

By: Cain

H.B. No. 5141

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(b), Tax Code, is amended to read
23 as follows:

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

1 except as provided by Subsection (e).

2 SECTION 3. Section 323.203(b), Tax Code, is amended to read
3 as follows:

4 (b) If a retailer has only one place of business in this
5 state, all of the retailer's retail sales of taxable items,
6 regardless of the method by which orders for the taxable items are
7 transmitted or received, are consummated at that place of business
8 except as provided by Subsection (e).

9 SECTION 4. The changes in law made by this Act do not affect
10 tax liability accruing before the effective date of this Act. That
11 liability continues in effect as if this Act had not been enacted,
12 and the former law is continued in effect for the collection of
13 taxes due and for civil and criminal enforcement of the liability
14 for those taxes.

15 SECTION 5. This Act takes effect January 1, 2024.