



August 7, 2009

Dear Taxpayer:

Senate Bill 636, passed by the 81st Legislature, amends the definition of a “place of business” found in Tax Code Section 321.002. The bill also changes how retailers who operate multiple places of business in Texas should collect local sales taxes. The local tax collection changes found in SB 636 do not affect retailers who operate a single place of business in this state. This notice summarizes these changes to help you and your customers understand the new law and collection requirements.

Definition of a “Place of Business”

Generally, local sales taxes are collected based on the location of the seller’s place of business.

A “place of business” is defined in Tax Code Section 321.002 as a store, office or other location operated for the purpose of receiving orders for taxable goods or services. A manufacturing plant, warehouse or other location not operated for the purpose of receiving orders for taxable items is not a place of business, unless three or more sales are made there, or orders are taken there, during a calendar year.

SB 636 modifies the definition slightly by providing that a “kiosk” is not a place of business for local sales and use tax purposes.

The amendment to 321.002 defines a kiosk as a small stand-alone area or structure that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both, but at which taxable items are not available for immediate delivery to a customer; and that is located entirely within a location that is a place of business of another retailer, such as a department store or shopping mall.

For the purposes of this legislation and the collection of Texas local sales and use taxes, the term “kiosk” does not include:

- booths, stalls or similar structures or data entry devices that are not located within a place of business of another retailer;
- any location where inventory is available for immediate transfer to customers (over-the-counter sales); or
- temporary locations operated in this state for the purpose of receiving orders for taxable items if the retailer does not operate another place of business in Texas.

For example, a booth set up in a shopping mall to sell cosmetics is not considered a “kiosk” if customers can receive the items purchased at the time of the sale. Similarly a mobile food

vendor selling prepared foods at a street fair or carnival is not a “kiosk.” In these scenarios, the seller is operating a place of business and local sales tax is due based on the location of the booth, stall or cart at the time of the sale.

Retailers Operating Multiple Places of Business – Local Tax Collection Changes are Effective Immediately

Prior to the enactment of SB 636, Tax Code Sections 321.203 and 323.203 provided that the local sales tax collected on delivery sales by a seller with more than one place of business in Texas was determined by the place of business from which the items were shipped, not the location where the order was received.

Senate Bill 636 amends Tax Code Sections 321.203 and 323.203 to specify that each sale of a taxable item is now consummated at the retailer’s place of business in this state where the retailer first accepts the order, provided that the order is placed in person by the purchaser or lessee of the taxable item. Now, when a purchaser places an order in person, retailers should collect local sales tax based on the location of the place of business where the order is received rather than the place of business from which the item is shipped.

Retailers should continue to collect local sales tax based on the “ship from” location on all delivery sales of taxable items that are shipped from a place of business in Texas when the order is not placed in person by the purchaser or lessee. Orders placed over the Internet, by telephone or through the mail are still consummated at the retailer’s place of business in this state from which the items are shipped, if the items are shipped from a place of business of the seller in Texas.

Also temporarily excluded from this change are warehouses that are places of business of a retailer, as defined under 321.002, *if* the retailer has an existing economic development agreement with the municipality or county in which the warehouse is located that was entered into under Local Government Code Chapter 380, 381, 504, or 505, or a predecessor statute, before Jan. 1, 2009.

To be eligible for the exclusion, the county or municipality must, before September 1, 2009, provide the Comptroller’s office with a copy of the economic development agreement as well as a list of all retail outlets in existence and identified as being served by the warehouse as of January 1, 2009. We will provide additional information about this reporting requirement to municipalities and counties soon. This exclusion expires September 1, 2014.

It is important to note that regardless of how an order is placed (e.g., in person, Internet, telephone), or whether the temporary exclusion discussed above applies, sellers engaged in business in multiple local taxing jurisdictions in this state are still responsible, when applicable,

for collecting local use taxes for other local taxing jurisdictions based on the point of delivery in addition to collecting local sales taxes based on the place of business.

See our *Guidelines for Collecting Local Sales and Use Tax* publication at www.window.state.tx.us/taxinfo/taxpubs/tx94_105.pdf for more information concerning sellers' responsibilities for collecting local sales and use taxes.

We hope this information explains your local sales and use tax collection responsibilities. If you have any questions, call us at (800) 252-5555 or (512) 463-4600, or e-mail us at tax.help@cpa.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Bryant K. Lomax". The signature is written in a cursive style with a large, stylized initial "B".

Bryant K. Lomax
Manager, Tax Policy Division