

MINNESOTA • REVENUE

SALES AND USE TAX Definition of Solicitor for Nexus

January 31, 2012

Department of Revenue
Analysis of H.F. 1849 (Davids)

	Yes	No
DOR Administrative Costs/Savings		X

	Fund Impact			
	F.Y. 2012	F.Y. 2013	F.Y. 2014	F.Y. 2015
			(000's)	
General Fund	\$0	\$3,700	\$4,700	\$5,400
Natural Resources and Arts Funds	<u>\$0</u>	<u>\$200</u>	<u>\$270</u>	<u>\$310</u>
Total – All Funds	\$0	\$3,900	\$4,970	\$5,710

Effective for sales and purchases made after June 30, 2012.

EXPLANATION OF THE BILL

Current Law: A retailer who does not maintain a place of business in Minnesota but advertises in this state by means of printed advertisements, billboards, television and radio, and ads on the Internet, cable, or other communication system, is obligated to collect and remit tax on its Minnesota sales. Certain *de minimis* provisions apply. Under the 1992 U.S. Supreme Court decision in the *Quill* case, only out-of-state retailers that have a physical presence in a state (property, employees, agents, or representatives) can be compelled to collect and remit the state's sales tax.

One of the tests for determining whether a retailer does maintain a place of business in Minnesota is if the retailer has an affiliated entity or solicitor in the state. An affiliated entity is one that uses its facilities or employees for the retailer's marketing and sales-related services and the retailer and the affiliated entity are related parties, as defined. An entity that meets the definition as an affiliate of the retailer must collect and remit tax on its Minnesota sales.

Proposed Law: The bill defines "solicitor" as a person who solicits business for the retailer. A retailer would have a solicitor in Minnesota if it has an agreement with a Minnesota resident or Minnesota business who, for a consideration, refers potential customers, whether by a link on an Internet web site or otherwise, to the retailer. These provisions would apply only if the retailer had at least \$10,000 in gross receipts from Minnesota customers who were referred by solicitors, as defined.

REVENUE ANALYSIS DETAIL

- The revenue estimate was based on first-quarter tax collections from Illinois, which has a law similar to this bill. The Illinois law became effective July 1, 2011.
- The first-quarter collections were increased by 50% to account for an early lag in return filing and conforming to the new provision. The estimate was adjusted for the difference in sales tax rates in the two states and for the difference in the Illinois and Minnesota shares of U.S. personal income.

REVENUE ANALYSIS DETAIL (Cont.)

- Census Bureau data show that from 2002 to 2007 the annual growth of electronic retail sales was about 23%. After leveling off in 2008, growth has been about 15% from 2009 to early 2010. A 15% annual growth rate was assumed through fiscal year 2015.
- The FY 2013 estimate was adjusted for the effective date of July 1, 2012.
- In Illinois, all of the prominent national “e-tailers” have dropped their solicitor arrangements. The estimates assume that a similar business response would also occur here.

Note: Revenues from enactment of this bill are also uncertain because of constitutionality questions.

Number of Taxpayers: Not known

Source: Minnesota Department of Revenue
Tax Research Division
http://www.taxes.state.mn.us/taxes/legal_policy