

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

3 (1-b) "Affiliated group" has the meaning assigned by
4 [Section 171.0001](#).

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

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

10 (A) its principal business location in this
11 state;

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

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

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

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

1 ~~business except as provided by Subsection (e)].~~

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

10 (c-1) If Subsections (b) and (c) do [~~the retailer has more~~
11 ~~than one place of business in this state and Subsection (c) does]~~
12 not apply, the sale is consummated at the location in this state to
13 which the item is shipped or delivered or at which possession is
14 taken by the purchaser [~~place of business of the retailer in this~~
15 ~~state.~~

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

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

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

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

27 (2) if the order is not received at a place of business

1 of the retailer, the place of business from which the retailer's
2 agent or employee who took the order operates.

3 (e-1) Except as otherwise provided by Subsection (f), (g),
4 (g-1), (g-2), (g-3), (h), (i), (j), (k), (m), [~~or~~] (n), (p), or (q),
5 a sale of a taxable item made by a marketplace seller through a
6 marketplace as provided by Section 151.0242 is consummated at the
7 location in this state to which the item is shipped or delivered or
8 at which possession is taken by the purchaser.

9 (o) An order is received at the location where all of the
10 information from the purchaser necessary to determine whether the
11 order can be accepted has been received by or on behalf of the
12 seller. The order is not received at a location where the order is
13 subsequently accepted, completed, or fulfilled.

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

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

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

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

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

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

13 SECTION 6. The following laws are repealed:

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

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

19 SECTION 7. The changes in law made by this Act do not affect
20 tax liability accruing before the effective date of this Act. That
21 liability continues in effect as if this Act had not been enacted,
22 and the former law is continued in effect for the collection of
23 taxes due and for civil and criminal enforcement of the liability
24 for those taxes.

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