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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3193

04/03/2023 Authored by Noor
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; clarifying the taxation of transfers of prewritten
1.3 computer software; modifying the exemption for qualified data centers; amending
1.4 Minnesota Statutes 2022, sections 297A.61, subdivision 3; 297A.68, subdivision
1.5 42.

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

1.7 Section 1. Minnesota Statutes 2022, 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 to,
1.9 each of the transactions listed in this subdivision. In applying the provisions of this chapter,
1.10 the terms "tangible personal property" and "retail sale" include the taxable services listed
1.11 in paragraph (g), clause (6), items (i) to (vi) and (viii), and the provision of these taxable
1.12 services, unless specifically provided otherwise. Services performed by an employee for
1.13 an employer are not taxable. Services performed by a partnership or association for another
1.14 partnership or association are not taxable if one of the entities owns or controls more than
1.15 80 percent of the voting power of the equity interest in the other entity. Services performed
1.16 between members of an affiliated group of corporations are not taxable. For purposes of
1.17 the preceding sentence, "affiliated group of corporations" means those entities that would
1.18 be classified as members of an affiliated group as defined under United States Code, title
1.19 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

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

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

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

2.9 (1) prepared food sold by the retailer;

2.10 (2) soft drinks;

2.11 (3) candy; and

2.12 (4) dietary supplements.

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

2.15 (f) A sale and a purchase includes the transfer for a consideration of prewritten computer  
2.16 software whether delivered electronically, by load and leave, or otherwise. A sale and a  
2.17 purchase also includes the charge made to a purchaser for the right to access and use  
2.18 prewritten computer software, whether temporary or permanent and regardless of whether  
2.19 the purchaser is required to make continued payments for such rights, where possession of  
2.20 the software is maintained by a seller or a third party, regardless of whether the charge for  
2.21 the service is on a per use, per user, per license, subscription, or some other basis.

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

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

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

3.1 accommodations intermediary services provided in connection with other services provided  
3.2 under this clause;

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

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

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

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

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

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

3.19 (i) public roads;

3.20 (ii) cartways; and

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

3.23 (6) services as provided in this clause:

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

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

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

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

4.7 (v) pet grooming services;

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

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

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

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

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

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

4.32 (k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer to a  
4.33 customer when (1) the vehicle is rented by the customer for a consideration, or (2) the motor

5.1 vehicle dealer is reimbursed pursuant to a service contract as defined in section 59B.02,  
5.2 subdivision 11.

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

5.10 (m) The sale of the privilege of admission under section 297A.61, subdivision 3,  
5.11 paragraph (g), clause (1), to a place of amusement, recreational area, or athletic event  
5.12 includes all charges included in the privilege of admission's sales price, without deduction  
5.13 for amenities that may be provided, unless the amenities are separately stated and the  
5.14 purchaser of the privilege of admission is entitled to add or decline the amenities, and the  
5.15 amenities are not otherwise taxable.

5.16 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
5.17 30, 2023.

5.18 Sec. 2. Minnesota Statutes 2022, section 297A.68, subdivision 42, is amended to read:

5.19 Subd. 42. **Qualified data centers.** (a) Purchases of enterprise information technology  
5.20 equipment ~~and computer software~~ for use in a qualified data center, or a qualified refurbished  
5.21 data center, are exempt, ~~except that computer software maintenance agreements are exempt~~  
5.22 ~~for purchases made after June 30, 2013.~~ The tax on purchases exempt under this paragraph  
5.23 must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied,  
5.24 and then refunded after June 30, 2013, in the manner provided in section 297A.75. This  
5.25 exemption includes enterprise information technology equipment ~~and computer software~~  
5.26 purchased to replace or upgrade enterprise information technology equipment ~~and computer~~  
5.27 ~~software~~ in a qualified data center, or a qualified refurbished data center.

5.28 (b) Electricity used or consumed in the operation of a qualified data center or qualified  
5.29 refurbished data center is exempt.

5.30 (c) For purposes of this subdivision, "qualified data center" means a facility in Minnesota:

5.31 (1) that is comprised of one or more buildings that consist in the aggregate of at least  
5.32 25,000 square feet, and that are located on a single parcel or on contiguous parcels, where  
5.33 the total cost of construction or refurbishment, investment in enterprise information

6.1 technology equipment, and computer software is at least \$30,000,000 within a 48-month  
6.2 period. The 48-month period begins no sooner than July 1, 2012, except that costs for  
6.3 computer software maintenance agreements purchased before July 1, 2013, are not included  
6.4 in determining if the \$30,000,000 threshold has been met;

6.5 (2) that is constructed or substantially refurbished after June 30, 2012, where  
6.6 "substantially refurbished" means that at least 25,000 square feet have been rebuilt or  
6.7 modified, including:

6.8 (i) installation of enterprise information technology equipment; environmental control,  
6.9 computer software, and energy efficiency improvements; and

6.10 (ii) building improvements; and

6.11 (3) that is used to house enterprise information technology equipment, where the facility  
6.12 has the following characteristics:

6.13 (i) uninterruptible power supplies, generator backup power, or both;

6.14 (ii) sophisticated fire suppression and prevention systems; and

6.15 (iii) enhanced security. A facility will be considered to have enhanced security if it has  
6.16 restricted access to the facility to selected personnel; permanent security guards; video  
6.17 camera surveillance; an electronic system requiring pass codes, keycards, or biometric scans,  
6.18 such as hand scans and retinal or fingerprint recognition; or similar security features.

6.19 In determining whether the facility has the required square footage, the square footage  
6.20 of the following spaces shall be included if the spaces support the operation of enterprise  
6.21 information technology equipment: office space, meeting space, and mechanical and other  
6.22 support facilities. For purposes of ~~this subdivision~~ determining investment criteria, "computer  
6.23 software" includes, but is not limited to, software utilized or loaded at a qualified data center  
6.24 or qualified refurbished data center, including maintenance, licensing, and software  
6.25 customization that is taxable under this chapter.

6.26 (d) For purposes of this subdivision, a "qualified refurbished data center" means an  
6.27 existing facility that qualifies as a data center under paragraph (c), clauses (2) and (3), but  
6.28 that is comprised of one or more buildings that consist in the aggregate of at least 25,000  
6.29 square feet, and that are located on a single parcel or contiguous parcels, where the total  
6.30 cost of construction or refurbishment, investment in enterprise information technology  
6.31 equipment, and computer software is at least \$50,000,000 within a 24-month period.

6.32 (e) For purposes of this subdivision, "enterprise information technology equipment"  
6.33 means computers and equipment supporting computing, networking, or data storage,

7.1 including servers and routers. It includes, but is not limited to: cooling systems, cooling  
7.2 towers, and other temperature control infrastructure; power infrastructure for transformation,  
7.3 distribution, or management of electricity used for the maintenance and operation of a  
7.4 qualified data center or qualified refurbished data center, including but not limited to exterior  
7.5 dedicated business-owned substations, backup power generation systems, battery systems,  
7.6 and related infrastructure; and racking systems, cabling, and trays, which are necessary for  
7.7 the maintenance and operation of the qualified data center or qualified refurbished data  
7.8 center.

7.9 (f) A qualified data center or qualified refurbished data center may claim the exemptions  
7.10 in this subdivision for purchases made either within 20 years of the date of its first purchase  
7.11 qualifying for the exemption under paragraph (a), or by June 30, 2042, whichever is earlier.

7.12 (g) The purpose of this exemption is to create jobs in the construction and data center  
7.13 industries.

7.14 (h) This subdivision is effective for sales and purchases made before July 1, 2042.

7.15 (i) The commissioner of employment and economic development must certify to the  
7.16 commissioner of revenue, in a format approved by the commissioner of revenue, when a  
7.17 qualified data center has met the requirements under paragraph (c) or a qualified refurbished  
7.18 data center has met the requirements under paragraph (d). The certification must provide  
7.19 the following information regarding each qualified data center or qualified refurbished data  
7.20 center:

7.21 (1) the total square footage amount;

7.22 (2) the total amount of construction or refurbishment costs and the total amount of  
7.23 qualifying investments in enterprise information technology equipment and computer  
7.24 software;

7.25 (3) the beginning and ending of the applicable period under either paragraph (c) or (d)  
7.26 in which the qualifying expenditures and purchases under clause (2) were made, but in no  
7.27 case shall the period begin before July 1, 2012; and

7.28 (4) the date upon which the qualified data center first met the requirements under  
7.29 paragraph (c) or a qualified refurbished data center first met the requirements under paragraph  
7.30 (d).

7.31 (j) Any refund for sales tax paid on qualifying purchases under this subdivision must  
7.32 not be issued unless the commissioner of revenue has received the certification required  
7.33 under paragraph (i) issued by the commissioner of employment and economic development.

8.1 (k) The commissioner of employment and economic development must annually notify  
8.2 the commissioner of revenue of the qualified data centers that are projected to meet the  
8.3 requirements under paragraph (c) and the qualified refurbished data centers that are projected  
8.4 to meet the requirements under paragraph (d) in each of the next four years. The notification  
8.5 must provide the information required under paragraph (i), clauses (1) to (4), for each  
8.6 qualified data center or qualified refurbished data center.

8.7 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
8.8 30, 2023.