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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1275

02/15/2017 Authored by Smith, McDonald, Daniels and Davids  
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; modifying taxation of sales through vending  
1.3 machines; amending Minnesota Statutes 2016, sections 297A.61, subdivisions 3,  
1.4 34; 297A.67, subdivisions 2, 4, 5, 6.

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

1.6 Section 1. Minnesota Statutes 2016, section 297A.61, subdivision 3, is amended to read:

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

1.19 (b) Sale and purchase include:

1.20 (1) any transfer of title or possession, or both, of tangible personal property, whether  
1.21 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; and

2.13 ~~(5) all food sold through vending machines.~~

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

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

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

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

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

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

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

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

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

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

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

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

3.15 (i) public roads;

3.16 (ii) cartways; and

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

3.19 (6) services as provided in this clause:

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

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

3.27 (iii) building and residential cleaning, maintenance, and disinfecting services and pest  
3.28 control and exterminating services;

3.29 (iv) detective, security, burglar, fire alarm, and armored car services; but not including  
3.30 services performed within the jurisdiction they serve by off-duty licensed peace officers as  
3.31 defined in section 626.84, subdivision 1, or services provided by a nonprofit organization  
3.32 or any organization at the direction of a county for monitoring and electronic surveillance

4.1 of persons placed on in-home detention pursuant to court order or under the direction of the  
4.2 Minnesota Department of Corrections;

4.3 (v) pet grooming services;

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

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

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

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

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

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

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

4.32 (l) A sale and a purchase includes furnishing for a consideration of specified digital  
4.33 products or other digital products or granting the right for a consideration to use specified

5.1 digital products or other digital products on a temporary or permanent basis and regardless  
 5.2 of whether the purchaser is required to make continued payments for such right. Wherever  
 5.3 the term "tangible personal property" is used in this chapter, other than in subdivisions 10  
 5.4 and 38, the provisions also apply to specified digital products, or other digital products,  
 5.5 unless specifically provided otherwise or the context indicates otherwise.

5.6 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
 5.7 30, 2017.

5.8 Sec. 2. Minnesota Statutes 2016, section 297A.61, subdivision 34, is amended to read:

5.9 Subd. 34. **Taxable food sold through vending machines.** "Taxable food sold through  
 5.10 vending machines" means ~~food~~ prepared food, soft drinks, or candy dispensed from a  
 5.11 machine or other device that accepts payment including honor payments.

5.12 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
 5.13 30, 2017.

5.14 Sec. 3. Minnesota Statutes 2016, section 297A.67, subdivision 2, is amended to read:

5.15 Subd. 2. **Food and food ingredients.** Except as otherwise provided in this subdivision,  
 5.16 food and food ingredients are exempt. For purposes of this subdivision, "food" and "food  
 5.17 ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or  
 5.18 dehydrated form, that are sold for ingestion or chewing by humans and are consumed for  
 5.19 their taste or nutritional value. Food and food ingredients exempt under this subdivision do  
 5.20 not include candy, soft drinks, ~~food sold through vending machines~~, dietary supplements,  
 5.21 and prepared foods. Food and food ingredients do not include alcoholic beverages and  
 5.22 tobacco. For purposes of this subdivision, "alcoholic beverages" means beverages that are  
 5.23 suitable for human consumption and contain one-half of one percent or more of alcohol by  
 5.24 volume. For purposes of this subdivision, "tobacco" means cigarettes, cigars, chewing or  
 5.25 pipe tobacco, or any other item that contains tobacco. For purposes of this subdivision,  
 5.26 "dietary supplements" means any product, other than tobacco, intended to supplement the  
 5.27 diet that:

5.28 (1) contains one or more of the following dietary ingredients:

5.29 (i) a vitamin;

5.30 (ii) a mineral;

5.31 (iii) an herb or other botanical;

6.1 (iv) an amino acid;

6.2 (v) a dietary substance for use by humans to supplement the diet by increasing the total  
6.3 dietary intake; and

6.4 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient  
6.5 described in items (i) to (v);

6.6 (2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form,  
6.7 or if not intended for ingestion in such form, is not represented as conventional food and is  
6.8 not represented for use as a sole item of a meal or of the diet; and

6.9 (3) is required to be labeled as a dietary supplement, identifiable by the supplement facts  
6.10 box found on the label and as required pursuant to Code of Federal Regulations, title 21,  
6.11 section 101.36.

6.12 Sec. 4. Minnesota Statutes 2016, section 297A.67, subdivision 4, is amended to read:

6.13 Subd. 4. **Exempt meals at residential facilities.** Prepared food, candy, and soft drinks  
6.14 served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes,  
6.15 senior citizen homes, and correctional, detention, and detoxification facilities are exempt.  
6.16 Taxable food sold through vending machines is not exempt.

6.17 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
6.18 30, 2017.

6.19 Sec. 5. Minnesota Statutes 2016, section 297A.67, subdivision 5, is amended to read:

6.20 Subd. 5. **Exempt meals at schools.** Prepared food, candy, and soft drinks served at  
6.21 public and private elementary, middle, or secondary schools as defined in section 120A.05  
6.22 are exempt. Prepared food, candy, and soft drinks served to students at a college, university,  
6.23 or private career school under a board contract are exempt. Taxable food sold through  
6.24 vending machines is not exempt.

6.25 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
6.26 30, 2017.

6.27 Sec. 6. Minnesota Statutes 2016, section 297A.67, subdivision 6, is amended to read:

6.28 Subd. 6. **Other exempt meals.** (a) Prepared food, candy, and soft drinks purchased for  
6.29 and served exclusively to individuals who are 60 years of age or over and their spouses or  
6.30 to disabled persons and their spouses by governmental agencies, nonprofit organizations,  
6.31 or churches, or pursuant to any program funded in whole or in part through United States

7.1 Code, title 42, sections 3001 through 3045, wherever delivered, prepared, or served, are  
7.2 exempt. Taxable food sold through vending machines is not exempt.

7.3 (b) Prepared food, candy, and soft drinks purchased for and served exclusively to children  
7.4 who are less than 14 years of age or disabled children who are less than 16 years of age and  
7.5 who are attending a child care or early childhood education program, are exempt if they  
7.6 are:

7.7 (1) purchased by a nonprofit child care facility that is exempt under section 297A.70,  
7.8 subdivision 4, and that primarily serves families with income of 250 percent or less of  
7.9 federal poverty guidelines; and

7.10 (2) prepared at the site of the child care facility.

7.11 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
7.12 30, 2017.