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By:  Shine H.B. No. 3538

A BILL TO BE ENTITLED

AN ACT

relating to local sales and use tax administration.

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

SECTION 1.  Section 321.002(a)(3), Tax Code, is amended to read as follows:

(3)(A)  "Place of business of the retailer" means an established outlet, office, or location operated by the retailer, or operated by the retailer's agent or employee, for the purpose of receiving orders, regardless of the method by which orders are transmitted or received, for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant.

(B)  An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a "place of business of the retailer" if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax legally due under this chapter or exists solely to rebate a portion of the tax imposed by this chapter to the contracting business. An outlet, office, facility, or location does not exist to avoid the tax legally due under this chapter or solely to rebate a portion of the tax imposed by this chapter if the outlet, office, facility, or location provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(C)  Notwithstanding any other provision of this subdivision, a kiosk is not a "place of business of the retailer." In this subdivision, "kiosk" means a small stand-alone area or structure that:

(i)  is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(ii)  is located entirely within a location that is a place of business of another retailer, such as a department store or shopping mall; and

(iii)  at which taxable items are not available for immediate delivery to a customer.

SECTION 2.  Section 321.203, Tax Code, is amended by amending Subsections (b) and (e-1) and adding Subsection (o) to read as follows:

(b)  If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items, regardless of the method by which orders for the taxable items are transmitted or received, are consummated at that place of business except as provided by Subsection (e) or (o).

(e-1)  Notwithstanding any other provision of this section, a sale of a taxable item made [~~by a marketplace seller~~] through a marketplace as provided by Section 151.0242 is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the purchaser.

(o)  The sale of a taxable item purchased by the retailer from a related entity, including a related entity acting as a third-party drop shipper of taxable items, is consummated at the place of business of the related entity where the order for the taxable item is fulfilled or from which the taxable item is shipped if:

(1)  the retailer has only one place of business in this state;

(2)  the retailer purchases the taxable item from the related entity using a resale certificate; and

(3)  the order for the taxable item is fulfilled at, or the taxable item is shipped from, a place of business of the related entity in this state that would constitute a place of business of the retailer if the related entity were the retailer.

SECTION 3.  Section 323.203, Tax Code, is amended by amending Subsections (b) and (e-1) and adding Subsection (n) to read as follows:

(b)  If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items, regardless of the method by which orders for the taxable items are transmitted or received, are consummated at that place of business except as provided by Subsection (e) or (n).

(e-1)  Notwithstanding any other provision of this section, a sale of a taxable item made [~~by a marketplace seller~~] through a marketplace as provided by Section 151.0242 is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the purchaser.

(n)  The sale of a taxable item purchased by the retailer from a related entity, including a related entity acting as a third-party drop shipper of taxable items, is consummated at the place of business of the related entity where the order for the taxable item is fulfilled or from which the taxable item is shipped if:

(1)  the retailer has only one place of business in this state;

(2)  the retailer purchases the taxable item from the related entity using a resale certificate; and

(3)  the order for the taxable item is fulfilled at, or the taxable item is shipped from, a place of business of the related entity in this state that would constitute a place of business of the retailer if the related entity were the retailer.

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

SECTION 5.  This Act takes effect January 1, 2022.