



Senate

General Assembly

File No. 599

January Session, 2009

Substitute Senate Bill No. 806

Senate, April 9, 2009

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEFINITION OF "RETAILER" FOR PURPOSES OF THE SALES AND USE TAX.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (12) of subsection (a) of section 12-407 of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective April 1, 2009, and applicable to sales occurring on and*
4 *after said date*):

5 (12) "Retailer" includes: (A) Every person engaged in the business of
6 making sales at retail or in the business of making retail sales at
7 auction of tangible personal property owned by the person or others;
8 (B) every person engaged in the business of making sales for storage,
9 use or other consumption or in the business of making sales at auction
10 of tangible personal property owned by the person or others for
11 storage, use or other consumption; (C) every operator, as defined in
12 subdivision (18) of this subsection; (D) every seller rendering any
13 service described in subdivision (2) of this subsection; (E) every person

14 under whom any salesman, representative, peddler or canvasser
15 operates in this state, or from whom such salesman, representative,
16 peddler or canvasser obtains the tangible personal property that is
17 sold; (F) every person with whose assistance any seller is enabled to
18 solicit orders within this state; (G) every person making retail sales
19 from outside this state to a destination within this state and not
20 maintaining a place of business in this state who engages in regular or
21 systematic solicitation of sales of tangible personal property in this
22 state (i) by the display of advertisements on billboards or other
23 outdoor advertising in this state, (ii) by the distribution of catalogs,
24 periodicals, advertising flyers or other advertising by means of print,
25 radio or television media, or (iii) by mail, telegraphy, telephone,
26 computer data base, cable, optic, microwave or other communication
27 system, for the purpose of effecting retail sales of tangible personal
28 property, provided such person has made one hundred or more retail
29 sales from outside this state to destinations within this state during the
30 twelve-month period ended on the September thirtieth immediately
31 preceding the monthly or quarterly period with respect to which such
32 person's liability for tax under this chapter is determined; (H) any
33 person owned or controlled, either directly or indirectly, by a retailer
34 engaged in business in this state which is the same as or similar to the
35 line of business in which such person so owned or controlled is
36 engaged; (I) any person owned or controlled, either directly or
37 indirectly, by the same interests that own or control, either directly or
38 indirectly, a retailer engaged in business in this state which is the same
39 as or similar to the line of business in which such person so owned or
40 controlled is engaged; (J) any assignee of a person engaged in the
41 business of leasing tangible personal property to others, where leased
42 property of such person which is subject to taxation under this chapter
43 is situated within this state and such assignee has a security interest, as
44 defined in subdivision (35) of subsection (b) of section 42a-1-201, in
45 such property; [and] (K) every person making retail sales of items of
46 tangible personal property from outside this state to a destination
47 within this state and not maintaining a place of business in this state
48 who repairs or services such items, under a warranty, in this state,

49 either directly or indirectly through an agent, independent contractor
 50 or subsidiary; and (L) every person making sales of tangible personal
 51 property or services through an independent contractor or other
 52 representative, if the retailer enters into an agreement with a resident
 53 of this state, under which the resident, for a commission or other
 54 consideration, directly or indirectly refers potential customers,
 55 whether by a link on an Internet web site or otherwise, to the retailer,
 56 provided the cumulative gross receipts from sales by the retailer to
 57 customers in the state who are referred to the retailer by all residents
 58 with this type of an agreement with the retailer, is in excess of two
 59 thousand dollars during the preceding four quarterly periods ending
 60 on the last day of March, June, September and December. Such retailer
 61 shall be presumed to be soliciting business through such independent
 62 contractor or other representative, which presumption may be
 63 rebutted by proof that the resident with whom the retailer has an
 64 agreement did not engage in any solicitation in the state on behalf of
 65 the retailer that would satisfy the nexus requirement of the United
 66 States Constitution during such four quarterly periods.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>April 1, 2009, and applicable to sales occurring on and after said date</i>	12-407(a)(12)

FIN *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Department of Revenue Services	GF - Revenue Gain	8.5 million	8.5 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill is anticipated to result in a General Fund revenue gain to the Sales & Use Tax of approximately \$8.5 million per year beginning in FY 10. The estimate is largely based on New York's experience since modifying their law. Thirty companies have registered with New York to collect sales taxes and are expected to remit \$62 million in state and local taxes in FY 10.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: *New York State Department of Taxation and Finance*

OLR Bill Analysis**sSB 806*****AN ACT CONCERNING THE DEFINITION OF "RETAILER" FOR PURPOSES OF THE SALES AND USE TAX.*****SUMMARY:**

State law requires "retailers" to collect Connecticut sales tax if they are "engaged in the business" of making retail sales in the state. If a retailer is engaged in business in Connecticut and is required to collect Connecticut sales tax, the retailer is said to have "nexus" here.

This bill presumes a company is a retailer with sales tax nexus in the state if it sells more than \$2,000 worth of taxable items or services annually in Connecticut through certain agreements with Connecticut residents. The agreements must provide that, in return for the resident referring potential customers to the company, he or she will receive a commission or other compensation from that company. Under the bill, the referrals can be direct or indirect and can be made by any means, including a link on an Internet website. By extending Connecticut sales tax nexus to companies that have such agreements, the bill requires them to collect Connecticut sales tax on all their taxable sales in Connecticut, not just on items sold through the referrals.

The bill applies to any company that earned more than \$2,000 annually in gross revenue from sales in the state under such referral agreements in the preceding four quarters ending on the last days of March, June, September, and December. It establishes a presumption that such a company is soliciting business in Connecticut through the independent contractors or representatives. The company can rebut the presumption by proving that the resident with whom it has an agreement did not solicit business in Connecticut in a manner that would satisfy the federal constitutional nexus requirement (see BACKGROUND).

By law, if a retailer does not collect and remit to the Department of Revenue Services (DRS) the 6% sales tax on a taxable item or service, a person who buys it for use in Connecticut must pay 6% use tax on that purchase directly to DRS.

EFFECTIVE DATE: April 1, 2009 and applicable to sales on or after that date.

BACKGROUND

U.S. Supreme Court Decisions

The U.S. Supreme Court has ruled that a state may require a company engaged in interstate commerce to collect taxes on its behalf if the tax is “applied to an activity with substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state” (*Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)).

The Court has ruled that a company does not have the required nexus if it has no physical presence in a state and its only connection with it is to solicit business there through catalogs, flyers, advertisements in national publications, or phone calls and to fulfill orders by delivering merchandise to customers by mail or common carrier (*Quill Corp v. North Dakota*, 504 U.S. 298 (1992); *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967)). But the Court has also found that the physical presence requirement is met if an out-of-state company has contracts with state residents who, for a sales commission or other compensation, solicit orders on its behalf (*Scripto v. Carson*, 362 U.S. 207 (1960)).

New York State Court Decision

Amazon.com filed suit against a 2008 New York law that is similar to this bill, alleging that New York’s law violates (1) the U.S. Constitution’s Commerce Clause by taxing out-of-state entities that have no substantial nexus with New York, (2) the U.S. and New York constitutions’ due process clauses by effectively creating an irrebuttable presumption of “solicitation” and being overly broad, and

(3) both constitutions' equal protection clauses by intentionally targeting Amazon. The New York court dismissed all three complaints on the grounds that, even if all Amazon's alleged facts are accepted as true, "there is no basis on which the company can prevail." (*Amazon.com LLC v. New York State Department of Tax and Finance*, Supreme Court of the State of New York, Eileen Bransten, J., Index No. 601247/08, 2009 NY Slip Op. 29007; 2009 N.Y. Misc. Lexis 28, January 12, 2009.) Amazon appealed the decision to the New York Court of Appeals on February 27, 2009.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 53 Nay 0 (03/24/2009)