

1-1 By: West S.B. No. 1798
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Finance; April 21, 2011,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 10, Nays 1; April 21, 2011, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1798 By: West

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

1-9 relating to retailers engaged in business in this state for
1-10 purposes of sales and use taxes.

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

1-12 SECTION 1. Subsection (b), Section 151.008, Tax Code, is
1-13 amended to read as follows:

1-14 (b) "Seller" and "retailer" include:

1-15 (1) a person in the business of making sales at auction
1-16 of tangible personal property owned by the person or by another;

1-17 (2) a person who makes more than two sales of taxable
1-18 items during a 12-month period, including sales made in the
1-19 capacity of an assignee for the benefit of creditors or receiver or
1-20 trustee in bankruptcy;

1-21 (3) a person regarded by the comptroller as a seller or
1-22 retailer under Section 151.024 [~~of this code~~];

1-23 (4) a hotel, motel, or owner or lessor of an office or
1-24 residential building or development that contracts and pays for
1-25 telecommunications services for resale to guests or tenants; [~~and~~]

1-26 (5) a person who engages in regular or systematic
1-27 solicitation of sales of taxable items in this state by the
1-28 distribution of catalogs, periodicals, advertising flyers, or
1-29 other advertising, by means of print, radio, or television media,
1-30 or by mail, telegraphy, telephone, computer data base, cable,
1-31 optic, microwave, or other communication system for the purpose of
1-32 effecting sales of taxable items; and

1-33 (6) a person who, under an agreement with another
1-34 person, is:

1-35 (A) entrusted with possession of tangible
1-36 personal property with respect to which the other person has title
1-37 or another ownership interest; and

1-38 (B) authorized to sell, lease, or rent the
1-39 property, or otherwise permit access to or use of the property,
1-40 without additional action by the person having title to or another
1-41 ownership interest in the property.

1-42 SECTION 2. Section 151.107, Tax Code, is amended by
1-43 amending Subsection (a) and adding Subsections (a-1) and (d) to
1-44 read as follows:

1-45 (a) For the purpose of this subchapter and in relation to
1-46 the use tax, a retailer is engaged in business in this state if the
1-47 retailer:

1-48 (1) maintains, occupies, or uses in this state
1-49 permanently, temporarily, directly, or indirectly or through a
1-50 subsidiary or agent by whatever name, an office, place of
1-51 distribution, sales or sample room or place, warehouse, storage
1-52 place, or any other location where [~~place of~~] business is
1-53 conducted;

1-54 (2) has a representative, agent, salesman, canvasser,
1-55 or solicitor operating in this state under the authority of the
1-56 retailer or its subsidiary for the purpose of selling, fulfilling,
1-57 or delivering or the taking of orders for a taxable item;

1-58 (3) derives receipts or receives compensation
1-59 [~~rentals~~] from the sale, use, [a] lease, or rental of tangible
1-60 personal property situated in this state;

1-61 (4) engages in regular or systematic solicitation of
1-62 sales of taxable items in this state by the distribution of
1-63 catalogs, periodicals, advertising flyers, or other advertising,

2-1 by means of print, radio, or television media, or by mail,
2-2 telegraphy, telephone, computer data base, cable, optic,
2-3 microwave, or other communication system for the purpose of
2-4 effecting sales of taxable items;

2-5 (5) solicits orders for taxable items by mail or
2-6 through other media and under federal law is subject to or permitted
2-7 to be made subject to the jurisdiction of this state for purposes of
2-8 collecting the taxes imposed by this chapter;

2-9 (6) has a franchisee or licensee operating under its
2-10 trade name if the franchisee or licensee is required to collect the
2-11 tax under this section; [~~or~~]

2-12 (7) holds a substantial ownership interest in, or is
2-13 owned in whole or substantial part by, a business entity that
2-14 maintains a location in this state at which business is conducted
2-15 and if:

2-16 (A) the retailer sells the same or a
2-17 substantially similar line of products as the business entity with
2-18 the location in this state and sells those products under a business
2-19 name that is the same or substantially similar to the business name
2-20 of the business entity with the location in this state; or

2-21 (B) the Texas facilities, Texas employees, or
2-22 other representatives of the business entity with the location in
2-23 this state are used to:

2-24 (i) advertise, promote, or facilitate sales
2-25 by the retailer to consumers; or

2-26 (ii) perform any other activity on behalf
2-27 of the retailer that is intended to establish or maintain a
2-28 marketplace for the retailer in this state, including receiving or
2-29 exchanging returned merchandise;

2-30 (8) holds a substantial ownership interest in, or is
2-31 owned in whole or substantial part by, a business entity that:

2-32 (A) maintains in this state a distribution house,
2-33 sales house, warehouse, or similar location at which business is
2-34 conducted; and

2-35 (B) delivers property sold by the retailer or an
2-36 affiliate of the retailer to consumers; or

2-37 (9) otherwise does business in this state.

2-38 (a-1) For the purpose of this subchapter and in relation to
2-39 the use tax, there is a rebuttable presumption that a retailer that
2-40 is part of an affiliated group is engaged in business in this state
2-41 if another member entity of the affiliated group is a retailer
2-42 engaged in business in this state. The presumption may be rebutted
2-43 by evidence that, during the preceding 12-month period, the other
2-44 member entity that is a retailer engaged in business in this state
2-45 did not engage in any activity described by this section on behalf
2-46 of the retailer to which the presumption applies.

2-47 (d) In this section:

2-48 (1) "Affiliated group" has the meaning assigned by
2-49 Section 171.0001.

2-50 (2) "Ownership" includes:

2-51 (A) direct ownership; and

2-52 (B) indirect ownership through a parent entity,
2-53 subsidiary, or affiliate.

2-54 (3) "Substantial" means, with respect to an ownership
2-55 interest, an interest in an entity that is at least equal to the
2-56 degree of ownership or equity interest that would require a
2-57 beneficial owner to file a disclosure statement under 15 U.S.C.
2-58 Section 78p or a successor to that statute.

2-59 SECTION 3. The change in law made by this Act does not
2-60 affect tax liability accruing before the effective date of this
2-61 Act. That liability continues in effect as if this Act had not been
2-62 enacted, and the former law is continued in effect for the
2-63 collection of taxes due and for civil and criminal enforcement of
2-64 the liability for those taxes.

2-65 SECTION 4. This Act takes effect January 1, 2012.

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