



MEMO

To: Minnesota Affiliate ("Resident")
From: Total Gym Fitness, LLC ("Retailer")
Re: Collection of Sales Tax in Minnesota

Effective July 1, 2013, the Minnesota Department of Revenue ("MDR") passed a Tax Law to require the collection of sales tax by certain out-of-state retailers selling to Minnesota residents. The new law enacted by the Minnesota Legislature provides these retailers create a "nexus" to Minnesota thereby giving Minnesota the right to collect and remit sales tax in the state.

According to the new law, an out-of-state retailer is presumed to maintain a place of business in Minnesota if they:

- enter into an agreement with a resident of Minnesota for a commission or other substantially similar consideration; and
- the resident's representative directly or indirectly solicits business from Minnesota customers to the Retailer, whether by link on the Internet website or otherwise; and
- and the out-of-state retailer's gross receipts over 12 months (preceding four quarterly periods) is at least \$10,000.

The law applies to (i) any individual who is a resident of Minnesota, as defined in Minn. Stat. § 290.01; (ii) a business that owns tangible personal property located in this state; or, (iii) has one or more employees providing services for the business in this state.

A Retailer may rebut the presumption that it is soliciting sales in Minnesota and the presumption will be deemed as rebutted if the out-of-state retailer is able to establish that the only activity of its Resident representatives in Minnesota on behalf of the Retailer is a link provided on the Resident representative's website and none of the Resident representatives engage in any solicitation activity in Minnesota targeted at potential Minnesota customers on behalf of the Retailer. A Retailer may rebut the presumption by meeting both of the following conditions:

1. Contract Condition. The agreement between the Retailer and the Resident provides that the Resident is prohibited from engaging in any solicitation activities in Minnesota that refer potential customers to the Retailer including but not limited to: distributing flyers, coupons, vouchers, newsletters and other promotional materials or their electronic equivalents; verbal solicitation, phone solicitation and e-mail solicitation; and
2. Proof of Compliance. Each Resident must submit to the Retailer, on an annual basis, a signed certification stating that the Resident representative has not engaged in any prohibited solicitation activities in Minnesota at any time during the previous year. The certification must contain a statement alerting the representative that the certification and any information submitted with it is subject to verification by audit by the department.
 - The annual certification may be provided by the Resident to the Retailer in paper or electronic form. The certification must be signed by the Resident. If the Resident is an organization, the person signing must have authority to bind the organization. The certification must show the name and address of the resident as well as the name and address of any person signing for an organization.
 - The Retailer must retain copies of the certifications that are signed by and received from the Residents as part of the seller's record keeping requirements. Also, copies must be made available on request by the MDR.

- A Retailer will have satisfied the certification condition if it receives the completed certifications from its Residents and accepts them in good faith.

If a Retailer meets both the contract and proof of compliance provisions, it rebuts the presumption that they have a solicitor in the state and the Retailer will not need to register and collect tax (unless the department subsequently determines that any of the residents are actually soliciting sales in Minnesota on behalf of the Retailer or for some other reason).

Resident hereby certifies law, that effective July 1, 2013, it will not engage in any solicitation activities in Minnesota, including but not limited to, distributing flyers, coupons, vouchers, newsletters and other promotional materials or their electronic equivalents; verbal solicitation, phone solicitation and e-mail solicitation, and Resident will certify annually, under penalty of perjury, that it has not engaged in any prohibited solicitation activities on Retailer's behalf in Minnesota at any time during the previous year. Resident acknowledges that this certification, and any information submitted herein, is subject to verification by audit by the MDR. For the avoidance of doubt, Resident will continue to maintain Internet links to Retailer's website in exchange for commissions on sales generated through such links.

This Memo is intended to represent an agreement between Resident and Retailer satisfying the compliance provisions set forth in the MDR. Resident has been afforded the opportunity to consult with an attorney prior to signing below.

Agreed to by: _____
[Print Name of Resident]

By: _____
Name:
Title:

Dated: _____

Address: _____
