87R7697 CJC-F

By:  Schwertner S.B. No. 1038

A BILL TO BE ENTITLED

AN ACT

relating to the place of business of a retailer for purposes of municipal sales and use taxes.

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

SECTION 1.  Section 321.002(a), Tax Code, is amended by amending Subdivision (3) and adding Subdivision (4) to read as follows:

(3)(A)  "Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year and at which at least four primary selling activities occur.  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 and at least four primary selling activities occur 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.

(4)  "Primary selling activity" means:

(A)  any of the following actions, if performed by a retailer or the agent or employee of a retailer:

(i)  exercising discretion and independent authority to solicit customers on behalf of the retailer and to bind the retailer to a sale;

(ii)  taking an action that binds the retailer to a sale, including accepting a purchase order or submitting an offer to a buyer that is subject to the buyer's unilateral acceptance;

(iii)  receiving a payment or issuing an invoice;

(iv)  engaging in marketing and solicitation activities on behalf of the retailer;

(v)  procuring goods for sale by the retailer;

(vi)  receiving and accepting purchase orders or, if the retailer's purchase orders are accepted, processed, or fulfilled in another location, receiving and accepting contracts and other documents;

(vii)  transferring title to an item to a buyer; or

(viii)  displaying goods for sale to prospective customers; or

(B)  the use of a structure owned or leased by a retailer to:

(i)  store or otherwise hold the retailer's inventory;

(ii)  house the retailer's business headquarters, meaning the location from which the retailer directs or manages the retailer's business; or

(iii)  provide office space for the retailer's officers, executives, or other employees who have authority to set prices and determine the terms of a sale.

SECTION 2.  The change in law made by this Act does 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 3.  This Act takes effect September 1, 2021.