

HF:580 – RETAIL DELIVERY FEE QUESTIONS

1. HF 580 does not address who is ultimately liable for the retail delivery fee.
 - a. Is the retail delivery fee an imposition on the consumer or the retailer? If intended to be the liability of the end-consumer, why is Minnesota considering a law that, from a policy perspective, is not largely able to be collected from the intended party due to the fee's novel nature and complexity/uniqueness?
 - b. Who is defined as the "retailer" in the case of third party (delivery) sales? For example, you order from Johnny's Restaurant via delivery app - who is responsible for the fee?
 - c. Is the consumer liable for the fee if it is not collected by the retailer?
 - d. Can the consumer make a claim for refund from the Commissioner for overpayment of the fee to a retailer?
2. As drafted in HF 580, the retail delivery fee is imposed on deliveries to the "purchaser" at a "location" in Minnesota:
 - a. Does the fee apply to deliveries to persons other than the purchaser?
 - b. What is a "location" in Minnesota?
 - c. Does the fee apply if the "location" is a location of the retailer – e.g., buy online, pick-up in store transactions?
 - d. Does the fee apply if the "location" is a drop-off locker, pick-up locker, PO Box, or similar facility? Does the answer change if the "location" belongs to the retailer versus a third-party?
3. Is the retail deliver fee refundable to the customer if they return the item purchased? What if multiple items are purchased in a single transaction and only one is returned?
4. Is the retail delivery fee refundable to the customer if an order is canceled?
5. As drafted, HF580 alludes to the entity paying sales tax – but often the retailer (ie restaurant or Johnny's Restaurant) will pay the delivery service to remit the sales tax fee to the government – who is responsible for the fee?
6. Has consideration been given to allowing retailers to elect to pay the retail delivery fee as prescribed in HF580 themselves and not pass it on to customers? Perhaps allowing retailers an election for an interim period until the technology to allow the collection from customers catches up?

7. Almost 20 months have passed since Colorado enacted a similar fee, and 8 months have passed since the fee went into effect; still today, many retailers (large and small) are paying the fee themselves and not passing the Colorado retail delivery fee on to customers. Extensive and costly modification and system workarounds are necessary to implement the Colorado fee (and also any similar fee Minnesota might enact) and many retailers are finding that costs to implement the fee exceed the amount of fees that would be collected. Colorado's experiment with its retail delivery fee has proved that the technology does not exist yet to allow the accurate collection of a fee on retail deliveries. Why is Minnesota considering a law that many Minnesota businesses are not able to comply with absent the expenditure of significant money and resources and other potential impacts on their business?
8. Is there opportunity for a quantitative exemption to HF580? Some businesses, delivery is a very small part of their business model and programming to collect the fee will be a significant challenge. Would there be considerations for a delivery number threshold per quarter?
9. Is there an opportunity to exempt full-service restaurants? At full-service restaurants, the core of the business model is the full dine-in experience. There are a limited amount of deliveries made but certain circumstances lead to a delivery – but this is not the normal model of business.
10. Does curbside deliver count in HF580?
11. How are business to business transactions handled in HF580? For example, if a florist delivers a bouquet to a business for display (say in a lobby), is this subject to the retail delivery fee?
12. In HF580, is there a specific call out to indicate wholesale is exempt?
13. How are event deliveries handled? For example, at a large scale event (ie wedding), there are delivery of rental equipment (tables, chairs, etc), potentially prepared food (catering), flowers, décor, etc?
14. Existing point of sale systems used by most retailers (large and small) are not capable of handling the retail delivery fee contemplated by HF 580 without retailers investing significant money and resources in reconfiguration.
 - a. Has the financial burden that will be borne by the retail industry been factored into whether HF 580 makes sense for Minnesota?
 - b. Will there be support to help businesses, in particular small businesses, transition their point of sale systems?
15. Most retailers rely heavily on third-party service providers for tax content/platforms that enable the collection of taxes and fees from customers. This is especially true of small and mid-size retailers that do not have in-house resources. The tax systems/platforms offered by these third-party providers do not currently have a solution that allows all sellers on these systems/platforms to accurately collect retail delivery fees like that contemplated in HF 580.
 - a. Has consideration been given to working with the tax content providers to ensure the necessary capabilities exist before burdening Minnesota retailers with this new

collection obligation?

- b. Has consideration been given to extending the effective date of HF 580 (maybe several years) to allow the technology to catch up before burdening Minnesota retailers with the additional costs to implement this fee?
16. A critical distinction between the proposed retail delivery fee and other taxes/fees is the imposition structure. What other Minnesota (or other state) fees/taxes are transaction level (as opposed to item level) that can be used to inform the application of HF 580, implement rules, and administer the fee?
17. Concerns have been raised regarding the legality and feasibility of Colorado's retail delivery fee and there is movement to repeal it this year. Do similar concerns exist in Minnesota and does it make sense to base a new tax on a novel fee that is subject to ongoing legal and feasibility challenge?
18. HF 580 provides for compensation to the Commissioner for its costs to administer the retail delivery fee. Retailers will need to invest substantial resources to comply with this novel fee and should also be compensated. Why is the retail industry being burdened with significant administrative and compliance costs but not also receiving vendor compensation for collecting this novel fee for the state?
19. The retail delivery fee envisioned by HF 580 does not take into account the reality of the many unique and complex ways companies do business - making compliance extremely difficult. Deliveries associated with a "retail sale" can be complex and the facts may change during the life of an order. These nuances and changes during the life of an order may change whether the fee applies or not.
 - a. Has consideration been given to granting retailers protections from consumer class actions that will arise from mistaken over-collections – especially since the technology is not fully developed and the struggles retailers are experiencing with collection in other states?
 - b. Has consideration been given to granting retailers protections against administrative penalties and interest for failure to pass the fee on to customers or mistaken under or over collection of the fee?
20. Does the retail delivery fee apply to deliveries made by third-parties and not the retailer (e.g., drop-ship or supplier-direct fulfillment transaction)?
21. As drafted in HF 580, each "retail sale" is considered a "single retail delivery." How does the retail delivery fee apply in complex transactions? For example, how does the fee apply to a construction contract (is the answer different for lumpsum and time and materials contracts); contracts with multiple purchase orders or with change orders; service contracts that include parts; monthly subscriptions paid upfront; monthly subscriptions paid periodically; leases;

installment payment contracts; etc.?

22. Is the retail delivery fee intended to supplement or replace some other tax/fee that exists in Minnesota? Is this the best way to balance narrowly impactful budget concerns when the public is dealing with significant inflationary pressure and visibility to a large state budget surplus?
23. Minnesota is a full member of the Streamlined Sales Tax organization with Senator Ann Rest on the Governing Board. What are the implications of HF 580 on compliance with and adherence to Minnesota's participation in the Streamlined Sales and Use Tax Agreement?
24. How will HF580 account for individuals receiving public assistance – for example SNAP or MFIP. As SNAP items are not taxable items, and recipients could receive an order with a blend of SNAP and not eligible SNAP items – how does that interact with the fee?