



March 23, 2017

An Open Letter to the Minnesota Legislature: Reject S.F. 1164's Unconstitutional Tax Grab

Dear Minnesota Legislator,

On behalf of the millions of members of the undersigned organizations, including thousands of Minnesota residents and taxpayers, we write in strong opposition to SF 1164, which would require any intermediary that merely facilitates a commercial transaction to collect and remit taxes, even if it lacks physical presence in the state. This legislation is both unconstitutional and unwise and therefore should be rejected.

This bill incorporates provisions used by other states in their laws, which were drafted to overturn legal precedent. This approach is costly to the state and proven to be unsuccessful, as demonstrated in South Dakota where a court recently enjoined a non-physical presence tax remittance law that sought to achieve objectives similar to what SF 1164 proposes. Ultimately, by empowering Minnesota to collect taxes from businesses with no physical presence within your borders, the rule would immediately draw Minnesota into a potentially expensive and bitter cycle of litigation that is duplicative of similar cases in other states. It's a cycle unlikely to yield a positive result because decades-old Supreme Court precedent makes clear that state tax powers stop at the border's edge.

This bill also imposes an undue burden on online marketplaces as well like eBay and Etsy, which are merely virtual storefronts that allow millions of small businesses to reach customers across the globe. But SF 1164 ignores this reality and creates a new tax burden on every marketplace in Minnesota. It would be like making the Mall of America liable for all the sales taxes owed by its stores. Of course, that is absurd, sales tax requirements should be on the seller, not the marketplace.

Setting aside the bill's obvious unconstitutionality, it is decidedly unwise for Minnesota. By contributing to the erosion of borders as effective limits on state tax power, it will encourage poorly-governed, tax-heavy states like California, New York, and Illinois to unleash their aggressive tax collectors on Minnesota businesses and marketplace facilitators. Your own constituents could be subject to audit and enforcement actions in states all across the country in which they have no physical presence.



Furthermore, a system of sales tax enforcement unbounded by any tangible connection like a physical presence would impose significant compliance costs on web-enabled businesses. This burden would fall particularly hard on specialty businesses and small sellers that are dependent on the internet to reach their customers. They would be forced to keep track of all 12,000 taxing jurisdictions across the country, each with its own rates, rules and regulations, while sales in similar brick-and-mortar businesses only require collection of tax for the single jurisdiction in which they're located.

The U.S. Constitution was written to replace the Articles of Confederation in no small part due to the latter's failure to prevent a spiraling interior "war" of states who could assert tax and regulatory authority outside their borders. While the Constitution's Commerce Clause and subsequent jurisprudence make clear that taxing power must be limited by state borders, this bill seeks to wipe those limits away. That would be dangerous and we urge that you and your fellow legislators act to stop it.

Sincerely,

Andrew Moylan, R Street Institute

Norm Singleton, Campaign for Liberty

Jeffrey L. Mazzella, Center for Individual Freedom

Jessica Melugin, Competitive Enterprise Institute

Wayne Brough, FreedomWorks

Pete Sepp, National Taxpayers Union

David Williams, Taxpayers Protection Alliance

Judson Phillips, Tea Party Nation