

By: Deuell, Jackson

S.B. No. 1202

A BILL TO BE ENTITLED

AN ACT

relating to the collection and allocation of local sales and use taxes.

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

SECTION 1. 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

1 retailer." In this subdivision, "kiosk" means a small stand-alone
2 area or structure that:

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

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

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

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

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

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

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

26 (2) where the purchaser or lessee takes possession of
27 and removes the item, if the purchaser or lessee takes possession of

1 and removes the item from a place of business of the retailer.

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

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

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

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

8 (i) the municipality in which the warehouse
9 is located that was entered into under Chapter 380, 504, or 505,
10 Local Government Code, or a predecessor statute, before January 1,
11 2009; or

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

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

21 (2) the place of business of the retailer at which the
22 retailer first receives the order in the manner described by
23 Subsection (c) is a retail outlet identified in the information
24 required by Subsection (c-3) or Section 323.203(c-3) as being
25 served by the warehouse on January 1, 2009.

26 (c-3) Not later than September 1, 2009, a municipality that
27 has entered into an economic development agreement described by

1 Subsection (c-2) shall send to the comptroller information
2 prescribed by the comptroller relating to the agreement that
3 identifies each warehouse subject to the agreement and each retail
4 outlet that, on January 1, 2009, was served by that warehouse. The
5 comptroller shall prescribe the manner in which the information
6 must be provided. The provision of information to the comptroller
7 under this subsection does not affect whether information described
8 by this subsection is confidential or excepted from required public
9 disclosure. This subsection and Subsection (c-2) expire September
10 1, 2014.

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

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

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

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

24 (c) If a retailer has more than one place of business in this
25 state, each [~~a~~] sale of each [~~a~~] taxable item by the retailer is
26 consummated at the [~~retailer's~~] place of business of the retailer
27 in this state where the retailer first receives the order, provided

1 that the order is placed in person by the purchaser or lessee of the
2 taxable item at the place of business of the retailer in this state
3 where the retailer first receives the order.

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

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

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

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

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

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

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

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

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

26 (C) in relation to which the county provides
27 information relating to the economic development agreement as

1 required by Subsection (c-3) by the deadline prescribed by that
2 subsection, or, if appropriate, the municipality complies with
3 Section 321.203(c-3) by the deadline prescribed by that section;
4 and

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

10 (c-3) Not later than September 1, 2009, a county that has
11 entered into an economic development agreement described by
12 Subsection (c-2) shall send to the comptroller information
13 prescribed by the comptroller relating to the agreement that
14 identifies each warehouse subject to the agreement and each retail
15 outlet that, on January 1, 2009, was served by that warehouse. The
16 comptroller shall prescribe the manner in which the information
17 must be provided. The provision of information to the comptroller
18 under this subsection does not affect whether information described
19 by this subsection is confidential or excepted from required public
20 disclosure. This subsection and Subsection (c-2) expire September
21 1, 2014.

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

27 (1) the [~~retailer's~~] place of business of the retailer

1 in this state where the order is received; or

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

5 SECTION 4. The change in law made by this Act does not
6 affect tax liability accruing before the effective date of this
7 Act. That liability continues in effect as if this Act had not been
8 enacted, and the former law is continued in effect for the
9 collection of taxes due and for civil and criminal enforcement of
10 the liability for those taxes.

11 SECTION 5. (a) Except as provided by Subsection (b) of
12 this section, this Act takes effect September 1, 2009.

13 (b) Subsection (c-3), Section 321.203, and Subsection
14 (c-3), Section 323.203, Tax Code, as added by this Act, take effect
15 immediately if this Act receives a vote of two-thirds of all the
16 members elected to each house, as provided by Section 39, Article
17 III, Texas Constitution. If this Act does not receive the vote
18 necessary for immediate effect, Subsection (c-3), Section 321.203
19 and Subsection (c-3), Section 323.203, Tax Code, as added by this
20 Act, take effect August 31, 2009.