

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 3124  
**Version:** As introduced

**DATE:** March 29, 2016

**Authors:** Davids

**Subject:** Expanding the definition of retailers with a duty to collect sales tax

**Analyst:** Pat Dalton

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: [www.house.mn/hrd/](http://www.house.mn/hrd/).

---

### Overview

Expands the duty to collect and remit the state's sales tax to additional businesses. It expands the definition of affiliate nexus which triggers a duty to collect the tax.

Many taxable sales are now completed through "electronic marketplaces" which may provide services ranging from merely advertising a seller's goods and services, to handling the actual transaction, to storing goods and providing order fulfillment, returns, and other customer service.

The bill provides that a market place provider that collects and remits payments from customers to the seller must also collect and remit sales tax. It also provides that a business (defined as a referrer) that merely refers customers to the seller where the seller completes the sale must register with the state and report to the state the contact information on sellers potentially making sales through its site.

Effective for sales and purchases made after June 30, 2016.

### Section

- 1** **Definitions.** Expands the definition of "retailer maintaining a place of business in the state" to include:
- having a storage facility in the state;
  - employing a state resident who works from a home office in the state; and

## Section

- using a marketplace provider, referrer, or other third party operating in the state to facilitate and/or process sales in the state.

**2** **Retailer not maintaining place of business in the state.** Expands the definition of retailers without a physical presence in the state who may be required to collect the sales tax to include retailers engaging in direct response marketing through a marketplace provider, referrer, or other third party through any of the following activities:

- sending or broadcasting flyers, mail, or other messages through conventional or electronic media, including social media;
- collecting, analyzing, and using individual data on purchasers/potential purchasers in the state;
- using information or software that are stored or distributed in the state;
- using persons, tangible property, intangibles, or digital files and information in the state to increase the probability that contact with a customer in the state will result in a sale;
- conducting any part of the sales process (i.e. soliciting, selling, processing or fulfilling orders, customer service, taking returns) in the state either directly or through a contract with an affiliate or third party; or
- offering its products for sale through a marketplace operated by a marketplace provider that is required to collect and remit the sales tax in this state.

**3** **Affiliated entities.** Expands the definition of “affiliated parties” used to determine whether a remote retailer is required to collect the state sales tax due to an affiliate entity in the state. Currently an affiliated entity must be a related entity that uses its facilities and employees to provide services to the customers of the remote retailer. An affiliated entity would now include a related entity that engage in any of the following practices:

- sells the same or similar taxable products under the same or similar name;
- maintains an office, warehouse, distribution center, or similar facility to deliver sales in the state made by the remote retailer;
- uses same or similar trademarks, service marks, and trade names of the remote retailer with their knowledge;
- provides delivery, installation, or maintenance services to in-state customers for products sold by the remote retailer;
- allows customers of the remote retailer to pick up their purchases at a facility located in the state and owned by the affiliated entity; or
- shares management or business practices or systems, or employees with the remote seller, or engage in other intercompany transactions to establish or maintain the remote retailer’s market in the state.

Also covers entities where the ownership relationships are principally designed to avoid sales tax collection.

## Section

- 4 Marketplace provider and marketplace seller.** Defines “marketplace provider” to be a person who facilitates a retail sale by listing the seller’s taxable goods and services in any forum and either directly or indirectly collects payment from the customer and transmits it to the seller. Defines “marketplace seller” to mean a seller that has an agreement with a marketplace provider that maintains a place of business in the state and the seller has at least \$10,000 of gross receipts in sales made through the marketplace provider in the latest 12 month period.

The definition in this subdivision does not narrow the scope of other terms, such as agent or representative, which might impose the duty to collect sales tax under another existing provision of law. It also has no impact on defining when a business is subject to corporate taxes.

- 5 Collection and remittance for marketplace providers and marketplace sellers.** Requires a marketplace provider to collect and remit sales tax on taxable sales made by a marketplace seller through its forum unless:
- it provides the marketplace provider with a copy of its sales tax registration; or
  - it is on a list published by the Department of Revenue of sellers registered to collect the state sales tax.

The marketplace provider is not liable for failing to collect and remit sales tax due to incorrect information from a seller, unless the seller is an affiliated entity.

- 6 Referrer; registration and reporting requirements.** Defines a “referrer” as a person that by contract lists a seller’s taxable goods and services through a forum like a catalog or Web site for a commission but transfers the customer to the seller to complete the sale and doesn’t collect a receipt for a transaction.

A referrer who received commissions from all sellers of at least \$7,500 in the previous three calendar quarters or \$10,000 in the last 12 months must apply for a permit from the Department of Revenue to continue to provide referrer services in the coming calendar year. A referrer that made at least \$10,000 must file an annual report with the department containing the name and address of each seller with whom it contracts along with any available information on (1) transaction level data on items and prices, but not purchaser identification; and (2) the number of potential customers in the state referred to the seller. The referrer must also inform the seller that it may be liable for collecting the sales tax and that the referrer is providing the seller’s information to the state. A referrer does not need to provide information to the state for any seller registered to collect sales tax in the state, or if the referrer is a marketplace provider who collects and remits sales tax on behalf of its sellers.

A referrer that does not comply with the provisions of this subdivision is liable for any tax owed on sales made through referral to a seller, unless the seller is registered to collect the sales tax.

- 7 Severability.** Provides that if any provision of this bill is held invalid, the rest of the provisions of the bill which work without the invalid provision remain in effect.

