

(SENATE AUTHORS: CHAMBERLAIN, Howe, Ortman, Bakk and Gazelka)

DATE	D-PG	OFFICIAL STATUS
02/17/2011	263	Introduction and first reading Referred to Taxes
01/26/2012	3650	Author added Gazelka

1.1

A bill for an act

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relating to taxation; clarifying the imposition of sales tax on motor vehicle paint

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and supplies; amending Minnesota Statutes 2010, section 297A.61, subdivision

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4, by adding a subdivision.

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

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

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read:

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Subd. 4. **Retail sale.** (a) A "retail sale" means any sale, lease, or rental for any

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purpose, other than resale, sublease, or subrent of items by the purchaser in the normal

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course of business as defined in subdivision 21.

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(b) A sale of property used by the owner only by leasing it to others or by holding it

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in an effort to lease it, and put to no use by the owner other than resale after the lease or

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effort to lease, is a sale of property for resale.

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(c) A sale of master computer software that is purchased and used to make copies for

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sale or lease is a sale of property for resale.

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(d) A sale of building materials, supplies, and equipment to owners, contractors,

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subcontractors, or builders for the erection of buildings or the alteration, repair, or

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improvement of real property is a retail sale in whatever quantity sold, whether the sale is

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for purposes of resale in the form of real property or otherwise.

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(e) A sale of carpeting, linoleum, or similar floor covering to a person who provides

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for installation of the floor covering is a retail sale and not a sale for resale since a sale

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of floor covering which includes installation is a contract for the improvement of real

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property.

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

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

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

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

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

(k) In the case of a lease, a retail sale occurs (1) when an obligation to make a lease payment becomes due under the terms of the agreement or the trade practices of the lessor or (2) in the case of a lease of a motor vehicle, as defined in section 297B.01, subdivision 11, but excluding vehicles with a manufacturer's gross vehicle weight rating greater than 10,000 pounds and rentals of vehicles for not more than 28 days, at the time the lease is executed.

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

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

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

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

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

(n) A sale of motor vehicle repair paint and supplies by a motor vehicle repair or body shop business is a retail sale and the sales tax is imposed on the gross receipts from the retail sale of the paint and supplies. The motor vehicle repair or body shop may multiply the number of labor hours by a rate of consideration for the paint and supplies used in the repair of the motor vehicle in order to calculate the sales price of the paint and supplies. If this method does not fairly reflect the taxable amount, the taxpayer may petition the commissioner for the use of another method, if that method fairly reflects the gross receipts from the retail sale of the paint and supplies that become part of a repaired motor vehicle or are consumed in repairing motor vehicles. This clause does not apply to wholesale transactions at an auto auction facility.

EFFECTIVE DATE. This section is effective for sales and purchases made after June 30, 2011.

Sec. 2. Minnesota Statutes 2010, section 297A.61, is amended by adding a subdivision to read:

Subd. 47. **Motor vehicle repair paint and supplies.** "Motor vehicle repair paint" includes primer, body paint, clear coat, and paint thinner used to paint motor vehicles, as defined in section 297B.01. "Motor vehicle repair supplies" are items that become a part of a repaired motor vehicle or are consumed in repairing the motor vehicle at retail, and include abrasives, battery water, body filler or putty, bolts and nuts, brake fluid, buffing pads, chamois, cleaning compounds, degreasing compounds, glaze, grease, grinding discs, hydraulic jack oil, lubricants, masking tape, oxygen and acetylene, polishes, rags, razor blades, sandpaper, sanding discs, scuff pads, sealer, solder, solvents, striping tape, tack cloth, thinner, waxes, and welding rods. Motor vehicle repair supplies do not include items that are not used directly on the motor vehicle, such as floor dry that is used to clean the shop, or cleaning compounds and rags that are used to clean tools, equipment, or the shop and are not used to clean the motor vehicle.

- 4.1 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
- 4.2 June 30, 2011.