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Overview

Establishes sales tax collection duties for marketplace providers located in the state and most retailers using marketplace providers located in the state with a delayed effective date, contingent on Supreme Court or congressional action related to Internet sales.

Section

- 1 **Definitions.** Modifies the definition of a “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, or having a marketplace provider or other third party operating in the state under the retailer’s authority to facilitate or process sales in the state. Defines a marketplace provider as a person who facilitates a sales for a retailer through any forum. This includes Internet based sales sites.
- 2 **Retailer maintaining a place of business in this state.** States that the duty to collect and remit sales taxes does not apply to a retailer making less than \$10,000 of taxable retail sales in the state in a year whose sole physical connection to the state is through a marketplace provider located in the state, unless they are or were previously registered in the state.
- 3 **Affiliated entities.** Modifies the definition of “affiliated entities.” A retailer having an in-state affiliate is required to collect and remit sales and use tax. Adds criteria by which an affiliate entity is deemed to be a related party to the retailer (and thus required to collect and remit sales and use tax) to include:

Section

- selling taxable products that are the same as or similar to the retailer or selling under the same or similar name;
- maintaining a facility such as an office, warehouse, distribution center, or the like to facilitate sales in the state made by the out-of-state retailer;
- using intellectual property with consent or knowledge that is the same or similar to the out-of-state retailer's intellectual property;
- delivering, installing, assembling, or performing maintenance or repair services on tangible personal property in the state if the property is sold to in-state customers by the out-of-state retailer;
- facilitating delivery of tangible personal property to in-state customers by allowing a customer to pick up the property at a facility in the state; or
- sharing management, business systems, or employees with, or engaging in intercompany transactions with, the out-of-state retailer in order to establish or maintain their market in the state.

Also deems two entities as related parties if the entities are related taxpayers under the Internal Revenue Code for purposes of certain disallowed deductions, or if the transactions are disallowed losses between partnerships and their owners under the code.

Entities that have one or more ownership relationships designed with the purpose of avoiding establishment of affiliate nexus would also be deemed related parties.

4 **Collection and remittance requirements.** Establishes collection and remittance requirements for marketplace providers. Marketplace providers are required to collect and remit sales and use tax under provisions in existing law, except when a retailer for whom the marketplace facilitates a sale either:

- provides a copy of its registration to collect and remit sales and use tax to the marketplace provider before the marketplace provider facilitates the sale; or
- the marketplace provider establishes that the retailer is registered to collect and remit sales tax by contacting the Department of Revenue.

Relieves a marketplace provider of liability to collect and remit sales and use taxes, in most cases, to the extent that the provider demonstrates that failure to collect and remit was due to incorrect or insufficient information provided by the retailer.

5 **Severability.** Provides that if any provision in sections 1 to 4 are held invalid, other provisions not affected by the invalidity are given effect. Effective the day following final enactment.

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- 6** **Effective date.** Establishes that the provisions of sections 1 to 4 are effective at the earlier of: (1) the U.S. Supreme Court overturning or expanding its 1992 *Quill* decision, which held that physical presence is required in a state for the state to require a retailer to collect and remit sales and use taxes; (2) July 1, 2020; or (3) Congress enacting a law authorizing states to impose collection and remittance requirements for retailers without physical presence in the state; Minnesota must enforce the provisions of sections 1 to 4 to the extent allowed under federal law.