

By: Naishtat

H.B. No. 1317

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a presumption that certain retailers are engaged in
3 business in this state for the purpose of the use tax.

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

5 SECTION 1. Section 151.107, Tax Code, is amended by adding
6 Subsections (d) and (e) to read as follows:

7 (d) For the purpose of this subchapter and in relation to
8 the use tax, there is a rebuttable presumption that a retailer is
9 engaged in business in this state if the retailer:

10 (1) enters into an agreement with a person who is a
11 resident of this state under which the resident receives a
12 commission or other consideration for directly or indirectly
13 referring potential customers to the retailer by any means,
14 including by a link on an Internet website; and

15 (2) during the previous four calendar quarters
16 received at least \$10,000 in cumulative gross receipts from sales
17 to consumers located in this state who were referred to the retailer
18 by residents under agreements described by Subdivision (1).

19 (e) The presumption under Subsection (d) may be rebutted by
20 proof that the resident with whom the retailer has an agreement
21 described by Subsection (d)(1) did not engage in any solicitation
22 in this state on behalf of the retailer that would satisfy the nexus
23 requirement of the United States Constitution during the period
24 described by Subsection (d)(2).

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

7 SECTION 3. This Act takes effect September 1, 2011.