

Amend SB 636 by adding the following appropriately numbered sections to read as follows and renumbered the subsequent sections accordingly:

SECTION. \_\_\_\_\_. Subdivision (3), Subsection (a), Section 321.002, Tax Code, is amended to read as follows:

(3) "Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant. An outlet, office, facility, or location that contracts with a retail or commercial business engaged in activities to which this chapter applies to process for that business invoices or bills of lading onto which sales tax is added is not a "place of business of the retailer" if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax imposed by this chapter or to rebate a portion of the tax imposed by this chapter to the contracting business. Notwithstanding any other provision of this subdivision, a kiosk is not a "place of business of the retailer." In this subdivision, "kiosk" means a small stand-alone area or structure that:

(A) is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) is located entirely within a location that is a place of business of another retailer, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a customer.

SECTION \_\_\_\_\_. Section 321.203, Tax Code, is amended by amending Subsections (c) and (d) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c) If a retailer has more than one place of business in this state, each [~~a~~] sale of each [~~a~~] taxable item by the retailer is

consummated at the [~~retailer's~~] place of business of the retailer in this state where the retailer first receives the order, provided that the order is placed in person by the purchaser or lessee of the taxable item at the place of business of the retailer in this state where the retailer first receives the order.

(c-1) If the retailer has more than one place of business in this state and Subsection (c) does not apply, the sale is consummated at the place of business of the retailer in this state:

(1) from which the retailer ships or delivers the item, if the retailer ships or delivers the item to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

(c-2) Subsection (c) does not apply if:

(1) the taxable item is shipped or delivered from a warehouse:

(A) that is a place of business of the retailer;

(B) in relation to which the retailer has an economic development agreement with:

(i) the municipality in which the warehouse is located that was entered into under Chapter 380, 504, or 505, Local Government Code, or a predecessor statute, before January 1, 2009; or

(ii) the county in which the warehouse is located that was entered into under Chapter 381, Local Government Code, before January 1, 2009; and

(C) in relation to which the municipality provides information relating to the economic development agreement as required by Subsection (c-3) by the deadline prescribed by that subsection, or, if appropriate, the county complies with Section 323.203(c-3) by the deadline prescribed by that section; and

(2) the place of business of the retailer at which the retailer first receives the order in the manner described by Subsection (c) is a retail outlet identified in the information required by Subsection (c-3) or Section 323.203(c-3) as being

served by the warehouse on January 1, 2009.

(c-3) Not later than September 1, 2009, a municipality that has entered into an economic development agreement described by Subsection (c-2) shall send to the comptroller information prescribed by the comptroller relating to the agreement that identifies each warehouse subject to the agreement and each retail outlet that, on January 1, 2009, was served by that warehouse. The comptroller shall prescribe the manner in which the information must be provided. The provision of information to the comptroller under this subsection does not affect whether information described by this subsection is confidential or excepted from required public disclosure. This subsection and Subsection (c-2) expire September 1, 2014.

(d) If the retailer has more than one place of business in this state and Subsections (c) and (c-1) do not apply [~~neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state~~], the sale is consummated at:

(1) the [~~retailer's~~] place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates.

SECTION \_\_\_\_\_. Section 323.203, Tax Code, is amended by amending Subsections (c) and (d) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c) If a retailer has more than one place of business in this state, each [~~a~~] sale of each [~~a~~] taxable item by the retailer is consummated at the [~~retailer's~~] place of business of the retailer in this state where the retailer first receives the order, provided that the order is placed in person by the purchaser or lessee of the taxable item at the place of business of the retailer in this state where the retailer first receives the order.

(c-1) If the retailer has more than one place of business in this state and Subsection (c) does not apply, the sale is consummated at the place of business of the retailer in this state:

(1) from which the retailer ships or delivers the

item, if the retailer ships or delivers the item to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

(c-2) Subsection (c) does not apply if:

(1) the taxable item is shipped or delivered from a warehouse:

(A) that is a place of business of the retailer;

(B) in relation to which the retailer has an economic development agreement with:

(i) the county in which the warehouse is located that was entered into under Chapter 381, Local Government Code, before January 1, 2009; or

(ii) the municipality in which the warehouse is located that was entered into under Chapter 380, 504, or 505, Local Government Code, or a predecessor statute, before January 1, 2009; and

(C) in relation to which the county provides information relating to the economic development agreement as required by Subsection (c-3) by the deadline prescribed by that subsection, or, if appropriate, the municipality complies with Section 321.203(c-3) by the deadline prescribed by that section; and

(2) the place of business of the retailer at which the retailer first receives the order in the manner described by Subsection (c) is a retail outlet identified in the information required by Subsection (c-3) or Section 321.203(c-3) as being served by the warehouse on January 1, 2009.

(c-3) Not later than September 1, 2009, a county that has entered into an economic development agreement described by Subsection (c-2) shall send to the comptroller information prescribed by the comptroller relating to the agreement that identifies each warehouse subject to the agreement and each retail outlet that, on January 1, 2009, was served by that warehouse. The comptroller shall prescribe the manner in which the information must be provided. The provision of information to the comptroller

under this subsection does not affect whether information described by this subsection is confidential or excepted from required public disclosure. This subsection and Subsection (c-2) expire September 1, 2014.

(d) If the retailer has more than one place of business in this state and Subsections (c) and (c-1) do not apply [~~neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state~~], the sale is consummated at:

(1) the [~~retailer's~~] place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates.

SECTION \_\_\_\_\_. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION \_\_\_\_\_. Section 321.203, and Section 323.203, Tax Code, as added by this Act, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 321.203 and Section 323.203, Tax Code, as added by this Act, take effect August 31, 2009.