

**Comments of Stephan L. Sheets  
on behalf of the City of Round Rock, Texas  
at the February 5, 2020 Meeting  
of the House Ways and Means Committee**

My name is Steve Sheets. I am the City Attorney of Round Rock and I have served in that position for more than 42 years. I am here to testify regarding the §380 agreement between Dell Computer and the City of Round Rock and the impact that the Comptroller's proposed amendments to Rule 3.344 will have on the City of Round Rock.

Prior to and during the 1989 Texas Legislative session, I and other officials with the City of Round Rock worked with our state representative, Parker McCullough, to draft and file HB 3192 to enact §380.001 of the Local Government Code to authorize cities to offer incentives to businesses to encourage economic development. HB 3192 was adopted by the '89 Legislature.

In 1990 or 1991 representatives of the Dell Computer Corporation ("Dell") contacted the City of Round Rock, and said that they were quickly outgrowing their available space in Austin and were looking for a new city, state or country to relocate. Dell was upfront with Round Rock that we were in competition with other states and even countries. In particular, we were in competition with Nashville, Tenn. and with Ireland, both of whom were offering very generous incentives to encourage Dell to move to their location.

Because Round Rock had been active in assisting Rep. McCullough to get HB 3192 adopted by the Legislature, we were in a position to be familiar with §380 when Dell came calling. We quickly understood that §380 was the perfect tool to use to incentivize Dell to remain in central Texas.

Thereafter, Dell and Round Rock spent several months negotiating the details of an agreement under the authority of §380 whereby Dell would relocate its corporate headquarters to Round Rock in exchange for economic development incentive payments from the City to Dell.

On August 26<sup>h</sup>, 1993, Dell Computer and the City of Round Rock entered into an Economic Development Program Agreement, (the "Agreement") which apparently was the first §380 Agreement in the State of Texas. The Agreement has a term of 60 years and will expire, unless extended, on December 31, 2053.

Dell Computer immediately went to work and less than a year later on August 2, 1994, Dell celebrated the grand opening of its corporate headquarters in Round Rock. In August of last year, Dell celebrated its 25<sup>th</sup> Anniversary in the City of Round Rock.

Dell currently has a corporate campus in Round Rock containing eight buildings with a total of over 2 million square feet with an assessed value of over \$517M. Dell has 12,000

employees at its Round Rock campus and 16,000 employees in Texas. Dell's employees have an average annual salary of \$104,000, which is 87% more than the state-wide average.

In Fiscal Year 2019, Round Rock collected a total of \$28.5M in sales tax from Dell's sales. \$14.5M was collected in the 1% municipal sales tax, over \$7M in the ½ cent sales tax for property tax relief. In addition, the city's Type B Economic Development Corporation collected over \$7M. Over the first 25 years of the agreement, Round Rock has collected \$245M in the 1% municipal sales tax, \$122.9M in the ½ cent sales tax for property tax relief. In addition, the city's Type B Economic Development Corporation has collected \$120.5M.

And let me be very clear, the State of Texas has collected more than \$1.5B in state sales tax generated by Dell's sales over the past 25 years. I will say it again, \$1.5B.

This is the ultimate "but for" text. If the City of Round Rock had not stepped up and offered Dell an incentive to stay in Central Texas, all of these tax dollars would have been lost.

I would now like to review with you some specific language in the proposed rules. I have attached copies of the excerpts of the following proposed rules to my written testimony.

Introductory paragraphs. HB 1525, marketplace providers and HB 2153 remote sellers. The City currently has no issues with the proposed rules dealing with these to HB's. However, the rules also deal with the Internet, Internet orders, and places of business.

3.334(a)(10) definition of Internet Order. The words "Internet" and "Internet Order" do not even appear in the Texas Tax Code.

3.334(a)(17) definition of Place of Business. A website, etc. is not a place of business.

3.334(c)(A)(D) and (F) regarding Internet Orders. Not received at place of business; sales tax destination based. Effective 12/31/22.

3.334(c)(1)(D) Orders not received at place of business. Sales tax destination based.

If these rules are adopted by the Comptroller, they will devastate the financial stability of the City of Round Rock. Round Rock will lose at least \$30M annually in sales tax revenues and will be forced to increase property taxes to make up the difference

The City's current bond rating is AAA, which compares to the State of Texas bond rating of AAA. The sheer magnitude of the projected loss of sales tax revenues will almost certainly result in a downgrade in the City's bond rating, which will result in the taxpayers having to pay millions of dollars in additional interest on future bond issues. The City's financial advisor says that something this dramatic could affect bond ratings of cities all over the state.

Origination based sales taxes encourage and reward cities that are innovated, competitive, entrepreneurial, and business friendly. This is an example of the free enterprise system at its best. Destination based sales taxes removes the positive influences of competition by treating all cities equally and provide no incentive to cities or businesses. This is an example of socialism at its worst.

Respectfully submitted,

Stephan L. Sheets  
Round Rock City Attorney

The Comptroller's introductory paragraph to the proposed rule amendments contains the following three sentences:

“The comptroller also implements House Bill 1525 and House Bill 2153, 86<sup>th</sup> Legislature, 2019. House Bill 1525 establishes local sales and use tax collection responsibilities on marketplace providers. House Bill 2153 establishes a single local use tax rate that remote sellers may elect to use.”

Last sentence of the Comptroller's first introductory paragraph to Rule 34 TAC §3.334

“. . . The amendments also clarify provisions concerning fulfillment, temporary places of business of the seller, places of business of the seller receiving more than three orders, traveling salespersons, **orders over the Internet,** and orders placed in person.”

The sixth paragraph of the Comptroller's introduction contains the following sentence:

“The comptroller has determined that orders placed on a website, through a software application, or other method using the Internet constitute orders over the Internet.”

§ 3.334(a)(10) is a new section that defines “Internet Order.”

“(10) Internet Order—An order placed on a website, software application, or other method using the Internet by a purchaser using a computer or mobile device that does not belong to the seller. Internet order does not include an order placed by phone call using Voice over Internet Protocol or a mobile device”

But note, there is no definition of “Internet”.

§ 3.334(a)(17) is the section that defines “Place of business of the seller.” This section contains a new sentence regarding Internet orders.

“(17) Place of business of the seller.

. . . A website, software application, or other method used to place an Internet order **is not a place of business** of the seller.”



§ 3.334(c)(6)(A), (D), and (F) are new sections that apply to “Internet Orders.”

“(A) General rule. Except as provided in this paragraph, **Internet orders are not received at a place of business** of the seller in Texas.”

“(D) Internet order fulfilled from a location in Texas that is not a place of business of the seller in Texas. When a seller fulfills an Internet order at a location in Texas that is not a place of business of the seller in Texas, the sale is consummated **at the location in Texas to which the order is shipped or delivered**, or at which the purchaser of the item takes possession.”

“(F) Exception for certain economic development agreements. Subparagraphs (A) – (E) of this paragraph do not apply to sales of taxable items for Internet orders made by a seller who has entered into an economic development agreement pursuant to Local Government Code, Chapters 380 and 381 with a local taxing jurisdiction before September 1, 2019. This subparagraph is effective until December 31, 2022.”

§ 3.334(c)(1)(D) is a new section that applies to orders not received at a place of business.

“(D) Order fulfilled within the state at a location that is not a place of business of the seller. When an order is received by a seller at any location **other than a place of business of the seller** in this state or by a traveling salesperson that does not operate out of a place of business of the seller in Texas, **and the seller fulfills the order at a location in Texas that is not a place of business of the seller, then the sale is consummated at the location in Texas to which the order is shipped or delivered,** or at which the purchaser of the item takes possession.”

**(Note: the above paragraph does not have a delayed effective date!)**