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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **884**

02/06/2017 Authored by Liebling and Davids
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/07/2017 By motion, recalled and re-referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; gross revenues and gross receipts; exempting certain massage
1.3 therapy from sales taxation; imposing the health care provider tax on certain
1.4 massage therapy; amending Minnesota Statutes 2016, sections 295.50, subdivisions
1.5 4, 9b, by adding subdivisions; 297A.61, subdivision 3; 297A.67, by adding a
1.6 subdivision.

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

1.8 Section 1. Minnesota Statutes 2016, section 295.50, subdivision 4, is amended to read:

1.9 Subd. 4. **Health care provider.** (a) "Health care provider" means:

1.10 (1) a person whose health care occupation is regulated or required to be regulated by
1.11 the state of Minnesota furnishing any or all of the following goods or services directly to a
1.12 patient or consumer: medical, surgical, optical, visual, dental, hearing, nursing services,
1.13 drugs, laboratory, diagnostic or therapeutic services;

1.14 (2) a person who provides goods and services not listed in clause (1) that qualify for
1.15 reimbursement under the medical assistance program provided under chapter 256B;

1.16 (3) a staff model health plan company;

1.17 (4) an ambulance service required to be licensed; ~~or~~

1.18 (5) a person who sells or repairs hearing aids and related equipment or prescription
1.19 eyewear; or

1.20 (6) a massage therapist.

1.21 (b) Health care provider does not include:

2.1 (1) hospitals; medical supplies distributors, except as specified under paragraph (a),
2.2 clause (5); nursing homes licensed under chapter 144A or licensed in any other jurisdiction;
2.3 wholesale drug distributors; pharmacies; surgical centers; bus and taxicab transportation,
2.4 or any other providers of transportation services other than ambulance services required to
2.5 be licensed; supervised living facilities for persons with developmental disabilities, licensed
2.6 under Minnesota Rules, parts 4665.0100 to 4665.9900; housing with services establishments
2.7 required to be registered under chapter 144D; board and lodging establishments providing
2.8 only custodial services that are licensed under chapter 157 and registered under section
2.9 157.17 to provide supportive services or health supervision services; adult foster homes as
2.10 defined in Minnesota Rules, part 9555.5105; day training and habilitation services for adults
2.11 with developmental disabilities as defined in section 252.41, subdivision 3; boarding care
2.12 homes, as defined in Minnesota Rules, part 4655.0100; and adult day care centers as defined
2.13 in Minnesota Rules, part 9555.9600;

2.14 (2) home health agencies as defined in Minnesota Rules, part 9505.0175, subpart 15; a
2.15 person providing personal care services and supervision of personal care services as defined
2.16 in Minnesota Rules, part 9505.0335; a person providing home care nursing services as
2.17 defined in Minnesota Rules, part 9505.0360; and home care providers required to be licensed
2.18 under chapter 144A;

2.19 (3) a person who employs health care providers solely for the purpose of providing
2.20 patient services to its employees;

2.21 (4) an educational institution that employs health care providers solely for the purpose
2.22 of providing patient services to its students if the institution does not receive fee for service
2.23 payments or payments for extended coverage; and

2.24 (5) a person who receives all payments for patient services from health care providers,
2.25 surgical centers, or hospitals for goods and services that are taxable to the paying health
2.26 care providers, surgical centers, or hospitals, as provided under section 295.53, subdivision
2.27 1, clause (3) or (4), or from a source of funds that is exempt from tax under this chapter.

2.28 **EFFECTIVE DATE.** This section is effective for gross revenues received after June
2.29 30, 2017.

3.1 Sec. 2. Minnesota Statutes 2016, section 295.50, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 8a. **Massage therapist.** "Massage therapist" means a person providing massage
3.4 therapy services who registers with the commissioner to pay the tax imposed under section
3.5 295.52 prior to the calendar quarter in which the massage therapy services are provided.

3.6 **EFFECTIVE DATE.** This section is effective for gross revenues received after June
3.7 30, 2017.

3.8 Sec. 3. Minnesota Statutes 2016, section 295.50, is amended by adding a subdivision to
3.9 read:

3.10 Subd. 8b. **Massage therapy services.** (a) "Massage therapy services" or "massage
3.11 therapy" means a health care service provided by a massage therapist that involves systematic
3.12 and structured touch and palpation and pressure and movement of the muscles, tendons,
3.13 ligaments, and fascia, in order to reduce muscle tension, relieve soft tissue pain, improve
3.14 circulation, increase flexibility, increase activity of the parasympathetic branch of the
3.15 autonomic nervous system, or promote general wellness, by:

3.16 (1) use of any or all of the following techniques using the hands, forearms, elbows,
3.17 knees, or feet, or handheld, nonpuncturing, mechanical, or electrical devices that mimic or
3.18 enhance the actions of the human hands: effleurage or gliding; petrissage or kneading;
3.19 vibration and jostling; friction; tapotement or percussion; compression; fascial manipulation;
3.20 or passive stretching within the normal anatomical range of motion; or

3.21 (2) application and use of any of the following: oils, lotions, gels, rubbing alcohol, or
3.22 powders for the purpose of lubricating the skin to be massaged; creams, with the exception
3.23 of prescription medicinal creams; hot or cold stones; essential oils as used in aromatherapy
3.24 for inhalation or diluted for topical application; salt glows and wraps; or heat or ice.

3.25 (b) Massage therapy services or massage therapy excludes services described in paragraph
3.26 (a) that are provided by a licensed health care facility or professional or upon written referral
3.27 from a licensed health care facility or professional for treatment of illness, injury, or disease.

3.28 **EFFECTIVE DATE.** This section is effective for gross revenues received after June
3.29 30, 2017.

4.1 Sec. 4. Minnesota Statutes 2016, section 295.50, subdivision 9b, is amended to read:

4.2 Subd. 9b. **Patient services.** (a) "Patient services" means inpatient and outpatient services
4.3 and other goods and services provided by hospitals, surgical centers, or health care providers.
4.4 They include the following health care goods and services provided to a patient or consumer:

4.5 (1) bed and board;

4.6 (2) nursing services and other related services;

4.7 (3) use of hospitals, surgical centers, or health care provider facilities;

4.8 (4) medical social services;

4.9 (5) drugs, biologicals, supplies, appliances, and equipment;

4.10 (6) other diagnostic or therapeutic items or services;

4.11 (7) medical or surgical services;

4.12 (8) items and services furnished to ambulatory patients not requiring emergency care;

4.13 ~~and~~

4.14 (9) emergency services; and

4.15 (10) massage therapy services.

4.16 (b) "Patient services" does not include:

4.17 (1) services provided to nursing homes licensed under chapter 144A;

4.18 (2) examinations for purposes of utilization reviews, insurance claims or eligibility,
4.19 litigation, and employment, including reviews of medical records for those purposes;

4.20 (3) services provided to and by community residential mental health facilities licensed
4.21 under Minnesota Rules, parts 9520.0500 to 9520.0670, and to and by residential treatment
4.22 programs for children with severe emotional disturbance licensed or certified under chapter
4.23 245A;

4.24 (4) services provided to and by community support programs and family community
4.25 support programs approved under Minnesota Rules, parts 9535.1700 to 9535.1760, or
4.26 certified as mental health rehabilitative services under chapter 256B;

4.27 (5) services provided to and by community mental health centers as defined in section
4.28 245.62, subdivision 2;

4.29 (6) services provided to and by assisted living programs and congregate housing
4.30 programs;

5.1 (7) hospice care services;

5.2 (8) home and community-based waived services under sections 256B.0915, 256B.49,
5.3 and 256B.501;

5.4 (9) targeted case management services under sections 256B.0621; 256B.0625,
5.5 subdivisions 20, 20a, 33, and 44; and 256B.094; and

5.6 (10) services provided to the following: supervised living facilities for persons with
5.7 developmental disabilities licensed under Minnesota Rules, parts 4665.0100 to 4665.9900;
5.8 housing with services establishments required to be registered under chapter 144D; board
5.9 and lodging establishments providing only custodial services that are licensed under chapter
5.10 157 and registered under section 157.17 to provide supportive services or health supervision
5.11 services; adult foster homes as defined in Minnesota Rules, part 9555.5105; day training
5.12 and habilitation services for adults with developmental disabilities as defined in section
5.13 252.41, subdivision 3; boarding care homes as defined in Minnesota Rules, part 4655.0100;
5.14 adult day care services as defined in section 245A.02, subdivision 2a; and home health
5.15 agencies as defined in Minnesota Rules, part 9505.0175, subpart 15, or licensed under
5.16 chapter 144A.

5.17 **EFFECTIVE DATE.** This section is effective for gross revenues received after June
5.18 30, 2017.

5.19 Sec. 5. Minnesota Statutes 2016, section 297A.61, subdivision 3, is amended to read:

5.20 Subd. 3. **Sale and purchase.** (a) "Sale" and "purchase" include, but are not limited to,
5.21 each of the transactions listed in this subdivision. In applying the provisions of this chapter,
5.22 the terms "tangible personal property" and "retail sale" include the taxable services listed
5.23 in paragraph (g), clause (6), items (i) to (vi) and (viii), and the provision of these taxable
5.24 services, unless specifically provided otherwise. Services performed by an employee for
5.25 an employer are not taxable. Services performed by a partnership or association for another
5.26 partnership or association are not taxable if one of the entities owns or controls more than
5.27 80 percent of the voting power of the equity interest in the other entity. Services performed
5.28 between members of an affiliated group of corporations are not taxable. For purposes of
5.29 the preceding sentence, "affiliated group of corporations" means those entities that would
5.30 be classified as members of an affiliated group as defined under United States Code, title
5.31 26, section 1504, disregarding the exclusions in section 1504(b).

5.32 (b) Sale and purchase include:

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

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

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

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

6.11 (1) prepared food sold by the retailer;

6.12 (2) soft drinks;

6.13 (3) candy;

6.14 (4) dietary supplements; and

6.15 (5) all food sold through vending machines.

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

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

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

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

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

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

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

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

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

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

7.13 (5) delivery of aggregate materials by a third party, excluding delivery of aggregate
7.14 material used in road construction; and delivery of concrete block by a third party if the
7.15 delivery would be subject to the sales tax if provided by the seller of the concrete block.
7.16 For purposes of this clause, "road construction" means construction of:

7.17 (i) public roads;

7.18 (ii) cartways; and

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

7.21 (6) services as provided in this clause:

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

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

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

7.31 (iv) detective, security, burglar, fire alarm, and armored car services; but not including
7.32 services performed within the jurisdiction they serve by off-duty licensed peace officers as

8.1 defined in section 626.84, subdivision 1, or services provided by a nonprofit organization
8.2 or any organization at the direction of a county for monitoring and electronic surveillance
8.3 of persons placed on in-home detention pursuant to court order or under the direction of the
8.4 Minnesota Department of Corrections;

8.5 (v) pet grooming services;

8.6 (vi) lawn care, fertilizing, mowing, spraying and sprigging services; garden planting
8.7 and maintenance; tree, bush, and shrub pruning, bracing, spraying, and surgery; indoor plant
8.8 care; tree, bush, shrub, and stump removal, except when performed as part of a land clearing
8.9 contract as defined in section 297A.68, subdivision 40; and tree trimming for public utility
8.10 lines. Services performed under a construction contract for the installation of shrubbery,
8.11 plants, sod, trees, bushes, and similar items are not taxable;

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

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

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

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

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

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

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

9.8 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June
9.9 30, 2017.

9.10 Sec. 6. Minnesota Statutes 2016, section 297A.67, is amended by adding a subdivision to
9.11 read:

9.12 **Subd. 34. Massage therapy.** Massage therapy services subject to tax under section
9.13 295.52 or provided upon referral from a professional or licensed health care facility for
9.14 treatment of illness, injury, or disease are exempt.

9.15 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June
9.16 30, 2017.