

1-1 By: Otto, et al. (Senate Sponsor - West) H.B. No. 2403
1-2 (In the Senate - Received from the House April 28, 2011;
1-3 May 3, 2011, read first time and referred to Committee on Finance;
1-4 May 11, 2011, reported favorably by the following vote: Yeas 14,
1-5 Nays 0; May 11, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to retailers engaged in business in this state for
1-9 purposes of sales and use taxes.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 151.008(b), Tax Code, is amended to read
1-12 as follows:

1-13 (b) "Seller" and "retailer" include:

1-14 (1) a person in the business of making sales at auction
1-15 of tangible personal property owned by the person or by another;

1-16 (2) a person who makes more than two sales of taxable
1-17 items during a 12-month period, including sales made in the
1-18 capacity of an assignee for the benefit of creditors or receiver or
1-19 trustee in bankruptcy;

1-20 (3) a person regarded by the comptroller as a seller or
1-21 retailer under Section 151.024 ~~[of this code]~~;

1-22 (4) a hotel, motel, or owner or lessor of an office or
1-23 residential building or development that contracts and pays for
1-24 telecommunications services for resale to guests or tenants; ~~and~~

1-25 (5) a person who engages in regular or systematic
1-26 solicitation of sales of taxable items in this state by the
1-27 distribution of catalogs, periodicals, advertising flyers, or
1-28 other advertising, by means of print, radio, or television media,
1-29 or by mail, telegraphy, telephone, computer data base, cable,
1-30 optic, microwave, or other communication system for the purpose of
1-31 effecting sales of taxable items; and

1-32 (6) a person who, under an agreement with another
1-33 person, is:

1-34 (A) entrusted with possession of tangible
1-35 personal property with respect to which the other person has title
1-36 or another ownership interest; and

1-37 (B) authorized to sell, lease, or rent the
1-38 property without additional action by the person having title to or
1-39 another ownership interest in the property.

1-40 SECTION 2. Section 151.107, Tax Code, is amended by
1-41 amending Subsection (a) and adding Subsection (d) to read as
1-42 follows:

1-43 (a) For the purpose of this subchapter and in relation to
1-44 the use tax, a retailer is engaged in business in this state if the
1-45 retailer:

1-46 (1) maintains, occupies, or uses in this state
1-47 permanently, temporarily, directly, or indirectly or through a
1-48 subsidiary or agent by whatever name, an office, ~~[place of]~~
1-49 distribution center, sales or sample room or place, warehouse,
1-50 storage place, or any other physical location where ~~[place of]~~
1-51 business is conducted;

1-52 (2) has a representative, agent, salesman, canvasser,
1-53 or solicitor operating in this state under the authority of the
1-54 retailer or its subsidiary for the purpose of selling or delivering
1-55 or the taking of orders for a taxable item;

1-56 (3) derives receipts ~~[rentals]~~ from the sale, [a]
1-57 lease, or rental of tangible personal property situated in this
1-58 state;

1-59 (4) engages in regular or systematic solicitation of
1-60 sales of taxable items in this state by the distribution of
1-61 catalogs, periodicals, advertising flyers, or other advertising,
1-62 by means of print, radio, or television media, or by mail,
1-63 telegraphy, telephone, computer data base, cable, optic,
1-64 microwave, or other communication system for the purpose of

2-1 effecting sales of taxable items;

2-2 (5) solicits orders for taxable items by mail or
 2-3 through other media and under federal law is subject to or permitted
 2-4 to be made subject to the jurisdiction of this state for purposes of
 2-5 collecting the taxes imposed by this chapter;

2-6 (6) has a franchisee or licensee operating under its
 2-7 trade name if the franchisee or licensee is required to collect the
 2-8 tax under this section; [~~or~~]

2-9 (7) holds a substantial ownership interest in, or is
 2-10 owned in whole or substantial part by, a person who maintains a
 2-11 location in this state from which business is conducted and if:

2-12 (A) the retailer sells the same or a
 2-13 substantially similar line of products as the person with the
 2-14 location in this state and sells those products under a business
 2-15 name that is the same as or substantially similar to the business
 2-16 name of the person with the location in this state; or

2-17 (B) the facilities or employees of the person
 2-18 with the location in this state are used to:

2-19 (i) advertise, promote, or facilitate sales
 2-20 by the retailer to consumers; or

2-21 (ii) perform any other activity on behalf
 2-22 of the retailer that is intended to establish or maintain a
 2-23 marketplace for the retailer in this state, including receiving or
 2-24 exchanging returned merchandise;

2-25 (8) holds a substantial ownership interest in, or is
 2-26 owned in whole or substantial part by, a person that:

2-27 (A) maintains a distribution center, warehouse,
 2-28 or similar location in this state; and

2-29 (B) delivers property sold by the retailer to
 2-30 consumers; or

2-31 (9) otherwise does business in this state.

2-32 (d) In this section:

2-33 (1) "Ownership" includes:

2-34 (A) direct ownership;

2-35 (B) common ownership; and

2-36 (C) indirect ownership through a parent entity,
 2-37 subsidiary, or affiliate.

2-38 (2) "Substantial" means, with respect to an ownership
 2-39 interest, an interest in an entity that is:

2-40 (A) if the entity is a corporation, at least 50
 2-41 percent, directly or indirectly, of:

2-42 (i) the total combined voting power of all
 2-43 classes of stock of the corporation; or

2-44 (ii) the beneficial ownership interest in
 2-45 the voting stock of the corporation;

2-46 (B) if the entity is a trust, at least 50 percent,
 2-47 directly or indirectly, of the current beneficial interest in the
 2-48 trust corpus or income;

2-49 (C) if the entity is a limited liability company,
 2-50 at least 50 percent, directly or indirectly, of:

2-51 (i) the total membership interest of the
 2-52 limited liability company; or

2-53 (ii) the beneficial ownership interest in
 2-54 the membership interest of the limited liability company; or

2-55 (D) for any entity, including a partnership or
 2-56 association, at least 50 percent, directly or indirectly, of the
 2-57 capital or profits interest in the entity.

2-58 SECTION 3. The change in law made by this Act does not
 2-59 affect tax liability accruing before the effective date of this
 2-60 Act. That liability continues in effect as if this Act had not been
 2-61 enacted, and the former law is continued in effect for the
 2-62 collection of taxes due and for civil and criminal enforcement of
 2-63 the liability for those taxes.

2-64 SECTION 4. This Act takes effect January 1, 2012.

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