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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1854

03/01/2017 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; establishing sales tax collection duties for
1.3 marketplace providers and certain retailers; amending Minnesota Statutes 2016,
1.4 section 297A.66, subdivisions 1, 2, 4, by adding a subdivision.

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

1.6 Section 1. Minnesota Statutes 2016, section 297A.66, subdivision 1, is amended to read:

1.7 Subdivision 1. Definitions. (a) To the extent allowed by the United States Constitution
1.8 and the laws of the United States, "retailer maintaining a place of business in this state," or
1.9 a similar term, means a retailer:

1.10 (1) having or maintaining within this state, directly or by a subsidiary or an affiliate, an
1.11 office, place of distribution, sales or sample room or place, storage, warehouse, or other
1.12 place of business, including the employment of a resident of this state who works from a
1.13 home office in this state; or

1.14 (2) having a representative, including, but not limited to, an affiliate, agent, salesperson,
1.15 canvasser, or marketplace provider, solicitor, or other third party operating in this state
1.16 under the authority of the retailer or its subsidiary, for any purpose, including the repairing,
1.17 selling, delivering, installing, facilitating sales, processing sales, or soliciting of orders for
1.18 the retailer's goods or services, or the leasing of tangible personal property located in this
1.19 state, whether the place of business or agent, representative, affiliate, salesperson, canvasser,
1.20 or solicitor is located in the state permanently or temporarily, or whether or not the retailer,
1.21 subsidiary, or affiliate is authorized to do business in this state. A retailer is represented by
1.22 a marketplace provider in this state if the retailer makes sales in this state facilitated by a
1.23 marketplace provider that maintains a place of business in this state.

2.1 (b) "Destination of a sale" means the location to which the retailer makes delivery of
 2.2 the property sold, or causes the property to be delivered, to the purchaser of the property,
 2.3 or to the agent or designee of the purchaser. The delivery may be made by any means,
 2.4 including the United States Postal Service or a for-hire carrier.

2.5 (c) "Marketplace provider" means any person who facilitates a retail sale by a retailer
 2.6 by:

2.7 (1) listing or advertising for sale by the retailer in any forum tangible personal property,
 2.8 services, or digital goods that are subject to tax under this chapter; and

2.9 (2) either directly or indirectly through agreements or arrangements with third parties
 2.10 collecting payment from the customer and transmitting that payment to the retailer regardless
 2.11 of whether the marketplace provider receives compensation or other consideration in
 2.12 exchange for its services.

2.13 (d) "Total taxable retail sales" means the gross receipts from the sale of all tangible
 2.14 goods, services, and digital goods subject to sales and use tax under this chapter.

2.15 Sec. 2. Minnesota Statutes 2016, section 297A.66, subdivision 2, is amended to read:

2.16 Subd. 2. **Retailer maintaining place of business in this state.** (a) Except as provided
 2.17 in paragraph (b), a retailer maintaining a place of business in this state who makes retail
 2.18 sales in Minnesota or to a destination in Minnesota shall collect sales and use taxes and
 2.19 remit them to the commissioner under section 297A.77.

2.20 (b) A retailer with total taxable retail sales to customers in this state of less than \$10,000
 2.21 in the 12-month period ending on the last day of the most recently completed calendar
 2.22 quarter is not required to collect and remit sales tax if it is determined to be a retailer
 2.23 maintaining a place of business in the state solely because it made sales through one or more
 2.24 marketplace providers. The provisions of this paragraph do not apply to a retailer that is or
 2.25 was registered to collect sales and use tax in this state.

2.26 Sec. 3. Minnesota Statutes 2016, section 297A.66, subdivision 4, is amended to read:

2.27 Subd. 4. **Affiliated entities.** (a) An entity is an "affiliate" of the retailer for purposes of
 2.28 subdivision 1, paragraph (a), if the entity:

2.29 (1) ~~the entity~~ uses its facilities or employees in this state to advertise, promote, or facilitate
 2.30 the establishment or maintenance of a market for sales of items by the retailer to purchasers
 2.31 in this state or for the provision of services to the retailer's purchasers in this state, such as

3.1 accepting returns of purchases for the retailer, providing assistance in resolving customer
3.2 complaints of the retailer, or providing other services; ~~and~~

3.3 (2) the retailer and the entity are related parties. has the same or a similar business name
3.4 to the retailer and sells, from a location or locations in this state, tangible personal property,
3.5 digital goods, or services, taxable under this chapter, that are similar to that sold by the
3.6 retailer;

3.7 (3) maintains an office, distribution facility, salesroom, warehouse, storage place, or
3.8 other similar place of business in this state to facilitate the delivery of tangible personal
3.9 property, digital goods, or services sold by the retailer to its customers in this state;

3.10 (4) maintains a place of business in this state and uses trademarks, service marks, or
3.11 trade names in this state that are the same or substantially similar to those used by the retailer,
3.12 and that use is done with the express or implied consent of the holder of the marks or names;

3.13 (5) delivers, installs, or assembles tangible personal property in this state, or performs
3.14 maintenance or repair services on tangible personal property in this state, for tangible
3.15 personal property sold by the retailer;

3.16 (6) facilitates the delivery of tangible personal property to customers of the retailer by
3.17 allowing the customers to pick up tangible personal property sold by the retailer at a place
3.18 of business the entity maintains in this state; or

3.19 (7) shares management, business systems, business practices, or employees with the
3.20 retailer, or engages in intercompany transactions with the retailer related to the activities
3.21 that establish or maintain the market in this state of the retailer.

3.22 (b) Two entities are related parties under this section if one of the entities meets at least
3.23 one of the following tests with respect to the other entity:

3.24 (1) one or both entities is a corporation, and one entity and any party related to that entity
3.25 in a manner that would require an attribution of stock from the corporation to the party or
3.26 from the party to the corporation under the attribution rules of section 318 of the Internal
3.27 Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent
3.28 of the value of the corporation's outstanding stock;

3.29 (2) one or both entities is a partnership, estate, or trust and any partner or beneficiary,
3.30 and the partnership, estate, or trust and its partners or beneficiaries own directly, indirectly,
3.31 beneficially, or constructively, in the aggregate, at least 50 percent of the profits, capital,
3.32 stock, or value of the other entity or both entities; ~~or~~

4.1 (3) an individual stockholder and the members of the stockholder's family (as defined
 4.2 in section 318 of the Internal Revenue Code) owns directly, indirectly, beneficially, or
 4.3 constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding
 4.4 stock;

4.5 (4) the entities are related within the meaning of subsections (b) and (c) of section 267
 4.6 or 707(b)(1) of the Internal Revenue Code; or

4.7 (5) the entities have one or more ownership relationships and the relationships were
 4.8 designed with a principal purpose of avoiding the application of this section.

4.9 (c) An entity is an affiliate under the provisions of this subdivision if the requirements
 4.10 of paragraphs (a) and (b) are met during any part of the 12-month period ending on the first
 4.11 day of the month before the month in which the sale was made.

4.12 Sec. 4. Minnesota Statutes 2016, section 297A.66, is amended by adding a subdivision to
 4.13 read:

4.14 **Subd. 4b. Collection and remittance requirements for marketplace providers and**
 4.15 **marketplace retailers.** (a) A marketplace provider shall collect sales and use taxes and
 4.16 remit them to the commissioner under section 297A.77 for all facilitated sales for a retailer,
 4.17 and is subject to audit on the retail sales it facilitates unless either:

4.18 (1) the retailer provides a copy of the retailer's registration to collect sales and use tax
 4.19 in this state to the marketplace provider before the marketplace provider facilitates a sale;
 4.20 or

4.21 (2) upon inquiry by the marketplace provider or its agent, the commissioner discloses
 4.22 that the retailer is registered to collect sales and use taxes in this state.

4.23 (b) Nothing in this subdivision shall be construed to interfere with the ability of a
 4.24 marketplace provider and a retailer to enter into an agreement regarding fulfillment of the
 4.25 requirements of this chapter.

4.26 (c) A marketplace provider is not liable under this subdivision for failure to file and
 4.27 collect and remit sales and use taxes if the marketplace provider demonstrates that the error
 4.28 was due to incorrect or insufficient information given to the marketplace provider by the
 4.29 retailer. This paragraph does not apply if the marketplace provider and the marketplace
 4.30 retailer are related as defined in subdivision 4, paragraph (b).

5.1 Sec. 5. **SEVERABILITY.**

5.2 If any provision of sections 1 to 4 or the application thereof is held invalid, such invalidity
5.3 shall not affect the provisions or applications of the sections that can be given effect without
5.4 the invalid provisions or applications.

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

5.6 Sec. 6. **EFFECTIVE DATE.**

5.7 (a) The provisions of sections 1 to 4 are effective at the earlier of:

5.8 (1) a decision by the United States Supreme Court modifying its decision in Quill Corp.
5.9 v. North Dakota, 504 U.S. 298 (1992) so that a state may require retailers without a physical
5.10 presence in the state to collect and remit sales tax; or

5.11 (2) July 1, 2018.

5.12 (b) Notwithstanding paragraph (a) or the provisions of sections 1 to 4, if a federal law
5.13 is enacted authorizing a state to impose a requirement to collect and remit sales tax on
5.14 retailers without a physical presence in the state, the commissioner must enforce the
5.15 provisions of this section and sections 2 to 5 to the extent allowed under federal law.

5.16 (c) The commissioner of revenue shall notify the revisor of statutes when either of the
5.17 provisions in paragraph (a) or (b) apply.