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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1939

02/25/2014 Authored by Zellers, Zerwas, Albright, Mack and Fabian
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; repealing the tax on certain business
1.3 transactions; amending Minnesota Statutes 2012, section 297A.68, by adding a
1.4 subdivision; Minnesota Statutes 2013 Supplement, section 297A.61, subdivision
1.5 3.

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

1.7 Section 1. Minnesota Statutes 2013 Supplement, section 297A.61, subdivision 3,
1.8 is amended to read:

1.9 Subd. 3. **Sale and purchase.** (a) "Sale" and "purchase" include, but are not limited
1.10 to, each of the transactions listed in this subdivision. In applying the provisions of this
1.11 chapter, the terms "tangible personal property" and "retail sale" include the taxable
1.12 services listed in paragraph (g), clause (6), items (i) to (vi) and (viii), and the provision
1.13 of these taxable services, unless specifically provided otherwise. Services performed by
1.14 an employee for an employer are not taxable. Services performed by a partnership or
1.15 association for another partnership or association are not taxable if one of the entities owns
1.16 or controls more than 80 percent of the voting power of the equity interest in the other
1.17 entity. Services performed between members of an affiliated group of corporations are not
1.18 taxable. For purposes of the preceding sentence, "affiliated group of corporations" means
1.19 those entities that would be classified as members of an affiliated group as defined under
1.20 United States Code, title 26, section 1504, disregarding the exclusions in section 1504(b).

1.21 (b) Sale and purchase include:

1.22 (1) any transfer of title or possession, or both, of tangible personal property, whether
1.23 absolutely or conditionally, for a consideration in money or by exchange or barter; and

(2) the leasing of or the granting of a license to use or consume, for a consideration in money or by exchange or barter, tangible personal property, other than a manufactured home used for residential purposes for a continuous period of 30 days or more.

(c) Sale and purchase include the production, fabrication, printing, or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production, fabrication, printing, or processing.

(d) Sale and purchase include the preparing for a consideration of food. Notwithstanding section 297A.67, subdivision 2, taxable food includes, but is not limited to, the following:

(1) prepared food sold by the retailer;

(2) soft drinks;

(3) candy;

(4) dietary supplements; and

(5) all food sold through vending machines.

(e) A sale and a purchase includes the furnishing for a consideration of electricity, gas, water, or steam for use or consumption within this state.

(f) A sale and a purchase includes the transfer for a consideration of prewritten computer software whether delivered electronically, by load and leave, or otherwise.

(g) A sale and a purchase includes the furnishing for a consideration of the following services:

(1) the privilege of admission to places of amusement, recreational areas, or athletic events, and the making available of amusement devices, tanning facilities, reducing salons, steam baths, Turkish baths, health clubs, and spas or athletic facilities;

(2) lodging and related services by a hotel, rooming house, resort, campground, motel, or trailer camp, including furnishing the guest of the facility with access to telecommunication services, and the granting of any similar license to use real property in a specific facility, other than the renting or leasing of it for a continuous period of 30 days or more under an enforceable written agreement that may not be terminated without prior notice and including accommodations intermediary services provided in connection with other services provided under this clause;

(3) nonresidential parking services, whether on a contractual, hourly, or other periodic basis, except for parking at a meter;

(4) the granting of membership in a club, association, or other organization if:

(i) the club, association, or other organization makes available for the use of its members sports and athletic facilities, without regard to whether a separate charge is assessed for use of the facilities; and

(ii) use of the sports and athletic facility is not made available to the general public on the same basis as it is made available to members.

Granting of membership means both onetime initiation fees and periodic membership dues. Sports and athletic facilities include golf courses; tennis, racquetball, handball, and squash courts; basketball and volleyball facilities; running tracks; exercise equipment; swimming pools; and other similar athletic or sports facilities;

(5) delivery of aggregate materials by a third party, excluding delivery of aggregate material used in road construction; and delivery of concrete block by a third party if the delivery would be subject to the sales tax if provided by the seller of the concrete block.

For purposes of this clause, "road construction" means construction of:

(i) public roads;

(ii) cartways; and

(iii) private roads in townships located outside of the seven-county metropolitan area up to the point of the emergency response location sign; and

(6) services as provided in this clause:

(i) laundry and dry cleaning services including cleaning, pressing, repairing, altering, and storing clothes, linen services and supply, cleaning and blocking hats, and carpet, drapery, upholstery, and industrial cleaning. Laundry and dry cleaning services do not include services provided by coin operated facilities operated by the customer;

(ii) motor vehicle washing, waxing, and cleaning services, including services provided by coin operated facilities operated by the customer, and rustproofing, undercoating, and towing of motor vehicles;

(iii) building and residential cleaning, maintenance, and disinfecting services and pest control and exterminating services;

(iv) detective, security, burglar, fire alarm, and armored car services; but not including services performed within the jurisdiction they serve by off-duty licensed peace officers as defined in section 626.84, subdivision 1, or services provided by a nonprofit organization or any organization at the direction of a county for monitoring and electronic surveillance of persons placed on in-home detention pursuant to court order or under the direction of the Minnesota Department of Corrections;

(v) pet grooming services;

(vi) lawn care, fertilizing, mowing, spraying and sprigging services; garden planting and maintenance; tree, bush, and shrub pruning, bracing, spraying, and surgery; indoor plant care; tree, bush, shrub, and stump removal, except when performed as part of a land clearing contract as defined in section 297A.68, subdivision 40; and tree trimming for

public utility lines. Services performed under a construction contract for the installation of shrubbery, plants, sod, trees, bushes, and similar items are not taxable;

(vii) massages, except when provided by a licensed health care facility or professional or upon written referral from a licensed health care facility or professional for treatment of illness, injury, or disease; and

(viii) the furnishing of lodging, board, and care services for animals in kennels and other similar arrangements, but excluding veterinary and horse boarding services.

(h) A sale and a purchase includes the furnishing for a consideration of tangible personal property or taxable services by the United States or any of its agencies or instrumentalities, or the state of Minnesota, its agencies, instrumentalities, or political subdivisions.

(i) A sale and a purchase includes the furnishing for a consideration of telecommunications services, ancillary services associated with telecommunication services, and pay television services. Telecommunication services include, but are not limited to, the following services, as defined in section 297A.669: air-to-ground radiotelephone service, mobile telecommunication service, postpaid calling service, prepaid calling service, prepaid wireless calling service, and private communication services. The services in this paragraph are taxed to the extent allowed under federal law.

(j) A sale and a purchase includes the furnishing for a consideration of installation if the installation charges would be subject to the sales tax if the installation were provided by the seller of the item being installed.

(k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer to a customer when (1) the vehicle is rented by the customer for a consideration, or (2) the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section 59B.02, subdivision 11.

(l) A sale and a purchase includes furnishing for a consideration of specified digital products or other digital products or granting the right for a consideration to use specified digital products or other digital products on a temporary or permanent basis and regardless of whether the purchaser is required to make continued payments for such right. Wherever the term "tangible personal property" is used in this chapter, other than in subdivisions 10 and 38, the provisions also apply to specified digital products, or other digital products, unless specifically provided otherwise or the context indicates otherwise.

~~(m) A sale and purchase includes the furnishing for consideration of the following services:~~

~~(1) repairing and maintaining electronic and precision equipment, which service can be deducted as a business expense under the Internal Revenue Code. This includes, but~~

is not limited to, repair or maintenance of electronic devices, computers and computer peripherals, monitors, computer terminals, storage devices, and CD-ROM drives; other office equipment such as photocopying machines, printers, and facsimile machines; televisions, stereos, sound systems, video or digital recorders and players; two-way radios and other communications equipment; radar and sonar equipment, scientific instruments, microscopes, and medical equipment;

(2) repairing and maintaining commercial and industrial machinery and equipment.

For purposes of this subdivision, the following items are not commercial or industrial machinery and equipment: (i) motor vehicles; (ii) furniture and fixtures; (iii) ships; (iv) railroad stock; and (v) aircraft; and

(3) warehousing or storage services for tangible personal property, excluding:

(i) agricultural products;

(ii) refrigerated storage;

(iii) electronic data; and

(iv) self-storage services and storage of motor vehicles, recreational vehicles, and boats, not eligible to be deducted as a business expense under the Internal Revenue Code.

EFFECTIVE DATE. This section is effective retroactively for sales and purchases made after June 30, 2013, except that the stricken paragraph (m), clause (3), is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2012, section 297A.68, is amended by adding a subdivision to read:

Subd. 35a. Telecommunications and pay television machinery and equipment.

(a) Telecommunications or pay television machinery and equipment purchased or leased for use directly by a telecommunications or pay television service provider primarily in the provision of telecommunications or pay television services that are ultimately to be sold at retail are exempt, regardless of whether purchased by the owner, a contractor, or a subcontractor.

(b) For purposes of this subdivision, "telecommunications or pay television machinery and equipment" includes, but is not limited to:

(1) machinery, equipment, and fixtures utilized in receiving, initiating, amplifying, processing, transmitting, retransmitting, recording, switching, or monitoring telecommunications, or pay television services, such as computers, transformers, amplifiers, routers, bridges, repeaters, multiplexers, and other items performing comparable functions;

6.1 (2) machinery, equipment, and fixtures used in the transportation of
6.2 telecommunications, or pay television services, radio transmitters and receivers, satellite
6.3 equipment, microwave equipment, and other transporting media, but not wire, cable,
6.4 fiber, poles, or conduit;

6.5 (3) ancillary machinery, equipment, and fixtures that regulate, control, protect, or
6.6 enable the machinery in clauses (1) and (2) to accomplish its intended function, such as
6.7 auxiliary power supply, test equipment, towers, heating, ventilating, and air conditioning
6.8 equipment necessary to the operation of the telecommunications, cable television, or direct
6.9 satellite equipment; and software necessary to the operation of the telecommunications
6.10 or pay television equipment; and

6.11 (4) repair and replacement parts, including accessories, whether purchased as spare
6.12 parts, repair parts, or as upgrades or modifications to qualified machinery or equipment.

6.13 **EFFECTIVE DATE.** This section is effective retroactively for sales and purchases
6.14 made after June 30, 2013. Refunds for sales tax paid on items exempted under this
6.15 section may be applied for and paid in the same manner as refunds under Minnesota
6.16 Statutes, section 297A.75.