

1-1 By: Deuell S.B. No. 1202
1-2 (In the Senate - Filed February 27, 2009; March 13, 2009, read
1-3 first time and referred to Committee on Finance; April 22, 2009,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 14, Nays 0; April 22, 2009, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1202 By: Deuell

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the collection and allocation of local sales and use
1-10 taxes.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subdivision (3), Subsection (a), Section
1-13 321.002, Tax Code, is amended to read as follows:

1-14 (3) "Place of business of the retailer" means an
1-15 established outlet, office, or location operated by the retailer or
1-16 the retailer's agent or employee for the purpose of receiving
1-17 orders for taxable items and includes any location at which three or
1-18 more orders are received by the retailer during a calendar year. A
1-19 warehouse, storage yard, or manufacturing plant is not a "place of
1-20 business of the retailer" unless at least three orders are received
1-21 by the retailer during the calendar year at the warehouse, storage
1-22 yard, or manufacturing plant. An outlet, office, facility, or
1-23 location that contracts with a retail or commercial business
1-24 engaged in activities to which this chapter applies to process for
1-25 that business invoices or bills of lading onto which sales tax is
1-26 added is not a "place of business of the retailer" if the
1-27 comptroller determines that the outlet, office, facility, or
1-28 location functions or exists to avoid the tax imposed by this
1-29 chapter or to rebate a portion of the tax imposed by this chapter to
1-30 the contracting business. Notwithstanding any other provision of
1-31 this subdivision, a kiosk is not a "place of business of the
1-32 retailer." In this subdivision, "kiosk" means a small stand-alone
1-33 area or structure that:

1-34 (A) is used solely to display merchandise or to
1-35 submit orders for taxable items from a data entry device, or both;

1-36 (B) is located entirely within a location that is
1-37 a place of business of another retailer, such as a department store
1-38 or shopping mall; and

1-39 (C) at which taxable items are not available for
1-40 immediate delivery to a customer.

1-41 SECTION 2. Section 321.203, Tax Code, is amended by
1-42 amending Subsections (c) and (d) and adding Subsection (c-1) to
1-43 read as follows:

1-44 (c) If a retailer has more than one place of business in this
1-45 state, each [a] sale of each [a] taxable item by the retailer is
1-46 consummated at the [retailer's] place of business of the retailer
1-47 in this state where the retailer first receives the order, provided
1-48 that the order is placed in person by the purchaser or lessee of the
1-49 taxable item at the place of business of the retailer in this state
1-50 where the retailer first receives the order.

1-51 (c-1) If the retailer has more than one place of business in
1-52 this state and Subsection (c) does not apply, the sale is
1-53 consummated at the place of business of the retailer in this state:

1-54 (1) from which the retailer ships or delivers the
1-55 item, if the retailer ships or delivers the item to a point
1-56 designated by the purchaser or lessee; or

1-57 (2) where the purchaser or lessee takes possession of
1-58 and removes the item, if the purchaser or lessee takes possession of
1-59 and removes the item from a place of business of the retailer.

1-60 (d) If the retailer has more than one place of business in
1-61 this state and Subsections (c) and (c-1) do not apply [neither the
1-62 possession of a taxable item is taken at nor shipment or delivery of
1-63 the item is made from the retailer's place of business in this

2-1 ~~state]~~, the sale is consummated at:

2-2 (1) the ~~[retailer's]~~ place of business of the retailer
2-3 in this state where the order is received; or

2-4 (2) if the order is not received at a place of business
2-5 of the retailer, the place of business from which the retailer's
2-6 agent or employee who took the order operates.

2-7 SECTION 3. Section 323.203, Tax Code, is amended by
2-8 amending Subsections (c) and (d) and adding Subsection (c-1) to
2-9 read as follows:

2-10 (c) If a retailer has more than one place of business in this
2-11 state, each [a] sale of each [a] taxable item by the retailer is
2-12 consummated at the [retailer's] place of business of the retailer
2-13 in this state where the retailer first receives the order, provided
2-14 that the order is placed in person by the purchaser or lessee of the
2-15 taxable item at the place of business of the retailer in this state
2-16 where the retailer first receives the order.

2-17 (c-1) If the retailer has more than one place of business in
2-18 this state and Subsection (c) does not apply, the sale is
2-19 consummated at the place of business of the retailer in this state:

2-20 (1) from which the retailer ships or delivers the
2-21 item, if the retailer ships or delivers the item to a point
2-22 designated by the purchaser or lessee; or

2-23 (2) where the purchaser or lessee takes possession of
2-24 and removes the item, if the purchaser or lessee takes possession of
2-25 and removes the item from a place of business of the retailer.

2-26 (d) If the retailer has more than one place of business in
2-27 this state and Subsections (c) and (c-1) do not apply [neither the
2-28 possession of a taxable item is taken at nor shipment or delivery of
2-29 the item is made from the retailer's place of business in this
2-30 state], the sale is consummated at:

2-31 (1) the ~~[retailer's]~~ place of business of the retailer
2-32 in this state where the order is received; or

2-33 (2) if the order is not received at a place of business
2-34 of the retailer, the place of business from which the retailer's
2-35 agent or employee who took the order operates.

2-36 SECTION 4. The change in law made by this Act does not
2-37 affect tax liability accruing before the effective date of this
2-38 Act. That liability continues in effect as if this Act had not been
2-39 enacted, and the former law is continued in effect for the
2-40 collection of taxes due and for civil and criminal enforcement of
2-41 the liability for those taxes.

2-42 SECTION 5. This Act takes effect September 1, 2009.

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