

By: West, Davis

S.B. No. 1798

A BILL TO BE ENTITLED

AN ACT

relating to retailers engaged in business in this state for purposes of sales and use taxes.

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

SECTION 1. Subsection (b), Section 151.008, Tax Code, is amended to read as follows:

(b) "Seller" and "retailer" include:

(1) a person in the business of making sales at auction of tangible personal property owned by the person or by another;

(2) a person who makes more than two sales of taxable items during a 12-month period, including sales made in the capacity of an assignee for the benefit of creditors or receiver or trustee in bankruptcy;

(3) a person regarded by the comptroller as a seller or retailer under Section 151.024 [~~of this code~~];

(4) a hotel, motel, or owner or lessor of an office or residential building or development that contracts and pays for telecommunications services for resale to guests or tenants; [~~and~~]

(5) a person who engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of

1 effecting sales of taxable items; and

2 (6) a person who, under an agreement with another
3 person, is:

4 (A) entrusted with possession of tangible
5 personal property with respect to which the other person has title
6 or another ownership interest; and

7 (B) authorized to sell, lease, or rent the
8 property, or otherwise permit access to or use of the property,
9 without additional action by the person having title to or another
10 ownership interest in the property.

11 SECTION 2. Section 151.107, Tax Code, is amended by
12 amending Subsection (a) and adding Subsections (a-1) and (d) to
13 read as follows:

14 (a) For the purpose of this subchapter and in relation to
15 the use tax, a retailer is engaged in business in this state if the
16 retailer:

17 (1) maintains, occupies, or uses in this state
18 permanently, temporarily, directly, or indirectly or through a
19 subsidiary or agent by whatever name, an office, place of
20 distribution, sales or sample room or place, warehouse, storage
21 place, or any other location where [~~place of~~] business is
22 conducted;

23 (2) has a representative, agent, salesman, canvasser,
24 or solicitor operating in this state under the authority of the
25 retailer or its subsidiary for the purpose of selling, fulfilling,
26 or delivering or the taking of orders for a taxable item;

27 (3) derives receipts [~~rentals~~] from the sale, use, [a]

1 lease, or rental of tangible personal property situated in this
2 state;

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

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

14 (6) has a franchisee or licensee operating under its
15 trade name if the franchisee or licensee is required to collect the
16 tax under this section; [~~or~~]

17 (7) holds a substantial ownership interest in, or is
18 owned in whole or substantial part by, a business entity that
19 maintains a location in this state at which business is conducted
20 and if:

21 (A) the retailer sells the same or a
22 substantially similar line of products as the business entity with
23 the location in this state and sells those products under a business
24 name that is the same or substantially similar to the business name
25 of the business entity with the location in this state; or

26 (B) the Texas facilities, Texas employees, or
27 other representatives of the business entity with the location in

1 this state are used to:

2 (i) advertise, promote, or facilitate sales
3 by the retailer to consumers; or

4 (ii) perform any other activity on behalf
5 of the retailer that is intended to establish or maintain a
6 marketplace for the retailer in this state, including receiving or
7 exchanging returned merchandise;

8 (8) holds a substantial ownership interest in, or is
9 owned in whole or substantial part by, a business entity that:

10 (A) maintains in this state a distribution house,
11 sales house, warehouse, or similar location at which business is
12 conducted; and

13 (B) delivers property sold by the retailer or an
14 affiliate of the retailer to consumers; or

15 (9) otherwise does business in this state.

16 (a-1) For the purpose of this subchapter and in relation to
17 the use tax, there is a rebuttable presumption that a retailer that
18 is part of an affiliated group is engaged in business in this state
19 if another member entity of the affiliated group is a retailer
20 engaged in business in this state. The presumption may be rebutted
21 by evidence that, during the preceding 12-month period, the other
22 member entity that is a retailer engaged in business in this state
23 did not engage in any activity described by this section on behalf
24 of the retailer to which the presumption applies.

25 (d) In this section:

26 (1) "Affiliated group" has the meaning assigned by
27 Section 171.0001.

1 (2) "Ownership" includes:

2 (A) direct ownership; and

3 (B) indirect ownership through a parent entity,
4 subsidiary, or affiliate.

5 (3) "Substantial" means, with respect to an ownership
6 interest, an interest in an entity that is at least equal to the
7 degree of ownership or equity interest that would require a
8 beneficial owner to file a disclosure statement under 15 U.S.C.
9 Section 78p or a successor to that statute.

10 SECTION 3. The change in law made by this Act does not
11 affect tax liability accruing before the effective date of this
12 Act. That liability continues in effect as if this Act had not been
13 enacted, and the former law is continued in effect for the
14 collection of taxes due and for civil and criminal enforcement of
15 the liability for those taxes.

16 SECTION 4. This Act takes effect January 1, 2012.