

Vermont Legislative Joint Fiscal Office

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FISCAL NOTE

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H. 143 An Act Relating to the Taxation of Certain Internet Sales

Bill Summary:

This bill would create a rebuttable presumption that: an out-of-state seller who enters into an agreement with a Vermont business, and for a commission or other consideration, the Vermont-based business refers potential customers to the seller; then the dealer is soliciting or transacting business in Vermont and is therefore required to collect the sales and use tax. This law would only apply to businesses with more than \$10,000 worth of sales into the state.

Fiscal Impact:

Sales and Use Tax

The revenue impact of this legislation depends upon the response by affected online retailers. New York is the only state to have collected sales tax as a result of affiliate nexus legislation because it is the only state in which the affiliate programs were retained by major online retailers. The experience in other, smaller, states suggests that it is unlikely that the major online retailers would comply with the provisions of the bill and begin to collect sales tax. The enactment of similar legislation in other states (Rhode Island and North Carolina) has prompted large online retailers to end their affiliate programs in those states. If this is the result of this legislation, no additional sales tax revenue will be realized.

Income Tax

It is unknown how many Vermont businesses are in affiliate relationships with large online retailers. Ending affiliate relationships in Vermont could also reduce or eliminate the income that these businesses receive from these agreements. Because there is no information about Vermont affiliates or their income attributable to these relationships it is not possible to quantify the potential income tax loss. Other states have not been able to identify or quantify losses in their states due to this legislation. In addition, other online retailers have offered to enter into affiliate relationships with these businesses if the current relationships are ended, and voluntarily collect the sales tax, which could mitigate any negative impacts.

Administrative Costs

If, as anticipated, the major online retailers end their Vermont affiliate programs, there will be little, if any, additional administrative costs associated with this legislation. It is anticipated that the legal issues surrounding affiliate nexus legislation will be pursued in New York State where the affiliate relationships were maintained and the state is pursuing the collection of the sales tax through the nexus established in the law.