

By: Springer

H.B. No. 97

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to actions by a retailer that constitute engaging in  
3 business in this state for purposes of the use tax.

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

5 SECTION 1. Section 151.107(a), Tax Code, is amended to read  
6 as follows:

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

10 (1) maintains, occupies, or uses in this state  
11 permanently, temporarily, directly, or indirectly or through a  
12 subsidiary or agent by whatever name, an office, distribution  
13 center, sales or sample room or place, warehouse, storage place, or  
14 any other physical location where business is conducted;

15 (2) has a representative, agent, salesman, canvasser,  
16 or solicitor operating in this state under the authority of the  
17 retailer or its subsidiary for the purpose of selling or delivering  
18 or the taking of orders for a taxable item;

19 (3) derives receipts from the sale, lease, or rental  
20 of tangible personal property situated in this state;

21 (4) engages in regular or systematic solicitation of  
22 sales of taxable items in this state by the distribution of  
23 catalogs, periodicals, advertising flyers, or other advertising,  
24 by means of print, radio, or television media, or by mail,

1 telegraphy, telephone, computer data base, cable, optic,  
2 microwave, or other communication system for the purpose of  
3 effecting sales of taxable items;

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

8 (6) has a franchisee or licensee operating under its  
9 trade name if the franchisee or licensee is required to collect the  
10 tax under this section;

11 (7) holds a substantial ownership interest in, or is  
12 owned in whole or substantial part by, a person who maintains a  
13 location in this state from which business is conducted and if:

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

19 (B) the facilities or employees of the person  
20 with the location in this state are used to:

21 (i) advertise, promote, or facilitate sales  
22 by the retailer to consumers; or

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

27 (8) holds a substantial ownership interest in, or is

1 owned in whole or substantial part by, a person that:

2 (A) maintains a distribution center, warehouse,  
3 or similar location in this state; and

4 (B) delivers property sold by the retailer to  
5 consumers; ~~or~~

6 (9) in the previous calendar year or the current  
7 calendar year:

8 (A) has total receipts of more than \$100,000 from  
9 taxable items delivered in this state, including taxable items  
10 delivered electronically to purchasers in this state; or

11 (B) has at least 200 sales of taxable items  
12 delivered in this state, including taxable items delivered  
13 electronically to purchasers in this state; or

14 (10) otherwise does business in this state.

15 SECTION 2. Section 151.801, Tax Code, is amended by  
16 amending Subsection (a) and adding Subsection (c-3) to read as  
17 follows:

18 (a) Except for the amounts allocated under Subsections (b),  
19 (c), ~~and~~ (c-2), and (c-3), all proceeds from the collection of the  
20 taxes imposed by this chapter shall be deposited to the credit of  
21 the general revenue fund.

22 (c-3) Except to the extent Subsection (b), (c), or (c-2)  
23 requires a different allocation, the comptroller shall deposit to  
24 the credit of the property tax relief fund established under  
25 Section 403.109, Government Code, the amount of the proceeds from  
26 the tax imposed under Section 151.101 and received by the  
27 comptroller that is attributable to the collection of that tax by

1 retailers considered to be engaged in business in this state solely  
2 on the basis of Section 151.107(a)(9). The comptroller may require  
3 a retailer described by this subsection to report to the  
4 comptroller as necessary to make the allocation under this  
5 subsection.

6 SECTION 3. (a) The state may bring an action for  
7 declaratory judgment in a district court in Travis County under  
8 Chapter 37, Civil Practice and Remedies Code, to determine the  
9 constitutionality and other validity under the state or federal  
10 constitution of all or any part of Section 151.107(a)(9), Tax Code,  
11 as amended by this Act. This subsection applies without regard to  
12 whether the state has initiated an audit of, or other tax collection  
13 procedure against, any taxpayer involving Section 151.107(a)(9),  
14 Tax Code, as amended by this Act. This subsection does not  
15 authorize an award of attorney's fees against this state, and  
16 Section 37.009, Civil Practice and Remedies Code, does not apply to  
17 an action filed under this subsection.

18 (b) An appeal of a declaratory judgment or order, however  
19 characterized, of a district court, including an appeal of the  
20 judgment of an appellate court, holding or otherwise determining  
21 that all or any part of Section 151.107(a)(9), Tax Code, as amended  
22 by this Act, is constitutional or unconstitutional, or otherwise  
23 valid or invalid, under the state or federal constitution is an  
24 accelerated appeal.

25 (c) If the judgment or order is interlocutory, an  
26 interlocutory appeal may be taken from the judgment or order and is  
27 an accelerated appeal.

1 (d) A district court in Travis County may grant or deny a  
2 temporary or otherwise interlocutory injunction or a permanent  
3 injunction on the grounds of the constitutionality or  
4 unconstitutionality, or other validity or invalidity, under the  
5 state or federal constitution of all or any part of Section  
6 151.107(a)(9), Tax Code, as amended by this Act.

7 (e) There is a direct appeal to the Texas Supreme Court from  
8 an order, however characterized, of a trial court granting or  
9 denying a temporary or otherwise interlocutory injunction or a  
10 permanent injunction on the grounds of the constitutionality or  
11 unconstitutionality, or other validity or invalidity, under the  
12 state or federal constitution of all or any part of Section  
13 151.107(a)(9), Tax Code, as amended by this Act.

14 (f) The direct appeal is an accelerated appeal.

15 (g) This section exercises the authority granted by Section  
16 3-b, Article V, Texas Constitution.

17 (h) The filing of a direct appeal under this section will  
18 automatically stay any temporary or otherwise interlocutory  
19 injunction or permanent injunction granted in accordance with this  
20 section pending final determination by the Texas Supreme Court.

21 (i) An appeal under this section, including an  
22 interlocutory, accelerated, or direct appeal, is governed, as  
23 applicable, by the Texas Rules of Appellate Procedure, including  
24 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),  
25 38.6(a) and (b), 40.1(b), and 49.4.

26 SECTION 4. While a declaratory judgment action under  
27 Section 3(a) of this Act or an appeal of a declaratory judgment or

1 order, however characterized, in an action under Section 3(a) of  
2 this Act is pending, the state may not apply Section 151.107(a)(9),  
3 Tax Code, as amended by this Act, to any person unless:

4 (1) the person consents to the application of Section  
5 151.107(a)(9), Tax Code, as amended by this Act, to the person; or

6 (2) another court order or judgment has determined  
7 that Section 151.107(a)(9), Tax Code, as amended by this Act, is  
8 valid and constitutional as applied to the particular person.

9 SECTION 5. The change in law made by this Act does not  
10 affect tax liability accruing before the effective date of this  
11 Act. That liability continues in effect as if this Act had not been  
12 enacted, and the former law is continued in effect for the  
13 collection of taxes due and for civil and criminal enforcement of  
14 the liability for those taxes.

15 SECTION 6. This Act takes effect January 1, 2018.