



EXECUTIVE ORDER

DH-2026-01

DIRECTING THE PUBLICATION OF PROPOSED AMENDMENTS TO 34 TEX. ADMIN. CODE § 3.330 (DATA PROCESSING SERVICES) TO END THE DOUBLE TAXATION OF MARKETPLACE AND PLATFORM FEES

WHEREAS, the Texas Legislature enacted the data processing services tax in 1987 to reach computerized data entry, retrieval, search, compilation, manipulation, and storage performed on mainframe computers for customers such as payroll processors and business accounting services, and did not enact that tax to reach the commissions or facilitation fees charged by marketplace and platform providers to the sellers who use their platforms;

WHEREAS, in 2025, the prior leadership of this agency adopted an interpretation of 34 Tex. Admin. Code § 3.330 that, for the first time, swept marketplace provider services into the definition of taxable “data processing services,” exposing the fees that platforms charge sellers to sales tax;

WHEREAS, this reinterpretation imposed a hidden, duplicative tax on ordinary Texas commerce, so that a single transaction could be taxed twice — once when the platform fee was charged to the seller, and again when sales tax applied to the underlying sale to the customer — a result the Legislature never authorized and that no statute compels;

WHEREAS, this hidden double tax has fallen hardest on small businesses and working Texans: the marketplace seller listing goods on platforms such as Amazon, eBay, or Etsy; the local restaurant offering delivery through services such as DoorDash, Grubhub, or Uber Eats; the family renting out a spare room; and the rideshare, freelance, and gig-economy workers and small operators who rely on platforms to reach customers;

WHEREAS, these Texas sellers and small businesses testified directly to the Comptroller that this tax disadvantages them against out-of-state competitors, strains the financial stability of local restaurants, and diverts dollars away from equipment, jobs, and growth that would otherwise stay in their businesses and communities;

WHEREAS, the Comptroller of Public Accounts possesses exclusive jurisdiction and clear statutory authority under Tax Code § 111.002 to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2, including the authority to correct an interpretation of its own rule that reaches beyond what the Legislature intended;

WHEREAS, the agency’s legal counsel has reviewed the proposed amendments to § 3.330 — which delete subsection (b)(5) and add new subsection (j) clarifying that fees, commissions, and other charges imposed by a platform provider on a platform seller for listing, offering, or facilitating sales are not a taxable data processing service or information service — and has certified the proposal to be within the agency’s legal authority to adopt;

WHEREAS, the Taxpayer First Project commits this agency to fair, consistent, and clearly defined rules that Texans and Texas businesses can plan around, rather than retroactive reinterpretations that surprise taxpayers after the fact; and

WHEREAS, ending this hidden double tax returns money to Texas families and small businesses that the government was never entitled to collect, without imposing any new cost on the State, because a tax collected beyond the Legislature’s intent was never the government’s money to keep;

NOW, THEREFORE, I, Don Huffines, Comptroller of Public Accounts of the State of Texas, by the authority vested in me by the laws of the State of Texas, including Tax Code § 111.002, do hereby ORDER the following:

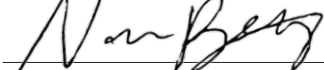
1. Publication Directed. The agency shall proceed without delay to publish in the Texas Register the proposed amendments to 34 Tex. Admin. Code § 3.330 (Data Processing Services), attached to and made part of this Order, which remove marketplace and platform facilitation fees from the definition of a taxable data processing service.
2. Statement of Purpose. This Order and the publication it directs are intended to make clear, without ambiguity, that it is the policy of this agency to end the double taxation of marketplace and platform fees and to restore the data processing services tax to the scope the Legislature intended when it enacted that tax in 1987.
3. Public Comment Preserved. Nothing in this Order shortens, waives, or otherwise alters the public comment period or any other procedural step required by the Administrative Procedure Act and by Tax Code § 111.002 for the adoption of the proposed amendments. This Order is issued for the purpose of announcing and directing publication of the proposal, and the amendments to § 3.330 shall take legal effect only upon completion of the rulemaking process required by law.
4. Agency Cooperation. All divisions of the Comptroller’s office, including the Office of General Counsel and the Tax Policy Division, shall render such assistance as the Associate Deputy Comptroller for Tax may request to ensure timely publication of the proposal and to respond to public comments received during the comment period.
5. Effective Date. This Order is effective immediately upon signing.

This Order reflects my commitment, and the commitment of this agency, to put Texas taxpayers first: to collect only what the law requires, to correct mistakes plainly when we find them, and to let Texans keep what is rightfully theirs.

SIGNED AND ISSUED in Austin, Texas, this 30th day of September, 2026.


DON HUFFINES
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

ATTESTED:


Chief Clerk, Office of the Comptroller