SALES AND USE TAX
Affiliates of Minnesota Vendors

March 4, 2002

	Yes	No
Separate Official Fiscal Note Requested		X
Fiscal Impact		
DOR Administrative Costs/Savings		X

Department of Revenue
Analysis of H.F. 3522 (Dorman) / S.F. 3375 (Rest)

	Revenue Gain or (Loss)			
	F.Y. 2002	**F.Y. 2003**	**F.Y. 2004**	**F.Y. 2005**
		(000's)		
General Fund	$0	$0	$0	$0

Effective July 1, 2002

EXPLANATION OF THE BILL

Current Law: Legislation passed in 1988 (M.S §297A.66) provides, to the extent allowed by the US Constitution and US laws, a definition of sales tax nexus with Minnesota that requires retailers not maintaining a place of business in Minnesota to collect and remit sales and use taxes on sales to Minnesota customers. An out-of-state retailer has nexus if it engages in the regular soliciting of sales to potential Minnesota customers. Such solicitation includes

- distribution of catalogues, periodicals, and advertising fliers;
- outdoor advertising;
- advertisements in newspapers published in this state;
- advertisements in a Minnesota edition of a national or regional publication;
- advertisements in a national or regional publication not specifically targeted to Minnesota but which is sold in this state over the counter or by subscription; and
- any solicitation by telephone, computer database, cable, optic, microwave, or other communication system.

Although some out-of-state vendors can and have agreed to collect tax on sales into this state, the US Supreme Court in the *Quill* case (*North Dakota v. Quill Corp.*, 112 S. Ct. (1992)) effectively prevents Minnesota and other states from enforcing a sales tax obligation on out-of-state vendors without a presence in Minnesota.

Proposed Law: Section 1 amends the definition of a retailer maintaining a place of business in this state to include an (out-of-state) affiliate of such a vendor. Section 2 defines "affiliate." The definition includes

- an entity that sells the same or substantially similar products as the retailer;

EXPLANATION OF THE BILL (Cont.)

- an entity that uses its facilities or employees in this state to promote the retailer's sales or to provide service to the retailer, such as accepting returns of purchases; and
- the retailer and the entity are related parties.

The bill goes on to define the kinds of relationship the retailer and its affiliate must have. If the requirements are met, the affiliate has nexus with Minnesota and is expected to collect and remit sales or use tax on its sales to Minnesota customers.

REVENUE ANALYSIS DETAIL

Nexus is constitutionally defined. This bill helps clarify existing language on sales tax nexus. The Department of Revenue believes that the bill's provisions could help facilitate the existing nexus standard.

Since under present circumstances states have a difficult time compelling sales tax compliance on out-of-state vendors with limited contacts within the state, no fiscal impact is shown. Should Congress enact new legislation or the federal courts change their position to assist states in their enforcement efforts, Minnesota could gain a significant amount of revenue.

ADMINISTRATIVE/OPERATIONAL IMPACT

There will be no significant administrative or operational costs or savings to DOR in administering this bill.

Source: Minnesota Department of Revenue
Tax Research Division
http://www.taxes.state.mn.us/polic.html#analyses

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