

This Document can be made available in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3787

04/01/2016 Authored by Davids  
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act  
1.2 relating to taxation; sales and use; requiring remote sellers without a physical  
1.3 presence in the state to collect and remit sales and use tax; amending Minnesota  
1.4 Statutes 2014, section 297A.66, subdivision 3.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 297A.66, subdivision 3, is amended to read:

1.7 Subd. 3. **Retailer not maintaining place of business in this state.** (a) ~~To the~~  
1.8 ~~extent allowed by the United States Constitution and in accordance with the terms and~~  
1.9 ~~conditions of federal remote seller law, a retailer making retail sales from outside this state~~  
1.10 ~~to a destination within this state and not maintaining a place of business in this state shall~~  
1.11 ~~collect sales and use taxes and remit them to the commissioner under section 297A.77.~~

1.12 (b) ~~To the extent allowed by the United States Constitution and the laws of the~~  
1.13 ~~United States,~~ A retailer making retail sales from outside this state to a destination within  
1.14 this state and not maintaining a place of business physical presence in this state shall  
1.15 collect sales and use taxes and remit them to the commissioner under section 297A.77, if  
1.16 the retailer meets the following requirements:

1.17 (1) the retailer engages in the regular or systematic soliciting of sales from potential  
1.18 customers in this state by:

1.19 (1) (i) distribution, by mail or otherwise, of catalogs, periodicals, advertising flyers,  
1.20 or other written solicitations of business to customers in this state;

1.21 (2) (ii) display of advertisements on billboards or other outdoor advertising in this  
1.22 state;

1.23 (3) (iii) advertisements in newspapers published in this state;

2.1 ~~(4)~~ (iv) advertisements in trade journals or other periodicals the circulation of which  
2.2 is primarily within this state;

2.3 ~~(5)~~ (v) advertisements in a Minnesota edition of a national or regional publication  
2.4 or a limited regional edition in which this state is included as part of a broader regional  
2.5 or national publication which are not placed in other geographically defined editions  
2.6 of the same issue of the same publication;

2.7 ~~(6)~~ (vi) advertisements in regional or national publications in an edition which is not  
2.8 by its contents geographically targeted to Minnesota but which is sold over the counter  
2.9 in Minnesota or by subscription to Minnesota residents;

2.10 ~~(7)~~ (vii) advertisements broadcast on a radio or television station located in  
2.11 Minnesota; ~~or~~

2.12 ~~(8) any other solicitation by telegraphy, telephone, computer database, cable, optic,~~  
2.13 ~~microwave, or other communication system.~~ (viii) sending, transmitting, or broadcasting  
2.14 of flyers, newsletters, telephone calls, targeted e-mail, text messages, social media  
2.15 messages, or targeted mailings;

2.16 (ix) collecting, analyzing, and utilizing individual data on purchasers or potential  
2.17 purchasers in this state;

2.18 (x) using information or software, including cached files, cached software, cookies,  
2.19 or other data-tracking tools, that are stored in or distributed within the state;

2.20 (xi) conducting any other actions that use persons, tangible property, intangibles,  
2.21 digital files or information, or software in the state in an effort to enhance the probability  
2.22 that a person's contact with a customer in the state will result in a sale to that customer;

2.23 (xii) conducting any part of the sale process in the state, regardless of whether that  
2.24 part of the process has been subcontracted to an affiliate or third party, including listing  
2.25 products or services for sale, soliciting, branding products, selling products, processing  
2.26 orders, fulfilling orders, providing customer service, or accepting or assisting with returns  
2.27 or exchanges. The sale process does not include shipping via a common carrier; or

2.28 (xiii) offering its products for sale through one or more marketplaces operated by  
2.29 any marketplace provider required to collect and remit sales and use taxes in the state  
2.30 under this section; and

2.31 ~~This paragraph must be construed without regard to the state from which distribution~~  
2.32 ~~of the materials originated or in which they were prepared.~~

2.33 ~~(c) The location within or without this state of independent vendors that provide~~  
2.34 ~~products or services to the retailer in connection with its solicitation of customers within this~~  
2.35 ~~state, including such products and services as creation of copy, printing, distribution, and~~  
2.36 ~~recording, is not considered in determining whether the retailer is required to collect tax.~~

3.1 ~~(d) A retailer not maintaining a place of business in this state is presumed, subject to~~  
 3.2 ~~rebuttal, to be engaged in regular solicitation within this state if it engages in any of the~~  
 3.3 ~~activities in paragraph (b) and:~~

3.4 ~~(1) makes 100 or more retail sales from outside this state to destinations in this state~~  
 3.5 ~~during a period of 12 consecutive months; or~~

3.6 ~~(2) makes ten or more retail sales during a period of 12 consecutive months, the~~  
 3.7 ~~retailer:~~

3.8 ~~(i) makes taxable retail sales to 20 or more unique purchasers in this state totaling~~  
 3.9 ~~in the aggregate more than \$100,000 from outside this state to destinations in this state~~  
 3.10 ~~during a period of 12 consecutive months. \$200,000; or~~

3.11 ~~(ii) makes 200 or more taxable retail sales to purchasers in this state.~~

3.12 ~~(b) Notwithstanding section 2, if a federal law is enacted authorizing the state to~~  
 3.13 ~~impose a requirement to collect and remit sales tax on retailers without a physical presence~~  
 3.14 ~~in the state, the commissioner must enforce the provisions of this section to the extent~~  
 3.15 ~~allowed under federal law.~~

3.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.17 The requirement to remit sales and use tax imposed by the amendments to this subdivision  
 3.18 is not retroactive.

3.19 **Sec. 2. REMOTE SELLERS; APPEAL AND ENFORCEMENT.**

3.20 (a) Notwithstanding any other law to the contrary, the Minnesota Supreme Court  
 3.21 shall have original jurisdiction over a claim arising under Minnesota Statutes, section  
 3.22 297A.66, subdivision 3. The Minnesota Supreme Court shall determine all questions of  
 3.23 law and fact and make such orders as will enable it to properly try and determine the  
 3.24 action and render a final judgment.

3.25 (b) If a claim challenging the constitutionality of Minnesota Statutes, section  
 3.26 297A.66, subdivision 3, is properly filed, the commissioner must suspend enforcement of  
 3.27 Minnesota Statutes, section 297A.66, subdivision 3, until all appeals are concluded and  
 3.28 final judgment is ordered.

3.29 (c) An absence of physical presence in this state by a retailer who voluntarily collects  
 3.30 and remits sales and use tax as required under Minnesota Statutes, section 297A.66,  
 3.31 subdivision 3, is not a factor in determining any refund owed to that retailer, or to a  
 3.32 purchaser from that retailer, under Minnesota Statutes, section 289A.50.

3.33 **EFFECTIVE DATE.** This section is effective the day following final enactment.