

February 16, 2011

VIA HAND DELIVERY

Dear Representatives Castro, Farrar and Gallego:

Thank you for your letter concerning the Amazon.com audit and Amazon's decision regarding the location of its distribution center.

The Texas sales tax was originally enacted in 1961. Two years later, in 1963, a provision was added to the law that specified which entities were required to collect and remit sales tax to the state. This provision states that an entity is "engaged in business" if, among other things, they have "directly, or indirectly or through a subsidiary or agent by whatever name, an office, *place of distribution* [emphasis added], sales or sample room or place, warehouse, storage place or any other place of business." You don't need to have a storefront to be engaged in business in the state. This statute, Texas Tax Code Section 151.107, can be found at www.statutes.legis.state.tx.us/Docs/TX/htm/TX.151.htm#151.007.

This longstanding provision in the law requires that once there is a physical presence in the state, that business is responsible for collecting and remitting sales tax. Our statutory obligation at the agency is then to ensure that the sales tax is actually collected and remitted to the state. We strive to ensure that all taxpayers are treated fairly in this process.

Further, any suggestion by a taxpayer audited by this office that they were not provided with the basis of the tax assessment is inaccurate. Every field audit conducted by this office includes an exit conference during which the taxpayer is provided with an explanation of their assessment and the basis of that assessment. The taxpayer is given the opportunity to ask questions at the exit conference and is provided with their options for contesting the audit results. For the Amazon audit, counsel for Amazon requested that detail behind the assessment be sent along with the bill. That information was promptly sent by e-mail and U.S. mail on Sept. 10, 2010.

This office further responded to a series of very detailed open records requests submitted by Amazon's counsel on Sept. 24, 2010 and Oct. 6, 2010, after their audit was billed and all requested information as to the basis of the audit was provided as noted above. Part of these requests asked for documents that this office believed included certain documents that were protected by the Texas Public Information Act, including attorney-client privileged communications. The Office of the Attorney General in a ruling, ORL2010-18978, agreed that the documents were protected under the Public Information Act. Amazon then sued the state in an attempt to obtain these protected documents.

We regret losing any business in Texas, but Amazon's decision to leave the state does not change our legal obligation to apply tax law fairly and uniformly. To make an exception would create an unfair advantage for Amazon, to the clear detriment of all other businesses in the state abiding by the law. Amazon is currently availing themselves of their right to contest their audit in an administrative hearing, and will ultimately have the ability to contest the audit in court.

My staff will contact your offices to set up a meeting should you need further clarification.

Sincerely,



Susan Combs