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H.B. No. 2403

A BILL TO BE ENTITLED

1 AN ACT

2 relating to retailers engaged in business in this state for
3 purposes of sales and use taxes.

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

5 SECTION 1. Section 151.008(b), Tax Code, is amended to read
6 as follows:

7 (b) "Seller" and "retailer" include:

8 (1) a person in the business of making sales at auction
9 of tangible personal property owned by the person or by another;

10 (2) a person who makes more than two sales of taxable
11 items during a 12-month period, including sales made in the
12 capacity of an assignee for the benefit of creditors or receiver or
13 trustee in bankruptcy;

14 (3) a person regarded by the comptroller as a seller or
15 retailer under Section 151.024 [~~of this code~~];

16 (4) a hotel, motel, or owner or lessor of an office or
17 residential building or development that contracts and pays for
18 telecommunications services for resale to guests or tenants; [~~and~~]

19 (5) a person who engages in regular or systematic
20 solicitation of sales of taxable items in this state by the
21 distribution of catalogs, periodicals, advertising flyers, or
22 other advertising, by means of print, radio, or television media,
23 or by mail, telegraphy, telephone, computer data base, cable,
24 optic, microwave, or other communication system for the purpose of

1 effecting sales of taxable items; and

2 (6) a person who, under an agreement with another
3 person, is:

4 (A) entrusted with possession of tangible
5 personal property with respect to which the other person has title
6 or another ownership interest; and

7 (B) authorized to sell, lease, or rent the
8 property without additional action by the person having title to or
9 another ownership interest in the property.

10 SECTION 2. Section 151.107, Tax Code, is amended by
11 amending Subsection (a) and adding Subsection (d) to read as
12 follows:

13 (a) For the purpose of this subchapter and in relation to
14 the use tax, a retailer is engaged in business in this state if the
15 retailer:

16 (1) maintains, occupies, or uses in this state
17 permanently, temporarily, directly, or indirectly or through a
18 subsidiary or agent by whatever name, an office, [~~place of~~]
19 distribution center, sales or sample room or place, warehouse,
20 storage place, or any other physical location where [~~place of~~]
21 business is conducted;

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

26 (3) derives receipts [~~rentals~~] from the sale, [~~a~~]
27 lease, or rental of tangible personal property situated in this

1 state;

2 (4) engages in regular or systematic solicitation of
3 sales of taxable items in this state by the distribution of
4 catalogs, periodicals, advertising flyers, or other advertising,
5 by means of print, radio, or television media, or by mail,
6 telegraphy, telephone, computer data base, cable, optic,
7 microwave, or other communication system for the purpose of
8 effecting sales of taxable items;

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

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

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

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

24 (B) the facilities or employees of the person
25 with the location in this state are used to:

26 (i) advertise, promote, or facilitate sales
27 by the retailer to consumers; or

1 (ii) perform any other activity on behalf
2 of the retailer that is intended to establish or maintain a
3 marketplace for the retailer in this state, including receiving or
4 exchanging returned merchandise;

5 (8) holds a substantial ownership interest in, or is
6 owned in whole or substantial part by, a person that:

7 (A) maintains a distribution center, warehouse,
8 or similar location in this state; and

9 (B) delivers property sold by the retailer to
10 consumers; or

11 (9) otherwise does business in this state.

12 (d) In this section:

13 (1) "Ownership" includes:

14 (A) direct ownership;

15 (B) common ownership; and

16 (C) indirect ownership through a parent entity,
17 subsidiary, or affiliate.

18 (2) "Substantial" means, with respect to an ownership
19 interest, an interest in an entity that is:

20 (A) if the entity is a corporation, at least 50
21 percent, directly or indirectly, of:

22 (i) the total combined voting power of all
23 classes of stock of the corporation; or

24 (ii) the beneficial ownership interest in
25 the voting stock of the corporation;

26 (B) if the entity is a trust, at least 50 percent,
27 directly or indirectly, of the current beneficial interest in the

1 trust corpus or income;

2 (C) if the entity is a limited liability company,
3 at least 50 percent, directly or indirectly, of:

4 (i) the total membership interest of the
5 limited liability company; or

6 (ii) the beneficial ownership interest in
7 the membership interest of the limited liability company; or

8 (D) for any entity, including a partnership or
9 association, at least 50 percent, directly or indirectly, of the
10 capital or profits interest in the entity.

11 SECTION 3. The change in law made by this Act does not
12 affect tax liability accruing before the effective date of this
13 Act. That liability continues in effect as if this Act had not been
14 enacted, and the former law is continued in effect for the
15 collection of taxes due and for civil and criminal enforcement of
16 the liability for those taxes.

17 SECTION 4. This Act takes effect January 1, 2012.