

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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The Honorable Greg Davids, Chair
House Committee on Taxes
585 State Office Bldg.
95 University Avenue W.
St. Paul, MN 55155

March 15, 2017

RE: Opposition to HF 2143, Marketplace provider and retailer sales tax collection duties

Dear Chairman Davids and members of the committee:

We respectfully ask that you not pass HF 2143.

We fully understand the need for states to seek additional revenue. But HF 2143 is unlikely to capture much new revenue and will impede the development of marketplaces that might otherwise invest and create jobs in the state.

Moreover, Minnesota voters will see HF 2143 as a new tax, since any money collected will come from the pockets of Minnesotans – not from out-of-state businesses.

Your constituents will see this as a new tax

HF 2143 is likely to be broadly opposed by Minnesotans. In a recent poll of New York residents regarding similar legislation there:

- 82% consider marketplace tax collection obligations a new tax;
- 69% oppose the online marketplace tax collection obligations of HF 2143;
- 82% would support a candidate who “opposed efforts to add new sales tax collection requirements on online marketplaces.”

We would likely see similar results in a poll of Minnesotans.

This is much ado about minimal tax revenue, since 24 of the top 25 e-retailers already collect sales tax in Minnesota

Already, online businesses overwhelmingly collect and remit taxes today for Minnesota, so you should expect a minimal fiscal impact from HF 2143. However, supporters of HF 2143 may be misled by relying on outdated projections from a time before Amazon began collecting sales tax for 98% of the US tax paying population – including Minnesota.¹

¹ See, e.g., NCLS’s Collecting E-Commerce Taxes | E-Fairness Legislation data relies on “Sales tax data from ‘State and Local Sales Tax Revenue Losses from E-Commerce Estimates as of April 2009’ by Dr. Donald Bruce and Dr. William Fox, Center for Business and Economic Research, University of Tennessee.”

When considering HF 2143, please balance the marginally small tax gained by HF 2143 against the losses to Minnesota businesses.

No new money will flow into the state

Regardless of the outcome of HF 2143 and its Supreme Court challenge, *no new money will flow into the state*. Any sales taxes collected as the result of HF 2143 would not come from out-of-state businesses, but would instead come from the pockets of Minnesotans. All HF 2143 would do is transfer money from Minnesotans citizens to the tax coffers in Saint Paul.

Encourages other states to assault Minnesota businesses selling online

Today, Minnesota businesses are only required to collect and remit taxes only for places where they have a physical presence. So they are not required to follow and comply with 12,000 tax jurisdictions or face audits from 46 states.

This protects Minnesota businesses like The **Sunrise Bakery** in Hibbing – which does not collect sales taxes for its out-of-state sales.

HF 2143 would encourage *other* states to force Minnesota businesses to comply with *their* tax rules, rates, audits, tax holidays, thresholds, and caps.

The screenshot shows the Sunrise Bakery website's shopping cart. At the top, there is a navigation bar with links for Login, My Account, View Cart, and Checkout. Below this is a search bar and a main navigation menu with links for Home, Shop Online, Our Story, Where to Buy, Potica, Cake Shoppe, and Contact. The cart table lists one item: Potica Variety: Pecan, with a price of \$18.99 and a quantity of 1. To the right of the table, a summary shows Subtotal (\$18.99), Tax (\$0.00), Discount (-\$0.00), and S/H (\$9.95), resulting in a Grand Total of \$28.94. A 'SUBMIT MY ORDER' button is located below the summary.

ITEM	SKU	PRICE	QTY	SUBTOTAL
Potica Variety: Pecan		\$18.99	1	\$18.99

Subtotal \$18.99
Tax \$0.00
Discount -\$0.00
S/H \$9.95
Grand Total **\$28.94**

[Edit Shopping Cart](#)

[SUBMIT MY ORDER](#)

Minnesota businesses are not required to pay sales taxes to states where they have no physical presence

Please consider the harms to your local businesses if New York and Illinois tax auditors come after them for taxes due on sales to out-of-state customers.

HF 2143 is not likely to survive a constitutional challenge

HF 2143 will not generate any immediate tax revenue. Not only because it takes effect in 2020, but also because of the certain court challenges and a likely injunction.

This marketplace bill takes a radical approach to sales tax collection by assuming that a tax collection obligation can be assigned to an intermediary that merely facilitates a transaction. Under that approach, even credit card issuers and payment processors could be implicated, and might join legal challenges if the bill were to become law.

Court challenges would likely question whether a marketplace provider performs activities in Minnesota that create substantial nexus. Another question is whether Due Process is violated if all of the marketplace functions are performed outside of Minnesota.

The US Supreme Court has repeatedly upheld the protection of businesses from other states' tax auditors. Not only is it unlikely that the Supreme Court would reverse a hundred years of jurisprudence, but such a challenge would cost Minnesota taxpayers millions of dollars. Minnesota has many better ideas to spend taxpayer money, other than paying lawyers to fight an issue on which the Supreme Court has already repeatedly ruled.

We ask that you not pass HF 2143 and instead protect Minnesota businesses from out-of-state tax auditors, protect Minnesota citizens from a new tax, and protect Minnesota from costly litigation.

Thank you for considering our views and please let me know if we can provide further information.

Sincerely,

Carl M. Szabo

Senior Policy Counsel, NetChoice

NetChoice is trade association of leading e-commerce and online businesses. www.NetChoice.org