SENATE BILL 824

Q4   0lr0444

SB 1071/09 – B&T

By: **Senators Madaleno, Conway, Currie, and Kelley**
Introduced and read first time: February 10, 2010
Assigned to: Budget and Taxation

A BILL ENTITLED

1   AN ACT concerning

2   **Sales and Use Tax – Online Sales Presumption**

3   FOR the purpose of providing that for purposes of certain provisions of the sales and
4   use tax law certain persons shall be presumed under certain circumstances to
5   have an agent, canvasser, representative, salesman, or solicitor operating in the
6   State for certain purposes; providing that a certain presumption may be
7   rebutted by certain proof; providing for the construction of certain provisions of
8   this Act; and generally relating to a presumption under the sales and use tax
9   law under certain circumstances that certain persons have an agent, canvasser,
10   representative, salesman, or solicitor operating in the State for certain
11   purposes.

12   BY repealing and reenacting, without amendments,
13   Article – Tax – General
14   Section 11–701(b)
15   Annotated Code of Maryland
16   (2004 Replacement Volume and 2009 Supplement)

17   BY adding to
18   Article – Tax – General
19   Section 11–701.1
20   Annotated Code of Maryland
21   (2004 Replacement Volume and 2009 Supplement)

22   SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23   MARYLAND, That the Laws of Maryland read as follows:

24   **Article – Tax – General**

25   11–701.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
     [Brackets] indicate matter deleted from existing law.

1   (b)   (1)   "Engage in the business of an out–of–state vendor" means to sell or
2 deliver tangible personal property or a taxable service for use in the State.

3   (2)   "Engage in the business of an out–of–state vendor" includes:

4   (i)   permanently or temporarily maintaining, occupying, or
5 using any office, sales or sample room, or distribution, storage, warehouse, or other
6 place for the sale of tangible personal property or a taxable service directly or
7 indirectly through an agent or subsidiary;

8   (ii)   having an agent, canvasser, representative, salesman, or
9 solicitor operating in the State for the purpose of delivering, selling, or taking orders
10 for tangible personal property or a taxable service; or

11   (iii)   entering the State on a regular basis to provide service or
12 repair for tangible personal property.

13 **11–701.1.**

14   **(A)**   **IN THIS SECTION, "SELLER" MEANS A PERSON MAKING SALES OF**
15 **TANGIBLE PERSONAL PROPERTY OR A TAXABLE SERVICE.**

16   **(B)**   **FOR PURPOSES OF § 11–701(B)(2)(II) OF THIS SUBTITLE, A SELLER**
17 **SHALL BE PRESUMED TO HAVE AN AGENT, CANVASSER, REPRESENTATIVE,**
18 **SALESMAN, OR SOLICITOR OPERATING IN THE STATE FOR THE PURPOSE OF**
19 **SELLING OR TAKING ORDERS FOR TANGIBLE PERSONAL PROPERTY OR A**
20 **TAXABLE SERVICE IF:**

21   **(1)**   **THE SELLER ENTERS INTO AN AGREEMENT WITH A RESIDENT**
22 **OF THE STATE UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER**
23 **CONSIDERATION, DIRECTLY OR INDIRECTLY REFERS POTENTIAL CUSTOMERS**
24 **TO THE SELLER, WHETHER BY A LINK ON AN INTERNET WEBSITE OR**
25 **OTHERWISE; AND**

26   **(2)**   **THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE**
27 **SELLER TO CUSTOMERS IN THE STATE WHO ARE REFERRED TO THE SELLER BY**
28 **ALL RESIDENTS HAVING AN AGREEMENT WITH THE SELLER AS DESCRIBED IN**
29 **ITEM (1) OF THIS SUBSECTION IS GREATER THAN $10,000 DURING THE**
30 **PRECEDING FOUR QUARTERLY PERIODS ENDING ON THE LAST DAY OF**
31 **FEBRUARY, MAY, AUGUST, AND NOVEMBER.**

32   **(C)**   **THE PRESUMPTION UNDER THIS SECTION MAY BE REBUTTED BY**
33 **PROOF THAT THE RESIDENT WITH WHOM THE SELLER HAS AN AGREEMENT AS**
34 **DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION DID NOT ENGAGE IN ANY**
35 **SOLICITATION IN THE STATE ON BEHALF OF THE SELLER THAT WOULD SATISFY**

1   **THE NEXUS REQUIREMENT OF THE UNITED STATES CONSTITUTION DURING**
2   **THE FOUR QUARTERLY PERIODS IN QUESTION.**

3   **(D)   THIS SECTION MAY NOT BE CONSTRUED TO NARROW THE SCOPE OF**
4   **THE TERMS "AGENT", "CANVASSER", "REPRESENTATIVE", "SALESMAN", AND**
5   **"SOLICITOR" FOR PURPOSES OF § 11–701(B)(2)(II) OF THIS SUBTITLE OR FOR**
6   **PURPOSES OF ANY OTHER PROVISION OF LAW.**

7   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8   June 1, 2010.