

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

1 to avoid the tax legally due under this chapter or exists solely to
2 rebate a portion of the tax imposed by this chapter to the
3 contracting business. An outlet, office, facility, or location
4 does not exist to avoid the tax legally due under this chapter or
5 solely to rebate a portion of the tax imposed by this chapter if the
6 outlet, office, facility, or location provides significant
7 business services, beyond processing invoices, to the contracting
8 business, including logistics management, purchasing, inventory
9 control, or other vital business services.

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

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

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

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

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

25 (b) If a retailer has only one place of business in this
26 state, all of the retailer's retail sales of taxable items,
27 regardless of the method by which orders for the taxable items are

1 transmitted or received, are consummated at that place of business
2 except as provided by Subsection (e) or (o).

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

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

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

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

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

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

25 (b) If a retailer has only one place of business in this
26 state, all of the retailer's retail sales of taxable items,
27 regardless of the method by which orders for the taxable items are

1 transmitted or received, are consummated at that place of business
2 except as provided by Subsection (e) or (n).

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

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

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

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

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

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

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