



# This Week in State Tax (TWIST)

December 16, 2024



## Texas: Comptroller's Second Try at Rule on Place of Business Again Contravenes Statute

A Texas district court judge recently issued a permanent injunction preventing the Comptroller of Public Accounts from enforcing certain provisions of a revised rule promulgated in July 2024 for determining what constitutes a “place of business” of a seller and where a sale is “consummated” for purposes of sourcing transactions for local sales and use tax purposes. The provisions struck down in this proceeding reflected further consultation, proceedings, and amendments made by the Comptroller after an initial proposed rule was rejected by the same judge in 2021.

The crux of the issue involves the sourcing of online orders placed by Texas residents with Texas retailers. Under current law, some retailers have established a sales office or fulfillment center in a jurisdiction and sourced all intrastate online sales to that jurisdiction. They have also entered into a sales tax sharing agreements with the locality for a portion of the tax emanating from the online orders; it was several cities with such agreements that brought the current action. Comptroller Hegar has argued this is inequitable to the localities in which the purchasers actually live. The proposed regulations that were challenged attempted to put some further parameters around what constitutes a place of business for purposes of consummating an intrastate online sale.

In her order pertaining to the latest proposed rule, the judge found that it specifically contravened the current “detailed statutory scheme for determining where a sale ... is ‘consummated’.” She also found that the proposed rule contravened the statutory definition of place of business and that the Comptroller did not substantially comply with certain requirements of the state Administrative Procedures Act. It is not known at this time whether the Comptroller will appeal the ruling and or further attempt to revise the rule. For further information on *City of Round Rock, Texas v. Hegar*, please contact [Karey Barton](#).

Learn about us:



[kpmg.com](https://www.kpmg.com)

The following information is not intended to be “written advice concerning one or more federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

© 2024 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. USCS011027-1AG