

BILL ANALYSIS

Senate Research Center
82R20356 KLA-D

H.B. 2403
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Finance
5/9/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many businesses are using business models that allow them to exploit a physical presence loophole in the law and consequently to avoid state sales tax responsibilities, despite creating and maintaining markets across state lines through remote sales while having a physical presence in Texas. With the advent of the Internet and the emergence of e-commerce, the number of sellers maintaining a physical presence while making remote sales to customers has exploded, creating a significant and growing loss of sales tax revenue to the states. This loss of revenue is compounded by the fact that traditional retailers with a storefront presence who must collect state and local sales and use taxes are placed at a competitive disadvantage.

H.B. 2403 seeks to address the situation by redefining "seller" and "retailer," defining "ownership" and "substantial ownership interest," and clarifying and expanding the conditions that constitute a retailer's being engaged in business in Texas.

H.B. 2403 amends current law relating to retailers engaged in business in this state for purposes of sales and use taxes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.008(b), Tax Code, to redefine "seller" and "retailer."

SECTION 2. Amends Section 151.107, Tax Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that for the purpose of this subchapter and in relation to the use tax, a retailer is engaged in business in this state if the retailer:

(1) maintains, occupies, or uses in this state permanently, temporarily, directly, or indirectly or through a subsidiary or agent by whatever name, an office, distribution center, sales or sample room or place, warehouse, storage place, or any other physical location where business is conducted, rather than by whatever name, an office, place of distribution, sales or sample room or place, warehouse, storage place, or any other place of business;

(2) has a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling or delivering or the taking of orders for a taxable item;

(3) derives receipts, rather than rentals, from the sale, lease, or rental of tangible personal property situated in this state;

(4) engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other

advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items;

(5) solicits orders for taxable items by mail or through other media and under federal law is subject to or permitted to be made subject to the jurisdiction of this state for purposes of collecting the taxes imposed by this chapter;

(6) has a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this section;

(7) holds a substantial ownership interest in, or is owned in whole or substantial part by, a person who maintains a location in this state from which business is conducted and if:

(A) the retailer sells the same or a substantially similar line of products as the person with the location in this state and sells those products under a business name that is the same as or substantially similar to the business name of the person with the location in this state; or

(B) the facilities or employees of the person with the location in this state are used to advertise, promote, or facilitate sales by the retailer to consumers, or perform any other activity on behalf of the retailer that is intended to establish or maintain a marketplace for the retailer in this state, including receiving or exchanging returned merchandise;

(8) holds a substantial ownership interest in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse, or similar location in this state, and delivers property sold by the retailer to consumers; or

(9) otherwise does business in this state.

(d) Defines, in this section, "ownership" and "substantial."

SECTION 3. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that 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 4. Effective date: January 1, 2012.