

[Minnesota Legislation to Block Entity Isolation]

Excerpt:

Minnesota

H.F No. 2498, 4th Engrossment: 82nd Legislative Session (2001-2002) Posted on May 16, 2002

42.32 [EFFECTIVE DATE.] With the exception of clause (2), item
42.33 (ii), this section is effective for sales and purchases made
42.34 after June 30, 2002. Clause (2), item (ii), is effective for
42.35 sales and purchases made after June 30, 2002, and before January
42.36 1, 2006.

43.1 Sec. 5. Minnesota Statutes 2001 Supplement, section
43.2 297A.66, subdivision 1, is amended to read:

43.3 Subdivision 1. [DEFINITIONS.] (a) To the extent allowed by
43.4 the United States Constitution and the laws of the United
43.5 States, "retailer maintaining a place of business in this
43.6 state," or a similar term, means a retailer:

43.7 (1) having or maintaining within this state, directly or by
43.8 a subsidiary or an affiliate, an office, place of distribution,
43.9 sales or sample room or place, warehouse, or other place of
43.10 business; or

43.11 (2) having a representative, including, but not limited to,
43.12 an affiliate agent, salesperson, canvasser, or solicitor
43.13 operating in this state under the authority of the retailer or
43.14 its subsidiary, for any purpose, including the repairing,
43.15 selling, delivering, installing, or soliciting of orders for the
43.16 retailer's goods or services, or the leasing of tangible
43.17 personal property located in this state, whether the place of
43.18 business or agent, representative, affiliate, salesperson,
43.19 canvasser, or solicitor is located in the state permanently or
43.20 temporarily, or whether or not the retailer or, subsidiary, or
43.21 affiliate is authorized to do business in this state.

43.22 (b) "Destination of a sale" means the location to which the
43.23 retailer makes delivery of the property sold, or causes the
43.24 property to be delivered, to the purchaser of the property, or
43.25 to the agent or designee of the purchaser. The delivery may be
43.26 made by any means, including the United States Postal Service or
43.27 a for-hire carrier.

43.28 [EFFECTIVE DATE.] (a) This section is effective the day
43.29 following final enactment and is intended to confirm the
43.30 original intent of the legislature in enacting Minnesota
43.31 Statutes, section 297A.66, and its predecessor provisions.

43.32 (b) A retailer may elect that the provisions of this
43.33 section apply only to sales it made after August 31, 2002, by

43.34 notifying the commissioner and by applying for a permit under
43.35 Minnesota Statutes, section 297A.84, by August 15, 2002, to
43.36 collect the tax imposed under Minnesota Statutes, chapter 297A.

44.1 A retailer qualifies under this paragraph only if it:

44.2 (1) did not maintain an office, place of distribution,
44.3 sales or sample room or place, warehouse, or other place of
44.4 business in Minnesota except through an affiliate or did not
44.5 have a representative, agent, salesperson, canvasser, or
44.6 solicitor in Minnesota except through an affiliate; and

44.7 (2) has not registered to collect tax under Minnesota
44.8 Statutes, chapter 297A, as of the date of enactment of this
44.9 section.

44.10 Sec. 6. Minnesota Statutes 2000, section 297A.66, is
44.11 amended by adding a subdivision to read:

44.12 Subd. 4. [AFFILIATED ENTITIES.] (a) An entity is an
44.13 "affiliate" of the retailer for purposes of subdivision 1,
44.14 paragraph (a), if:

44.15 (1) the entity uses its facilities or employees in this
44.16 state to advertise, promote, or facilitate the establishment or
44.17 maintenance of a market for sales of items by the retailer to
44.18 purchasers in this state or for the provision of services to the
44.19 retailer's purchasers in this state, such as accepting returns
44.20 of purchases for the retailer, providing assistance in resolving
44.21 customer complaints of the retailer, or providing other
44.22 services; and

44.23 (2) the retailer and the entity are related parties.

44.24 (b) Two entities are related parties under this section if
44.25 one of the entities meets at least one of the following tests
44.26 with respect to the other entity:

44.27 (1) one or both entities is a corporation, and one entity
44.28 and any party related to that entity in a manner that would
44.29 require an attribution of stock from the corporation to the
44.30 party or from the party to the corporation under the attribution
44.31 rules of section 318 of the Internal Revenue Code owns directly,
44.32 indirectly, beneficially, or constructively at least 50 percent
44.33 of the value of the corporation's outstanding stock;

44.34 (2) one or both entities is a partnership, estate, or trust
44.35 and any partner or beneficiary, and the partnership, estate, or
44.36 trust and its partners or beneficiaries own directly,
45.1 indirectly, beneficially, or constructively, in the aggregate,
45.2 at least 50 percent of the profits, capital, stock, or value of
45.3 the other entity or both entities; or

45.4 (3) an individual stockholder and the members of the
45.5 stockholder's family (as defined in section 318 of the Internal
45.6 Revenue Code) owns directly, indirectly, beneficially, or
45.7 constructively, in the aggregate, at least 50 percent of the

45.8 value of both entities' outstanding stock.

45.9 (c) An entity is an affiliate under the provisions of this
45.10 subdivision if the requirements of paragraphs (a) and (b) are
45.11 met during any part of the 12-month period ending on the first
45.12 day of the month before the month in which the sale was made.

45.13 [EFFECTIVE DATE.] (a) This section is effective the day
45.14 following final enactment and is intended to confirm the
45.15 original intent of the legislature in enacting Minnesota
45.16 Statutes, section 297A.66, and its predecessor provisions.

45.17 (b) A retailer may elect that the provisions of this
45.18 section apply only to sales it made after August 31, 2002, by
45.19 notifying the commissioner and by applying for a permit under
45.20 Minnesota Statutes, section 297A.84, by August 15, 2002, to
45.21 collect the tax imposed under Minnesota Statutes, chapter 297A.

45.22 A retailer qualifies under this paragraph only if it:

45.23 (1) did not maintain an office, place of distribution,
45.24 sales or sample room or place, warehouse, or other place of
45.25 business in Minnesota except through an affiliate or did not
45.26 have a representative, agent, salesperson, canvasser, or
45.27 solicitor in Minnesota except through an affiliate; and

45.28 (2) has not registered to collect tax under Minnesota
45.29 Statutes, chapter 297A, as of the date of enactment of this
45.30 section.