88R21926 BEF-F

By:  Meyer H.B. No. 5089

Substitute the following for H.B. No. 5089:

By:  Button C.S.H.B. No. 5089

A BILL TO BE ENTITLED

AN ACT

relating to the location at which certain sales are consummated for purposes of local sales and use taxes.

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

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

(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. The term does not include a computer server, Internet protocol address, domain name, website, or software application. 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.

SECTION 2.  Section 321.002(a), Tax Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), (4), and (5) to read as follows:

(1)  "Active economic development agreement" means an agreement under Chapter 380, 381, 504, or 505, Local Government Code, under which the local government made payments on or before January 1, 2023, based on local sales and use tax collections.

(1-a)  "Additional municipal sales and use tax" means only the additional tax authorized by Section 321.101(b).

(1-b)  "Affiliated group" has the meaning assigned by Section 171.0001.

(4)  "Principal business location" means the business location where the decision makers of a business conduct the daily affairs of the organization.

(5)  "Small business" means a sales tax permit holder that has:

(A)  its principal business location in this state;

(B)  not more than 20 employees, including all employees of each member of an affiliated group that includes the permit holder; and

(C)  total combined gross receipts from the sale of tangible personal property and services in the preceding twelve calendar months of less than $500,000, including the gross receipts of each member of an affiliated group that includes the permit holder.

SECTION 3.  Section 321.203, Tax Code, is amended by amending Subsections (b), (c), (c-1), (d), and (e-1) and adding Subsections (o), (p), and (q) to read as follows:

(b)  Except as otherwise provided by this section, the sale of a taxable item by a small business is consummated at the principal business location of the small business [~~If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items are consummated at that place of business except as provided by Subsection (e)~~].

(c)  Each [~~If a retailer has more than one place of business in this state, each~~] sale of each taxable item by a [~~the~~] retailer other than a small business is consummated at the place of business of the retailer in this state where the retailer [~~first~~] receives the order, provided that the order is placed in person by the purchaser or lessee of the taxable item at the place of business of the retailer in this state where the retailer [~~first~~] receives the order.

(c-1)  If Subsections (b) and (c) do [~~the retailer has more than one place of business in this state and Subsection (c) does~~] not apply, the sale 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 [~~place of business of the retailer in this state:~~

[~~(1)  from which the retailer ships or delivers the item, if the retailer ships or delivers the item to a point designated by the purchaser or lessee; or~~

[~~(2)  where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer~~].

(d)  If [~~the retailer has more than one place of business in this state and~~] Subsections (b), (c), and (c-1) do not apply, the sale is consummated at:

(1)  the place of business of the retailer in this state where the order is received; or

(2)  if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates.

(e-1)  Except as otherwise provided by Subsection (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), (m), [~~or~~] (n), (p), or (q), 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)  An order is received at the location where all of the information from the purchaser necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The order is not received at a location where the order is subsequently accepted, completed, or fulfilled.

(p)  A retailer that has an active economic development agreement with a municipality and has a single place of business in this state that is within the municipality may elect to collect and report the sales tax authorized by this chapter based on the location of the retailer's single place of business. An election under this subsection is binding on the retailer and the purchaser. This subsection expires December 31, 2028.

(q)  A retailer that has an active economic development agreement with a municipality may elect to collect and report the sales tax authorized by this chapter based on the location of the retailer within the municipality from which an item is shipped directly to the purchaser or the purchaser's designee. An election under this subsection is binding on the retailer and the purchaser. This subsection expires December 31, 2028.

SECTION 4.  The heading to Section 323.203, Tax Code, is amended to read as follows:

Sec. 323.203.  CONSUMMATION OF SALE: CERTAIN PROVISIONS OF MUNICIPAL SALES AND USE TAX APPLICABLE.

SECTION 5.  Section 323.203(a), Tax Code, is amended to read as follows:

(a)  Sections 321.002 and 321.203 apply to the taxes authorized by this chapter in the same manner as those sections apply to the taxes authorized under Chapter 321 [~~A sale of a taxable item occurs within the county in which the sale is consummated.  A sale is consummated as provided by this section regardless of the place where transfer of title or possession occurs~~].

SECTION 6.  The following laws are repealed:

(1)  Section 3853.202(d), Special District Local Laws Code; and

(2)  Sections 323.203(b), (c), (c-1), (c-4), (c-5), (d), (e), (e-1), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (m), Tax Code.

SECTION 7.  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 8.  This Act takes effect January 1, 2024.