

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 3256

03/21/2014 Authored by Hoppe and Davids

The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; sales and use; clarifying the definition of retail sales as it
1.3 relates to fiber optic and communication cable; amending Minnesota Statutes
1.4 2013 Supplement, section 297A.61, subdivision 4.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2013 Supplement, section 297A.61, subdivision 4,
1.7 is amended to read:

1.8 Subd. 4. **Retail sale.** (a) A "retail sale" means:

1.9 (1) any sale, lease, or rental of tangible personal property for any purpose, other than
1.10 resale, sublease, or subrent of items by the purchaser in the normal course of business
1.11 as defined in subdivision 21; and

1.12 (2) any sale of a service enumerated in subdivision 3, for any purpose other than
1.13 resale by the purchaser in the normal course of business as defined in subdivision 21.

1.14 (b) A sale of property used by the owner only by leasing it to others or by holding it
1.15 in an effort to lease it, and put to no use by the owner other than resale after the lease or
1.16 effort to lease, is a sale of property for resale.

1.17 (c) A sale of master computer software that is purchased and used to make copies for
1.18 sale or lease is a sale of property for resale.

1.19 (d) A sale of building materials, supplies, and equipment to owners, contractors,
1.20 subcontractors, or builders for the erection of buildings or the alteration, repair, or
1.21 improvement of real property is a retail sale in whatever quantity sold, whether the sale is
1.22 for purposes of resale in the form of real property or otherwise.

(e) A sale of carpeting, linoleum, or similar floor covering to a person who provides for installation of the floor covering is a retail sale and not a sale for resale since a sale of floor covering which includes installation is a contract for the improvement of real property.

(f) A sale of shrubbery, plants, sod, trees, and similar items to a person who provides for installation of the items is a retail sale and not a sale for resale since a sale of shrubbery, plants, sod, trees, and similar items that includes installation is a contract for the improvement of real property.

(g) A sale of tangible personal property that is awarded as prizes is a retail sale and is not considered a sale of property for resale.

(h) A sale of tangible personal property utilized or employed in the furnishing or providing of services under subdivision 3, paragraph (g), clause (1), including, but not limited to, property given as promotional items, is a retail sale and is not considered a sale of property for resale.

(i) A sale of tangible personal property used in conducting lawful gambling under chapter 349 or the State Lottery under chapter 349A, including, but not limited to, property given as promotional items, is a retail sale and is not considered a sale of property for resale.

(j) a sale of machines, equipment, or devices that are used to furnish, provide, or dispense goods or services, including, but not limited to, coin-operated devices, is a retail sale and is not considered a sale of property for resale.

(k) In the case of a lease, a retail sale occurs (1) when an obligation to make a lease payment becomes due under the terms of the agreement or the trade practices of the lessor or (2) in the case of a lease of a motor vehicle, as defined in section 297B.01, subdivision 11, but excluding vehicles with a manufacturer's gross vehicle weight rating greater than 10,000 pounds and rentals of vehicles for not more than 28 days, at the time the lease is executed.

(l) In the case of a conditional sales contract, a retail sale occurs upon the transfer of title or possession of the tangible personal property.

(m) A sale of a bundled transaction in which one or more of the products included in the bundle is a taxable product is a retail sale, except that if one of the products is a telecommunication service, ancillary service, Internet access, or audio or video programming service, and the seller has maintained books and records identifying through reasonable and verifiable standards the portions of the price that are attributable to the distinct and separately identifiable products, then the products are not considered part of a bundled transaction. For purposes of this paragraph:

(1) the books and records maintained by the seller must be maintained in the regular course of business, and do not include books and records created and maintained by the seller primarily for tax purposes;

(2) books and records maintained in the regular course of business include, but are not limited to, financial statements, general ledgers, invoicing and billing systems and reports, and reports for regulatory tariffs and other regulatory matters; and

(3) books and records are maintained primarily for tax purposes when the books and records identify taxable and nontaxable portions of the price, but the seller maintains other books and records that identify different prices attributable to the distinct products included in the same bundled transaction.

(n) A sale of motor vehicle repair paint and materials by a motor vehicle repair or body shop business is a retail sale and the sales tax is imposed on the gross receipts from the retail sale of the paint and materials. The motor vehicle repair or body shop that purchases motor vehicle repair paint and motor vehicle repair materials for resale must either:

(1) separately state each item of paint and each item of materials, and the sales price of each, on the invoice to the purchaser; or

(2) in order to calculate the sales price of the paint and materials, use a method which estimates the amount and monetary value of the paint and materials used in the repair of the motor vehicle by multiplying the number of labor hours by a rate of consideration for the paint and materials used in the repair of the motor vehicle following industry standard practices that fairly calculate the gross receipts from the retail sale of the motor vehicle repair paint and motor vehicle repair materials. An industry standard practice fairly calculates the gross receipts if the sales price of the paint and materials used or consumed in the repair of a motor vehicle equals or exceeds the purchase price paid by the motor vehicle repair or body shop business. Under this clause, the invoice must either separately state the "paint and materials" as a single taxable item, or separately state "paint" as a taxable item and "materials" as a taxable item. This clause does not apply to wholesale transactions at an auto auction facility.

(o) A sale of specified digital products or other digital products to an end user with or without rights of permanent use and regardless of whether rights of use are conditioned upon payment by the purchaser is a retail sale. When a digital code has been purchased that relates to specified digital products or other digital products, the subsequent receipt of or access to the related specified digital products or other digital products is not a retail sale.

(p) A payment made to a cooperative electric association or public utility as a contribution in aid of construction is a contract for improvement to real property and is not a retail sale.

4.1 (q) Installation of fiber optic and communication cable in buildings is a retail sale
4.2 and not an improvement to retail property. For purposes of this paragraph, "fiber optic
4.3 and communication cable" means cable that is of the type required to be removed from
4.4 abandoned buildings under the most recent edition of the National Electrical Code, as
4.5 adopted by the National Fire Protection Association, Inc. and approved by the National
4.6 Standards Institute.

4.7 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
4.8 June 30, 2014.