

## **BILL ANALYSIS**

Senate Research Center  
82R303 MAW-D

S.B. 1798  
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Finance  
4/1/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Companies incorporated in states other than Texas that benefit from electronic sales to consumers in Texas, such as Amazon.com and other e-retailers, are not collecting and remitting sales tax to the State of Texas for those purchases. The Texas comptroller of public accounts estimates that Texas loses approximately \$600 million per year in uncollected online sales tax.

The United States Supreme Court has held that state sales tax may only be collected from out-of-state companies whose sales operations have a nexus, or connection, to the state which is entitled to tax those operations. What constitutes the requisite nexus has become increasingly confusing because of legal language that has become essentially irrelevant in an age of routine Internet transactions. The result has been to create a significant competitive advantage for out-of-state e-retailers over Texas-based brick-and-mortar retailers and Texas-based e-retailer competitors.

Out-of-state companies attempt to circumvent and escape nexus through the use of in-state company solicitation on its behalf. This practice is known as "affiliate marketing," wherein in-state companies post links on their websites to out-of-state e-retailers. Out-of-state companies also utilize "entity isolation," taking functions that would traditionally be performed by separate divisions within the same corporation and turning them into separate business and legal entities. The company accordingly creates the legal function of separation in order to attempt to escape taxation.

As proposed, S.B. 1798 amends current law relating to a presumption that certain retailers are engaged in business in this state for the purpose of the use tax.

### **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 151.107, Tax Code, by adding Subsections (d) and (e), as follows:

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

(1) enters into an agreement with a person who is a resident of this state under which the resident receives a commission or other consideration for directly or indirectly referring potential customers to the retailer by any means, including by a link on an Internet website; and

(2) during the previous four calendar quarters received at least \$10,000 in cumulative gross receipts from sales to consumers located in this state who were referred to the retailer by residents under agreements described by Subdivision (1).

(e) Authorizes the presumption under Subsection (d) to be rebutted by proof that the resident with whom the retailer has an agreement described by Subsection (d)(1) did not engage in any solicitation in this state on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the period described by Subsection (d)(2).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.