

March 31, 2009

Re: Senate File No. 1274
Imposition of Sales Tax on Legal Services

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I am writing on behalf of the Section of Real Property Law of the Minnesota State Bar Association (the "Section"). The Section has reviewed Senate File No. 1274 and is concerned about the amendment to MINNESOTA STATUTES § 297A.61 that would extend the sales tax to legal services. For the following reasons, the Section opposes any legislation that would subject legal services to sales or any other type of tax.

1. **Harm to consumers.** If legal services are subject to sales tax, lawyers will pass that cost on to their clients. The additional cost may render legal services unaffordable for many Minnesota consumers, and thereby deprive consumers of meaningful access to the justice system.

Some people say that the sales tax is "fair" because consumers are free to decide whether to buy goods and services that are subject to it. That justification fails when applied to most legal services, however. Consumers at all levels of income typically retain lawyers at times of crisis: Credit trouble, mortgage foreclosure, bankruptcy, divorce, domestic abuse, death of a loved one, personal injury, or encounters with the criminal justice system. Over the years, the legislature has consistently refused to subject Minnesotans who are facing such moments of misery, despair, vulnerability, and misfortune to the additional burden of paying sales tax on the legal services that their circumstances so desperately demand.

2. **Harm to businesses.** A tax on legal services will harm Minnesota's business climate. New businesses need lawyers when they start up, and existing businesses need lawyers when they expand. Adding sales tax to the cost of legal services at those and other crucial points in the business life cycle will deter businesses from locating or expanding in Minnesota. Fewer businesses will mean a decline in employment and in corporate, income, and sales taxes associated with business activity.

Small businesses in particular would feel the harmful effect of a sales tax on legal services. Large businesses can afford to hire attorneys as direct employees and thereby avoid paying sales tax on their services, but small businesses can't. Similarly, the cost of the

staff members and software that law firms will need to compute and report sales tax and comply with related requirements will be far more burdensome on small law firms than on large.

3. **Rejection by Minnesota and other states.** Minnesota first enacted the sales tax in 1967. On four separate occasions between 1967 and this session, the legislature has considered and wisely rejected the idea of extending the sales tax to legal services. Most other states have recognized the deleterious effects of taxing legal services as well. For example, Maine, Maryland, Michigan, Ohio, and several other states have defeated proposals to tax legal services. Florida and Massachusetts imposed sales taxes on legal services but quickly repealed those statutes when they proved unpopular and difficult to administer. Today, only three states--South Dakota, Hawaii, and New Mexico--tax legal services.

The Section understands the unprecedented financial situation that the State of Minnesota faces as the legislature prepares this biennium budget. Our 1,700 members are Minnesota taxpayers and voters, and they share the legislature's concern about our state's financial future. The Section also understands, however, that taxing legal services would harm many of Minnesota's most vulnerable citizens, and discourage businesses from locating and expanding here at a time when we need them most.

On behalf of the Section of Real Property Law of the Minnesota State Bar Association and the clients that our members represent, I strongly urge you to oppose passage of Senate File 1274 or any other legislation that would impose a sales or other tax on legal services.

Regards,