

By: Rose

H.B. No. 3406

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the collection of sales or use taxes by certain
3 businesses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. DEFINITIONS. In this Act:

6 (1) "Nexus" means substantial physical presence in
7 this state in the form of facilities, plants, distribution centers,
8 offices, property, or employees.

9 (2) "State" includes any political subdivision of a
10 state.

11 SECTION 2. DECLARATORY JUDGMENTS INVOLVING BUSINESSES;
12 CAUSE OF ACTION. (a) A district court has original jurisdiction of
13 a proceeding seeking declaratory judgment that involves:

14 (1) a party seeking declaratory relief that is a
15 business that is:

16 (A) organized under the laws of this state or is
17 otherwise owned by a resident of this state; or

18 (B) otherwise qualified to do business in this
19 state; and

20 (2) a responding party that:

21 (A) is an official of another state; and

22 (B) asserts a claim that the party seeking
23 declaratory relief is required to collect sales or use taxes for
24 that state based on conduct of the business that occurs in whole or

1 in part within this state.

2 (b) A business described by Subsection (a)(1) is entitled to
3 declaratory relief on the issue of whether the requirement of
4 another state that the business collect and remit sales or use taxes
5 to that state constitutes an undue burden on interstate commerce
6 under Section 8, Article I, United States Constitution.

7 (c) In determining whether to grant declaratory relief to a
8 business under this section, a court shall consider:

9 (1) the factual circumstances of the business's
10 operations that give rise to the demand by the other state; and

11 (2) the decisions of other courts interpreting Section
12 8, Article I, United States Constitution.

13 SECTION 3. COMMERCIAL NEXUS; LIABILITY FOR TAX. (a) A
14 business is not liable for the collection and remittance of sales
15 and use taxes to this state unless the business has sufficient nexus
16 to this state.

17 (b) A business may not be considered to have sufficient
18 nexus for purposes of this section without evidence of sufficient
19 contacts in this state in addition to participation in this state in
20 any of the following economic activities:

21 (1) directing business activities by use of
22 telecommunications or common carrier;

23 (2) advertising;

24 (3) licensing software;

25 (4) deriving income or revenue from customers;

26 (5) sending representatives to generate business;

27 (6) attending trade shows;

- 1 (7) conducting seminars; or
- 2 (8) assessing competitors' products.

3 SECTION 4. TRANSITION. This Act applies to a cause of
4 action that accrues on or after the effective date of this Act. A
5 cause of action that accrues before the effective date of this Act
6 is governed by the law in effect at the time the action accrued, and
7 the former law is continued in effect for that purpose.

8 SECTION 5. EFFECTIVE DATE. This Act takes effect September
9 1, 2005.