

This Document can be made available  
in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2769

03/08/2016 Authored by Atkins

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; modifying requirements for collecting sales  
1.3 and use tax; amending Minnesota Statutes 2014, section 297A.66, subdivisions  
1.4 1, 3, 4, by adding subdivisions.

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

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

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

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

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

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

**EFFECTIVE DATE.** This section is effective for sales and purchases made after  
June 30, 2016.

Sec. 2. Minnesota Statutes 2014, section 297A.66, subdivision 3, is amended to read:

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

(b) To the extent allowed by the United States Constitution and the laws of the United States, a retailer making retail sales from outside this state to a destination within this state and not maintaining a place of business in this state shall collect sales and use taxes and remit them to the commissioner under section 297A.77, if the retailer engages in the regular or systematic soliciting of sales from potential customers in this state by:

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

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

(3) advertisements in newspapers published in this state;

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

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

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

(7) advertisements broadcast on a radio or television station located in Minnesota; or

(8) any other solicitation by telegraphy, telephone, computer database, cable, optic, microwave, or other communication system;

(9) engaging in direct response marketing in this state, either directly or indirectly through a marketplace provider, referrer, or other third party. For purposes of this section, "direct response marketing" includes but is not limited to the following:

(i) sending, transmitting, or broadcasting of flyers, newsletters, telephone calls, targeted e-mail, text messages, social media messages, or targeted mailings;

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

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

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

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

(11) offering its products for sale through one or more marketplaces operated by any marketplace provider required to collect and remit sales and use taxes in this state under this section.

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

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

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

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

(2) makes ten or more retail sales totaling more than \$100,000 from outside this state to destinations in this state during a period of 12 consecutive months.

**EFFECTIVE DATE.** This section is effective for sales and purchases made after June 30, 2016.

Sec. 3. Minnesota Statutes 2014, section 297A.66, subdivision 4, is amended to read:

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

(1) ~~the entity~~ uses its facilities or employees in this state to advertise, promote, or facilitate the establishment or maintenance of a market for sales of items by the retailer

to purchasers in this state or for the provision of services to the retailer's purchasers in this state, such as accepting returns of purchases for the retailer, providing assistance in resolving customer complaints of the retailer, or providing other services; and

(2) sells under the same or a similar business name tangible personal property or taxable services similar to that sold by the person against whom the presumption is asserted;

(3) maintains an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business in this state to facilitate the delivery of tangible personal property or taxable services sold by the person against whom the presumption is asserted to that person's in-state customers;

(4) uses, with consent or knowledge of the person against whom the presumption is asserted, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the person against whom the presumption is asserted;

(5) delivers, installs, or assembles tangible personal property in this state, or performs maintenance or repair services on tangible personal property in this state, if the tangible personal property is sold to in-state customers by the person against whom the presumption is asserted;

(6) facilitates the delivery of tangible personal property to in-state customers of the person against whom the presumption is asserted by allowing the customers to pick up tangible personal property sold by the person at an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business maintained in this state;

(7) shares management, business systems, business practices, or employees with the person against whom the presumption is asserted, or engages in intercompany transactions with the person against whom the presumption is asserted related to the activities that establish or maintain the market in this state of the person against whom the presumption is asserted; and

(8) is a related party to the retailer and the entity are related parties.

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

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

(2) one or both entities is a partnership, estate, or trust and any partner or beneficiary, and the partnership, estate, or trust and its partners or beneficiaries own directly, indirectly,

beneficially, or constructively, in the aggregate, at least 50 percent of the profits, capital, stock, or value of the other entity or both entities; or

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

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

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

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

**EFFECTIVE DATE.** This section is effective for sales and purchases made after June 30, 2016.

Sec. 4. Minnesota Statutes 2014, section 297A.66, is amended by adding a subdivision to read:

**Subd. 4b. Marketplace provider and marketplace seller.** (a) For purposes of subdivisions 1, paragraph (a), and 4c, "marketplace provider" means any person who facilitates a retail sale by a seller. A marketplace provider facilitates a retail sale when the marketplace provider:

(1) lists or advertises in any forum tangible personal property for sale or taxable services for sale; and

(2) either directly or indirectly through agreements or arrangements with third parties collects payment from the customer and transmits that payment to a seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

(b) "Marketplace seller" means a seller that has any sales facilitated by a marketplace provider.

(c) A seller is presumed to have a marketplace provider in this state if the seller enters into an agreement with a marketplace provider that maintains a place of business in the state for the facilitation of retail sales.

(d) This subdivision applies only if the seller's total gross receipts are at least \$10,000 in the 12-month period ending on the last day of the most recent calendar quarter before the calendar quarter in which the sale is made. For purposes of this paragraph,

6.1 "gross receipts" means receipts from sales to customers located in the state that were  
6.2 facilitated by the marketplace provider.

6.3 (e) Nothing in this subdivision shall be construed to narrow the scope of the terms  
6.4 affiliate, agent, salesperson, canvasser, solicitor, or other representative for purposes  
6.5 of subdivision 1, paragraph (a).

6.6 (f) This subdivision does not apply to chapter 290 and does not expand or contract  
6.7 the jurisdiction to tax a trade or business under chapter 290.

6.8 **EFFECTIVE DATE.** This section is effective for sales and purchases made after  
6.9 June 30, 2016.

6.10 Sec. 5. Minnesota Statutes 2014, section 297A.66, is amended by adding a subdivision  
6.11 to read:

6.12 Subd. 4c. **Collection and remittance requirements for marketplace providers**  
6.13 **and marketplace sellers.** (a) A marketplace provider that facilitates sales to customers  
6.14 in this state shall collect sales and use taxes and remit them to the commissioner under  
6.15 section 297A.77.

6.16 (b) The requirement under paragraph (a) does not apply to a marketplace provider if  
6.17 the marketplace seller for whom the marketplace provider facilitates a sale either:

6.18 (1) provides a copy of the seller's registration to collect sales and use tax in this state  
6.19 to the marketplace provider before the marketplace provider facilitates a sale; or

6.20 (2) the marketplace seller appears on a list published by the commissioner of revenue  
6.21 of the entities registered to collect sales and use taxes in this state.

6.22 (c) The commissioner of revenue shall promulgate regulations regarding the content  
6.23 and publication of the list under paragraph (b), clause (2). Nothing in this subdivision  
6.24 shall be construed to interfere with the ability of a marketplace provider and a marketplace  
6.25 seller to enter into an agreement regarding fulfillment of the requirements of this chapter.

6.26 (d) A marketplace provider is relieved of liability under this subdivision for failure  
6.27 to collect and remit sales and use taxes to the extent that the marketplace provider  
6.28 demonstrates that the error was due to incorrect or insufficient information given to the  
6.29 marketplace provider by the marketplace seller. This paragraph does not apply if the  
6.30 marketplace provider and the marketplace seller are related as defined in subdivision 4,  
6.31 paragraph (b).

6.32 **EFFECTIVE DATE.** This section is effective for sales and purchases made after  
6.33 June 30, 2016.

7.1 Sec. 6. Minnesota Statutes 2014, section 297A.66, is amended by adding a subdivision  
7.2 to read:

7.3 Subd. 4d. Referrer; registration and reporting requirements. (a) "Referrer"  
7.4 means any person who:

7.5 (1) contracts or otherwise agrees with a seller to list for sale multiple items of  
7.6 tangible personal property or services and the sales price of those items in any forum,  
7.7 including a catalog or Web site;

7.8 (2) receives a fee, commission, or other consideration from a seller for the listing;

7.9 (3) transfers, via telephone, Internet link, or otherwise, a customer to the seller or the  
7.10 seller's Web site to complete a purchase; and

7.11 (4) does not collect a receipt from the customer for a transaction.

7.12 (b) By the first day of the last month of a calendar year, a referrer must file a notice  
7.13 with the commissioner, in a form and manner prescribed by the commissioner, stating the  
7.14 referrer's intent to provide the services described in paragraph (a) for the calendar year  
7.15 immediately following the calendar year the notice is filed, if the referrer:

7.16 (1) received more than \$10,000 in compensation from all sellers in the 12-month  
7.17 period ending on the last day of the most recent calendar quarter; or

7.18 (2) received more than \$7,500 in compensation from all sellers in the first three  
7.19 quarters of the current calendar year.

7.20 For purposes of this paragraph, "gross receipts" means receipts from sales to customers  
7.21 located in the state who were referred to the seller by the referrer.

7.22 (c) The notice under paragraph (b) constitutes an application for a permit for the  
7.23 referrer to provide referrer services to a seller. Within 15 days of receipt of the notice  
7.24 under paragraph (b), the commissioner shall issue a permit to the referrer to provide  
7.25 referrer services to a seller.

7.26 (d) A referrer required to file the notice under paragraph (a) who fails to obtain a  
7.27 permit under paragraph (b) must not refer customers in this state to any seller. A referrer  
7.28 who refers customers to a seller without a permit is liable for sales and use taxes payable  
7.29 under paragraph (j).

7.30 (e) In addition to any other return or report required to be filed under this chapter, a  
7.31 referrer that receives more than \$10,000 in compensation from all sellers for the activities  
7.32 described in paragraph (a) in the 12-month period ending on the last day of the most recent  
7.33 calendar quarter shall annually file a report with the commissioner listing the following:

7.34 (1) the name and address of each seller who contracted with the referrer to refer  
7.35 customers within this state to the seller;

(2) if available, the total gross receipts price and any available transactional-level detail for referrals made by the referrer of customers in this state to each seller, including the listed price of items and the number of referrals made to a seller for those items. In no instance must the referrer be required to provide any information that could identify a purchaser; and

(3) if available, the number of potential customers located in this state that were referred to the seller and, if available, the number of customers who made purchases after a referral.

(f) A referrer that receives more than \$10,000 in compensation from all sellers in the 12-month period ending on the last day of the most recent calendar quarter shall provide notice to each seller with whom the referrer has an agreement under paragraph (a) that the seller's sales may be subject to sales and use tax and that the referrer is required to provide the seller's contact information and total gross receipts to the commissioner. The commissioner may promulgate rules establishing the notice to sellers sufficient to meet the requirements of this paragraph.

(g) The commissioner must revoke the permit issued under paragraph (c) if the referrer does not fulfill the requirements under paragraphs (e) and (f).

(h) A referrer is not required to provide the information under paragraph (e) if the seller either:

(1) provides a copy of the seller's sales tax permit issued under section 297A.84 to the referrer; or

(2) the seller appears on a list of sales tax permit holders published by the commissioner.

(i) A referrer is not required to provide the information under paragraph (e) if the referrer is a marketplace provider that collects and remits sales and use taxes under subdivision 4c.

(j) When a referrer refers a customer to a seller who makes a retail sale to that customer in this state, the referrer is liable for the sales and use tax resulting from the retail sale in the amount of the sales and use tax that would have been due on the transaction, based on the sales price listed by the seller, unless the seller provides a copy of the seller's sales tax permit issued under section 297A.84 to the referrer, or appears on a list of sales tax permit holders published by the commissioner. This paragraph does not apply to any referrer that has complied with paragraphs (e) and (f).

**EFFECTIVE DATE.** This section is effective for sales and purchases made after June 30, 2016.



9.1       Sec. 7. **SEVERABILITY.**

9.2             If any provision of sections 1 to 6 or the application thereof is held invalid, such  
9.3 invalidity shall not affect the provisions or applications of the sections which can be given  
9.4 effect without the invalid provisions or applications.