

### 387.212 CONTINGENT FUND.

The board of county commissioners in any county may create a sheriff's contingent fund and may credit thereto not more than ~~\$1,000~~ \$3,000. The moneys in such fund may be used for the advancement and reimbursement of expenses of the sheriff and his office. Such moneys shall be disbursed by the county treasurer in accordance with rules and regulations prescribed by the board. Any balance remaining at the end of the year shall be transferred to the revenue fund.

Approved May 8, 1985

### CHAPTER 83 — S.F.No. 1329

*An act relating to taxation; clarifying definitions for sales and use tax; clarifying exemptions; providing an exemption for certain mailing materials used for advertising purposes; imposing civil and criminal penalties for underreporting or failing to report motor vehicle excise tax; repealing certain refund procedures; amending Minnesota Statutes 1984, sections 297A.01, subdivision 11; 297A.041; 297A.25, subdivision 1; 297B.10; and 297B.11; repealing Minnesota Statutes 1984, section 297A.35, subdivision 3.*

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

Section 1. Minnesota Statutes 1984, section 297A.01, subdivision 11, is amended to read:

Subd. 11. "Tangible personal property" means corporeal personal property of any kind whatsoever, including property which is to become a fixture or which is to lose its identity by incorporation in or attachment to real property as a result of incorporation, attachment, or installation following its acquisition.

Personal property does not include:

(a) large ponderous machinery and equipment used in a business or production activity which at common law would be considered to be real property;

(b) property which is subject to an ad valorem property tax;

(c) property described in section 272.02, subdivision 1, clause (8), paragraphs (a) to (d);

(d) property described in section 272.03, subdivision 2, clauses (3) and (5).

Sec. 2. Minnesota Statutes 1984, section 297A.041, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

**297A.041 OPERATOR OF FLEA MARKETS; SELLER'S PERMITS REQUIRED; PENALTY.**

The operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event, as a prerequisite to renting or leasing space on the premises owned or controlled by the operator to a person desiring to engage in or conduct business as a seller, shall obtain evidence that the seller is the holder of a valid seller's permit issued pursuant to section 297A.04, or a written statement from the seller that he is not offering for sale any item that is taxable under this chapter.

Flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event, as used in this section, means an activity involving a series of sales sufficient in number, scope, and character to constitute a regular course of business, and which would not qualify as an isolated or occasional sale pursuant to section 297A.25, subdivision 1, clause (k).

Any operator who fails or refuses to comply with the provisions of this section shall be subject to a penalty payable to the commissioner of revenue of \$100 for each day of each selling event that the operator fails to obtain evidence that the seller is the holder of a valid seller's permit issued pursuant to section 297A.04.

This section ~~shall~~ does not apply to an operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event which is: (1) held in conjunction with a community sponsored festival which has a duration of four or fewer consecutive days no more than once a year; or (2) conducted by a nonprofit organization annually or less frequently.

Sec. 3. Minnesota Statutes 1984, section 297A.25, subdivision 1, is amended to read:

Subdivision 1. The following are specifically exempted from the taxes imposed by sections 297A.01 to 297A.44:

(a) The gross receipts from the sale of food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products, and food products which are not taxable pursuant to section 297A.01, subdivision 3, clause (c) ~~and which are sold by a retailer, organized as a nonprofit corporation or association, within a place located on property owned by the state or an agency or instrumentality of the state, the entrance to which is subject to an admission charge.~~ This exemption does not include the following:

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(i) candy and candy products, except when sold for fundraising purposes by a nonprofit organization that provides educational and social activities for young people primarily aged 18 and under;

(ii) carbonated beverages, beverages commonly referred to as soft drinks containing less than 15 percent fruit juice, or bottled water other than noncarbonated and noneffervescent bottled water sold in individual containers of one-half gallon or more in size;

(b) The gross receipts from the sale of prescribed drugs and medicine intended for use, internal or external, in the cure, mitigation, treatment or prevention of illness or disease in human beings and products consumed by humans for the preservation of health, including prescription glasses, therapeutic and prosthetic devices, but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein;

(c) The gross receipts from the sale of and the storage, use or other consumption in Minnesota of tangible personal property, tickets, or admissions, electricity, gas, or local exchange telephone service, which under the Constitution or laws of the United States or under the Constitution of Minnesota, the state of Minnesota is prohibited from taxing;

(d) The gross receipts from the sale of tangible personal property (i) which, without intermediate use, is shipped or transported outside Minnesota by the purchaser and thereafter used in a trade or business or is stored, processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property transported or shipped outside Minnesota and thereafter used in a trade or business outside Minnesota, and which is not thereafter returned to a point within Minnesota, except in the course of interstate commerce (storage shall not constitute intermediate use); provided that the property is not subject to tax in that state or country to which it is transported for storage or use, or, if subject to tax in that other state, that state allows a similar exemption for property purchased therein and transported to Minnesota for use in this state; except that sales of tangible personal property that is shipped or transported for use outside Minnesota shall be taxed at the rate of the use tax imposed by the state to which the property is shipped or transported, unless that state has no use tax, in which case the sale shall be taxed at the rate generally imposed by this state; and provided further that sales of tangible personal property to be used in other states or countries as part of a maintenance contract shall be specifically exempt; or (ii) which the seller delivers to a common carrier for delivery outside Minnesota, places in the United States mail or parcel post directed to the purchaser outside Minnesota, or delivers to the purchaser outside Minnesota by means of the seller's own delivery vehicles, and which is not thereafter returned to a point within Minnesota, except in the course of interstate commerce;

(e) The gross receipts from the sale of packing materials used to pack and ship household goods, the ultimate destination of which is outside the state of

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Minnesota and which are not thereafter returned to a point within Minnesota, except in the course of interstate commerce;

(f) The gross receipts from the sale of and storage, use or consumption of petroleum products upon which a tax has been imposed under the provisions of chapter 296, whether or not any part of said tax may be subsequently refunded;

(g) The gross receipts from the sale of clothing and wearing apparel except the following:

(i) all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof; watches; clocks; cases and movements for watches and clocks; gold, gold-plated, silver, or sterling flatware or hollow ware and silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses and binoculars;

(ii) articles made of fur on the hide or pelt, and articles of which such fur is the component material or chief value, but only if such value is more than three times the value of the next most valuable component material;

(iii) perfume, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous and toilet powders. The tax imposed by this act shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the case of babies;

(iv) trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use by travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, salesmen's sample and display cases, purses, handbags, pocketbooks, wallets, billfolds, card, pass, and key cases and toilet cases;

(h) The gross receipts from the sale of and the storage, use, or consumption of all materials, including chemicals, fuels, petroleum products, lubricants, packaging materials, including returnable containers used in packaging food and beverage products, feeds, seeds, fertilizers, electricity, gas and steam, used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail, whether or not the item so used becomes an ingredient or constituent part of the property produced. Chemicals used for cleaning food processing machinery and equipment are included in this exemption. Such production shall include, but is not limited to, research, development, design or production of any tangible personal property, manufacturing, processing (other than by restaurants and consumers) of agricultural products whether vegetable or animal, commercial fishing, refining, smelting, reducing, brewing, distilling, printing, mining, quarrying, lumbering, generating electricity and the production of road building materials. Such production shall not include painting, cleaning, repairing or similar processing of property except as part of the original manufacturing process. Machinery, equipment, implements, tools,

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accessories, appliances, contrivances, furniture and fixtures, used in such production and fuel, electricity, gas or steam used for space heating or lighting, are not included within this exemption; however, accessory tools, equipment and other short lived items, which are separate detachable units used in producing a direct effect upon the product, where such items have an ordinary useful life of less than 12 months; are included within the exemption provided herein;

(i) The gross receipts from the sale of and storage, use or other consumption in Minnesota of tangible personal property (except as provided in section 297A.14) which is used or consumed in producing any publication regularly issued at average intervals not exceeding three months, and any such publication. For purposes of this subsection, "publication" as used herein shall include, without limiting the foregoing, a legal newspaper as defined by Minnesota Statutes 1965, section 331.02, and any supplements or enclosures with or part of said newspaper; and the gross receipts of any advertising contained therein or therewith shall be exempt. For this purpose, advertising in any such publication shall be deemed to be a service and not tangible personal property, and persons or their agents who publish or sell such newspapers shall be deemed to be engaging in a service with respect to gross receipts realized from such newsgathering or publishing activities by them, including the sale of advertising. The term "publication" shall not include magazines and periodicals sold over the counter. Machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures used in such publication and fuel, electricity, gas or steam used for space heating or lighting, are not exempt;

(j) The gross receipts from all sales, including sales in which title is retained by a seller or a vendor or is assigned to a third party under an installment sale or lease purchase agreement under section 465.71, of tangible personal property to, and all storage, use or consumption of such property by, the United States and its agencies and instrumentalities or a state and its agencies, instrumentalities and political subdivisions. Sales exempted by this clause include sales pursuant to section 297A.01, subdivision 3, clauses (d) and (f). This exemption shall not apply to building, construction or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration or repair of a building or facility. This exemption does not apply to construction materials purchased by tax exempt entities or their contractors to be used in constructing buildings or facilities which will not be used principally by the tax exempt entities;

(k) The gross receipts from the isolated or occasional sale of tangible personal property in Minnesota not made in the normal course of business of selling that kind of property, and the storage, use, or consumption of property acquired as a result of such a sale. For purposes of this clause, sales by a nonprofit organization shall be deemed to be "isolated or occasional" if they occur at sale events that have a duration of three or fewer consecutive days. The

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granting of the privilege of admission to places of amusement and the privilege of use of amusement devices by a nonprofit organization at an isolated or occasional event conducted on property owned or leased for a continuous period of more than 30 days by the nonprofit organization are also exempt. The exemption provided for isolated sales of tangible personal property and of the granting of admissions or the privilege of use of amusement devices by nonprofit organizations pursuant to this clause shall be available only if the sum of the days on which the organization and any subsidiary nonprofit organization sponsored by it that does not have a separate sales tax exemption permit conduct sales of tangible personal property, plus the days with respect to which the organization charges for the use of amusement devices or admission to places of amusement, does not exceed eight days in a calendar year. For purposes of this clause, a "nonprofit organization" means any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, no part of the net earnings of which inures to the benefit of a private individual;

(l) The gross receipts from sales of rolling stock and the storage, use or other consumption of such property by railroads, freight line companies, sleeping car companies and express companies taxed on the gross earnings basis in lieu of ad valorem taxes. For purposes of this clause "rolling stock" is defined as the portable or moving apparatus and machinery of any such company which moves on the road, and includes, but is not limited to, engines, cars, tenders, coaches, sleeping cars and parts necessary for the repair and maintenance of such rolling stock;

(m) The gross receipts from sales of airlift equipment and the storage, use or other consumption of such property by airline companies taxed under the provisions of sections 270.071 to 270.079. For purposes of this clause, "airlift equipment" includes airplanes and parts necessary for the repair and maintenance of such airlift equipment, and flight simulators;

(n) The gross receipts from the sale of telephone central office telephone equipment used in furnishing intrastate and interstate telephone service to the public;

(o) The gross receipts from the sale of and the storage, use or other consumption by persons taxed under the in lieu provisions of chapter 298, of mill liners, grinding rods and grinding balls which are substantially consumed in the production of taconite, the material of which primarily is added to and becomes a part of the material being processed;

(p) The gross receipts from the sale of tangible personal property to, and the storage, use or other consumption of such property by, any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes if the property purchased is to be used in the performance of charitable, religious or educational functions, or any

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senior citizen group or association of groups that in general limits membership to persons age 55 or older and is organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholders. Sales exempted by this clause include sales pursuant to section 297A.01, subdivision 3, clauses (d) and (f). This exemption shall not apply to building, construction or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration or repair of a building or facility. This exemption does not apply to construction materials purchased by tax exempt entities or their contractors to be used in constructing buildings or facilities which will not be used principally by the tax exempt entities;

(q) The gross receipts from the sale of caskets and burial vaults;

(r) The gross receipts from the sale of an automobile or other conveyance if the purchaser is assisted by a grant from the United States in accordance with 38 United States Code, section 1901, as amended;

(s) The gross receipts from the sale to the licensed aircraft dealer of an aircraft for which a commercial use permit has been issued pursuant to section 360.654, if the aircraft is resold while the permit is in effect;

(t) The gross receipts from the sale of building materials to be used in the construction or remodeling of a residence when the construction or remodeling is financed in whole or in part by the United States in accordance with 38 United States Code, sections 801 to 805, as amended. This exemption shall not be effective at time of sale of the materials to contractors, subcontractors, builders or owners, but shall be applicable only upon a claim for refund to the commissioner of revenue filed by recipients of the benefits provided in title 38 United States Code, chapter 21, as amended. The commissioner shall provide by regulation for the refund of taxes paid on sales exempt in accordance with this paragraph;

(u) The gross receipts from the sale of textbooks which are prescribed for use in conjunction with a course of study in a public or private school, college, university and business or trade school to students who are regularly enrolled at such institutions. For purposes of this clause a "public school" is defined as one that furnishes course of study, enrollment and staff that meets standards of the state board of education and a private school is one which under the standards of the state board of education, provides an education substantially equivalent to that furnished at a public school. Business and trade schools shall mean such schools licensed pursuant to section 141.25;

(v) The gross receipts from the sale of and the storage of material designed to advertise and promote the sale of merchandise or services, which material is purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside the

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state of Minnesota, Mailing and reply envelopes and cards used exclusively in connection with the advertising and promotional materials are included in this exemption;

(w) The gross receipt from the sale of residential heating fuels in the following manner:

(i) all fuel oil, coal, wood, steam, hot water, propane gas, and L.P. gas sold to residential customers for residential use;

(ii) natural gas sold for residential use to customers who are metered and billed as residential users and who use natural gas for their primary source of residential heat, for the billing months of November, December, January, February, March and April;

(iii) electricity sold for residential use to customers who are metered and billed as residential users and who use electricity for their primary source of residential heat, for the billing months of November, December, January, February, March and April;

(x) The gross receipts from the sale or use of tickets or admissions to the premises of or events sponsored by an association, corporation or other group of persons which provides an opportunity for citizens of the state to participate in the creation, performance or appreciation of the arts and which qualifies as a tax-exempt organization within the meaning of Minnesota Statutes 1980, section 290.05, subdivision 1, clause (i);

(y) The gross receipts from either the sales to or the storage, use or consumption of tangible personal property by an organization of military service veterans or an auxiliary unit of an organization of military service veterans, provided that:

(i) the organization or auxiliary unit is organized within the state of Minnesota and is exempt from federal taxation pursuant to section 501(c), clause (19), of the Internal Revenue Code as amended through December 31, 1982; and

(ii) the tangible personal property which is sold to or stored, used or consumed by the organization or auxiliary unit is for charitable, civic, educational, or nonprofit uses and not for social, recreational, pleasure or profit uses;

(z) The gross receipts from the sale of sanitary napkins, tampons, or similar items used for feminine hygiene;

(aa) The gross receipts from the sale of a manufactured home, as defined in section 327.31, subdivision 6, to be used by the purchaser for residential purposes, unless the sale is the first retail sale of the manufactured home in this state;

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(bb) The gross receipts from the sale of equipment used for processing solid or hazardous waste at a resource recovery facility, as defined in section 115A.03, subdivision 28.

Sec. 4. Minnesota Statutes 1984, section 297B.10, is amended to read:

#### 297B.10 PENALTIES.

(1) Any person, including persons other than the purchaser, who prepares, completes or submits a false or fraudulent motor vehicle purchaser's certificate with intent to defeat or evade the tax imposed under Laws 1974, this chapter 853 or any purchaser who fails to complete or submit a motor vehicle purchaser's certificate with intent to defeat or evade the tax or who attempts to defeat or evade the tax in any manner, is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event he is guilty of a felony. The term "person" as used in this section includes any officer or employee of a corporation or a member or employee of a partnership who as an officer, member or employee is under a duty to perform the act with respect to which the violation occurs. Notwithstanding the provisions of section 628.26 or any other provision of the criminal laws of this state, an indictment may be found and filed, upon any criminal offense specified in this section, in the proper court within six years after the commission of the offense.

(2) Any person who violates any of the provisions of Laws 1974, this chapter 853, unless the violation be of the type referred to in clause (1), is guilty of a misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$100 or by imprisonment in the county jail for not less than 30 days, or both.

Sec. 5. Minnesota Statutes 1984, section 297B.11, is amended to read:

#### 297B.11 MOTOR VEHICLE REGISTRAR TO ACT AS AGENT OF COMMISSIONER OF REVENUE IN ADMINISTRATION OF MOTOR VEHICLE EXCISE TAX; POWERS OF COMMISSIONER.

The state commissioner of revenue is charged with the administration of Laws 1974, Chapter 853 the motor vehicle excise tax. The commissioner may prescribe all rules and regulations not inconsistent with the provisions of Laws 1974, this chapter 853, necessary and advisable for the proper and efficient administration of Laws 1974, Chapter 853 the law. The collection of this motor vehicle excise tax shall be carried out by the motor vehicle registrar who shall act as the agent of the commissioner and who shall be subject to all rules and regulations not inconsistent with the provisions of Laws 1974, this chapter 853, that may be prescribed by the commissioner. The provisions of Laws 1974, Chapter 853, shall not be construed as preventing the collection of motor vehicle excise taxes by the commissioner of revenue in the course of any audit carried on by the commissioner of revenue.

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The provisions of chapter 297A relating to the commissioner's authority to audit, assess, and collect the tax are applicable to the motor vehicle excise tax. The commissioner may impose civil penalties as provided in chapter 297A, and the additional tax and penalties are subject to interest at the rate provided in section 270.75.

Sec. 6. **REPEALER.**

Minnesota Statutes 1984, section 297A.35, subdivision 3, is repealed.

Sec. 7. **EFFECTIVE DATES.**

Sections 1 to 3 are effective the day following final enactment. Sections 4 and 5 are effective July 1, 1985. Section 6 is effective for sales tax paid on electricity billed on or after January 1, 1987.

Approved May 8, 1985

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**CHAPTER 84 — H.F.No. 266**

*An act relating to arrest; providing indemnification for off-duty peace officers who make arrests outside their jurisdiction; specifying the circumstances under which peace officers, constables, and part-time peace officers may make on- or off-duty arrests outside their jurisdictions; amending Minnesota Statutes 1984, sections 3.736, subdivision 1, and by adding a subdivision; 97.50, subdivision 1; 629.34, subdivision 1; and 629.40.*

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

Section 1. Minnesota Statutes 1984, section 3.736, subdivision 1, is amended to read:

Subdivision 1. **GENERAL RULE.** The state will pay compensation for injury to or loss of property or personal injury or death caused by an act or omission of any employee of the state while acting within the scope of his office or employment or peace officer who is not acting on behalf of a private employer and who is acting in good faith pursuant to section 629.40, subdivision 3, under circumstances where the state, if a private person, would be liable to the claimant.

Sec. 2. Minnesota Statutes 1984, section 3.736, is amended by adding a subdivision to read:

Subd. 9a. PEACE OFFICER INDEMNIFICATION. The state of Minnesota shall defend, save harmless, and indemnify a peace officer who is not acting on behalf of a private employer and who is acting in good faith pursuant to section 629.40, subdivision 3, the same as if the officer were an employee of the state.

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