

Senate Study Bill 3186 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON BOLKCOM)

A BILL FOR

1 An Act relating to retailers maintaining a place of business
2 in this state for purposes of the collection of sales and
3 use taxes, agreements relating to the collection of sales
4 and use taxes, and sales of tangible personal property and
5 services to the state.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, subsection 48, Code Supplement
2 2011, is amended to read as follows:

3 48. a. *“Retailer maintaining a place of business in this*
4 *state”* or any like term includes any retailer having or
5 maintaining within this state, directly or by a subsidiary,
6 an office, distribution house, sales house, warehouse, or
7 other place of business, or any representative operating
8 within this state under the authority of the retailer or its
9 subsidiary, irrespective of whether that place of business or
10 representative is located here permanently or temporarily, or
11 whether the retailer or subsidiary is admitted to do business
12 within this state pursuant to chapter 490.

13 b. (1) A retailer shall be presumed to be maintaining a
14 place of business in this state, as defined in paragraph “a”, if
15 any person that has substantial nexus in this state, other than
16 a person acting in its capacity as a common carrier, does any
17 of the following:

18 (a) Sells a similar line of products as the retailer and
19 does so under the same or similar business name.

20 (b) Maintains an office, distribution facility, warehouse,
21 storage place, or similar place of business in this state to
22 facilitate the delivery of property or services sold by the
23 retailer to the retailer’s customers.

24 (c) Uses trademarks, service marks, or trade names in this
25 state that are the same or substantially similar to those used
26 by the retailer.

27 (d) Delivers, installs, assembles, or performs maintenance
28 services for the retailer’s customers.

29 (e) Facilitates the retailer’s delivery of property to
30 customers in this state by allowing the retailer’s customers to
31 take delivery of property sold by the retailer at an office,
32 distribution facility, warehouse, storage place, or similar
33 place of business maintained by the person in this state.

34 (f) Conducts any other activities in this state that
35 are significantly associated with the retailer’s ability

1 to establish and maintain a market in this state for the
2 retailer's sales.

3 (2) The presumption established in this paragraph may be
4 rebutted by a showing of proof that the person's activities in
5 this state are not significantly associated with the retailer's
6 ability to establish or maintain a market in this state for the
7 retailer's sales.

8 c. (1) At any time on or after October 1, 2012, a retailer
9 shall be presumed to be maintaining a place of business in
10 this state, as defined in paragraph "a", if a retailer has an
11 agreement with one or more residents of this state under which
12 the resident, for a commission or other consideration, directly
13 or indirectly refers potential customers, whether by a link on
14 an internet site, telemarketing, in-person presentation, or
15 otherwise, to the retailer, if the cumulative gross receipts
16 from sales by the retailer attributable to those agreements is
17 in excess of ten thousand dollars for the twelve-month period
18 ending on the last day of the most recent calendar quarter.

19 (2) The presumption established in this paragraph may be
20 rebutted by a showing of proof that the resident with whom
21 the retailer has an agreement did not engage in any activity
22 within this state that was significantly associated with the
23 retailer's ability to establish or maintain the retailer's
24 market in this state during the preceding twelve-month period
25 ending on the last day of the most recent calendar quarter.
26 Such proof may consist of sworn written statements from all
27 the residents with whom the retailer has an agreement stating
28 that the resident did not engage in any solicitation in this
29 state on behalf of the retailer during the period in question,
30 provided that such statement is provided and obtained in good
31 faith.

32 **Sec. 2. NEW SECTION. 423.13A Administration —**
33 **effectiveness of agreements with retailers.**

34 **1. Notwithstanding any provision of this chapter to the**
35 **contrary, any ruling, agreement, or contract, whether written**

1 or oral, express or implied, entered into after the effective
2 date of this Act between a retailer and a state agency which
3 provides that a retailer is not required to collect sales and
4 use tax in this state despite the presence in this state of
5 a warehouse, distribution center, or fulfillment center that
6 is owned and operated by the retailer or an affiliate of the
7 retailer shall be null and void unless such ruling, agreement,
8 or contract is approved by a majority vote of both houses of
9 the general assembly.

10 2. For purposes of this section, "*state agency*" means
11 the executive branch, including any executive department,
12 commission, board, institution, division, bureau, office,
13 agency, or other entity of state government. "*State agency*"
14 does not mean the general assembly, or the judicial branch as
15 provided in section 602.1102.

16 Sec. 3. Section 423.36, Code 2011, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 1A. a. Notwithstanding subsection 1,
19 if any person will make taxable sales of tangible personal
20 property or furnish services to any state agency, that person
21 and any affiliate shall, prior to the sale, apply for and
22 receive a permit to collect sales or use tax pursuant to this
23 section. A state agency shall not purchase tangible personal
24 property or services from any person unless that person and any
25 affiliate of that person has a valid, unexpired permit issued
26 pursuant to this section and is in compliance with all other
27 requirements in this chapter imposed upon retailers, including
28 but not limited to the requirement to collect and remit sales
29 and use tax and file sales tax returns.

30 b. For purposes of this subsection, "*state agency*" means
31 any executive, judicial, or legislative department, commission,
32 board, institution, division, bureau, office, agency, or other
33 entity of state government.

34

EXPLANATION

35 This bill relates to the collection of sales and use taxes

1 by retailers maintaining a place of business in this state,
2 agreements relating to the collection of sales and use taxes,
3 and sales of tangible personal property and services to state
4 agencies.

5 A retailer located in this state, or maintaining a place of
6 business in this state, must collect and remit sales and use
7 taxes to the department of revenue. Currently, as defined in
8 Code section 423.1, the term "retailer maintaining a place of
9 business in this state" includes certain places of business,
10 and representatives operating under the authority of the
11 retailer.

12 The bill provides that a retailer will be presumed to be
13 maintaining a place of business in this state if any person
14 that has substantial nexus in this state, other than a common
15 carrier, engages in any of six activities specified in the
16 bill. The presumption may be rebutted by a showing of proof
17 that the person's activities are not significantly associated
18 with the retailer's ability to establish or maintain a market
19 in this state for the retailer's sales.

20 The bill also provides that, on or after October 1, 2012, a
21 retailer will be presumed to be maintaining a place of business
22 in this state if the retailer has an agreement with one or
23 more residents of this state whereby the residents receive
24 consideration for referring potential customers to the retailer
25 through the internet, telephone, or in person, and those
26 agreements yield in excess of \$10,000 of gross receipts per
27 year. The presumption may be rebutted by a showing of proof
28 that the residents with whom the retailer has an agreement did
29 not engage in any activity within this state during the year
30 that was significantly associated with the retailer's ability
31 to establish or maintain the retailer's market in the state,
32 which proof may consist of sworn written statements stating
33 that the resident did not engage in any solicitation in this
34 state on behalf of the retailer during the year, so long as the
35 statement is provided and obtained in good faith.

1 The bill provides that any ruling, agreement, or contract
2 entered into after the effective date of the bill between a
3 retailer and a state agency which provides that a retailer is
4 not required to collect sales and use tax in this state despite
5 the presence in this state of a warehouse, distribution center,
6 or fulfillment center owned and operated by the retailer or
7 an affiliate shall be null and void unless it is specifically
8 approved by a majority vote of both houses of the general
9 assembly. For purposes of this provision of the bill, "state
10 agency" does not include the general assembly or the judicial
11 branch.

12 The bill provides that no person shall make taxable sales
13 or furnish taxable services to a state agency unless that
14 person and their affiliates obtain a sales tax permit. Also,
15 the state is prohibited from purchasing taxable property
16 or services from any person unless that person and their
17 affiliates have a valid, unexpired sales tax permit and are
18 in compliance with all other sales tax laws imposed upon
19 retailers. For purposes of this provision of the bill, "state
20 agency" includes the executive branch, the general assembly,
21 and the judicial branch.