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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2032

01/30/2012 Authored by Myhra, Davids, Loon, Hoppe, Sanders and others
The bill was read for the first time and referred to the Committee on Taxes
02/23/2012 By motion, recalled and re-referred to the Committee on Transportation Policy and Finance

1.1 A bill for an act
1.2 relating to taxation; sales and use; modifying definition of retail sale; amending
1.3 Minnesota Statutes 2010, section 297A.61, subdivision 4.

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

1.5 Section 1. Minnesota Statutes 2010, section 297A.61, subdivision 4, is amended to
1.6 read:

1.7 Subd. 4. **Retail sale.** (a) A "retail sale" means any sale, lease, or rental for any
1.8 purpose, other than resale, sublease, or subrent of items by the purchaser in the normal
1.9 course of business as defined in subdivision 21.

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

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

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

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

1.23 (f) A sale of shrubbery, plants, sod, trees, and similar items to a person who provides
1.24 for installation of the items is a retail sale and not a sale for resale since a sale of

2.1 shrubbery, plants, sod, trees, and similar items that includes installation is a contract for
2.2 the improvement of real property.

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

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

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

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

2.16 (k) In the case of a lease, a retail sale occurs (1) when an obligation to make a lease
2.17 payment becomes due under the terms of the agreement or the trade practices of the lessor
2.18 ~~or~~ (2) in the case of a lease of a motor vehicle, as defined in section 297B.01, subdivision
2.19 11, but excluding vehicles with a manufacturer's gross vehicle weight rating greater than
2.20 10,000 pounds and rentals of vehicles for not more than 28 days, at the time the lease is
2.21 executed; or (3) for rent-to-own or lease-to-own used vehicles where the lessee may
2.22 purchase or return the vehicle at any time without penalty, at the time each payment is
2.23 made under the terms of the agreement.

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

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

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

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

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

3.8 **EFFECTIVE DATE.** This section is effective for leases entered into after June
3.9 30, 2012.