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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2017

03/19/2015 Authored by McDonald, Loonan, Lohmer, Barrett and Lucero
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 digital products; amending
1.3 Minnesota Statutes 2014, sections 297A.61, subdivisions 3, 4, 38; 297A.668,
1.4 subdivisions 1, 2, 6a, 7; 297A.669, subdivision 14a; repealing Minnesota Statutes
1.5 2014, section 297A.61, subdivisions 50, 51, 52, 53, 54, 55, 56.

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

1.7 Section 1. Minnesota Statutes 2014, section 297A.61, subdivision 3, is amended to read:

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

1.20 (b) Sale and purchase include:

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

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

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

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

- 2.7 (1) prepared food sold by the retailer;
- 2.8 (2) soft drinks;
- 2.9 (3) candy;
- 2.10 (4) dietary supplements; and
- 2.11 (5) all food sold through vending machines.

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

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

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

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

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

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

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

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

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

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

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

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

3.9 (i) public roads;

3.10 (ii) cartways; and

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

3.13 (6) services as provided in this clause:

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

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

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

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

3.29 (v) pet grooming services;

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

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

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

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

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

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

4.20 (k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer
 4.21 to a customer when (1) the vehicle is rented by the customer for a consideration, or (2)
 4.22 the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section
 4.23 59B.02, subdivision 11.

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

4.31 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
 4.32 June 30, 2015.

4.33 Sec. 2. Minnesota Statutes 2014, section 297A.61, subdivision 4, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

5.34 (k) In the case of a lease, a retail sale occurs (1) when an obligation to make a lease
5.35 payment becomes due under the terms of the agreement or the trade practices of the
5.36 lessor or (2) in the case of a lease of a motor vehicle, as defined in section 297B.01,

6.1 subdivision 11, but excluding vehicles with a manufacturer's gross vehicle weight rating
6.2 greater than 10,000 pounds and rentals of vehicles for not more than 28 days, at the time
6.3 the lease is executed.

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

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

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

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

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

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

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

6.29 (2) in order to calculate the sales price of the paint and materials, use a method
6.30 which estimates the amount and monetary value of the paint and materials used in
6.31 the repair of the motor vehicle by multiplying the number of labor hours by a rate of
6.32 consideration for the paint and materials used in the repair of the motor vehicle following
6.33 industry standard practices that fairly calculate the gross receipts from the retail sale of
6.34 the motor vehicle repair paint and motor vehicle repair materials. An industry standard
6.35 practice fairly calculates the gross receipts if the sales price of the paint and materials used
6.36 or consumed in the repair of a motor vehicle equals or exceeds the purchase price paid

7.1 by the motor vehicle repair or body shop business. Under this clause, the invoice must
 7.2 either separately state the "paint and materials" as a single taxable item, or separately state
 7.3 "paint" as a taxable item and "materials" as a taxable item. This clause does not apply to
 7.4 wholesale transactions at an auto auction facility.

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

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

7.13 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
 7.14 June 30, 2015.

7.15 Sec. 3. Minnesota Statutes 2014, section 297A.61, subdivision 38, is amended to read:

7.16 Subd. 38. **Bundled transaction.** (a) "Bundled transaction" means the retail sale
 7.17 of two or more products when the products are otherwise distinct and identifiable, and
 7.18 the products are sold for one nonitemized price. As used in this subdivision, "product"
 7.19 includes tangible personal property, services, and intangibles, ~~and digital goods, including~~
 7.20 ~~specified digital products or other digital products~~, but does not include real property or
 7.21 services to real property. A bundled transaction does not include the sale of any products
 7.22 in which the sales price varies, or is negotiable, based on the selection by the purchaser of
 7.23 the products included in the transaction.

7.24 (b) For purposes of this subdivision, "distinct and identifiable" products does not
 7.25 include:

7.26 (1) packaging and other materials, such as containers, boxes, sacks, bags, and
 7.27 bottles, wrapping, labels, tags, and instruction guides, that accompany the retail sale of the
 7.28 products and are incidental or immaterial to the retail sale. Examples of packaging that are
 7.29 incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags,
 7.30 and express delivery envelopes and boxes;

7.31 (2) a promotional product provided free of charge with the required purchase of
 7.32 another product. A promotional product is provided free of charge if the sales price of
 7.33 another product, which is required to be purchased in order to receive the promotional
 7.34 product, does not vary depending on the inclusion of the promotional product; and

7.35 (3) items included in the definition of sales price.

8.1 (c) For purposes of this subdivision, the term "one nonitemized price" does not
 8.2 include a price that is separately identified by product on binding sales or other supporting
 8.3 sales-related documentation made available to the customer in paper or electronic form
 8.4 including but not limited to an invoice, bill of sale, receipt, contract, service agreement,
 8.5 lease agreement, periodic notice of rates and services, rate card, or price list.

8.6 (d) A transaction that otherwise meets the definition of a bundled transaction is
 8.7 not a bundled transaction if it is:

8.8 (1) the retail sale of tangible personal property and a service and the tangible
 8.9 personal property is essential to the use of the service, and is provided exclusively in
 8.10 connection with the service, and the true object of the transaction is the service;

8.11 (2) the retail sale of services if one service is provided that is essential to the use or
 8.12 receipt of a second service and the first service is provided exclusively in connection with
 8.13 the second service and the true object of the transaction is the second service;

8.14 (3) a transaction that includes taxable products and nontaxable products and the
 8.15 purchase price or sales price of the taxable products is de minimis; or

8.16 (4) the retail sale of exempt tangible personal property and taxable tangible personal
 8.17 property if:

8.18 (i) the transaction includes food and food ingredients, drugs, durable medical
 8.19 equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices,
 8.20 or medical supplies; and

8.21 (ii) the seller's purchase price or sales price of the taxable tangible personal property is
 8.22 50 percent or less of the total purchase price or sales price of the bundled tangible personal
 8.23 property. Sellers must not use a combination of the purchase price and sales price of the
 8.24 tangible personal property when making the 50 percent determination for a transaction.

8.25 (e) For purposes of this subdivision, "purchase price" means the measure subject to
 8.26 use tax on purchases made by the seller, and "de minimis" means that the seller's purchase
 8.27 price or sales price of the taxable products is ten percent or less of the total purchase
 8.28 price or sales price of the bundled products. Sellers shall use either the purchase price
 8.29 or the sales price of the products to determine if the taxable products are de minimis.
 8.30 Sellers must not use a combination of the purchase price and sales price of the products
 8.31 to determine if the taxable products are de minimis. Sellers shall use the full term of a
 8.32 service contract to determine if the taxable products are de minimis.

8.33 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
 8.34 June 30, 2015.

8.35 Sec. 4. Minnesota Statutes 2014, section 297A.668, subdivision 1, is amended to read:

9.1 Subdivision 1. **Applicability.** The provisions of this section apply regardless of the
9.2 characterization of a product as tangible personal property, ~~a digital good~~, or a service;
9.3 but do not apply to telecommunications services or the sales of motor vehicles. These
9.4 provisions only apply to determine a seller's obligation to pay or collect and remit a sales
9.5 or use tax with respect to the seller's sale of a product. These provisions do not affect the
9.6 obligation of a seller as purchaser to remit tax on the use of the product.

9.7 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
9.8 June 30, 2015.

9.9 Sec. 5. Minnesota Statutes 2014, section 297A.668, subdivision 2, is amended to read:

9.10 Subd. 2. **Sourcing rules.** (a) The retail sale, excluding lease or rental, of a product
9.11 shall be sourced as required in paragraphs (b) through (f).

9.12 (b) When the product is received by the purchaser at a business location of the seller,
9.13 the sale is sourced to that business location.

9.14 (c) When the product is not received by the purchaser at a business location of the
9.15 seller, the sale is sourced to the location where receipt by the purchaser or the donee
9.16 designated by the purchaser occurs, including the location indicated by instructions for
9.17 delivery to the purchasers or the purchaser's donee, known to the seller.

9.18 (d) When paragraphs (b) and (c) do not apply, the sale is sourced to the location
9.19 indicated by an address for the purchaser that is available from the business records of
9.20 the seller that are maintained in the ordinary course of the seller's business, when use of
9.21 this address does not constitute bad faith.

9.22 (e) When paragraphs (b), (c), and (d) do not apply, the sale is sourced to the location
9.23 indicated by an address for the purchaser obtained during the consummation of the sale,
9.24 including the address of a purchaser's payment instrument if no other address is available,
9.25 when use of this address does not constitute bad faith.

9.26 (f) When paragraphs (b), (c), (d), and (e) do not apply, including the circumstance
9.27 where the seller is without sufficient information to apply the previous paragraphs, then
9.28 the location is determined by the address from which tangible personal property was
9.29 shipped, from which ~~the digital good~~ or the computer software delivered electronically
9.30 was first available for transmission by the seller, or from which the service was provided.
9.31 ~~For purposes of this paragraph, the seller must disregard any location that merely provided~~
9.32 ~~the digital transfer of the product sold.~~

9.33 (g) For purposes of this subdivision, the terms "receive" and "receipt" mean taking
9.34 possession of tangible personal property, making first use of services, or taking possession
9.35 or making first use of ~~digital goods~~ or the computer software delivered electronically,

10.1 whichever occurs first. The terms receive and receipt do not include possession by a
10.2 carrier for hire on behalf of the purchaser.

10.3 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
10.4 June 30, 2015.

10.5 Sec. 6. Minnesota Statutes 2014, section 297A.668, subdivision 6a, is amended to read:

10.6 Subd. 6a. **Multiple points of use.** (a) Notwithstanding the provisions of subdivisions
10.7 2 and 3, a business purchaser that has not received authorization to pay the tax directly to
10.8 the commissioner may use an exemption certificate indicating multiple points of use if:

10.9 (1) the purchaser knows at the time of its purchase of a ~~digital good~~, computer
10.10 software delivered electronically, or a service that the good or service will be concurrently
10.11 available for use in more than one taxing jurisdiction; and

10.12 (2) the purchaser delivers to the seller the exemption certificate indicating multiple
10.13 points of use at the time of purchase.

10.14 (b) Upon receipt of the fully completed exemption certificate indicating multiple
10.15 points of use, the seller is relieved of the obligation to collect, pay, or remit the applicable
10.16 tax and the purchaser is obligated to collect, pay, or remit the applicable tax on a direct
10.17 pay basis. The provisions of section 297A.665 apply to this paragraph.

10.18 (c) The purchaser delivering the exemption certificate indicating multiple points
10.19 of use may use any reasonable but consistent and uniform method of apportionment
10.20 that is supported by the purchaser's business records as they exist at the time of the
10.21 consummation of the sale.

10.22 (d) The purchaser shall provide the exemption certificate indicating multiple points
10.23 of use to the seller at the time of purchase.

10.24 (e) A purchaser that has received authorization to pay the tax directly to the
10.25 commissioner is not required to deliver to the seller an exemption certificate indicating
10.26 multiple points of use. A purchaser that has received authorization to pay the tax directly
10.27 to the commissioner shall follow the provisions of paragraph (c) in apportioning the tax
10.28 due on a ~~digital good~~, computer software delivered electronically, or a service that will be
10.29 concurrently available for use in more than one taxing jurisdiction.

10.30 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
10.31 June 30, 2015.

10.32 Sec. 7. Minnesota Statutes 2014, section 297A.668, subdivision 7, is amended to read:

11.1 Subd. 7. **Advertising and promotional direct mail.** (a) Notwithstanding other
11.2 subdivisions of this section, the provisions in paragraphs (b) to (e) apply to the sale of
11.3 advertising and promotional direct mail. "Advertising and promotional direct mail" means
11.4 printed material that is direct mail as defined in section 297A.61, subdivision 35, the
11.5 primary purpose of which is to attract public attention to a product, person, business, or
11.6 organization, or to attempt to sell, popularize, or secure financial support for a person,
11.7 business, organization, or product. "Product" includes tangible personal property, ~~a digital~~
11.8 ~~product transferred electronically,~~ or a service.

11.9 (b) A purchaser of advertising and promotional direct mail may provide the seller
11.10 with one of the following:

11.11 (1) a fully completed exemption certificate as described in section 297A.72
11.12 indicating that the purchaser is authorized to pay any sales or use tax due on purchases
11.13 made by the purchaser directly to the commissioner under section 297A.89;

11.14 (2) a fully completed exemption certificate claiming an exemption for direct mail; or

11.15 (3) information showing the jurisdictions to which the advertising and promotional
11.16 direct mail is to be delivered to recipients.

11.17 (c) In the absence of bad faith, if the purchaser provides one of the exemption
11.18 certificates indicated in paragraph (b), clauses (1) and (2), the seller is relieved of all
11.19 obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay
11.20 or remit the tax on any transaction involving advertising and promotional direct mail to
11.21 which the certificate applies. The purchaser shall source the sale to the jurisdictions to
11.22 which the advertising and promotional direct mail is to be delivered to the recipients of
11.23 the mail, and shall report and pay any applicable tax due.

11.24 (d) If the purchaser provides the seller information showing the jurisdictions to
11.25 which the advertising and promotional direct mail is to be delivered to recipients, the seller
11.26 shall source the sale to the jurisdictions to which the advertising and promotional direct
11.27 mail is to be delivered and shall collect and remit the applicable tax. In the absence of
11.28 bad faith, the seller is relieved of any further obligation to collect any additional tax on
11.29 the sale of advertising and promotional direct mail where the seller has sourced the sale
11.30 according to the delivery information provided by the purchaser.

11.31 (e) If the purchaser does not provide the seller with any of the items listed in
11.32 paragraph (b), the sale shall be sourced under subdivision 2, paragraph (f). Nothing in
11.33 this paragraph limits a purchaser's obligation for sales or use tax to any state to which the
11.34 direct mail is delivered.

11.35 (f) This subdivision does not apply to printed materials that result from developing
11.36 billing information or providing any data processing service that is more than incidental

12.1 to producing the printed materials, regardless of whether advertising and promotional
12.2 direct mail is included in the same mailing.

12.3 (g) If a transaction is a bundled transaction that includes advertising and promotional
12.4 direct mail, this subdivision applies only if the primary purpose of the transaction is the sale
12.5 of products or services that meet the definition of advertising and promotional direct mail.

12.6 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
12.7 June 30, 2015.

12.8 Sec. 8. Minnesota Statutes 2014, section 297A.669, subdivision 14a, is amended to read:

12.9 Subd. 14a. **Prepaid wireless calling service.** "Prepaid wireless calling service," for
12.10 purposes of this section, means a telecommunications service that:

12.11 (1) provides the right to utilize mobile wireless service as well as other
12.12 nontelecommunications services, including ~~the download of digital products delivered~~
12.13 ~~electronically, content, and ancillary services;~~

12.14 (2) must be paid for in advance; and

12.15 (3) is sold in predetermined units or dollars of which the number declines with
12.16 use in a known amount.

12.17 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
12.18 June 30, 2015.

12.19 Sec. 9. **REPEALER.**

12.20 Minnesota Statutes 2014, section 297A.61, subdivisions 50, 51, 52, 53, 54, 55,
12.21 and 56, are repealed.

12.22 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
12.23 June 30, 2015.

297A.61 DEFINITIONS.

Subd. 50. **Digital audio works.** "Digital audio works" means works that result from a fixation of a series of musical, spoken, or other sounds, that are transferred electronically. Digital audio works includes such items as the following which may either be prerecorded or live: songs, music, readings of books or other written materials, speeches, ring tones, or other sound recordings. Digital audio works does not include audio greeting cards sent by electronic mail. Unless the context provides otherwise, in this chapter digital audio works includes the digital code, or a subscription to or access to a digital code, for receiving, accessing, or otherwise obtaining digital audio works.

Subd. 51. **Digital audiovisual works.** "Digital audiovisual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. Digital audiovisual works includes such items as motion pictures, movies, musical videos, news and entertainment, and live events. Digital audiovisual works does not include video greeting cards sent by electronic mail. Unless the context provides otherwise, in this chapter digital audiovisual works includes the digital code, or a subscription to or access to a digital code, for receiving, accessing, or otherwise obtaining digital audiovisual works.

Subd. 52. **Digital books.** "Digital books" means any literary works, other than digital audiovisual works or digital audio works, expressed in words, numbers, or other verbal or numerical symbols or indicia so long as the product is generally recognized in the ordinary and usual sense as a "book." It includes works of fiction and nonfiction and short stories. It does not include periodicals, magazines, newspapers, or other news or information products, chat rooms, or weblogs. Unless the context provides otherwise, in this chapter digital books includes the digital code, or a subscription to or access to a digital code, for receiving, accessing, or otherwise obtaining digital books.

Subd. 53. **Digital code.** "Digital code" means a code which provides a purchaser with a right to obtain one or more specified digital products or other digital products. A digital code may be transferred electronically, such as through electronic mail, or it may be transferred on a tangible medium, such as on a plastic card, a piece of paper or invoice, or imprinted on another product. A digital code is not a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser, and it is not a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select a digital product of an indicated cash value. The end user of a digital code is any purchaser except one who receives the contractual right to redistribute a digital product which is the subject of the transaction.

Subd. 54. **Other digital products.** "Other digital products" means the following items when transferred electronically:

- (1) greeting cards; and
- (2) online video or electronic games.

Subd. 55. **Specified digital products.** "Specified digital products" means digital audio works, digital audiovisual works, and digital books that are transferred electronically to a customer.

Subd. 56. **Transferred electronically.** "Transferred electronically" means obtained by the purchaser by means other than tangible storage media. For purposes of this subdivision, it is not necessary that a copy of the product be physically transferred to the purchaser. A product will be considered to have been transferred electronically to a purchaser if the purchaser has access to the product.