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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 3566

03/08/2018 Authored by Davids
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 and limiting liability collection and
1.3 remittance; amending Minnesota Statutes 2017 Supplement, section 297A.66,
1.4 subdivision 4b.

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

1.6 Section 1. Minnesota Statutes 2017 Supplement, section 297A.66, subdivision 4b, is
1.7 amended to read:

1.8 Subd. 4b. **Collection and remittance requirements for marketplace providers and**
1.9 **marketplace retailers.** (a) A marketplace provider shall collect sales and use taxes and
1.10 remit them to the commissioner under section 297A.77 for all facilitated sales for a retailer,
1.11 and is subject to audit on the retail sales it facilitates unless ~~either~~:

1.12 (1) the retailer provides a copy of the retailer's registration to collect sales and use tax
1.13 in this state to the marketplace provider before the marketplace provider facilitates a sale;
1.14 ~~or~~

1.15 (2) upon inquiry by the marketplace provider or its agent, the commissioner discloses
1.16 that the retailer is registered to collect sales and use taxes in this state; or

1.17 (3) the retailer provides the marketplace provider written confirmation that it is exempt
1.18 from collecting and remitting the tax under subdivision 2, paragraph (b), and the marketplace
1.19 provider has not facilitated at least \$10,000 of sales for the retailer in any 12-month period
1.20 ending on the last day of a calendar quarter that ended at least three months prior to the
1.21 current calendar quarter.

1.22 (b) Nothing in this subdivision shall be construed to interfere with the ability of a
1.23 marketplace provider and a retailer to enter into an agreement regarding fulfillment of the

2.1 requirements of this chapter, including the assignment of fiscal liability for payment of taxes
2.2 due under this chapter.

2.3 (c) A marketplace provider is not liable under this subdivision for failure to file and
2.4 collect and remit sales and use taxes if the marketplace provider demonstrates that the error
2.5 was due to incorrect or insufficient information given to the marketplace provider by the
2.6 retailer. This paragraph does not apply if the marketplace provider and the marketplace
2.7 retailer are related as defined in subdivision 4, paragraph (b).

2.8 (d) If a marketplace provider provides the commissioner a copy of an agreement with
2.9 a retailer that assigns fiscal liability to the retailer for payment of taxes due under this chapter,
2.10 the commissioner must assign fiscal liability to the retailer for underpayment of taxes
2.11 resulting from an audit of the marketplace provider under this subdivision. This paragraph
2.12 only applies if the agreement contains information sufficient for the commissioner to assign
2.13 fiscal liability to the retailer for payment of the taxes under this chapter in a form and manner
2.14 prescribed by the commissioner.

2.15 **EFFECTIVE DATE.** (a) This section is effective at the earlier of:

2.16 (1) a decision by the United States Supreme Court modifying its decision in Quill Corp.
2.17 v. North Dakota, 504 U.S. 298 (1992) so that a state may require retailers without a physical
2.18 presence in the state to collect and remit sales tax; or

2.19 (2) July 1, 2020.

2.20 (b) Notwithstanding paragraph (a) or the provisions of Minnesota Statutes, section
2.21 297A.66, subdivisions 1, 2, and 4, and section 1, if a federal law is enacted authorizing a
2.22 state to impose a requirement to collect and remit sales tax on retailers without a physical
2.23 presence in the state, the commissioner must enforce the provisions of this section and
2.24 section 1 to the extent allowed under federal law.

2.25 (c) The commissioner of revenue shall notify the revisor of statutes when either of the
2.26 provisions in paragraph (a) or (b) apply.