

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 1537 - SB 2298**

March 6, 2014

**SUMMARY OF BILL:** Expands the definition of “dealer”, as it applies to sales tax law, to include a person that maintains, uses, owns or operates within Tennessee, directly or by a subsidiary or affiliate, directly or through a third party, any distribution facility, office, sales room or house, warehouse, or other place of business. Establishes that a person is presumed to have a representative, agent, salesperson, canvasser, or solicitor operating in this state for the purpose of making sales and is presumed to be a dealer if: the person enters into an agreement or contract with a resident of Tennessee under which the resident, for a commission or other consideration, directly or indirectly refers potential purchasers to the person, whether by an Internet link on a website or any other means; and the person’s cumulative gross receipts from retail sales made by the person to purchasers in Tennessee who are referred to the person by any resident who entered into agreement or contract with the person exceed \$10,000 during the preceding calendar year.

Adds that substantial nexus to any person who does not have a place of business in Tennessee is established through the person’s maintenance, use, ownership, or operation of any place of business, directly or by the person’s subsidiary or affiliate, directly or through a third party, having a presence in this state that substantially contributes to the person’s ability to establish and maintain a market in Tennessee. Requires activities of a person’s affiliate in this state, including fulfillment services, to be considered in determining whether the person has a physical presence in this state sufficient to establish substantial nexus. Adds that the processing of orders electronically, including facsimile, telephone, the Internet, or other electronic ordering process, does not relieve the person of the obligation to collect the tax imposed by this chapter. Establishes that sales of tangible personal property by a dealer to a retailer who directs that the dealer deliver or ship tangible personal property or provide related services to the retailer’s purchaser in Tennessee, who is a user or consumer, shall be subject to the sales and use tax, unless the retailer is registered as a Tennessee dealer and the retailer has presented a valid Tennessee certificate of resale to the dealer. Defines “affiliate”, “distribution facility”, and “fulfillment services” for the purposes of this section.

**ESTIMATED FISCAL IMPACT:**

**Increase State Revenue – Net Impact – \$973,300/FY13-14  
\$5,840,000/FY14-15 and Subsequent Years**

**Increase State Expenditures – \$33,300/FY13-14  
\$94,800/FY14-15 and Subsequent Years**

**HB 1537 - SB 2298**

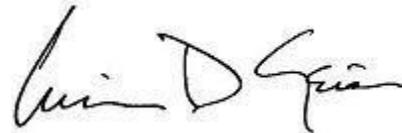
**Increase Local Revenue – \$396,700/FY13-14  
\$2,380,000/FY14-15 and Subsequent Years**

Assumptions:

- The fiscal impact of this bill is dependent upon several unknown factors including, but not limited to, the number of persons or entities that will qualify as dealers under the expanded definition as proposed and that will be subject to the sales and use tax, the number of dealers that will conduct operations in this state in the future, the extent to which any associate programs currently operating in this state will be canceled as a direct result of this bill, the extent of taxable sales made by newly designated dealers, and the extent to which the tax is currently collected on internet sales in this state.
- Given the extent of unknown factors, determining a precise fiscal impact for this bill is difficult. Based on information provided by the Department of Revenue, and based on the projections of the University of Tennessee's Center for Business and Economic Research of state and local revenue losses in Tennessee in 2015, the recurring increase in state and local government revenue is reasonably estimated to be \$5,840,000 and \$2,380,000 respectively.
- Given the effective date of the bill, which is May 1, 2014, the increase in state and local government revenue in FY13-14 is estimated to be approximately \$973,333 and \$396,667 respectively.
- According to the Department, due to the expected increased number of calls this bill will create regarding the registration and filing requirements, two additional Taxpayer Services Representative 3 positions will be required, resulting in a one-time increase in state expenditures of \$9,600 and a recurring increase in state expenditures of \$94,791 (\$59,232 salary + \$19,759 benefits + \$15,800 other). All of the one-time increase in expenditures and approximately \$23,698 [ $\$94,791 \times (3 / 12)$ ] of the recurring expenditures will be incurred in FY13-14, for a total of \$33,298 (\$9,600 + \$23,698).

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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