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HOUSE BILL NO. 1463

Offered January 23, 2004

A BILL to amend the Code of Virginia by adding sections numbered 8.01-184.1 and 58.1-607.1, relating to constitutional nexus for imposition of sales and use tax; declaratory judgment.

Patron—Hugo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 8.01-184.1 and 58.1-607.1 as follows:

§ 8.01-184.1. Declaratory judgment to adjudicate constitutional nexus.

A. Circuit courts shall have original jurisdiction over civil actions seeking declaratory judgment where:

1. The party seeking declaratory relief is a business that (i) is organized under the laws of the Commonwealth or a sole proprietorship owned by a Commonwealth domiciliary, or (ii) has qualified to do business in the Commonwealth; and

2. The responding party is an official of another state, or political subdivision of another state, who asserts that the business in question is obliged to collect sales or use taxes for such state or political subdivision based upon conduct of the business that occurs wholly or partially within the Commonwealth.

B. Any business meeting the requirements and facing the circumstances described in subsection A shall be entitled to declaratory relief on the issue of whether the requirement of another state, or political subdivision of another state, that the business collect and remit sales or use taxes to that state, or political subdivision, in the factual circumstances of the business' operations giving rise to the demand, constitutes an undue burden on interstate commerce within the meaning of Article I, Section 8, Clause 3 of the United States Constitution. In reaching such a determination, the circuit court shall be guided by the decisions of the courts of the United States construing Article I, Section 8, Clause 3 of the United States Constitution.

§ 58.1-607.1. Commercial nexus required.

A. Definitions.

As used in this section:

"Business" means any entity engaged in commerce or enterprise.

"Employees" means paid servants of a business who live or work in the Commonwealth.

"Common carrier" means mail, air, ground, rail or other form of transportation commonly used to facilitate business.

"Advertising" means the promotion of products or services of a particular business in print, electronic, television, radio or other forms of media.

"Licensing" means an agreement between a software seller and software user that the user will be the sole consumer of the software product.

"Representatives" means employees or independent contractors of a business.

"Nexus" means substantial physical presence, such as facilities, plants, distribution centers, offices, property and employees.

B. No business shall be liable to collect and remit sales and use tax to the Commonwealth unless the business has nexus in the Commonwealth.

C. Conducting economic activities, such as, but not limited to, directing business activities toward the Commonwealth by use of telecommunications or common carrier, advertising in the Commonwealth, licensing software in the Commonwealth, deriving income or revenue from customers in the Commonwealth, sending representatives to the Commonwealth to generate business, attending trade shows in the Commonwealth, conducting seminars in the Commonwealth, assessing competitor's products in the Commonwealth, without more, is not enough to constitute nexus in the Commonwealth.

INTRODUCED

HB1463