

SENATE BILL 2298

By McNally

AN ACT to amend Tennessee Code Annotated, Title 67,  
Chapter 6, relative to the collection of sales and  
use taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-102(23)(I), is amended by designating the existing language as subdivision (i) and by adding the following new subdivisions (ii) and (iii):

(ii) A person is presumed to have a representative, agent, salesperson, canvasser, or solicitor operating in this state for the purpose of making sales and is presumed to be a dealer within the meaning of this subdivision (23)(I) if:

(a) The person enters into an agreement or contract with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential purchasers to the person, whether by an Internet link on a web site or any other means; and

(b) The person's cumulative gross receipts from retail sales made by the person to purchasers in this state who are referred to the person by any resident who entered into the agreement or contract with the person exceed ten thousand dollars (\$10,000) during the preceding calendar year.

(iii) The presumption in subdivision (23)(I)(ii) may be rebutted only by clear and convincing evidence that the resident with whom the person has an agreement or contract did not conduct any activities in this state that would substantially contribute to the person's ability to establish and maintain a market in this state during the preceding calendar year.

SECTION 2. Tennessee Code Annotated, Section 67-6-102(23), is amended by deleting subdivision (G) in its entirety and by substituting instead the following:

(G) Maintains, uses, owns or operates within this state, directly or by a subsidiary or affiliate as defined in § 67-6-211, directly or through a third party, any distribution facility, office, sales room or house, warehouse, or other place of business. For purposes of this subdivision (23)(G), “affiliate” and “distribution facility” have the same meaning as defined in § 67-6-211;

SECTION 3. Tennessee Code Annotated, Section 67-6-201, is amended by adding the following as a new, appropriately designated subdivision:

( ) Whether or not the person has a place of business in this state, uses any agent, office, distribution facility as defined in § 67-6-211, sales room or house, warehouse, or other place of business in this state for delivering or shipping tangible personal property or providing related services, including fulfillment services as defined in § 67-6-211, to a purchaser in this state if the delivery, shipment or related services are provided pursuant to a retail sale by the person to the purchaser, whether or not the place of business is owned, operated or maintained by the person directly or by the person's affiliate as defined in § 67-6-211, directly or through a third party.

SECTION 4. Tennessee Code Annotated, Section 67-6-211, is amended by deleting the section in its entirety and by substituting instead the following:

(a) It is the intention of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state. Substantial nexus to any person who does not have a place of business in this state is established through the person's maintenance, use, ownership, or operation of any place of business, directly or by the person's affiliate as defined in § 67-6-211, directly or through a third party, having a presence in this state for

the purpose of conducting activities in this state that substantially contribute to the person's ability to establish and maintain a market in this state.

(b) Notwithstanding § 67-6-515 or this chapter to the contrary, the activities of a person's affiliate in this state, including fulfillment services, shall be considered in determining whether the person has a physical presence in this state sufficient to establish substantial nexus with this state for sales and use tax purposes. This section shall apply to a person that has an affiliate that maintains any distribution facility, directly or through a third party.

(c) The processing of orders electronically, including facsimile, telephone, the Internet, or other electronic ordering process, does not relieve the person of the obligation to collect the tax imposed by this chapter.

(d) Sales of tangible personal property by a dealer to a retailer who directs that the dealer deliver or ship tangible personal property or provide related services to the retailer's purchaser in this state, who is a user or consumer, shall be subject to the tax imposed by this chapter, unless the retailer is registered as a Tennessee dealer and the retailer has presented a valid Tennessee certificate of resale to the dealer.

(e) As used in this section:

(1) "Affiliate" means a person that directly or indirectly, through one (1) or more intermediaries, is controlled by or under common control with, or controls, another person. A person controls another person if that person holds more than a fifty percent (50%) direct or indirect ownership interest in the other person;

(2) "Distribution facility" includes an establishment where shipments of tangible personal property are stored and processed for delivery to customers;  
and

(3) "Fulfillment services" means all activities related to the storage and preparation of tangible personal property for shipment to customers, including gift wrapping, packaging, processing, repair and assembly.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.