

By: Schwertner

S.B. No. 1038

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the place of business of a retailer for purposes of  
3 municipal sales and use taxes.

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

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

8 (3)(A) "Place of business of the retailer" means an  
9 established outlet, office, or location operated by the retailer or  
10 the retailer's agent or employee for the purpose of receiving  
11 orders for taxable items and includes any location at which three or  
12 more orders are received by the retailer during a calendar year and  
13 at which at least four primary selling activities occur. A  
14 warehouse, storage yard, or manufacturing plant is not a "place of  
15 business of the retailer" unless at least three orders are received  
16 by the retailer during the calendar year and at least four primary  
17 selling activities occur at the warehouse, storage yard, or  
18 manufacturing plant.

19 (B) An outlet, office, facility, or any location  
20 that contracts with a retail or commercial business to process for  
21 that business invoices, purchase orders, bills of lading, or other  
22 equivalent records onto which sales tax is added, including an  
23 office operated for the purpose of buying and selling taxable goods  
24 to be used or consumed by the retail or commercial business, is not

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

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

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

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

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

24 (4) "Primary selling activity" means:

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

27 (i) exercising discretion and independent

1 authority to solicit customers on behalf of the retailer and to bind  
2 the retailer to a sale;

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

7 (iii) receiving a payment or issuing an  
8 invoice;

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

11 (v) procuring goods for sale by the  
12 retailer;

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

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

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

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

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

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

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

4            SECTION 2. The change in law made by this Act does not  
5 affect tax liability accruing before the effective date of this  
6 Act. That liability continues in effect as if this Act had not been  
7 enacted, and the former law is continued in effect for the  
8 collection of taxes due and for civil and criminal enforcement of  
9 the liability for those taxes.

10            SECTION 3. This Act takes effect September 1, 2021.