

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

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Sen. Roger C. Chamberlain, Chair
Senate Taxes Committee
3225 Minnesota Senate Bldg.
95 University Avenue W.
St. Paul, MN 55155

March 6, 2017

RE: Opposition to SF 1164 – Establishing sales tax collection duties for marketplace providers

Dear Chairman Chamberlain and members of the committee:

We ask that you not pass SF 1164.

We fully understand the need for states to seek additional revenue. But SF 1164 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 SF 1164 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

SF 1164 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 SF 1164;
- 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 SF 1164. However, supporters of SF 1164 may be misled by relying on outdated projections from a time before Amazon began collecting sales tax for 98% of the US tax paying population – including Minnesota.¹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 SF 1164, please balance the marginally small tax gained by SF 1164 against the losses to Minnesota businesses.

No new money will flow into the state

Regardless of the outcome of SF 1164 and its Supreme Court challenge, *no new money will flow into the state*. Any sales taxes collected as the result of SF 1164 would not come from out-of-state businesses, but would instead come from the pockets of Minnesotans. All SF 1164 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.

SF 1164 would encourage *other* states to force Minnesota businesses to comply with *their* tax rules, rates, audits, tax holidays, thresholds, and caps.

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.

SF 1164 is not likely to survive a constitutional challenge

SF 1164 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.

The screenshot shows the Sunrise Bakery website interface. At the top, there is a navigation bar with links for Home, Shop Online, Our Story, Where to Buy, Potica, Cake Shoppe, and Contact. A search bar is also present. Below the navigation bar, a shopping cart table is displayed with the following items:

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

Below the table, there is a link to "Edit Shopping Cart". To the right of the table, a summary of the cart total is shown:

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

At the bottom right of the cart summary, there is a "SUBMIT MY ORDER" button. A text box at the bottom of the screenshot states: "Minnesota businesses are not required to pay sales taxes to states where they have no physical presence".

We ask that you not pass SF 1164 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