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A Washington National Tax Services (WNTS)
Publication

May 20, 2011

Texas Legislature passes legislation to expand sales tax nexus provisions

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The Texas Legislature has approved legislation that would expand the state's sales tax nexus provisions by expanding the definition of a retailer doing business in the state, applicable to tax liabilities on or after January 1, 2012. [[House Bill 2403](#), sent to Governor, 5/18/2011].

Definition of “retailer engaged in business” expanded

H.B. 2403 would expand the definition of a retailer engaged in business to include a retailer holding a substantial ownership interest in, or owned by, an entity with a location in Texas from which business is conducted if one of the following scenarios exists:

1. the retailer sells the same or a substantially similar line of products as the person with the location in Texas and sells those products under a business name that is the same or substantially similar to the business name of the person with the location in Texas; or
2. the facilities or employees of the person with the location in Texas 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 Texas, including receiving or exchanging merchandise.



A retailer engaged in business also would include an entity holding a substantial ownership interest in another entity that maintains a distribution center, warehouse, or similar location in Texas and delivers property sold by the retailer to consumers. H.B. 2403 defines the terms "ownership" as direct, common, or indirect ownership through a parent entity, subsidiary, or affiliate and "substantial" as an ownership interest of at least 50 percent.

Further, a "retailer" would include a person who, under an agreement with another person, is entrusted with the possession of tangible personal property owned by that other person and who is authorized to sell, lease, or rent the property without additional action by the owning person.

House research organization bill analysis explains bill purposes

In a [Bill Analysis](#), the Texas House Ways and Means Committee noted several disagreements between supporters and opponents of the bill in regards to whether corporate and ownership structures create a physical presence that would require the collection of sales tax. Supporters of H.B. 2403 assert that some businesses that sell to Texas customers presently avoid the statutory definition of "doing business" in Texas with a corporate and ownership structure that allows certain business aspects to be fulfilled by companies present in Texas while the taxable sales are performed by related out-of-state companies. Supporters contend that deeming these parent companies as physically present within Texas would be appropriate since the subsidiaries are engaged in either substantially the same business or they exist to facilitate the business of the out-of-state company. Opponents counter that the issue remains an interstate issue best regulated appropriately by Congress. Opponents further contend that even under the proposed definition of control, the out-of-state business would not be physically present in the state and should not be required to collect sales tax.

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