

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the clarification of the circumstances under which a
3 retailer is considered to be engaged in business in this state, and
4 the information required to be provided by certain retailers, for
5 purposes of the collection of sales and use taxes.

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

7 SECTION 1. Section 151.024, Tax Code, is amended to read as
8 follows:

9 Sec. 151.024. PERSONS WHO MAY BE REGARDED AS RETAILERS. (a)
10 If the comptroller determines that it is necessary for the
11 efficient administration of this chapter to regard a salesperson
12 [~~salesman~~], representative, peddler, or canvasser as the agent of a
13 dealer, distributor, supervisor, or employer under whom the person
14 [~~he~~] operates or from whom the person [~~he~~] obtains the tangible
15 personal property that the person [~~he~~] sells, whether or not the
16 sale is made in the person's [~~his~~] own behalf or for the dealer,
17 distributor, supervisor, or employer, the comptroller may so regard
18 the salesperson [~~salesman~~], representative, peddler, or canvasser,
19 and may regard the dealer, distributor, supervisor, or employer as
20 a retailer or seller for the purpose of this chapter.

21 (b) A dealer, distributor, supervisor, or employer may not
22 be regarded under this section as a retailer or seller for the
23 purpose of this chapter if the dealer, distributor, supervisor, or
24 employer directly or indirectly, or through a subsidiary,

1 affiliate, or agent by whatever name, maintains, occupies,
2 operates, or uses, permanently or temporarily, only:

3 (1) a fulfillment center as described by Section
4 151.107(i); or

5 (2) a computer server.

6 SECTION 2. Subchapter B, Chapter 151, Tax Code, is amended
7 by adding Section 151.028 to read as follows:

8 Sec. 151.028. INFORMATION NOT REQUIRED FROM CERTAIN
9 RETAILERS. The comptroller or any other official or agency of this
10 state may not require for purposes of this chapter a retailer that
11 is not engaged in business in this state to:

12 (1) file any report, statement, or other information
13 regarding purchases made by customers in this state; or

14 (2) send to a customer in this state any type of notice
15 regarding the customer's purchase.

16 SECTION 3. Section 151.107, Tax Code, is amended by
17 amending Subsection (a) and adding Subsections (f), (g), (h), and
18 (i) to read as follows:

19 (a) Except as otherwise provided by this section, for ~~For~~
20 the purpose of this subchapter and in relation to the use tax, a
21 retailer is engaged in business in this state if the retailer:

22 (1) maintains, occupies, or uses in this state
23 permanently, temporarily, directly, or indirectly or through a
24 subsidiary or agent by whatever name, an office, place of
25 distribution, sales or sample room or place, warehouse, storage
26 place, or any other place of business;

27 (2) has a representative, agent, salesperson

1 ~~[salesman]~~, canvasser, or solicitor operating in this state under
2 the authority of the retailer or its subsidiary for the purpose of
3 selling or delivering or the taking of orders for a taxable item;

4 (3) derives rentals from a lease of tangible personal
5 property situated in this state;

6 (4) engages in regular or systematic solicitation of
7 sales of taxable items in this state by the distribution of
8 catalogs, periodicals, advertising flyers, or other advertising,
9 by means of print, radio, or television media, or by mail,
10 telegraphy, telephone, computer data base, cable, optic,
11 microwave, or other communication system for the purpose of
12 effecting sales of taxable items;

13 (5) solicits orders for taxable items by mail or
14 through other media and under federal law is subject to or permitted
15 to be made subject to the jurisdiction of this state for purposes of
16 collecting the taxes imposed by this chapter;

17 (6) has a franchisee or licensee operating under its
18 trade name if the franchisee or licensee is required to collect the
19 tax under this section; or

20 (7) otherwise does business in this state.

21 (f) A retailer whose physical presence in this state is
22 attributable to the maintenance, occupation, operation, or use by
23 the retailer indirectly, or through the retailer's subsidiary,
24 affiliate, or agent by whatever name, of an office, place of
25 distribution, sales or sample room or place, warehouse, storage
26 place, or any other place of business in this state is engaged in
27 business in this state as provided by Subsection (a)(1) only if:

1 (1) the place of business in this state is a physical
2 location that is open to the public for the sale of goods at retail;
3 and

4 (2) at least one of the following activities is
5 performed on the retailer's behalf at that place of business:

6 (A) promotion of the retailer's business, such as
7 distributing the retailer's coupons or compiling the retailer's
8 mailing list, except that making the retailer's catalog available
9 for use as a reference or providing the catalog to a customer in
10 this state at the customer's request is not considered promotion of
11 the business;

12 (B) acceptance of returns or exchanges of, or
13 credits for, merchandise purchased from or through the retailer;

14 (C) maintenance of telephone or Internet kiosks
15 that allow customers to access inventory and purchase merchandise
16 from or through the retailer; or

17 (D) acceptance or placement of customers' orders
18 with the retailer if a product is unavailable at the place of
19 business.

20 (g) Notwithstanding any other law, a retailer is not
21 considered to be engaged in business in this state if the retailer's
22 physical presence in this state is attributable to:

23 (1) the maintenance, occupation, operation, or use in
24 this state permanently, temporarily, directly, or indirectly or
25 through a subsidiary, affiliate, or agent by whatever name, of a
26 fulfillment center;

27 (2) the ownership of tangible personal property

1 located on the premises of a fulfillment center described by
2 Subdivision (1); or

3 (3) the maintenance, occupation, operation, or use in
4 this state permanently, temporarily, directly, or indirectly or
5 through a subsidiary, affiliate, or agent by whatever name, of a
6 computer server.

7 (h) For purposes of this section, a retailer and another
8 person are affiliates if:

9 (1) either the retailer or the other person has a
10 direct or indirect ownership interest in the other of more than 50
11 percent; or

12 (2) a third person, or a group of persons affiliated
13 with each other, has a direct or indirect ownership interest of more
14 than 50 percent in the retailer and more than 50 percent in the
15 other person.

16 (i) In this section, "fulfillment center" means an
17 establishment in this state at which shipments of tangible personal
18 property are processed for delivery to customers. The term does not
19 include an establishment at which retail sales of tangible personal
20 property are made to retail customers on more than 12 days per year
21 unless the establishment processes customer sales orders by mail,
22 telephone, or electronic means, also processes shipments of
23 tangible personal property to customers, and, of the goods sold by
24 or shipped through the establishment, the goods sold or shipped to
25 customers outside this state represent at least 75 percent of the
26 fair market value of the total goods sold by or shipped through the
27 establishment. Retail sales made inside an establishment to

1 employees working at the establishment are not considered in
2 determining the number of days per year on which sales are made to
3 retail customers or the value of goods sold by or shipped through an
4 establishment.

5 SECTION 4. Section 151.028, Tax Code, as added by this Act,
6 and Sections 151.024 and 151.107, Tax Code, as amended by this Act,
7 are a clarification of existing law and do not imply that the former
8 law may be construed as inconsistent with the law as amended by this
9 Act.

10 SECTION 5. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2011.