

CHAPTER 297A

GENERAL SALES AND USE TAXES

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- 297A.47** [Repealed, 2000 c 418 art 1 s 45]
- 297A.48** [Repealed, 2000 c 418 art 1 s 45]

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297A.52 [Repealed, Ex1971 c 31 art 31 s 1]

297A.53 [Repealed, Ex1971 c 31 art 31 s 1]

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297A.58 [Repealed, Ex1971 c 31 art 31 s 1]

297A.59 [Repealed, Ex1971 c 31 art 31 s 1]

297A.60 [Repealed, Ex1971 c 31 art 31 s 1]

DEFINITIONS

297A.61 DEFINITIONS.

Subdivision 1. **Applicability.** The following words, terms, and phrases when used in this chapter have the meanings given them in this section, unless the context clearly indicates a different meaning.

Subd. 2. **Person.** (a) "Person" includes any individual or group and any combination of individuals, groups, or individuals and groups acting as a unit.

(b) Person includes a firm, partnership, joint venture, limited liability company, association, cooperative, social club, fraternal organization, municipal or private corporation whether or not organized for profit, estate, trust, business trust, receiver, trustee, syndicate, the United States, and a state and its political subdivisions.

(c) Person includes, but is not limited to, directors and officers of corporations, governors and managers of a limited liability company, or members of partnerships who, either individually or jointly with others, have the control, supervision, or responsibility of filing returns and making payment of the amount of tax imposed by this chapter.

(d) Person includes any agent or consignee of any individual or organization listed in this subdivision.

Subd. 3. **Sale and purchase.** (a) "Sale" and "purchase" include, but are not limited to, each of the transactions listed in this subdivision.

(b) Sale and purchase include:

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

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

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

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

(1) prepared food sold by the retailer;

- (2) soft drinks;
- (3) candy; and
- (4) all food sold through vending machines.
- (e) A sale and a purchase includes the furnishing for a consideration of electricity, gas, water, or steam for use or consumption within this state.
- (f) A sale and a purchase includes the transfer for a consideration of prewritten computer software whether delivered electronically, by load and leave, or otherwise.
- (g) A sale and a purchase includes the furnishing for a consideration of the following services:
 - (1) the privilege of admission to places of amusement, recreational areas, or athletic events, and the making available of amusement devices, tanning facilities, reducing salons, steam baths, turkish baths, health clubs, and spas or athletic facilities;
 - (2) lodging and related services by a hotel, rooming house, resort, campground, motel, or trailer camp and the granting of any similar license to use real property other than the renting or leasing of it for a continuous period of 30 days or more;
 - (3) nonresidential parking services, whether on a contractual, hourly, or other periodic basis, except for parking at a meter;
 - (4) the granting of membership in a club, association, or other organization if:
 - (i) the club, association, or other organization makes available for the use of its members sports and athletic facilities, without regard to whether a separate charge is assessed for use of the facilities; and
 - (ii) use of the sports and athletic facility is not made available to the general public on the same basis as it is made available to members.

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

- (5) delivery of aggregate materials and concrete block by a third party if the delivery would be subject to the sales tax if provided by the seller of the aggregate material or concrete block; and
- (6) services as provided in this clause:
 - (i) laundry and dry cleaning services including cleaning, pressing, repairing, altering, and storing clothes, linen services and supply, cleaning and blocking hats, and carpet, drapery, upholstery, and industrial cleaning. Laundry and dry cleaning services do not include services provided by coin operated facilities operated by the customer;
 - (ii) motor vehicle washing, waxing, and cleaning services, including services provided by coin operated facilities operated by the customer, and rustproofing, undercoating, and towing of motor vehicles;
 - (iii) building and residential cleaning, maintenance, and disinfecting and exterminating services;
 - (iv) detective, security, burglar, fire alarm, and armored car services; but not including services performed within the jurisdiction they serve by off-duty licensed peace officers as defined in section 626.84, subdivision 1, or services provided by a nonprofit organization for monitoring and electronic surveillance of persons placed on in-home detention pursuant to court order or under the direction of the Minnesota Department of Corrections;
 - (v) pet grooming services;
 - (vi) lawn care, fertilizing, mowing, spraying and sprigging services; garden planting and maintenance; tree, bush, and shrub pruning, bracing, spraying, and surgery; indoor plant care; tree, bush, shrub, and stump removal; and tree trimming for public utility lines. Services performed under a construction contract for the installation of shrubbery, plants, sod, trees, bushes, and similar items are not taxable;

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

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

In applying the provisions of this chapter, the terms “tangible personal property” and “sales at retail” include taxable services listed in clause (6), items (i) to (vi) and (viii), and the provision of these taxable services, unless specifically provided otherwise. Services performed by an employee for an employer are not taxable. Services performed by a partnership or association for another partnership or association are not taxable if one of the entities owns or controls more than 80 percent of the voting power of the equity interest in the other entity. Services performed between members of an affiliated group of corporations are not taxable. For purposes of the preceding sentence, “affiliated group of corporations” includes those entities that would be classified as members of an affiliated group under United States Code, title 26, section 1504, and that are eligible to file a consolidated tax return for federal income tax purposes.

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

(i) A sale and a purchase includes the furnishing for a consideration of telecommunications services, including cable television services and direct satellite services. Telecommunications services are taxed to the extent allowed under federal law.

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

(k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer to a customer when (1) the vehicle is rented by the customer for a consideration, or (2) the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section 65B.29, subdivision 1, clause (1).

Subd. 4. Retail sale. (a) A “retail sale” means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

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

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

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

(e) A sale of carpeting, linoleum, or similar floor covering to a person who provides for installation of the floor covering is a retail sale and not a sale for resale since a sale of floor covering which includes installation is a contract for the improvement of real 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 when an obligation to make a lease payment becomes due under the terms of the agreement or the trade practices of the lessor.

(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.

Subd. 5. **Storage.** "Storage" includes keeping or retaining tangible personal property in Minnesota for any purpose except sale in the regular course of business.

Subd. 6. **Use.** (a) "Use" includes the exercise of a right or power incident to the ownership of any interest in tangible personal property, or services, purchased from a retailer, other than the sale of that property in the regular course of business.

(b) Use includes the consumption of printed materials in the creation of nontaxable advertising that is distributed, either directly or indirectly, within Minnesota.

Subd. 7. **Sales price.** (a) "Sales price" means the measure subject to sales tax, and means the total amount of consideration, including cash, credit, personal property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges;
- (5) installation charges; and
- (6) the value of exempt property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) Sales price does not include:

- (1) discounts, including cash, terms, or coupons, that are not reimbursed by a third party and that are allowed by the seller and taken by a purchaser on a sale;
- (2) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
- (3) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Subd. 8. **Gross receipts.** "Gross receipts" means the total amount received, in money or by barter or exchange, for all sales at retail as measured by the sales price.

Subd. 9. **Retailer and seller.** "Retailer" and "seller" means any person making sales, leases, or rentals of personal property or services.

Subd. 10. **Tangible personal property.** (a) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, steam, prewritten computer software, and prepaid calling cards.

(b) Tangible personal property does not include:

- (1) large ponderous machinery and equipment used in a business or production activity which at common law would be considered to be real property;
- (2) property which is subject to an ad valorem property tax;
- (3) property described in section 272.02, subdivision 9, clauses (a) to (d); and
- (4) property described in section 272.03, subdivision 2, clauses (3) and (5).

Subd. 11. **Commissioner.** "Commissioner" means the commissioner of revenue of the state of Minnesota.

Subd. 12. **Farm machinery.** (a) "Farm machinery" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in agricultural production including, but not limited to:

(1) machinery for the preparation, seeding, or cultivation of soil for growing agricultural crops;

(2) barn cleaners, milking systems, grain dryers, feeding systems including stationary feed bunks, and similar installations, whether or not the equipment is installed by the seller and becomes part of the real property; and

(3) irrigation equipment sold for exclusively agricultural use, including pumps, pipe fittings, valves, sprinklers, and other equipment necessary to the operation of an irrigation system when sold as part of an irrigation system, whether or not the equipment is installed by the seller and becomes part of the real property.

(b) Farm machinery does not include:

(1) repair or replacement parts;

(2) tools, shop equipment, grain bins, fencing material, communication equipment, and other farm supplies;

(3) motor vehicles taxed under chapter 297B;

(4) snowmobiles or snow blowers;

(5) lawn mowers except those used in the production of sod for sale, or garden-type tractors or garden tillers; or

(6) machinery, equipment, implements, accessories, and contrivances used directly in the production of horses not raised for slaughter, fur-bearing animals, or research animals.

Subd. 13. **Aquaculture production equipment.** (a) "Aquaculture production equipment" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in aquaculture production.

(b) Aquaculture production equipment includes augers and blowers, automatic feed systems, manual feeding equipment, shockers, gill nets, trap nets, seines, box traps, round nets and traps, net pens, dip nets, net washers, floating net supports, floating access walkways, net supports and walkways, growing tanks, holding tanks, troughs, raceways, transport tanks, egg taking equipment, egg hatcheries, egg incubators, egg baskets and troughs, egg graders, egg counting equipment, fish counting equipment, fish graders, fish pumps and loaders, fish elevators, air blowers, air compressors, oxygen generators, oxygen regulators, diffusers and injectors, air supply equipment, oxygenation columns, water coolers and heaters, heat exchangers, water filter systems, water purification systems, waste collection equipment, feed mills, portable scales, feed grinders, feed mixers, feed carts and trucks, power feed wagons, fertilizer spreaders, fertilizer tanks, forage collection equipment, land levelers, loaders, post hole diggers, disc, harrow, plow, and water diversion devices.

(c) Aquaculture production equipment does not include repair or replacement parts for aquaculture production equipment.

Subd. 14. [Repealed, 2003 c 127 art 1 s 34]

Subd. 14a. **Lease or rental.** (a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(b) Lease or rental does not include:

(1) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(2) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100 or one percent of the total required payments; or

(3) providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

(c) Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in United States Code, title 26, section 7701(h)(l).

(d) This definition must be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, chapter 336, or other provisions of federal, state, or local law.

Subd. 15. [Repealed, 2003 c 127 art 1 s 34]

Subd. 16. [Repealed, 1Sp2001 c 5 art 12 s 95]

Subd. 17. **Prewritten computer software.** "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions of the programs does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of it that is modified or enhanced to any degree, if the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software"; provided, however, that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, the modification or enhancement does not constitute "prewritten computer software." For purposes of this subdivision:

(1) "computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(2) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; and

(3) "computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

Subd. 17a. **Delivered electronically.** "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

Subd. 17b. **Load and leave.** "Load and leave" means delivered to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

Subd. 18. **Handicapped.** "Handicapped" means an individual who has a permanent and total disability as defined in section 273.13, subdivision 22.

Subd. 19. **For-hire carrier.** "For-hire carrier" means a person engaged in transportation for hire of tangible personal property.

Subd. 20. **Prepaid telephone calling card.** "Prepaid telephone calling card" means any card or other similar arrangement, including a prepaid authorization number, that permits its holder to obtain telephone services and pay for such services in advance.

Subd. 21. **Normal course of business.** "Normal course of business" means activities that demonstrate a commercial continuity or consistency of making sales or performing services for the purposes of attaining profit or producing income. Factors that indicate that a person is acting in the normal course of business include:

- (1) systematic solicitation of sales through advertising media;
- (2) entering into contracts to perform services or provide tangible personal property;
- (3) maintaining a place of business; or
- (4) use of exemption certificates to purchase items exempt from the sales tax.

Subd. 22. **Internal Revenue Code.** Unless specifically provided otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 2000.

Subd. 23. **United States Code.** Unless specifically provided otherwise, "United States Code" means the United States Code as amended through December 31, 2000.

Subd. 24. **Telecommunications services.** (a) "Telecommunications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, satellite, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission, conveyance, or routing.

(b) Telecommunications services includes the furnishing for consideration of access to telephone services by a hotel to its guests.

(c) Telecommunications services do not include:

- (1) services purchased with a prepaid telephone calling card;
- (2) private communication service purchased by an agent acting on behalf of the State Lottery;
- (3) information services; and
- (4) purchases of telecommunications when the purchaser uses the purchased services as a component part of or integrates such service into another telecommunications service that is sold by the purchaser in the normal course of business.

(d) For purposes of this subdivision, "information services" means the offering of the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information.

Subd. 25. **Cable television service.** "Cable television service" means the transmission of video, audio, or other programming service to purchasers, and the subscriber interaction, if any, required for the selection or use of the programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more dealers of communications services. The term includes point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the subscriber's premises. The term includes basic, extended, premium, pay-per-view, digital, and music services.

Subd. 26. **Private communication service.** "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communication channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

Subd. 27. **Direct satellite service.** "Direct satellite service" means programming transmitted or broadcast by satellite directly to the subscriber's premises without the

use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

Subd. 28. **Purchase price.** "Purchase price" means the measure subject to the use tax and has the same meaning as "sales price."

Subd. 29. **State.** Unless specifically provided otherwise, "state" means any state of the United States and the District of Columbia.

Subd. 30. **Delivery charges.** "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

Subd. 31. **Prepared food.** "Prepared food" means food that meets either of the following conditions:

(1) the food is sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws; or

(2) the food is sold in a heated state or heated by the seller or two or more food ingredients are mixed or combined by the seller for sale as a single item, except for:

(i) bakery items, including, but not limited to, bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas;

(ii) ready-to-eat meat and seafood in an unheated state sold by weight;

(iii) eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its food code so as to prevent food borne illnesses; or

(iv) food that is only sliced, repackaged, or pasteurized by the seller.

Subd. 32. **Soft drinks.** "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; or greater than 50 percent vegetable or fruit juice by volume.

Subd. 33. **Candy.** "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and must require no refrigeration.

Subd. 34. **Food sold through vending machines.** "Food sold through vending machines" means food dispensed from a machine or other device that accepts payment including honor payments.

Subd. 35. **Direct mail.** "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

Subd. 36. **Agricultural production.** "Agricultural production" includes, but is not limited to, horticulture, silviculture, floriculture, maple syrup harvesting, and the raising of pets, livestock as defined in section 17A.03, subdivision 5, poultry, dairy and poultry products, bees and apiary products, the raising and harvesting of agricultural crops, sod, fur-bearing animals, research animals, and horses.

History: 2000 c 418 art 1 s 4,44 subd 3; 2000 c 490 art 8 s 5; 1Sp2001 c 5 art 12 s 5,7-30; 2002 c 377 art 3 s 3,4; art 9 s 11; 1Sp2002 c 3 s 1; 2003 c 127 art 1 s 8-16; art 6 s 4-7

NOTE: Subdivision 31, clause (2), item (ii), as added by Laws 2002, chapter 377, article 3, section 4, is effective for sales and purchases made after June 30, 2002, and before January 1, 2006. Laws 2002, chapter 377, article 3, section 4, the effective date.

TAXES; RATES

297A.62 SALES TAX IMPOSED; RATES.

Subdivision 1. **Generally.** Except as otherwise provided in subdivision 2 or 3 or in this chapter, a sales tax of 6.5 percent is imposed on the gross receipts from retail sales as defined in section 297A.61, subdivision 4, made in this state or to a destination in this state by a person who is required to have or voluntarily obtains a permit under section 297A.83, subdivision 1.

Subd. 2. **Liquor and beer sales.** The rate of the sales tax imposed is nine percent on the gross receipts from retail sales of:

- (1) intoxicating liquor, as defined in section 340A.101, subdivision 14; and
- (2) 3.2 percent malt liquor, as defined in section 340A.101, subdivision 19, when sold at an on-sale or off-sale municipal liquor store or other establishment licensed to sell any type of intoxicating liquor.

Subd. 3. **Manufactured housing and park trailers.** For retail sales of manufactured homes as defined in section 327.31, subdivision 6, for residential uses, the sales tax under subdivision 1 is imposed on 65 percent of the dealer's cost of the manufactured home. For retail sales of new or used park trailers, as defined in section 168.011, subdivision 8, paragraph (b), the sales tax under subdivision 1 is imposed on 65 percent of the sales price of the park trailer.

History: 2000 c 418 art 1 s 5

NOTE: Subdivision 2 is repealed by Laws 2001, First Special Session chapter 5, article 12, section 95, effective for sales and purchases made after December 31, 2005.

297A.63 USE TAXES IMPOSED; RATES.

Subdivision 1. **Use of tangible personal property or taxable services.** (a) For the privilege of using, storing, distributing, or consuming in Minnesota tangible personal property or taxable services purchased for use, storage, distribution, or consumption in this state, a use tax is imposed on a person in Minnesota. The tax is imposed on the sales price of retail sales of the tangible personal property or taxable services at the rate of tax imposed under section 297A.62.

(b) No tax is imposed under paragraph (a) if the tax imposed by section 297A.62 was paid on the sales price of the tangible personal property or taxable services.

(c) No tax is imposed under paragraph (a) if the purchase meets the requirements for exemption under section 297A.67, subdivision 21.

Subd. 2. **Use of tangible personal property made from materials.** (a) A use tax is imposed on a person who manufactures, fabricates, or assembles tangible personal property from materials, either within or outside this state and who uses, stores, distributes, or consumes the tangible personal property in Minnesota. The tax is imposed on the sales price of retail sales of the materials contained in the tangible personal property at the rate of tax imposed under section 297A.62.

(b) No tax is imposed under paragraph (a) if the tax imposed by section 297A.62 was paid on the sales price of materials contained in the tangible personal property.

History: 2000 c 418 art 1 s 6

297A.64 RENTAL MOTOR VEHICLE TAX IMPOSED; RATE.

Subdivision 1. **Tax imposed.** A tax is imposed on the lease or rental in this state for not more than 28 days of a passenger automobile as defined in section 168.011, subdivision 7, a van as defined in section 168.011, subdivision 28, or a pickup truck as defined in section 168.011, subdivision 29. The rate of tax is 6.2 percent of the sales price. The tax applies whether or not the vehicle is licensed in the state.

Subd. 2. **Fee imposed.** A fee equal to three percent of the sales price is imposed on leases or rentals of vehicles subject to the tax under subdivision 1. The lessor on the invoice to the customer may designate the fee as "a fee imposed by the State of Minnesota for the registration of rental cars."

Subd. 3. **Administration.** The retailer shall report and pay the tax imposed in subdivision 1 to the commissioner of revenue with the taxes imposed in this chapter. The tax imposed in subdivision 1 and the fee imposed in subdivision 2 are subject to the same interest, penalty, and other provisions provided for sales and use taxes under chapter 289A and this chapter. The commissioner has the same powers to assess and collect the tax and fee that are given the commissioner in chapters 270 and 289A and this chapter to assess and collect sales and use tax.

Subd. 4. **Exemptions.** (a) The tax and the fee imposed by this section do not apply to a lease or rental of (1) a vehicle to be used by the lessee to provide a licensed taxi service; (2) a hearse or limousine used in connection with a burial or funeral service; or (3) a van designed or adapted primarily for transporting property rather than passengers.

(b) The lessor may elect not to charge the fee imposed in subdivision 2 if in the previous calendar year the lessor had no more than 20 vehicles available for lease that would have been subject to tax under this section, or no more than \$50,000 in gross receipts that would have been subject to tax under this section.

Subd. 5. **Payment of excess fees.** On the first sales tax return due following the end of a calendar year during which a lessor has imposed a fee under subdivision 2, the lessor shall report to the commissioner of revenue, in the form required by the commissioner, the amount of the fee collected during the previous year and the amount of motor vehicle registration taxes paid during the previous year by the lessor under chapter 168 on vehicles subject to the fee under this section. If the amount of the fees collected exceeds the amount of motor vehicle registration taxes paid, the lessor shall remit the excess to the commissioner of revenue at the time the report is submitted.

History: 2000 c 418 art 1 s 7

NOTE: Subdivision 1 is repealed by Laws 2001, First Special Session chapter 5, article 12, section 95, effective for sales and purchases made after December 31, 2005.

NOTE: Subdivision 3 was amended by Laws 2001, First Special Session chapter 5, article 12, section 31, effective for leases entered into after December 31, 2005. Laws 2001, First Special Session chapter 5, article 12, section 31, the effective date. The subdivision, as amended, will read as follows:

"Subd. 3. **Administration.** The fee imposed in subdivision 2 is subject to the same interest, penalty, and other provisions provided for sales and use taxes under chapter 289A and this chapter. The commissioner has the same powers to assess and collect the fee that are given the commissioner in chapters 270 and 289A and this chapter to assess and collect sales and use tax."

NOTE: Subdivision 4 was amended by Laws 2001, First Special Session chapter 5, article 12, section 32, effective for leases entered into after December 31, 2005. Laws 2001, First Special Session chapter 5, article 12, section 32, the effective date. The subdivision, as amended, will read as follows:

"Subd. 4. **Exemptions.** (a) The fee imposed by this section does not apply to a lease or rental of (1) a vehicle to be used by the lessee to provide a licensed taxi service; (2) a hearse or limousine used in connection with a burial or funeral service; or (3) a van designed or adapted primarily for transporting property rather than passengers.

(b) The lessor may elect not to charge the fee imposed in subdivision 2 if in the previous calendar year the lessor had no more than 20 vehicles available for lease that would have been subject to tax under this section, or no more than \$50,000 in gross receipts that would have been subject to tax under this section."

297A.65 LOTTERY TICKETS; IN LIEU TAX.

Sales of State Lottery tickets are exempt from the tax imposed under section 297A.62. The State Lottery must on or before the 20th day of each month transmit to the commissioner of revenue an amount equal to the gross receipts from the sale of lottery tickets for the previous month multiplied by the tax rate under section 297A.62, subdivision 1. The resulting payment is in lieu of the sales tax that otherwise would be imposed by this chapter. The commissioner shall deposit the money transmitted as provided by section 297A.94 and the money must be treated as other proceeds of the sales tax. For purposes of this section, "gross receipts" means the proceeds of the sale of tickets before deduction of a commission or other compensation paid to the vendor or retailer for selling tickets.

History: 2000 c 418 art 1 s 8

REQUIREMENT TO COLLECT AND REMIT**297A.66 JURISDICTION TO REQUIRE COLLECTION AND REMITTANCE OF TAX BY RETAILER.**

Subdivision 1. **Definitions.** (a) To the extent allowed by the United States Constitution and the laws of the United States, "retailer maintaining a place of business in this state," or a similar term, means a retailer:

(1) having or maintaining within this state, directly or by a subsidiary or an affiliate, an office, place of distribution, sales or sample room or place, warehouse, or other place of business; or

(2) having a representative, including, but not limited to, an affiliate, agent, salesperson, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary, for any purpose, including the repairing, selling, delivering, installing, or soliciting of orders for the retailer's goods or services, or the leasing of tangible personal property located in this state, whether the place of business or agent, representative, affiliate, salesperson, canvasser, or solicitor is located in the state permanently or temporarily, or whether or not the retailer, subsidiary, or affiliate is authorized to do business in this state.

(b) "Destination of a sale" means the location to which the retailer makes delivery of the property sold, or causes the property to be delivered, to the purchaser of the property, or to the agent or designee of the purchaser. The delivery may be made by any means, including the United States Postal Service or a for-hire carrier.

Subd. 2. **Retailer maintaining a place of business in this state.** A retailer maintaining a place of business in this state who makes retail sales in Minnesota or to a destination in Minnesota shall collect sales and use taxes and remit them to the commissioner under section 297A.77.

Subd. 3. **Retailer not maintaining a place of business in this state.** (a) To the extent allowed by the United States Constitution and the laws of the United States, a retailer making retail sales from outside this state to a destination within this state and not maintaining a place of business in this state shall collect sales and use taxes and remit them to the commissioner under section 297A.77, if the retailer engages in the regular or systematic soliciting of sales from potential customers in this state by:

(1) distribution, by mail or otherwise, of catalogs, periodicals, advertising flyers, or other written solicitations of business to customers in this state;

(2) display of advertisements on billboards or other outdoor advertising in this state;

(3) advertisements in newspapers published in this state;

(4) advertisements in trade journals or other periodicals the circulation of which is primarily within this state;

(5) advertisements in a Minnesota edition of a national or regional publication or a limited regional edition in which this state is included as part of a broader regional or national publication which are not placed in other geographically defined editions of the same issue of the same publication;

(6) advertisements in regional or national publications in an edition which is not by its contents geographically targeted to Minnesota but which is sold over the counter in Minnesota or by subscription to Minnesota residents;

(7) advertisements broadcast on a radio or television station located in Minnesota; or

(8) any other solicitation by telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.

This paragraph (a) must be construed without regard to the state from which distribution of the materials originated or in which they were prepared.

(b) The location within or without this state of independent vendors that provide products or services to the retailer in connection with its solicitation of customers

within this state, including such products and services as creation of copy, printing, distribution, and recording, is not considered in determining whether the retailer is required to collect tax.

(c) A retailer not maintaining a place of business in this state is presumed, subject to rebuttal, to be engaged in regular solicitation within this state if it engages in any of the activities in paragraph (a) and:

(1) makes 100 or more retail sales from outside this state to destinations in this state during a period of 12 consecutive months; or

(2) makes ten or more retail sales totaling more than \$100,000 from outside this state to destinations in this state during a period of 12 consecutive months.

Subd. 4. **Affiliated entities.** (a) An entity is an "affiliate" of the retailer for purposes of subdivision 1, paragraph (a), if:

(1) the entity uses its facilities or employees in this state to advertise, promote, or facilitate the establishment or maintenance of a market for sales of items by the retailer to purchasers in this state or for the provision of services to the retailer's purchasers in this state, such as accepting returns of purchases for the retailer, providing assistance in resolving customer complaints of the retailer, or providing other services; and

(2) the retailer and the entity are related parties.

(b) Two entities are related parties under this section if one of the entities meets at least one of the following tests with respect to the other entity:

(1) one or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent of the value of the corporation's outstanding stock;

(2) one or both entities is a partnership, estate, or trust and any partner or beneficiary, and the partnership, estate, or trust and its partners or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, capital, stock, or value of the other entity or both entities; or

(3) an individual stockholder and the members of the stockholder's family (as defined in section 318 of the Internal Revenue Code) owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock.

(c) An entity is an affiliate under the provisions of this subdivision if the requirements of paragraphs (a) and (b) are met during any part of the 12-month period ending on the first day of the month before the month in which the sale was made.

Subd. 5. **Withdrawal from streamlined sales and use tax agreement.** If the state has withdrawn its membership or been expelled from the streamlined sales and use tax agreement, it shall not use a seller's registration with the central registration system and the collection of sales and use taxes in the state as a factor in determining whether the seller has nexus with that state for any tax at any time.

History: 2000 c 418 art 1 s 9; 1Sp2001 c 5 art 12 s 33,34; 2002 c 377 art 3 s 5,6; 2003 c 127 art 1 s 17

297A.665 PRESUMPTION OF TAX; BURDEN OF PROOF.

(a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax, until the contrary is established, it is presumed that:

(1) all gross receipts are subject to the tax; and

(2) all retail sales for delivery in Minnesota are for storage, use, or other consumption in Minnesota.

(b) The burden of proving that a sale is not a taxable retail sale is on the seller. However, the seller may take from the purchaser at the time of the sale a fully completed exemption certificate which conclusively relieves the seller from collecting and remitting the tax. This relief from liability does not apply to a seller who

fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption. If a seller claiming that certain sales are exempt is not in possession of the required exemption certificates within 60 days after receiving written notice from the commissioner that the certificates are required, deductions claimed by the seller that required delivery of the certificates must be disallowed. If the certificates are delivered to the commissioner within the 60-day period, the commissioner may verify the reason or basis for the exemption claimed in the certificates before allowing any deductions. A deduction must not be granted on the basis of certificates delivered to the commissioner after the 60-day period.

(c) A purchaser of tangible personal property or any items listed in section 297A.63 that are shipped or brought to Minnesota by the purchaser has the burden of proving that the property was not purchased from a retailer for storage, use, or consumption in Minnesota.

History: 2000 c 418 art 1 s 10; 2003 c 127 art 6 s 8

297A.666 AMNESTY FOR REGISTRATION.

Subdivision 1. **Amnesty provisions.** Subject to the limitations of subdivision 2:

(1) this state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the streamlined sales and use tax agreement, provided that the seller was not so registered in this state in the 12-month period preceding the effective date of the state's participation in the agreement; and

(2) the amnesty shall preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in this state, provided registration occurs within 12 months of the effective date of the state's participation in the agreement.

Subd. 2. **Limitations.** (a) The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and the audit is not yet finally resolved, including any related administrative and judicial processes.

(b) The amnesty is not available for sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(c) The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months. The statute of limitations provisions of chapter 289A applicable to asserting a sales or use tax liability must be tolled during this 36-month period.

(d) The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

History: 2003 c 127 art 1 s 18

297A.668 SOURCING OF SALE; SITUS IN THIS STATE.

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

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

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

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

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

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

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

(g) For purposes of this subdivision, the terms "receive" and "receipt" mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods or the computer software delivered electronically, whichever occurs first. The terms receive and receipt do not include possession by a carrier for hire on behalf of the purchaser.

Subd. 3. Lease or rental of tangible personal property. The lease or rental of tangible personal property, other than property identified in subdivision 4 or 5, shall be sourced as required in paragraphs (a) to (c).

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location must be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location must not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2.

(c) This subdivision does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

Subd. 4. Lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subdivision 5, shall be sourced as required in paragraphs (a) to (c).

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location must be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location must not be altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2.

(c) This subdivision does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

Subd. 5. Transportation equipment. (a) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subdivision 2, notwithstanding the exclusion of lease or rental in subdivision 2.

(b) "Transportation equipment" means any of the following:

(1) locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce; and/or

(2) trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are:

(i) registered through the international registration plan; and

(ii) operated under authority of a carrier authorized and certified by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

Subd. 6. Multiple points of use. (a) Notwithstanding the provisions of subdivisions 2 to 5, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one taxing jurisdiction shall deliver to the seller in conjunction with its purchase a multiple points of use exemption certificate disclosing this fact.

(b) Upon receipt of the multiple points of use exemption certificate, the seller is relieved of the obligation to collect, pay, or remit the applicable tax and the purchaser is obligated to collect, pay, or remit the applicable tax on a direct pay basis.

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

(d) The multiple points of use exemption certificate remains in effect for all future sales by the seller to the purchaser until it is revoked in writing, except as to the subsequent sale's specific apportionment that is governed by the principle of paragraph (c) and the facts existing at the time of the sale.

(e) A holder of a direct pay permit is not required to deliver a multiple points of use exemption certificate to the seller. A direct pay permit holder shall follow the provisions of paragraph (c) in apportioning the tax due on a digital good, computer software delivered electronically, or a service that will be concurrently available for use in more than one taxing jurisdiction.

Subd. 7. Direct mail. (a) Notwithstanding other subdivisions of this section, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller, in conjunction with the purchase, either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(1) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(2) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by paragraph (a), the seller shall collect the tax according to subdivision 2, paragraph (f).

Nothing in this paragraph limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.

History: *1Sp2001 c 5 art 12 s 35; 2002 c 379 art 1 s 68; 2003 c 127 art 1 s 19; 2004 c 228 art 1 s 49*

297A.669 TELECOMMUNICATION SOURCING.

Subdivision 1. **Call-by-call basis sourcing.** Except for the defined telecommunication services in subdivision 3, the sale of telecommunication service sold on a call-by-call basis shall be sourced to (1) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

Subd. 2. **Other than call-by-call basis sourcing.** Except for the defined telecommunication services in subdivision 3, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

Subd. 3. **Defined telecommunications services sourcing.** The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction in paragraphs (a) to (d).

(a) A sale of mobile telecommunications services, other than air-to-ground radio-telephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

- (1) the seller's telecommunications system; or
- (2) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service is sourced in accordance with section 297A.668, subdivision 2. However, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in section 297A.668, subdivision 2, paragraph (f), shall include as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(1) service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located;

(2) service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(3) service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located; and

(4) service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

Subd. 4. **Air-to-ground radiotelephone service.** "Air-to-ground radiotelephone service," for purposes of this section, means a radio service, as that term is defined in Code of Federal Regulations, title 47, section 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

Subd. 5. **Call-by-call basis.** "Call-by-call basis," for purposes of this section, means any method of charging for telecommunications services where the price is measured by individual calls.

Subd. 6. **Communications channel.** "Communications channel," for purposes of this section, means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

Subd. 7. **Customer.** "Customer," for purposes of this section, means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence applies only for the purpose of sourcing sales of telecommunications services under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

Subd. 8. **Customer channel termination point.** "Customer channel termination point," for purposes of this section, means the location where the customer either inputs or receives the communications.

Subd. 9. **End user.** "End user," for purposes of this section, means the person who utilizes the telecommunication service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity.

Subd. 10. **Home service provider.** "Home service provider," for purposes of this section, means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

Subd. 11. **Mobile telecommunications service.** "Mobile telecommunications service," for purposes of this section, means the same as that term is defined in Section 124(1) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

Subd. 12. **Place of primary use.** "Place of primary use," for purposes of this section, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, place of primary use must be within the licensed service area of the home service provider.

Subd. 13. **Postpaid calling service.** "Postpaid calling service," for purposes of this section, means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service.

Subd. 14. **Prepaid calling service.** "Prepaid calling service," for purposes of this section, means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

Subd. 15. **Private communication services.** "Private communication services," for purposes of this section, means the same as that term is defined in section 297A.61, subdivision 26.

Subd. 16. **Service address.** "Service address," for purposes of this section, means:

(1) the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(2) if the location in clause (1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the

seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or

(3) if the location in clauses (1) and (2) is not known, the service address means the location of the customer's place of primary use.

History: 2003 c 127 art 1 s 20; 2004 c 228 art 1 s 50

EXEMPTIONS

297A.67 GENERAL EXEMPTIONS.

Subdivision 1. **Scope.** The gross receipts from the sale and purchase of, and storage, distribution, use, or consumption of the items contained in this section are specifically exempted from the taxes imposed by this chapter.

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

- (1) contains one or more of the following dietary ingredients:
 - (i) a vitamin;
 - (ii) a mineral;
 - (iii) an herb or other botanical;
 - (iv) an amino acid;
 - (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; and
 - (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in items (i) to (v);
- (2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
- (3) is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to Code of Federal Regulations, title 21, section 101.36.

Subd. 3. **Food stamps.** Tangible personal property purchased with food stamps, coupons, or vouchers issued by the federal government under the Food Stamp Program is exempt. This exemption also applies to food purchased under the Special Supplemental Food Program for Women, Infants, and Children. The exemption provided by this subdivision is effective and applies only to the extent required by federal law.

Subd. 4. **Exempt meals at residential facilities.** Meals or drinks served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes, senior citizen homes, and correctional, detention, and detoxification facilities are exempt.

Subd. 5. **Exempt meals at schools.** Meals and lunches served at public and private elementary, middle, or secondary schools as defined in section 120A.05 are exempt. Meals and lunches served to students at a college, university, or private career school under a board contract are exempt. For purposes of this subdivision, "meals and lunches" does not include sales from vending machines.

Subd. 6. **Other exempt meals.** Meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to handicapped persons and their spouses by governmental agencies, nonprofit organizations, or churches, or pursuant to any program funded in whole or in part through United States Code, title 42, sections 3001 through 3045, wherever delivered, prepared, or served, are exempt.

Subd. 7. **Medicines; medical devices.** (a) Prescribed drugs and medicine, and insulin, intended for internal or external use, in the cure, mitigation, treatment, or prevention of illness or disease in human beings are exempt. "Prescribed drugs and medicine" includes over-the-counter drugs or medicine prescribed by a licensed health care professional.

(b) Nonprescription medicines consisting principally (determined by the weight of all ingredients) of analgesics that are approved by the United States Food and Drug Administration for internal use by human beings are exempt. For purposes of this subdivision, "principally" means greater than 50 percent analgesics by weight.

(c) Prescription glasses, hospital beds, fever thermometers, reusable finger-pricking devices for the extraction of blood, blood glucose monitoring machines, and other diagnostic agents used in diagnosing, monitoring, or treating diabetes, and therapeutic and prosthetic devices are exempt. "Therapeutic devices" means devices that are attached or applied to the human body to cure, heal, or alleviate injury, illness, or disease, either directly or by administering a curative agent. "Prosthetic devices" means devices that replace injured, diseased, or missing parts of the human body, either temporarily or permanently.

Subd. 8. **Clothing.** (a) Clothing is exempt. For purposes of this subdivision, "clothing" means all human wearing apparel suitable for general use.

(b) Clothing includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; children and adult diapers, including disposable; ear muffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed boots; underwear; uniforms, athletic and nonathletic; and wedding apparel.

(c) Clothing does not include the following:

- (1) belt buckles sold separately;
- (2) costume masks sold separately;
- (3) patches and emblems sold separately;
- (4) sewing equipment and supplies, including but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles;
- (5) sewing materials that become part of clothing, including but not limited to, buttons, fabric, lace, thread, yarn, and zippers;
- (6) clothing accessories or equipment;
- (7) sports or recreational equipment; and
- (8) protective equipment.

Clothing also does not include apparel made from fur if a uniform definition of "apparel made from fur" is developed by the member states of the Streamlined Sales and Use Tax Agreement.

For purposes of this subdivision, "clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing. Clothing accessories and equipment include, but are not limited to, briefcases; cosmetics; hair notions, including barrettes, hair bows, and hairnets; handbags; handkerchiefs; jewelry; nonprescription sunglasses; umbrellas; wallets; watches; and wigs and hairpieces. "Sports or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. Sports and

recreational equipment includes, but is not limited to, ballet and tap shoes; cleated or spiked athletic shoes; gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf gloves; goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins. "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. Protective equipment includes, but is not limited to, breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; finger guards; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welders gloves and masks.

Subd. 9. **Baby products.** (a) Products such as lotion, creams, ointments, oil, powder, or shampoo, and other articles designed for application to the hair or skin of babies are exempt.

(b) Baby bottles and nipples, pacifiers, teething rings, thumb sucking preventatives, and infant syringes are exempt.

Subd. 10. **Caskets; vaults.** Caskets and burial vaults for human burial are exempt.

Subd. 11. **Automobiles; disabled veterans.** Automobiles or other conveyances are exempt if the purchaser is assisted by a grant from the United States in accordance with United States Code, title 38, section 3902.

Subd. 12. **Parts and accessories used to make a motor vehicle handicapped accessible.** Parts, accessories, and labor charges that are used solely to modify a motor vehicle to make it handicapped accessible are exempt.

Subd. 13. **Textbooks.** Textbooks that are prescribed for use in conjunction with a course of study in a school, college, university, and private career school to students who are regularly enrolled at such institutions are exempt. For purposes of this subdivision (1) a "school" is as defined in section 120A.22, subdivision 4; and (2) "private career school" means a school licensed under section 141.25.

Subd. 13a. **Instructional materials.** Instructional materials, other than textbooks, that are prescribed for use in conjunction with a course of study in a postsecondary school, college, university, or private career school to students who are regularly enrolled at such institutions are exempt. For purposes of this subdivision, "instructional materials" means materials required to be used directly in the completion of the course of study, including, but not limited to, interactive CDs, tapes, and computer software.

Instructional materials do not include general reference works or other items incidental to the instructional process such as pens, pencils, paper, folders, or computers. For purposes of this subdivision, "school" and "private career school" have the meanings given in subdivision 13.

Subd. 14. **Personal computers prescribed for use by school.** Personal computers and related computer software sold by a school, college, university, or private career school to students who are enrolled at the institutions are exempt if:

(1) the use of the personal computer, or of a substantially similar model of computer, and the related computer software is prescribed by the institution in conjunction with a course of study; and

(2) each student of the institution, or of a unit of the institution in which the student is enrolled, is required by the institution to have such a personal computer and related software as a condition of enrollment.

For the purposes of this subdivision, "school" and "private career school" have the meanings given in subdivision 13.

Subd. 15. **Residential heating fuels.** Residential heating fuels are exempt as follows:

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

(2) for the billing months of November, December, January, February, March, and April, 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; and

(3) for the billing months of November, December, January, February, March, and April, 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.

Subd. 16. **Residential water services.** Water services for residential use are exempt regardless of how the services are billed.

Subd. 17. **Feminine hygiene products.** Sanitary napkins, tampons, or similar items used for feminine hygiene are exempt.

Subd. 18. **Used motor oils.** Used motor oils are exempt.

Subd. 19. **Cross-country ski passes.** Cross-country ski passes issued under sections 85.40 to 85.43 are exempt.

Subd. 20. **Manufactured homes.** Manufactured homes, as defined in section 327.31, subdivision 6, to be used by the purchaser for residential purposes are exempt, unless the sale is the first retail sale of the manufactured home in this state.

Subd. 21. **De minimis exemption.** A purchase subject to use tax under section 297A.63 is exempt if (1) the purchase is made by an individual for personal use, and (2) the total purchases that are subject to the use tax do not exceed \$770 in the calendar year. For purposes of this subdivision, "personal use" includes purchases for gifts. If an individual makes purchases subject to use tax of more than \$770 in the calendar year, the individual must pay the use tax on the entire amount. This exemption does not apply to purchases made from retailers who are required or registered to collect taxes under this chapter.

Subd. 22. **Property brought into Minnesota by nonresident.** All articles of tangible personal property brought into Minnesota by a person who was a nonresident of this state immediately prior to bringing such property into this state for the person's use, storage, or consumption are exempt from the use tax imposed by section 297A.63.

Subd. 23. **Occasional sales.** Isolated and occasional sales in Minnesota not made in the normal course of business of selling that kind of property or service are exempt. The storage, use, or consumption of property or services acquired as a result of such a sale is exempt. This exemption does not apply to sales of tangible personal property primarily used in a trade or business.

Subd. 24. **Constitutional prohibitions.** The sale of and the storage, use, or consumption in Minnesota of tangible personal property, or services, that the state of Minnesota is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of Minnesota, are exempt.

Subd. 25. **Maintenance of cemetery grounds.** Lawn care and related services used in the maintenance of cemetery grounds are exempt. For purposes of this subdivision, "lawn care and related services" means the services listed in section 297A.61, subdivision 3, paragraph (g), clause (6), item (vi), and "cemetery" means a cemetery for human burial.

Subd. 26. **Trade allowance.** The amount allowed as a credit against the sales price for tangible personal property taken in trade for resale is exempt.

Subd. 27. **Sewing materials.** Sewing materials are exempt. For purposes of this subdivision "sewing materials" mean fabric, thread, zippers, interfacing, buttons, trim, and other items that are usually directly incorporated into the construction of clothing, regardless of whether it is actually used for making clothing. It does not include batting, foam, or fabric specifically manufactured for arts and craft projects, or other materials for craft projects.

Subd. 28. **Ambulance supplies, parts, and equipment.** The following sales to or use by an ambulance service licensed under section 144E.10 are exempt:

- (1) supplies and equipment used to provide medical care; and
- (2) repair and replacement parts for ambulances.

Subd. 29. **Energy efficient products.** (a) A residential lighting fixture or a compact fluorescent bulb is exempt if it has an energy star label.

(b) The following products are exempt if they have an energyguide label that indicates that the product meets or exceeds the standards listed below:

- (1) an electric heat pump hot water heater with an energy factor of at least 1.9;
- (2) a natural gas water heater with an energy factor of at least 0.62;
- (3) a propane gas or fuel oil water heater with an energy factor of at least 0.62;
- (4) a natural gas furnace with an annual fuel utilization efficiency greater than 92 percent; and
- (5) a propane gas or fuel oil furnace with an annual fuel utilization efficiency greater than 92 percent.

(c) A photovoltaic device is exempt. For purposes of this subdivision, "photovoltaic device" means a solid-state electrical device, such as a solar module, that converts light directly into direct current electricity of voltage-current characteristics that are a function of the characteristics of the light source and the materials in and design of the device. A "solar module" is a photovoltaic device that produces a specified power output under defined test conditions, usually composed of groups of solar cells connected in series, in parallel, or in series-parallel combinations.

(d) For purposes of this subdivision, "energy star label" means the label granted to certain products that meet United States Environmental Protection Agency and United States Department of Energy criteria for energy efficiency. For purposes of this subdivision, "energyguide label" means the label that the United States Federal Trade Commissioner requires manufacturers to apply to certain appliances under United States Code, title 16, part 305.

Subd. 30. **Motor vehicles.** Motor vehicles taxable under the provisions of chapter 297B are exempt.

Subd. 31. **Service loaner vehicle covered by warranty.** The loan of a vehicle by a motor vehicle dealer to a customer as a replacement for a vehicle being serviced or repaired is exempt if the vehicle is loaned pursuant to a warranty included in the original purchase price of the vehicle being serviced or repaired.

History: 2000 c 418 art 1 s 11,44 subd 3; 2000 c 490 art 8 s 13; 1Sp2001 c 5 art 7 s 51; art 12 s 36-44,93; 2002 c 377 art 3 s 7-10; 2002 c 400 s 8; 2003 c 127 art 1 s 21,22; art 6 s 9

NOTE: Subdivision 29, as added by Laws 2001, First Special Session chapter 5, article 12, section 44, is effective for sales and purchases made after July 31, 2001, and before August 1, 2005. Laws 2001, First Special Session chapter 5, article 12, section 44, the effective date.

NOTE: The amendment to subdivision 29 by Laws 2002, chapter 377, article 3, section 10, is effective for sales and purchases made on or after May 19, 2002, and before August 1, 2005. Laws 2002, chapter 377, article 3, section 10, the effective date.

297A.68 BUSINESS EXEMPTIONS.

Subdivision 1. **Scope.** The gross receipts from the sale of, and storage, distribution, use, or consumption of the items contained in this section are specifically exempted from the taxes imposed by this chapter.

Subd. 2. **Materials consumed in industrial production.** (a) Materials stored, used, or consumed in industrial production of personal property intended to be sold ultimately at retail are exempt, whether or not the item so used becomes an ingredient or constituent part of the property produced. Materials that qualify for this exemption include, but are not limited to, the following:

- (1) chemicals, including chemicals used for cleaning food processing machinery and equipment;
- (2) materials, including chemicals, fuels, and electricity purchased by persons engaged in industrial production to treat waste generated as a result of the production process;

(3) fuels, electricity, gas, and steam used or consumed in the production process, except that electricity, gas, or steam used for space heating, cooling, or lighting is exempt if (i) it is in excess of the average climate control or lighting for the production area, and (ii) it is necessary to produce that particular product;

(4) petroleum products and lubricants;

(5) packaging materials, including returnable containers used in packaging food and beverage products;

(6) accessory tools, equipment, and other items that are separate detachable units with an ordinary useful life of less than 12 months used in producing a direct effect upon the product; and

(7) the following materials, tools, and equipment used in metalcasting: crucibles, thermocouple protection sheaths and tubes, stalk tubes, refractory materials, molten metal filters and filter boxes, degassing lances, and base blocks.

(b) This exemption does not include:

(1) machinery, equipment, implements, tools, accessories, appliances, contrivances and furniture and fixtures, except those listed in paragraph (a), clause (6); and

(2) petroleum and special fuels used in producing or generating power for propelling ready-mixed concrete trucks on the public highways of this state.

(c) Industrial production includes, 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, the production of road building materials, and the research, development, design, or production of computer software. Industrial production does not include painting, cleaning, repairing or similar processing of property except as part of the original manufacturing process.

Subd. 3. Materials used in providing certain taxable services. (a) Materials stored, used, or consumed in providing a taxable service listed in section 297A.61, subdivision 3, paragraph (g), clause (6), intended to be sold ultimately at retail are exempt.

(b) This exemption includes, but is not limited to:

(1) chemicals, lubricants, packaging materials, seeds, trees, fertilizers, and herbicides, if these items are used or consumed in providing the taxable service;

(2) chemicals used to treat waste generated as a result of providing the taxable service;

(3) accessory tools, equipment, and other items that are separate detachable units used in providing the service and that have an ordinary useful life of less than 12 months; and

(4) fuel, electricity, gas, and steam used or consumed in the production process, except that electricity, gas, or steam used for space heating, cooling, or lighting is exempt if (i) it is in excess of average climate control or lighting, and (ii) it is necessary to produce that particular service.

(c) This exemption does not include machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, and fixtures used in providing the taxable service.

Subd. 4. Taconite production materials. Mill liners, grinding rods, and grinding balls that are substantially consumed in the production of taconite are exempt when sold to or stored, used, or consumed by persons taxed under the in-lieu provisions of chapter 298.

Subd. 5. Capital equipment. (a) Capital equipment is exempt. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

“Capital equipment” means machinery and equipment purchased or leased, and used in this state by the purchaser or lessee primarily for manufacturing, fabricating, mining, or refining tangible personal property to be sold ultimately at retail if the

machinery and equipment are essential to the integrated production process of manufacturing, fabricating, mining, or refining. Capital equipment also includes machinery and equipment used to electronically transmit results retrieved by a customer of an on-line computerized data retrieval system.

(b) Capital equipment includes, but is not limited to:

(1) machinery and equipment used to operate, control, or regulate the production equipment;

(2) machinery and equipment used for research and development, design, quality control, and testing activities;

(3) environmental control devices that are used to maintain conditions such as temperature, humidity, light, or air pressure when those conditions are essential to and are part of the production process;

(4) materials and supplies used to construct and install machinery or equipment;

(5) repair and replacement parts, including accessories, whether purchased as spare parts, repair parts, or as upgrades or modifications to machinery or equipment;

(6) materials used for foundations that support machinery or equipment;

(7) materials used to construct and install special purpose buildings used in the production process;

(8) ready-mixed concrete equipment in which the ready-mixed concrete is mixed as part of the delivery process regardless if mounted on a chassis and leases of ready-mixed concrete trucks; and

(9) machinery or equipment used for research, development, design, or production of computer software.

(c) Capital equipment does not include the following:

(1) motor vehicles taxed under chapter 297B;

(2) machinery or equipment used to receive or store raw materials;

(3) building materials, except for materials included in paragraph (b), clauses (6) and (7);

(4) machinery or equipment used for nonproduction purposes, including, but not limited to, the following: plant security, fire prevention, first aid, and hospital stations; support operations or administration; pollution control; and plant cleaning, disposal of scrap and waste, plant communications, space heating, cooling, lighting, or safety;

(5) farm machinery and aquaculture production equipment as defined by section 297A.61, subdivisions 12 and 13;

(6) machinery or equipment purchased and installed by a contractor as part of an improvement to real property; or

(7) any other item that is not essential to the integrated process of manufacturing, fabricating, mining, or refining.

(d) For purposes of this subdivision:

(1) "Equipment" means independent devices or tools separate from machinery but essential to an integrated production process, including computers and computer software, used in operating, controlling, or regulating machinery and equipment; and any subunit or assembly comprising a component of any machinery or accessory or attachment parts of machinery, such as tools, dies, jigs, patterns, and molds.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Integrated production process" means a process or series of operations through which tangible personal property is manufactured, fabricated, mined, or refined. For purposes of this clause, (i) manufacturing begins with the removal of raw materials from inventory and ends when the last process prior to loading for shipment has been completed; (ii) fabricating begins with the removal from storage or inventory of the property to be assembled, processed, altered, or modified and ends with the creation or production of the new or changed product; (iii) mining begins with the

removal of overburden from the site of the ores, minerals, stone, peat deposit, or surface materials and ends when the last process before stockpiling is completed; and (iv) refining begins with the removal from inventory or storage of a natural resource and ends with the conversion of the item to its completed form.

(4) "Machinery" means mechanical, electronic, or electrical devices, including computers and computer software, that are purchased or constructed to be used for the activities set forth in paragraph (a), beginning with the removal of raw materials from inventory through completion of the product, including packaging of the product.

(5) "Machinery and equipment used for pollution control" means machinery and equipment used solely to eliminate, prevent, or reduce pollution resulting from an activity described in paragraph (a).

(6) "Manufacturing" means an operation or series of operations where raw materials are changed in form, composition, or condition by machinery and equipment and which results in the production of a new article of tangible personal property. For purposes of this subdivision, "manufacturing" includes the generation of electricity or steam to be sold at retail.

(7) "Mining" means the extraction of minerals, ores, stone, or peat.

(8) "On-line data retrieval system" means a system whose cumulation of information is equally available and accessible to all its customers.

(9) "Primarily" means machinery and equipment used 50 percent or more of the time in an activity described in paragraph (a).

(10) "Refining" means the process of converting a natural resource to an intermediate or finished product, including the treatment of water to be sold at retail.

Subd. 6. Special tooling. Special tooling is exempt. "Special tooling" means tools, dies, jigs, patterns, gauges, and other special tools that have value and use only for the buyer and for the use for which they are made. An item has value and use only to the buyer if the item is not standard enough to be stocked or ordered from a catalog or other sales literature, but must be produced in accordance with special requirements peculiar to the buyer and not common to someone else whose conditions for possible use of the material are reasonably similar to the buyer's.

Subd. 7. Air cooling equipment. Equipment used for air cooling is exempt, if the equipment is purchased for conversion or replacement of an existing groundwater-based once-through cooling system as required under section 103G.271, subdivision 5.

Subd. 8. Pollution control equipment; steel reprocessing. Pollution control equipment purchased by a steel reprocessing firm is exempt if the equipment is necessary to meet state or federal emission standards. For purposes of this subdivision:

(1) "pollution control equipment" means equipment used for the purpose of eliminating, preventing, or reducing air, land, or water pollution during or as a result of the manufacturing process; and

(2) "steel reprocessing firm" means a firm whose primary business is the recovery of steel from automobiles, appliances, and other steel products and the rerefining of this recovered metal into new steel products.

Subd. 9. Super Bowl admissions. The granting of the privilege of admission to a world championship football game sponsored by the National Football League is exempt.

Subd. 10. Publications; publication materials. Tangible personal property that is used or consumed in producing any publication regularly issued at average intervals not exceeding three months is exempt, and any such publication is exempt. "Publication" includes, but is not limited to, a qualified newspaper as defined by section 331A.02, together with any supplements or enclosures. "Publication" does not include magazines and periodicals sold over the counter. Tangible personal property that is used or consumed in producing a publication does not include machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, and fixtures used in the publication, or fuel, electricity, gas, or steam used for space heating or lighting.

Advertising contained in a publication is a nontaxable service and is exempt. Persons who publish or sell newspapers are engaging in a nontaxable service with

respect to gross receipts realized from such news-gathering or news-publishing activities, including the sale of advertising.

Subd. 11. Advertising materials. Materials designed to advertise and promote the sale of merchandise or services are exempt if these materials are mailed or transferred to a person outside the state for use solely outside the state. Mailing and reply envelopes and cards used exclusively in connection with these advertising and promotional materials are included in this exemption. The exemption applies regardless of where the mailing occurs. The storage of these materials in the state for the purpose of subsequently shipping or otherwise transferring the material out of state is also exempt if the other conditions in this subdivision are met.

Subd. 12. Wind energy conversion systems. Wind energy conversion systems, as defined in section 216C.06, subdivision 19, that are used as an electric power source are exempt, and the materials used to manufacture, install, construct, repair, or replace them are exempt.

Subd. 13. Outstate transport or delivery. (a) Tangible personal property is exempt if all of the following conditions are met:

(1) the property, without intermediate use, is shipped or transported outside Minnesota by the purchaser or is stored, processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property that is transported or shipped outside Minnesota; and

(2) the property is used in a trade or business outside Minnesota after being shipped or transported outside of Minnesota, and is not returned to Minnesota, except in the course of interstate commerce; and

(3) the property is either (i) not subject to tax in the state or country to which it is transported for storage or use, or (ii) to be used in other states or countries as part of a maintenance contract.

(b) For purposes of this subdivision, storage or processing, fabricating, manufacturing, attaching to, or incorporating into other property is not intermediate use.

Subd. 14. Property in transit. Tangible personal property is exempt if all of the following conditions are met:

(1) it is shipped or brought into Minnesota by a for-hire carrier;

(2) without use, it is kept in a public warehouse;

(3) it is kept for the purpose of being later transported outside Minnesota; and

(4) after storage, it is used solely outside Minnesota, except in the course of interstate commerce.

Subd. 15. Outstate delivery by seller. Property is exempt if:

(1) it is delivered in one of the following ways:

(i) delivery by the seller to a common carrier for delivery outside Minnesota;

(ii) placement in the United States mail or parcel post directed to the purchaser outside Minnesota; or

(iii) delivery to the purchaser outside Minnesota by means of the seller's own delivery vehicles; and

(2) it is not later returned to a point within Minnesota, except in the course of interstate commerce.

Subd. 16. Packing materials. Packing materials used to pack and ship household goods are exempt if the ultimate destination of the goods is outside Minnesota and if the goods are not later returned to a point within Minnesota, except in the course of interstate commerce.

Subd. 17. Ships used in interstate commerce. Repair, replacement, and rebuilding parts and materials, and lubricants, for ships or vessels used or to be used principally in interstate or foreign commerce are exempt. Vessels with a gross registered tonnage of at least 3,000 tons are exempt.

Subd. 18. Custom computer software. The design, development, writing, translation, fabrication, lease, or transfer for a consideration of title or possession of a custom

computer program is exempt. "Custom computer program" means a computer program prepared to the special order of the customer, either in the form of written procedures or contained on tapes, discs, cards, or another device, or any required documentation or manuals designed to facilitate the use of the custom computer program transferred. It includes those services represented by separately stated charges for modifications to an existing prewritten program that are prepared to the special order of the customer. It does not include a "canned" or prewritten computer program that is held or existing for general or repeated sale or lease, even if the prewritten or "canned" program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification.

Subd. 19. Petroleum products. The following petroleum products are exempt:

(1) products upon which a tax has been imposed and paid under chapter 296A, and for which no refund has been or will be allowed because the buyer used the fuel for nonhighway use;

(2) products that are used in the improvement of agricultural land by constructing, maintaining, and repairing drainage ditches, tile drainage systems, grass waterways, water impoundment, and other erosion control structures;

(3) products purchased by a transit system receiving financial assistance under section 174.24, 256B.0625, subdivision 17, or 473.384;

(4) products purchased by an ambulance service licensed under chapter 144E;

(5) products used in a passenger snowmobile, as defined in section 296A.01, subdivision 39, for off-highway business use as part of the operations of a resort as provided under section 296A.16, subdivision 2, clause (2); or

(6) products purchased by a state or a political subdivision of a state for use in motor vehicles exempt from registration under section 168.012, subdivision 1, paragraph (b).

Subd. 20. Natural gas in vehicles. Natural gas to be used as a fuel in vehicles propelled by natural gas is exempt.

Subd. 21. [Repealed, 1Sp2001 c 5 art 12 s 95]

Subd. 22. Copies of court reporter documents. Transcripts or copies of transcripts of verbatim testimony are exempt if produced and sold by court reporters or other transcribers of legal proceedings to individuals or entities that are parties to or representatives of parties to the proceeding to which the transcript relates.

Subd. 23. Automatic fire-safety sprinkler systems. Automatic fire-safety sprinkler systems described in section 273.11, subdivision 6a, are exempt.

Subd. 24. Waste processing equipment. Equipment used for processing solid or hazardous waste at a resource recovery facility, as defined in section 115A.03, subdivision 28, is exempt, including pollution control equipment at a resource recovery facility that burns refuse-derived fuel or mixed municipal solid waste as its primary fuel. An electric generation facility that processes and utilizes waste tires as its primary fuel is a resource recovery facility for the purposes of this section.

Subd. 25. Sale of property used in a trade or business. (a) The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling that kind of property and if one of the following conditions is satisfied:

(1) the sale occurs in a transaction subject to or described in section 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033 of the Internal Revenue Code;

(2) the sale is between members of a controlled group as defined in section 1563(a) of the Internal Revenue Code;

(3) the sale is a sale of farm machinery;

(4) the sale is a farm auction sale;

(5) the sale is a sale of substantially all of the assets of a trade or business; or

(6) the total amount of gross receipts from the sale of trade or business property made during the calendar month of the sale and the preceding 11 calendar months does not exceed \$1,000.

The use, storage, distribution, or consumption of tangible personal property acquired as a result of a sale exempt under this subdivision is also exempt.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) A "farm auction" is a public auction conducted by a licensed auctioneer if substantially all of the property sold consists of property used in the trade or business of farming and property not used primarily in a trade or business.

(2) "Trade or business" includes the assets of a separate division, branch, or identifiable segment of a trade or business if, before the sale, the income and expenses attributable to the separate division, branch, or identifiable segment could be separately ascertained from the books of account or record (the lease or rental of an identifiable segment does not qualify for the exemption).

(3) A "sale of substantially all of the assets of a trade or business" must occur as a single transaction or a series of related transactions within the 12-month period beginning on the date of the first sale of assets intended to qualify for the exemption provided in paragraph (a), clause (5).

Subd. 26. [Repealed, 2002 c 377 art 3 s 26]

Subd. 27. [Renumbered 297A.67, subd 30]

Subd. 28. **Medical supplies.** Medical supplies purchased by a licensed health care facility or licensed health care professional to provide medical treatment to residents or patients are exempt. The exemption does not apply to medical equipment or components of medical equipment, laboratory supplies, radiological supplies, and other items used in providing medical services. For purposes of this subdivision, "medical supplies" means adhesive and nonadhesive bandages, gauze pads and strips, cotton applicators, antiseptics, nonprescription drugs, eye solution, and other similar supplies used directly on the resident or patient in providing medical services.

Subd. 29. **Prizes.** Tangible personal property that will be given as prizes to players in games of skill or chance is exempt if the games are conducted at events such as community festivals, fairs, and carnivals and if the events last less than six days. This exemption does not apply to property awarded as prizes in connection with lawful gambling as defined in section 349.12 or the state lottery.

Subd. 30. **Television commercials.** Tangible personal property primarily used or consumed in the preproduction, production, or postproduction of a television commercial is exempt. Any such commercial, regardless of the medium in which it is transferred, is exempt. "Preproduction" and "production" include, but are not limited to, all activities related to the preparation for shooting and the shooting of television commercials, including film processing. Equipment rented for the preproduction and production activities is exempt. "Postproduction" includes, but is not limited to, all activities related to the finishing and duplication of television commercials. This exemption does not apply to tangible personal property used primarily in administration, general management, or marketing. Machinery and equipment purchased for use in producing such commercials and fuel, electricity, gas, or steam used for space heating or lighting are not exempt under this subdivision.

Subd. 31. **Waste management containers and compactors.** Compactors and waste collection containers are exempt if they are purchased by a waste management service provider and are used in providing waste management services as defined in section 297H.01, subdivision 12. A waste management service provider that does not remit tax on customer charges or lease or rental payments for compactors and waste collection containers under chapter 297H is ineligible for this exemption.

Subd. 32. **Events located outside Minnesota.** Tickets or admissions to places of amusement located outside Minnesota or to athletic events to be held outside Minnesota are exempt.

Subd. 33. **Patent, trademark, and copyright drawings and documents.** A drawing, diagram, or similar or related document or a copy of such a document is exempt if the document:

- (1) is produced and sold by a patent drafter; and
- (2) is for use in:

(i) a patent, trademark, or copyright application to be filed with government agencies;

(ii) an application to the federal Food and Drug Administration for approval of a medical device; or

(iii) a judicial or quasi-judicial proceeding, including mediation and arbitration, relating to the validity of or legal rights under a patent, trademark, or copyright.

For purposes of this subdivision, a "patent drafter" is a person who prepares illustrative documents required in the preparation of intellectual property applications.

Subd. 34. **Machinery and equipment for ski areas.** Tangible personal property used or consumed primarily and directly for tramways at ski areas or in snowmaking and snow-grooming operations at ski hills, ski slopes, or ski trails, including machinery, equipment, fuel, electricity, and water additives used in the production and maintenance of machine-made snow, is exempt.

Subd. 35. **Telecommunications equipment.** (a) Telecommunications machinery and equipment purchased or leased for use directly by a telecommunications service provider primarily in the provision of telecommunications services that are ultimately to be sold at retail are exempt, regardless of whether purchased by the owner, a contractor, or a subcontractor.

(b) For purposes of this subdivision, "telecommunications machinery and equipment" includes, but is not limited to:

(1) machinery, equipment, and fixtures utilized in receiving, initiating, amplifying, processing, transmitting, retransmitting, recording, switching, or monitoring telecommunications services, such as computers, transformers, amplifiers, routers, bridges, repeaters, multiplexers, and other items performing comparable functions;

(2) machinery, equipment, and fixtures used in the transportation of telecommunications services, radio transmitters and receivers, satellite equipment, microwave equipment, and other transporting media, but not wire, cable, fiber, poles, or conduit;

(3) ancillary machinery, equipment, and fixtures that regulate, control, protect, or enable the machinery in clauses (1) and (2) to accomplish its intended function, such as auxiliary power supply, test equipment, towers, heating, ventilating, and air conditioning equipment necessary to the operation of the telecommunications equipment; and software necessary to the operation of the telecommunications equipment; and

(4) repair and replacement parts, including accessories, whether purchased as spare parts, repair parts, or as upgrades or modifications to qualified machinery or equipment.

(c) For purposes of this subdivision, "telecommunications services" means telecommunications services as defined in section 297A.61, subdivision 24, paragraph (a), only.

Subd. 36. **Delivery or distribution charges; direct mail.** Charges for the delivery or distribution of direct mail are exempt if the charges are separately stated on an invoice or similar billing document given to the purchaser.

Subd. 37. **Job opportunity building zones.** (a) Purchases of tangible personal property or taxable services by a qualified business, as defined in section 469.310, are exempt if the property or services are primarily used or consumed in a job opportunity building zone designated under section 469.314.

(b) Purchase and use of construction materials and supplies for construction of improvements to real property in a job opportunity building zone are exempt if the improvements after completion of construction are to be used in the conduct of a

qualified business, as defined in section 469.310. This exemption applies regardless of whether the purchases are made by the business or a contractor.

(c) The exemptions under this subdivision apply to a local sales and use tax regardless of whether the local sales tax is imposed on the sales taxable as defined under this chapter.

(d) This subdivision applies to sales, if the purchase was made and delivery received during the duration of the zone.

Subd. 38. Biotechnology and health sciences industry zone. (a) Purchases of tangible personal property or taxable services by a qualified business, as defined in section 469.330, are exempt if the property or services are primarily used or consumed in a biotechnology and health sciences industry zone designated under section 469.334.

(b) Purchase and use of construction materials and supplies for construction of improvements to real property in a biotechnology and health sciences industry zone are exempt if the improvements after completion of construction are to be used in the conduct of a qualified business, as defined in section 469.330. This exemption applies regardless of whether the purchases are made by the business or a contractor.

(c) The exemptions under this subdivision apply to a local sales and use tax regardless of whether the local sales tax is imposed on the sales taxable as defined under this chapter.

(d)(1) The tax on sales of goods or services exempted under this subdivision are imposed and collected as if the applicable rate under section 297A.62 applied. Upon application by the purchaser, on forms prescribed by the commissioner, a refund equal to the tax paid must be paid to the purchaser. The application must include sufficient information to permit the commissioner to verify the sales tax paid and the eligibility of the claimant to receive the credit. No more than two applications for refunds may be filed under this subdivision in a calendar year. The provisions of section 289A.40 apply to the refunds payable under this subdivision.

(2) The amount required to make the refunds is annually appropriated to the commissioner of revenue.

(3) The aggregate amount refunded to a qualified business must not exceed the amount allocated to the qualified business under section 469.335.

(e) This subdivision applies only to sales made during the duration of the designation of the zone.

Subd. 39. Preexisting bids or contracts. (a) The sale of tangible personal property or services is exempt from tax for a period of six months from the effective date of the law change that results in the imposition of the tax under this chapter if:

(1) the act imposing the tax does not have transitional effective date language for existing construction contracts and construction bids; and

(2) the requirements of paragraph (b) are met.

(b) A sale is tax exempt under paragraph (a) if it meets the requirements of either clause (1) or (2):

(1) For a construction contract:

(i) the goods or services sold must be used for the performance of a bona fide written lump sum or fixed price construction contract;

(ii) the contract must be entered into before the date the goods or services become subject to the sales tax;

(iii) the contract must not provide for allocation of future taxes; and

(iv) for each qualifying contract the contractor must give the seller documentation of the contract on which an exemption is to be claimed.

(2) For a bid:

(i) the goods or services sold must be used pursuant to an obligation of a bid or bids;

(ii) the bid or bids must be submitted and accepted before the date the goods or services became subject to the sales tax;

(iii) the bid or bids must not be able to be withdrawn, modified, or changed without forfeiting a bond; and

(iv) for each qualifying bid, the contractor must give the seller documentation of the bid on which an exemption is to be claimed.

History: 2000 c 418 art 1 s 12,44 subd 3; 2000 c 490 art 8 s 8,14,15; 1Sp2001 c 5 art 12 s 6,45-54,93; 2002 c 377 art 3 s 11; art 9 s 12; 2003 c 127 art 1 s 23-25; art 6 s 10,11; 1Sp2003 c 21 art 1 s 13; art 2 s 8

297A.69 AGRICULTURAL EXEMPTIONS.

Subdivision 1. **Scope.** The gross receipts from the sale of, and storage, distribution, use, or consumption of the items contained in this section are specifically exempted from the taxes imposed by this chapter.

Subd. 2. **Materials consumed in agricultural production.** Materials stored, used, or consumed in agricultural production of personal property intended to be sold ultimately at retail are exempt, whether or not the item becomes an ingredient or constituent part of the property produced. Materials that qualify for this exemption include, but are not limited to, the following:

(1) feeds, seeds, trees, fertilizers, and herbicides, including when purchased for use by farmers in a federal or state farm or conservation program;

(2) materials sold to a veterinarian to be used or consumed in the care, medication, and treatment of agricultural production animals and horses;

(3) chemicals, including chemicals used for cleaning food processing machinery and equipment;

(4) materials, including chemicals, fuels, and electricity purchased by persons engaged in agricultural production to treat waste generated as a result of the production process;

(5) fuels, electricity, gas, and steam used or consumed in the production process, except that electricity, gas, or steam used for space heating, cooling, or lighting is exempt if (i) it is in excess of the average climate control or lighting for the production area, and (ii) it is necessary to produce that particular product;

(6) petroleum products and lubricants;

(7) packaging materials, including returnable containers used in packaging food and beverage products; and

(8) accessory tools and equipment that are separate detachable units with an ordinary useful life of less than 12 months used in producing a direct effect upon the product.

Machinery, equipment, implements, tools, accessories, appliances, contrivances, and furniture and fixtures, except those listed in this clause are not included within this exemption.

Subd. 3. **Repair and replacement parts.** Repair and replacement parts, except tires, used for maintenance or repair of farm machinery, logging equipment, and aquaculture production equipment are exempt, if the part replaces a machinery part assigned a specific or generic part number by the manufacturer of the machinery.

Subd. 4. **Machinery, equipment, and fencing.** The following machinery, equipment, and fencing is exempt:

(1) farm machinery;

(2) logging equipment, including chain saws used for commercial logging;

(3) fencing used for the containment of farmed cervidae, as defined in section 17.451, subdivision 2;

(4) primary and backup generator units used to generate electricity for the purpose of operating farm machinery, aquacultural production equipment, or logging equipment, or providing light or space heating necessary for the production of livestock, dairy animals, dairy products, or poultry and poultry products; and

(5) aquaculture production equipment.

Subd. 5. **Used farm tires.** The first \$5,000 of gross receipts from the sales of used, remanufactured, or repaired tires for farm machinery, by a sole proprietor, in a calendar year are exempt if:

(1) the seller had gross receipts from all sales of less than \$10,000 in the previous year; and

(2) the tires are not retreaded.

Subd. 6. **Horses; related materials.** (a) Horses, including racehorses, are exempt.

(b) Materials, including feed and bedding, used or consumed in the breeding, raising, owning, boarding, and keeping of horses are exempt. Machinery, equipment, implements, tools, appliances, furniture, and fixtures used in the breeding, raising, owning, boarding, and keeping of horses are not included within this exemption.

Subd. 7. **Feed for poultry raised for human consumption.** Poultry feed is exempt if the poultry is raised for human consumption.

History: 2000 c 418 art 1 s 13,44 subd 3; 2000 c 490 art 8 s 4,16; 1Sp2001 c 5 art 12 s 55; 2003 c 127 art 6 s 12-14

NOTE: Subdivision 5 is repealed by Laws 2003, chapter 127, article 1, section 34, paragraph (b), effective January 1, 2006.

297A.70 EXEMPTIONS FOR GOVERNMENTS AND NONPROFIT GROUPS.

Subdivision 1. **Scope.** (a) To the extent provided in this section, the gross receipts from sales of items to or by, and storage, distribution, use, or consumption of items by the organizations listed in this section are specifically exempted from the taxes imposed by this chapter.

(b) Notwithstanding any law to the contrary enacted before 1992, only sales to governments and political subdivisions listed in this section are exempt from the taxes imposed by this chapter.

(c) "Sales" includes purchases under an installment contract or lease purchase agreement under section 465.71.

Subd. 2. **Sales to government.** (a) All sales, except those listed in paragraph (b), to the following governments and political subdivisions, or to the listed agencies or instrumentalities of governments and political subdivisions, are exempt:

(1) the United States and its agencies and instrumentalities;

(2) school districts, the University of Minnesota, state universities, community colleges, technical colleges, state academies, the Perpich Minnesota Center for Arts Education, and an instrumentality of a political subdivision that is accredited as an optional/special function school by the North Central Association of Colleges and Schools;

(3) hospitals and nursing homes owned and operated by political subdivisions of the state of tangible personal property and taxable services used at or by hospitals and nursing homes;

(4) the metropolitan council, for its purchases of vehicles and repair parts to equip operations provided for in section 473.4051;

(5) other states or political subdivisions of other states, if the sale would be exempt from taxation if it occurred in that state; and

(6) sales to public libraries, public library systems, multicounty, multitype library systems as defined in section 134.001, county law libraries under chapter 134A, state agency libraries, the state library under section 480.09, and the legislative reference library.

(b) This exemption does not apply to the sales of the following products and services:

(1) 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;

(2) 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;

(3) the leasing of a motor vehicle as defined in section 297B.01, subdivision 5, except for leases entered into by the United States or its agencies or instrumentalities; or

(4) meals and lodging as defined under section 297A.61, subdivision 3, paragraphs (d) and (g), clause (2), except for meals and lodging purchased directly by the United States or its agencies or instrumentalities.

(c) As used in this subdivision, "school districts" means public school entities and districts of every kind and nature organized under the laws of the state of Minnesota, and any instrumentality of a school district, as defined in section 471.59.

Subd. 3. Sales of certain goods and services to government. (a) The following sales to or use by the specified governments and political subdivisions of the state are exempt:

(1) repair and replacement parts for emergency rescue vehicles, fire trucks, and fire apparatus to a political subdivision;

(2) machinery and equipment, except for motor vehicles, used directly for mixed municipal solid waste management services at a solid waste disposal facility as defined in section 115A.03, subdivision 10;

(3) chore and homemaking services to a political subdivision of the state to be provided to elderly or disabled individuals;

(4) telephone services to the Department of Administration that are used to provide telecommunications services through the intertechnologies revolving fund;

(5) firefighter personal protective equipment as defined in paragraph (b), if purchased or authorized by and for the use of an organized fire department, fire protection district, or fire company regularly charged with the responsibility of providing fire protection to the state or a political subdivision;

(6) bullet-resistant body armor that provides the wearer with ballistic and trauma protection, if purchased by a law enforcement agency of the state or a political subdivision of the state, or a licensed peace officer, as defined in section 626.84, subdivision 1;

(7) motor vehicles purchased or leased by political subdivisions of the state if the vehicles are exempt from registration under section 168.012, subdivision 1, paragraph (b), exempt from taxation under section 473.448, or exempt from the motor vehicle sales tax under section 297B.03, clause (12);

(8) equipment designed to process, dewater, and recycle biosolids for wastewater treatment facilities of political subdivisions, and materials incidental to installation of that equipment; and

(9) sales to a town of gravel and of machinery, equipment, and accessories, except motor vehicles, used exclusively for road and bridge maintenance, and leases by a town of motor vehicles exempt from tax under section 297B.03, clause (10).

(b) For purposes of this subdivision, "firefighters personal protective equipment" means helmets, including face shields, chin straps, and neck liners; bunker coats and pants, including pant suspenders; boots; gloves; head covers or hoods; wildfire jackets; protective coveralls; goggles; self-contained breathing apparatus; canister filter masks; personal alert safety systems; spanner belts; optical or thermal imaging search devices; and all safety equipment required by the Occupational Safety and Health Administration.

Subd. 4. Sales to nonprofit groups. (a) All sales, except those listed in paragraph (b), to the following "nonprofit organizations" are exempt:

(1) a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes if the item purchased is used in the performance of charitable, religious, or educational functions; and

(2) any senior citizen group or association of groups that:

(i) in general limits membership to persons who are either age 55 or older, or physically disabled; and

(ii) 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.

For purposes of this subdivision, charitable purpose includes the maintenance of a cemetery owned by a religious organization.

(b) This exemption does not apply to the following sales:

(1) 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;

(2) construction materials purchased by tax-exempt entities or their contractors to be used in constructing buildings or facilities that will not be used principally by the tax-exempt entities; and

(3) meals and lodging as defined under section 297A.61, subdivision 3, paragraphs (d) and (g), clause (2); and

(4) leasing of a motor vehicle as defined in section 297B.01, subdivision 5, except as provided in paragraph (c).

(c) This exemption applies to the leasing of a motor vehicle as defined in section 297B.01, subdivision 5, only if the vehicle is:

(1) a truck, as defined in section 168.011, a bus, as defined in section 168.011, or a passenger automobile, as defined in section 168.011, if the automobile is designed and used for carrying more than nine persons including the driver; and

(2) intended to be used primarily to transport tangible personal property or individuals, other than employees, to whom the organization provides service in performing its charitable, religious, or educational purpose.

(d) A limited liability company also qualifies for exemption under this subdivision if (1) it consists of a sole member that would qualify for the exemption, and (2) the items purchased qualify for the exemption.

Subd. 5. Veterans groups. Sales to an organization of military service veterans or an auxiliary unit of an organization of military service veterans are exempt if:

(1) the organization or auxiliary unit is organized within the state of Minnesota and is exempt from federal taxation under section 501(c), clause (19), of the Internal Revenue Code; and

(2) the tangible personal property is for charitable, civic, educational, or nonprofit uses and not for social, recreational, pleasure, or profit uses.

Subd. 6. Ambulances. The lease of a motor vehicle for use as an ambulance by an ambulance service licensed under section 144E.10 is exempt.

Subd. 7. Hospitals and outpatient surgical centers. (a) Sales, except for those listed in paragraph (c), to a hospital are exempt, if the items purchased are used in providing hospital services. For purposes of this subdivision, "hospital" means a hospital organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, and licensed under chapter 144 or by any other jurisdiction, and "hospital services" are services authorized or required to be performed by a "hospital" under chapter 144.

(b) Sales, except for those listed in paragraph (c), to an outpatient surgical center are exempt, if the items purchased are used in providing outpatient surgical services.

For purposes of this subdivision, "outpatient surgical center" means an outpatient surgical center organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, and licensed under chapter 144 or by any other jurisdiction. For the purposes of this subdivision, "outpatient surgical services" means: (1) services authorized or required to be performed by an outpatient surgical center under chapter 144; and (2) urgent care. For purposes of this subdivision, "urgent care" means health services furnished to a person whose medical condition is sufficiently acute to require treatment unavailable through, or inappropriate to be provided by, a clinic or physician's office, but not so acute as to require treatment in a hospital emergency room.

(c) This exemption does not apply to the following products and services:

(1) purchases made by a clinic, physician's office, or any other medical facility not operating as a hospital or outpatient surgical center, even though the clinic, office, or facility may be owned and operated by a hospital or outpatient surgical center;

(2) sales under section 297A.61, subdivision 3, paragraphs (d) and (g), clause (2);

(3) building and construction materials used in constructing buildings or facilities that will not be used principally by the hospital or outpatient surgical center;

(4) 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 hospital or outpatient surgical center; or

(5) the leasing of a motor vehicle as defined in section 297B.01, subdivision 5.

(d) A limited liability company also qualifies for exemption under this subdivision if (1) it consists of a sole member that would qualify for the exemption, and (2) the items purchased qualify for the exemption.

Subd. 8. Regionwide public safety radio communication system; products and services. Products and services including, but not limited to, end user equipment used for construction, ownership, operation, maintenance, and enhancement of the backbone system of the regionwide public safety radio communication system established under sections 403.21 to 403.34, are exempt. For purposes of this subdivision, backbone system is defined in section 403.21, subdivision 9. This subdivision is effective for purchases, sales, storage, use, or consumption occurring before August 1, 2005, in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Subd. 9. Sacramental wine. Wine for sacramental purposes in religious ceremonies, as described in section 340A.316, is exempt if the wine is purchased from a nonprofit religious organization meeting the requirements of subdivision 4 or from a person authorized to import sacramental wine without a license as provided in section 340A.316.

Subd. 10. Nonprofit tickets or admissions. (a) Tickets or admissions to an event are exempt if all the gross receipts are recorded as such, in accordance with generally accepted accounting principles, on the books of one or more organizations whose primary mission is to provide an opportunity for citizens of the state to participate in the creation, performance, or appreciation of the arts, and provided that each organization is:

(1) an organization described in section 501(c)(3) of the Internal Revenue Code in which voluntary contributions make up at least the following percent of the organization's annual revenue in its most recently completed 12-month fiscal year, or in the current year if the organization has not completed a 12-month fiscal year:

(i) for sales made after July 31, 2001, and before July 1, 2002, for the organization's fiscal year completed in calendar year 2000, three percent;

(ii) for sales made on or after July 1, 2002, and on or before June 30, 2003, for the organization's fiscal year completed in calendar year 2001, three percent;

(iii) for sales made on or after July 1, 2003, and on or before June 30, 2004, for the organization's fiscal year completed in calendar year 2002, four percent; and

(iv) for sales made in each 12-month period, beginning on July 1, 2004, and each subsequent year, for the organization's fiscal year completed in the preceding calendar year, five percent;

(2) a municipal board that promotes cultural and arts activities; or

(3) the University of Minnesota, provided that the event is held at a university-owned facility.

The exemption only applies if the entire proceeds, after reasonable expenses, are used solely to provide opportunities for citizens of the state to participate in the creation, performance, or appreciation of the arts.

(b) Tickets or admissions to the premises of the Minnesota Zoological Garden are exempt, provided that the exemption under this paragraph does not apply to tickets or admissions to performances or events held on the premises unless the performance or event is sponsored and conducted exclusively by the Minnesota Zoological Board or employees of the Minnesota Zoological Garden.

Subd. 11. **School tickets or admissions.** Tickets or admissions to regular season school games, events, and activities are exempt. For purposes of this subdivision, "school" has the meaning given it in section 120A.22, subdivision 4.

Subd. 12. **YMCA, YWCA, and JCC memberships.** The sale of memberships, meaning both onetime initiation fees and periodic membership dues, to an association incorporated under section 315.44 or an organization defined under section 315.51, are exempt. However, all separate charges made for the privilege of having access to and the use of the association's sports and athletic facilities are taxable.

Subd. 13. **Fund-raising sales by or for nonprofit groups.** (a) The following sales by the specified organizations for fund-raising purposes are exempt, subject to the limitations listed in paragraph (b):

(1) all sales made by an organization that exists solely for the purpose of providing educational or social activities for young people primarily age 18 and under;

(2) all sales made by an organization that is a senior citizen group or association of groups if (i) in general it limits membership to persons age 55 or older; (ii) it is organized and operated exclusively for pleasure, recreation, and other nonprofit purposes; and (iii) no part of its net earnings inures to the benefit of any private shareholders;

(3) the sale or use of tickets or admissions to a golf tournament held in Minnesota if the beneficiary of the tournament's net proceeds qualifies as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code; and

(4) sales of gum, candy, and candy products sold for fund-raising purposes by a nonprofit organization that provides educational and social activities primarily for young people age 18 and under.

(b) The exemptions listed in paragraph (a) are limited in the following manner:

(1) the exemption under paragraph (a), clauses (1) and (2), applies only if the gross annual receipts of the organization from fund-raising do not exceed \$10,000; and

(2) the exemption under paragraph (a), clause (1), does not apply if the sales are derived from admission charges or from activities for which the money must be deposited with the school district treasurer under section 123B.49, subdivision 2, or be recorded in the same manner as other revenues or expenditures of the school district under section 123B.49, subdivision 4.

(c) Sales of tangible personal property are exempt if the entire proceeds, less the necessary expenses for obtaining the property, will be contributed to a registered combined charitable organization described in section 309.501, to be used exclusively for charitable, religious, or educational purposes, and the registered combined charitable organization has given its written permission for the sale. Sales that occur over a period of more than 24 days per year are not exempt under this paragraph.

(d) For purposes of this subdivision, a club, association, or other organization of elementary or secondary school students organized for the purpose of carrying on

sports, educational, or other extracurricular activities is a separate organization from the school district or school for purposes of applying the \$10,000 limit.

Subd. 14. Fund-raising events sponsored by nonprofit groups. (a) Sales of tangible personal property at, and admission charges for fund-raising events sponsored by, a nonprofit organization are exempt if:

(1) all gross receipts are recorded as such, in accordance with generally accepted accounting practices, on the books of the nonprofit organization; and

(2) the entire proceeds, less the necessary expenses for the event, will be used solely and exclusively for charitable, religious, or educational purposes. Exempt sales include the sale of food, meals, and drinks at the fund-raising event.

(b) This exemption is limited in the following manner:

(1) it does not apply to admission charges for events involving bingo or other gambling activities or to charges for use of amusement devices involving bingo or other gambling activities;

(2) all gross receipts are taxable if the profits are not used solely and exclusively for charitable, religious, or educational purposes;

(3) it does not apply unless the organization keeps a separate accounting record, including receipts and disbursements from each fund-raising event that documents all deductions from gross receipts with receipts and other records;

(4) it does not apply to any sale made by or in the name of a nonprofit corporation as the active or passive agent of a person that is not a nonprofit corporation;

(5) all gross receipts are taxable if fund-raising events exceed 24 days per year;

(6) it does not apply to fund-raising events conducted on premises leased for more than five days but less than 30 days; and

(7) it does not apply if the risk of the event is not borne by the nonprofit organization and the benefit to the nonprofit organization is less than the total amount of the state and local tax revenues foregone by this exemption.

(c) For purposes of this subdivision, a "nonprofit organization" means any unit of government, corporation, society, association, foundation, or institution organized and operated for charitable, religious, educational, civic, fraternal, and senior citizens' or veterans' purposes, no part of the net earnings of which inures to the benefit of a private individual.

Subd. 15. Statewide amateur athletic games. Notwithstanding section 297A.61, subdivision 3, or any other provision of this chapter, the gross receipts from the following sales made to or by a nonprofit corporation designated by the Minnesota Amateur Sports Commission to conduct a series of statewide amateur athletic games and related events, workshops, and clinics are exempt:

(1) sales of tangible personal property to or the storage, use, or other consumption of tangible personal property by the nonprofit corporation; and

(2) sales of tangible personal property, admission charges, and sales of food, meals, and drinks by the nonprofit corporation at fund-raising events, athletic events, or athletic facilities.

Subd. 16. Camp fees. Fees to camps or other recreation facilities are exempt for:

(1) services primarily for children, adults accompanying children, or persons with disabilities; or

(2) educational or religious activities;

and the camp or facilities are owned and operated by an exempt organization under section 501(c)(3) of the Internal Revenue Code.

History: 2000 c 418 art 1 s 14,44 subd 3; 2000 c 490 art 8 s 9-11; 1Sp2001 c 5 art 7 s 52; art 12 s 56-64; 1Sp2001 c 8 art 2 s 63; 1Sp2001 c 13 s 16; 2002 c 377 art 3 s 12; art 10 s 24; 2003 c 2 art 1 s 35; 1Sp2003 c 1 art 2 s 135; 1Sp2003 c 21 art 8 s 5-8

297A.71 CONSTRUCTION EXEMPTIONS.

Subdivision 1. **Scope.** The gross receipts from the sale of, and storage, distribution, use, or consumption of the tangible personal property contained in this section are specifically exempted from the taxes imposed by this chapter. Building materials, equipment, and supplies and other items exempt under this section are exempt regardless of whether purchased by the owner or a contractor, subcontractor, or builder.

Subd. 2. [Repealed, 1Sp2001 c 5 art 12 s 95]

Subd. 3. **Correctional facilities.** Building materials and supplies for constructing or improving an adult or juvenile correctional facility by a county, home rule charter city, or statutory city are exempt if the project is mandated by state or federal law, rule, or regulation. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 4. **Lake Superior Center.** Building materials and supplies for construction of the Lake Superior Center are exempt.

Subd. 5. **Science Museum.** Building materials and supplies for construction of the Science Museum of Minnesota are exempt.

Subd. 6. **Business incubator and industrial park.** Building materials and supplies for construction of a facility that includes a business incubator and industrial park are exempt if the facility:

(1) is owned and operated by a nonprofit charitable organization that qualifies for tax exemption under section 501(c)(3) of the Internal Revenue Code;

(2) is used for the development of nonretail businesses, offering access to equipment, space, services, and advice to the tenant businesses, for the purpose of encouraging economic development and job creation in the area served by the organization, and emphasizes development of businesses that manufacture products from materials found in the waste stream, or manufacture alternative energy and conservation systems, or make use of emerging environmental technologies;

(3) includes in its structure systems of material and energy exchanges that use waste products from one industrial process as sources of energy and material for other processes; and

(4) makes use of solar and wind energy technology and incorporates salvaged materials in its construction.

A limited liability company also qualifies for exemption under this subdivision if (1) it consists of a sole member that would qualify for the exemption, and (2) the items purchased qualify for the exemption.

Subd. 7. **Alfalfa processing facility.** Building materials and supplies for constructing a facility that either develops market-value agricultural products made from alfalfa leaf material, or produces biomass energy fuel or electricity from alfalfa stems in accordance with the biomass mandate imposed under section 216B.2424 are exempt if the total capital investment made in the value-added agricultural products and biomass electric generation facilities is at least \$50,000,000.

Subd. 8. **Wood waste cogeneration facility.** Building materials and supplies for constructing, equipping, or modifying a district heating and cooling system cogeneration facility are exempt if the facility:

(1) utilizes wood waste as a primary fuel source; and

(2) satisfies the requirements of the biomass mandate in section 216B.2424, subdivision 5.

Subd. 9. **Direct satellite broadcasting facility.** Building materials and supplies for constructing a new facility in Minnesota for providing Federal Communications Commission licensed direct satellite broadcasting services using direct broadcast satellites operating in the 12-GHz. band or fixed satellite regional or national program services, as defined in section 272.02, subdivision 16, are exempt if construction of the facility was commenced after June 30, 1993. All machinery, equipment, tools, accessories,

appliances, contrivances, furniture, fixtures, and all technical equipment or tangible personal property of any other nature or description necessary to the construction and equipping of that facility in order to provide those services are also exempt.

Subd. 10. **Aircraft heavy maintenance facility.** Materials, equipment, and supplies used or consumed in constructing a heavy maintenance facility for aircraft that is to be owned by the state of Minnesota or one of its political subdivisions and leased by an airline company, or an aircraft engine repair facility described in section 116R.02, subdivision 6, are exempt. Except for equipment owned or leased by a contractor, all machinery, equipment, and tools necessary to the construction and equipping of that facility in order to provide those services are also exempt.

Subd. 11. **Building materials; disabled veterans.** Building materials to be used in the construction or remodeling of a residence are exempt when the construction or remodeling is financed in whole or in part by the United States in accordance with United States Code, title 38, sections 2101 to 2105. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 12. **Chair lifts, ramps, elevators.** Chair lifts, ramps, and elevators and building materials used to install or construct them are exempt, if they are authorized by a physician and installed in or attached to the owner's homestead. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 13. **Agriculture processing facility materials.** Building materials and supplies for constructing an agriculture processing facility as defined in section 469.1811 in which the total capital investment in the processing facility is expected to exceed \$100,000,000 are exempt. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

Subd. 14. **Mineral production facilities.** Building materials, equipment, and supplies used for the construction of the following mineral production facilities are exempt.

The mineral production facilities that qualify for this exemption are:

(1) a value added iron products plant, which may be either a new plant or a facility incorporated into an existing plant that produces iron upgraded to a minimum of 75 percent iron content or any iron alloy with a total minimum metallic content of 90 percent;

(2) a facility used for the manufacture of fluxed taconite pellets as defined in section 298.24;

(3) a new capital project that has a total cost of over \$40,000,000 that is directly related to production, cost, or quality at an existing taconite facility that does not qualify under clause (1) or (2); and

(4) a new mine or minerals processing plant for any mineral subject to the net proceeds tax imposed under section 298.015.

The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

Subd. 15. [Repealed, 1Sp2001 c 5 art 12 s 95]

Subd. 16. [Repealed, 1Sp2001 c 5 art 12 s 9; 2002 c 377 art 3 s 24]

Subd. 17. **Environmental learning center.** Construction materials and supplies are exempt if they are used or consumed in constructing or improving the Long Lake Conservation Center pursuant to the funding provided under Laws 1994, chapter 643, section 23, subdivision 28, as amended by Laws 1995, First Special Session chapter 2, article 1, section 48; Laws 1996, chapter 463, section 7, subdivision 26; and Laws 1997, chapter 246, section 24. The tax must be calculated and paid as if the rate in section 297A.62, subdivision 1, was in effect and a refund applied for in the manner prescribed in section 297A.75.

Subd. 18. **Soybean oilseed processing and refining facility.** Construction materials and supplies are exempt if:

(1) the materials and supplies are used or consumed in constructing a facility for soybean oilseed processing and refining;

(2) the total capital investment made in the facility is at least \$60,000,000; and

(3) the facility is constructed by a Minnesota-based cooperative organized under chapter 308A.

Subd. 19. **Earle Brown Heritage Center.** Materials and supplies used or consumed in and equipment incorporated into the construction, improvement, or expansion of the Earle Brown Heritage Center in Brooklyn Center are exempt. This subdivision is effective for purchases made before July 1, 2003.

Subd. 20. **Construction materials and supplies; beef processing facility.** Materials and supplies used or consumed in, and equipment incorporated into, the expansion, remodeling, or improvement of a facility used for cattle slaughtering are exempt if:

(1) the cost of the project is expected to exceed \$15,000,000;

(2) the expansion, remodeling, or improvement of the facility will be used to fabricate beef;

(3) the number of jobs at the facility is expected to increase by at least 150 when the project is completed; and

(4) the project is expected to be completed by December 31, 2001.

Subd. 21. **Construction materials and equipment; biomass electrical generating facility.** Materials and supplies used or consumed in, and equipment incorporated into, the construction, improvement, or expansion of a facility using biomass to generate electricity are exempt if:

(1) the facility exclusively utilizes residue wood, sawdust, bark, chipped wood, or brush to generate electricity;

(2) the facility utilizes a reciprocated grate combination system; and

(3) the total gross capacity of the facility is 15 to 21 megawatts.

Subd. 22. **Materials used to make residential property handicapped accessible.** Building materials and equipment sold to, or stored, used, or consumed by, a nonprofit organization are exempt if:

(1) the materials and equipment are used or incorporated into modifying an existing residential structure to make it handicapped accessible; and

(2) the materials and equipment used in the modification would qualify for an exemption under either subdivision 11 or 12 if made by the current owner of the residence.

For purposes of this subdivision, "nonprofit organization" means any nonprofit corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, educational, or civic purposes; or a veterans' group exempt from federal taxation under section 501(c), clause (19), of the Internal Revenue Code.

Subd. 23. **Construction materials for qualified low-income housing projects.** (a) Purchases of materials and supplies used or consumed in and equipment incorporated into the construction, improvement, or expansion of qualified low-income housing projects are exempt from the tax imposed under this chapter if the owner of the qualified low-income housing project is:

(1) the public housing agency or housing and redevelopment authority of a political subdivision;

(2) an entity exercising the powers of a housing and redevelopment authority within a political subdivision;

(3) a limited partnership in which the sole general partner is an authority under clause (1) or an entity under clause (2);

(4) a nonprofit corporation subject to the provisions of chapter 317A, and qualifying under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended; or

(5) an owner entity, as defined in Code of Federal Regulations, title 24, part 941.604, for a qualified low-income housing project described in paragraph (b), clause (5).

This exemption applies regardless of whether the purchases are made by the owner of the facility or a contractor.

(b) For purposes of this exemption, "qualified low-income housing project" means:

(1) a housing or mixed use project in which at least 20 percent of the residential units are qualifying low-income rental housing units as defined in section 273.126;

(2) a federally assisted low-income housing project financed by a mortgage insured or held by the United States Department of Housing and Urban Development under United States Code, title 12, section 1701s, 1715l(d)(3), 1715l(d)(4), or 1715z-1; United States Code, title 42, section 1437f; the Native American Housing Assistance and Self-Determination Act, United States Code, title 25, section 4101 et seq.; or any similar successor federal low-income housing program;

(3) a qualified low-income housing project as defined in United States Code, title 26, section 42(g), meeting all of the requirements for a low-income housing credit under section 42 of the Internal Revenue Code regardless of whether the project actually applies for or receives a low-income housing credit;

(4) a project that will be operated in compliance with Internal Revenue Service revenue procedure 96-32; or

(5) a housing or mixed use project in which all or a portion of the residential units are subject to the requirements of section 5 of the United States Housing Act of 1937.

(c) For a project, a portion of which is not used for low-income housing units, the amount of purchases that are exempt under this subdivision must be determined by multiplying the total purchases, as specified in paragraph (a), by the ratio of:

(1) the total gross square footage of units subject to the income limits under section 273.126, the financing for the project, the federal low-income housing tax credit, revenue procedure 96-32, or section 5 of the United States Housing Act of 1937, as applicable to the project; and

(2) the total gross square footage of all units in the project.

(d) The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

Subd. 24. [Expired]

Subd. 25. [Expired]

Subd. 26. [Expired]

Subd. 27. [Expired]

Subd. 28. [Expired]

Subd. 29. [Expired]

Subd. 30. **Nonprofit arts organization.** Materials, equipment, and supplies incorporated into the construction or renovation of a state bond financed facility funded in 2002 which is owned or operated by a nonprofit arts organization are exempt.

Subd. 31. **Construction materials; baseball park.** Materials, supplies used or consumed in, and equipment incorporated into the construction or improvement of the baseball park constructed under sections 473I.01 to 473I.10, are exempt. This subdivision expires one year after the first major league baseball game is played in the baseball park.

Subd. 32. **Walker Art Center.** Materials, equipment, and supplies used or consumed in construction of the Walker Art Center are exempt if more than \$70,000,000 is raised from private sources to pay for a portion of the costs of the project.

History: 2000 c 418 art 1 s 15,44 subd 3; 2000 c 490 art 8 s 12; 1Sp2001 c 5 art 12 s 65-70; 2002 c 377 art 3 s 13-16; 2002 c 397 s 2; 1Sp2003 c 21 art 8 s 9,16

NOTE: Subdivision 21 (formerly section 297A.25, subdivision 82) is effective for purchases made before July 1, 2005. Laws 1999, chapter 243, article 4, section 19, as amended by Laws 2001, First Special Session chapter 5, article 12, section 88; and Laws 2003, First Special Session chapter 21, article 8, section 14.

NOTE: Subdivision 30, as added by Laws 2002, chapter 377, article 3, section 16, is effective for sales and purchases made after May 18, 2002, and before July 1, 2007. Laws 2002, chapter 377, article 3, section 16, the effective date.

EXEMPTION CERTIFICATES

297A.72 EXEMPTION CERTIFICATES.

Subdivision 1. [Repealed, 2003 c 127 art 6 s 18]

Subd. 2. Content and form of exemption certificate. An exemption certificate must be substantially in the form prescribed by the commissioner and:

- (1) be signed by the purchaser or meet the requirements of section 289A.07;
- (2) bear the name and address of the purchaser;
- (3) indicate the sales tax account number, if any, issued to the purchaser;
- (4) indicate the general character of the property sold by the purchaser in the regular course of business or the activities carried on by the organization; and
- (5) identify the property purchased.

History: 2000 c 418 art 1 s 16; 1Sp2001 c 5 art 12 s 71

297A.73 IMPROPER USE OF ITEM OBTAINED WITH EXEMPTION CERTIFICATE.

If a purchaser who gives an exemption certificate makes any use of the item that is not for a purpose exempted under this chapter, that use is considered a retail sale by the purchaser and the sales price to the purchaser is considered the gross receipts. If the sole use is rental while holding for sale, the purchaser shall include in the purchaser's gross receipts the amount of the rental charged. Upon subsequent sale of the item, the seller shall include the entire amount of gross receipts received from the sale without deduction of amounts previously received as rentals.

History: 2000 c 418 art 1 s 17

297A.74 COMMINGLING EXEMPTION CERTIFICATE ITEMS.

If a purchaser gives an exemption certificate for the purchase of fungible items and later commingles the items with similar fungible items not purchased exempt, sales from the commingled items are considered sales of items purchased exempt until a quantity has been sold that equals the quantity purchased exempt.

History: 2000 c 418 art 1 s 18

EXEMPTION REFUNDS

297A.75 REFUND; APPROPRIATION.

Subdivision 1. **Tax collected.** The tax on the gross receipts from the sale of the following exempt items must be imposed and collected as if the sale were taxable and the rate under section 297A.62, subdivision 1, applied. The exempt items include:

- (1) capital equipment exempt under section 297A.68, subdivision 5;
- (2) building materials for an agricultural processing facility exempt under section 297A.71, subdivision 13;
- (3) building materials for mineral production facilities exempt under section 297A.71, subdivision 14;
- (4) building materials for correctional facilities under section 297A.71, subdivision 3;
- (5) building materials used in a residence for disabled veterans exempt under section 297A.71, subdivision 11;
- (6) chair lifts, ramps, elevators, and associated building materials exempt under section 297A.71, subdivision 12;

(7) building materials for the Long Lake Conservation Center exempt under section 297A.71, subdivision 17;

(8) materials, supplies, fixtures, furnishings, and equipment for a county law enforcement and family service center under section 297A.71, subdivision 26; and

(9) materials and supplies for qualified low-income housing under section 297A.71, subdivision 23.

Subd. 2. Refund; eligible persons. Upon application on forms prescribed by the commissioner, a refund equal to the tax paid on the gross receipts of the exempt items must be paid to the applicant. Only the following persons may apply for the refund:

(1) for subdivision 1, clauses (1) to (3), the applicant must be the purchaser;

(2) for subdivision 1, clauses (4), (7), and (8), the applicant must be the governmental subdivision;

(3) for subdivision 1, clause (5), the applicant must be the recipient of the benefits provided in United States Code, title 38, chapter 21;

(4) for subdivision 1, clause (6), the applicant must be the owner of the homestead property; and

(5) for subdivision 1, clause (9), the owner of the qualified low-income housing project.

Subd. 3. Application. (a) The application must include sufficient information to permit the commissioner to verify the tax paid. If the tax was paid by a contractor, subcontractor, or builder, under subdivision 1, clause (4), (5), (6), (7), (8), or (9), the contractor, subcontractor, or builder must furnish to the refund applicant a statement including the cost of the exempt items and the taxes paid on the items unless otherwise specifically provided by this subdivision. The provisions of sections 289A.40 and 289A.50 apply to refunds under this section.

(b) An applicant may not file more than two applications per calendar year for refunds for taxes paid on capital equipment exempt under section 297A.68, subdivision 5.

Subd. 4. Interest. Interest must be paid on the refund at the rate in section 270.76 from 90 days after the refund claim is filed with the commissioner for taxes paid under subdivision 1.

Subd. 5. Appropriation. The amount required to make the refunds is annually appropriated to the commissioner.

History: 2000 c 418 art 1 s 19,44 subd 3; 2000 c 490 art 8 s 6; 1Sp2001 c 5 art 12 s 72; 2002 c 377 art 3 s 17; 2003 c 127 art 1 s 26

COMPUTATION AND COLLECTION OF SALES AND USE TAXES

297A.76 COMPUTATION OF SALES AND USE TAXES.

Subdivision 1. Rounding up or down. In computing the sales or use tax to be collected or remitted as the result of a transaction, amounts of tax less than one-half of one cent must be disregarded and amounts of tax of one-half cent or more must be considered an additional cent.

Subd. 2. Uniform tax collection methods; rules. Agreements between competitive retailers or the adoption of appropriate rules or regulations by organizations or associations of retailers to provide uniform methods for adding the sales tax or its average equivalent, which do not involve otherwise unlawful price fixing agreements, are expressly authorized and are not in violation of any Minnesota laws prohibiting such agreements. The commissioner may prescribe rules for such agreements.

History: 2000 c 418 art 1 s 20

297A.77 COLLECTION OF SALES AND USE TAXES.

Subdivision 1. Collection of tax at time of sale. The tax must be stated and charged separately from the sales price insofar as practicable and must be collected by the seller from the purchaser.

Subd. 2. **Receipt.** For use tax, the retailer shall give the purchaser a tax receipt. The receipt must indicate the tax in the form of a notation on the sales slip or receipt for the sales price or in another form as prescribed by the commissioner.

Subd. 3. **Tax must be remitted.** The tax collected by a retailer under this section must be remitted to the commissioner as provided in chapter 289A and this chapter.

Subd. 4. **Status of sales and use taxes as debt.** Sales and use taxes that are required to be collected by a retailer are debts from the purchaser to the retailer recoverable at law in the same manner as other debts.

History: 2000 c 418 art 1 s 21; 1Sp2001 c 5 art 12 s 73

297A.78 LIABILITY FOR USE TAX; RECEIPT AS EVIDENCE.

Liability for the payment of the use tax is not extinguished until the tax has been paid to Minnesota. However, a receipt from a retailer given to the purchaser under section 297A.77, subdivision 2, relieves the purchaser of further liability for the tax to which the receipt refers, unless the purchaser knows or has reason to know that the retailer did not have a permit to collect the tax.

History: 2000 c 418 art 1 s 22

297A.79 REPORTING OF GROSS RECEIPTS.

At the option of the taxpayer, gross receipts from sales may be reported on the cash basis as the consideration is received or on the accrual basis as sales are made.

History: 2000 c 418 art 1 s 23

297A.80 TAXES IN OTHER STATES; OFFSET AGAINST USE TAX.

If an article of tangible personal property or an item listed in section 297A.63 has already been taxed by another state and any subdivision thereof for its sale, storage, use, or other consumption in an amount less than the tax imposed by this chapter, then as to the person who paid the tax in the other state or any subdivision thereof, section 297A.63 applies only at a rate measured by the difference between the rate imposed under section 297A.62 and the rate by which the previous tax was computed. If the tax imposed in the other state or any subdivision thereof is equal to or greater than the tax imposed in this state, then no tax is due from that person under section 297A.63. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against any use tax due a subdivision.

History: 2000 c 418 art 1 s 24; 1Sp2001 c 5 art 12 s 74

297A.81 UNCOLLECTIBLE DEBTS; OFFSET AGAINST OTHER TAXES.

Subdivision 1. **General.** The taxpayer may offset against the taxes payable for any reporting period the amount of taxes imposed by this chapter previously paid as a result of any transaction the consideration for which became a debt owed to the taxpayer that became uncollectible during the reporting period, but only in proportion to the portion of the debt that became uncollectible. Section 289A.40, subdivision 2, applies to an offset under this section.

Subd. 2. **Manner of allowing deduction for uncollectible debt.** (a) Uncollectible debt is allowed as a deduction in the manner provided in this subdivision.

(b) If the uncollectible debt arose with respect to a sale required to be included in gross receipts, subject to a tax imposed under chapter 297A, the entire amount of the debt remaining uncollected is allowed as a deduction.

(c) If the uncollectible debt arose with respect to a sale partly subject to the tax imposed under chapter 297A and partly exempt, the amount of the uncollectible debt allowed as a deduction is the amount derived by multiplying the uncollectible debt by the percentage that the taxable sale bears to the total sales.

(d) If the uncollectible debt arose with respect to two or more sales made at successive intervals, payments made before the date the debt became uncollectible

must be applied first to the earliest sale upon which there is an unpaid balance, and to following sales in successive order.

(e) If the books and records of the taxpayer claiming the bad debt allowance support an allocation of the bad debts among the member states of the streamlined sales and use tax agreement, such an allocation shall be allowed.

Subd. 3. **Certified service provider.** A certified service provider, as defined in section 297A.995, subdivision 2, on behalf of a taxpayer who is its client, may offset against taxes as provided by this section.

History: 2000 c 418 art 1 s 25; 2003 c 127 art 1 s 27

AIRCRAFT AND FLIGHT EQUIPMENT

297A.82 AIRCRAFT; FLIGHT EQUIPMENT; PAYMENT OF TAXES; EXEMPTIONS.

Subdivision 1. **Requirements for registration.** An aircraft must not be registered or licensed in this state unless the applicant presents proof that the sales or use tax imposed by this chapter has been paid or that the transaction is exempt from the sales and use tax. The exemption for an occasional sale under section 297A.67, subdivision 23, or 297A.68, subdivision 25, does not apply to the sale or purchase of an aircraft.

Subd. 2. **Payment of tax to dealer.** If an aircraft is purchased from a dealer holding a valid sales and use tax permit under this chapter, the applicant shall present proof that the tax has been paid to the dealer.

Subd. 3. **Payment of tax.** If an aircraft is purchased from a person who is not the holder of a valid sales and use tax permit under this chapter, the purchaser shall pay the tax prior to registering or licensing the aircraft in this state.

Subd. 4. **Exemptions.** (a) The following transactions are exempt from the tax imposed in this chapter to the extent provided.

(b) The purchase or use of aircraft previously registered in Minnesota by a corporation or partnership is exempt if the transfer constitutes a transfer within the meaning of section 351 or 721 of the Internal Revenue Code.

(c) The sale to or purchase, storage, use, or consumption by a licensed aircraft dealer of an aircraft for which a commercial use permit has been issued pursuant to section 360.654 is exempt, if the aircraft is resold while the permit is in effect.

(d) Airflight equipment when sold to, or purchased, stored, used, or consumed by airline companies, as defined in section 270.071, subdivision 4, is exempt. For purposes of this subdivision, "airflight equipment" includes airplanes and parts necessary for the repair and maintenance of such airflight equipment, and flight simulators, but does not include airplanes with a gross weight of less than 30,000 pounds that are used on intermittent or irregularly timed flights.

(e) Sales of, and the storage, distribution, use, or consumption of aircraft, as defined in section 360.511 and approved by the Federal Aviation Administration, and which the seller delivers to a purchaser outside Minnesota or which, without intermediate use, is shipped or transported outside Minnesota by the purchaser are exempt, but only if the purchaser is not a resident of Minnesota and provided that the aircraft is not thereafter returned to a point within Minnesota, except in the course of interstate commerce or isolated and occasional use, and will be registered in another state or country upon its removal from Minnesota. This exemption applies even if the purchaser takes possession of the aircraft in Minnesota and uses the aircraft in the state exclusively for training purposes for a period not to exceed ten days prior to removing the aircraft from this state.

Subd. 5. **Exempt purchase certificate.** If the purchase of an aircraft is exempt under this chapter, the commissioner shall issue a certificate that no sales or use tax is due and owing in respect to the transaction.

Subd. 6. **Sales and leases; tax treatment.** (a) A sale of aircraft and parts for the repair of aircraft purchased by a nonprofit, incorporated flying club or association utilized solely by the corporation by leasing the aircraft to shareholders of the

corporation is exempt as property purchased for resale. The leasing of the aircraft to the shareholders by the flying club or association is taxable as a retail sale.

(b) A lease of aircraft utilized by a lessee for leasing to others, whether or not the lessee also utilizes the aircraft for charter service or for flight instruction if no separate charge is made for aircraft rental, is exempt as a purchase for resale. However, a proportionate share of the lease payment reflecting use for flight instruction or charter service is taxable under section 297A.63.

Subd. 7. **Agreement with commissioner of transportation.** Notwithstanding subdivisions 1 to 4, the commissioner may enter into an agreement with the commissioner of transportation whereby, upon approval of both commissioners, the commissioner of transportation will collect the sales tax on aircraft from persons required to register or license aircraft in this state. For purposes of collecting the tax, the commissioner of transportation shall act as agent of the commissioner of revenue and shall be subject to all rules not inconsistent with the provisions of this chapter, that may be prescribed by the commissioner.

History: 2000 c 418 art 1 s 26,44 subd 3; 2000 c 490 art 8 s 7; 1Sp2001 c 5 art 7 s 53,54

PERMITS

297A.83 APPLICATION FOR PERMIT.

Subdivision 1. **Persons applying.** (a) A retailer required to collect and remit sales taxes under section 297A.66 shall file with the commissioner an application for a permit.

(b) A retailer making retail sales from outside this state to a destination within this state who is not required to obtain a permit under paragraph (a) may nevertheless voluntarily file an application for a permit.

(c) The commissioner may require any person or class of persons obligated to file a use tax return under section 289A.11, subdivision 3, to file an application for a permit.

Subd. 2. **Application requirements.** The application must be made on a form prescribed by the commissioner and indicate the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information the commissioner may require. The application must be filed by the owner, if a natural person; by a member or partner, if the owner is an association or partnership; or by a person authorized to file the application, if the owner is a corporation.

Subd. 3. **Commissioner's discretion.** (a) The commissioner may decline to issue a permit to a retailer not maintaining a place of business in this state, or may cancel a permit previously issued to the retailer, if the commissioner believes that the tax can be collected more effectively from the persons using the property in this state. A refusal to issue or cancellation of a permit on such grounds does not affect the retailer's right to make retail sales from outside this state to destinations within this state.

(b) If the commissioner considers it necessary for the efficient administration of the tax to regard a salesperson, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom the person obtains the tangible personal property sold, whether making sales personally or in behalf of that dealer, distributor, supervisor, employer, or other person, the commissioner may regard the salesperson, representative, trucker, peddler, or canvasser as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of collecting the tax.

History: 2000 c 418 art 1 s 27

297A.84 PERMITS ISSUED.

The commissioner shall issue a permit to each applicant who has complied with section 297A.83, and with section 297A.92 if security is required. A person is considered to have a permit if the person has a Minnesota tax identification number issued by the department that is currently active for taxes imposed by this chapter. A permit is valid until canceled or revoked. It is not assignable and is valid only for the person in whose name it is granted and for the transaction of business at the places designated on the permit.

History: 2000 c 418 art 1 s 28

297A.85 CANCELLATION OF PERMITS.

The commissioner may cancel a permit if one of the following conditions occurs:

- (1) the permit holder has not filed a sales or use tax return for at least one year;
- (2) the permit holder has not reported any sales or use tax liability on the permit holder's returns for at least two years;
- (3) the permit holder requests cancellation of the permit; or
- (4) the permit is subject to cancellation pursuant to section 297A.86, subdivision 2, paragraph (a).

History: 2000 c 418 art 1 s 29; 2003 c 127 art 8 s 12

297A.86 REVOCATION OF PERMITS.

Subdivision 1. Notice of revocation; hearings. (a) If: (1) a person fails to comply with this chapter or the sales and use tax provisions of chapter 289A or the rules related to sales tax, or (2) any retailer purchases for resale from an unlicensed seller more than 20,000 cigarettes or \$500 or more worth of tobacco products, without reasonable cause, the commissioner may give the person 30 days' notice in writing, specifying the violations, and stating that based on the violations the commissioner intends to revoke the person's permit. The notice must also advise the person of the right to contest the revocation under this subdivision. It must also explain the general procedures for a contested case hearing under chapter 14. The notice may be served personally or by mail in the manner prescribed for service of an order of assessment.

(b) If the person does not request a hearing within 30 days after the date of the notice of intent, the commissioner may serve a notice of revocation of permit upon the person, and the permit is revoked. If a hearing is timely requested, and held, the permit is revoked after the commissioner serves an order of revocation of permit under section 14.62, subdivision 1.

Subd. 2. New permits after revocation. (a) The commissioner shall not issue a new permit after revocation or reinstate a revoked permit unless the taxpayer applies for a permit and provides reasonable evidence of intention to comply with the sales and use tax laws and rules. The commissioner may require the applicant to provide security, in addition to that authorized by section 297A.92, in an amount reasonably necessary to ensure compliance with the sales and use tax laws and rules. If the commissioner issues or reinstates a permit not in conformance with the requirements of this subdivision or applicable rules, the commissioner may cancel the permit upon notice to the permit holder. The notice must be served by first class and certified mail at the permit holder's last known address. The cancellation shall be effective immediately, subject to the right of the permit holder to show that the permit was issued in conformance with the requirements of this subdivision and applicable rules. Upon such showing, the permit must be reissued.

(b) If a taxpayer has had a permit or permits revoked three times in a five-year period, the commissioner shall not issue a new permit or reinstate the revoked permit until 24 months have elapsed after revocation and the taxpayer has satisfied the conditions for reinstatement of a revoked permit or issuance of a new permit imposed by this section and rules adopted under this section.

(c) For purposes of this subdivision, "taxpayer" means:

(1) an individual, if a revoked permit was issued to or in the name of an individual, or a corporation or partnership, if a revoked permit was issued to or in the name of a corporation or partnership; and

(2) an officer of a corporation, a member of a partnership, or an individual who is liable for delinquent sales taxes, either for the entity for which the new or reinstated permit is at issue, or for another entity for which a permit was previously revoked, or personally as a permit holder.

History: 2000 c 418 art 1 s 30; 1Sp2001 c 5 art 7 s 50; art 12 s 75

297A.87 FLEA MARKETS, SHOWS, AND OTHER SELLING EVENTS.

Subdivision 1. **Events affected.** (a) This section applies to a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event.

(b) To be subject to this section, the operator of an event described in paragraph (a) must rent or lease space on the sale premises to the seller, charge the seller a registration or participation fee, or receive a percentage of sales or other consideration from a seller as a condition to participation by a seller in the event.

Subd. 2. **Seller's permit or alternate statement.** (a) The operator of an event under subdivision 1 shall obtain one of the following from a person who wishes to do business as a seller at the event:

(1) evidence that the person holds a valid seller's permit under section 297A.84; or

(2) a written statement that the person is not offering for sale any item that is taxable under this chapter.

(b) The operator shall require the evidence or statement as a prerequisite to participating in the event as a seller.

Subd. 3. **Occasional sale provisions not applicable.** The isolated and occasional sale provisions under section 297A.67, subdivision 23, or under section 297A.68, subdivision 25, do not apply to a seller at an event under this section.

History: 2000 c 418 art 1 s 31

DIRECT PAY

297A.89 DIRECT PAYMENT BY PURCHASERS PERMITTED.

Subdivision 1. **Commissioner may permit.** The commissioner may permit purchasers to pay taxes imposed by this chapter directly to the commissioner. Any taxes paid by purchasers under this section are considered use taxes.

Subd. 2. **Retailer does not collect.** The retailer shall not collect the tax from a purchaser who furnishes to the retailer a copy of a certificate issued by the commissioner authorizing the purchaser to pay any sales or use tax due on purchases made by the purchaser directly to the commissioner under subdivision 1.

History: 2000 c 418 art 1 s 32; 1Sp2001 c 5 art 12 s 76

297A.90 INTERSTATE MOTOR CARRIERS AS RETAILERS.

Subdivision 1. **Registration; records.** (a) A person who is engaged in interstate for-hire transportation of tangible personal property or passengers by motor vehicle may, under rules prescribed by the commissioner, register as a retailer and pay the taxes imposed by this chapter in accordance with this section. Any taxes paid under this section are use taxes.

(b) As used in this section, "person" means:

(1) one who possesses a certificate or permit or has completed a registration process that authorizes for-hire transportation of property or passengers from the United States Department of Transportation or the Department of Transportation;

(2) one who transports commodities defined as "exempt" in for-hire transportation in interstate commerce; or

(3) one who transports tangible personal property in interstate commerce, pursuant to contracts with persons described in clause (1) or (2).

Persons qualifying under clause (2) or (3) must maintain on a current basis the same type of mileage records that are required by persons specified in clause (1) by the United States Department of Transportation.

(c) Persons who in the course of their business are transporting solely their own goods in interstate commerce may also register as retailers under rules prescribed by the commissioner and pay the taxes imposed by this chapter in accordance with this section.

Subd. 2. Payment of tax. (a) Persons who are registered as retailers may make purchases in this state or import property into this state without payment of the sales or use taxes imposed by this chapter at the time of purchase or importation, if the purchases or importations come within the provisions of this section and are made in strict compliance with the rules of the commissioner.

(b) A person described in subdivision 1 may elect to pay directly to the commissioner any sales or use tax that may be due under this chapter for the acquisition of mobile transportation equipment and parts and accessories attached or to be attached to such equipment registered under section 168.187.

(c) The total cost of such equipment and parts and accessories attached or to be attached to such equipment must be multiplied by a fraction. The numerator of the fraction is the Minnesota mileage as reported on the current pro rata application provided for in section 168.187 and the denominator of the fraction is the total mileage reported on the current pro rata registration application. The amount so determined must be multiplied by the tax rate to obtain the tax due.

In computing the tax under this section "sales price" does not include the amount of any tax, except any manufacturer's or importer's excise tax, imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer.

(d) A retailer covered by this section shall make a return and remit to the commissioner the tax due for the preceding calendar month in accordance with sections 289A.11 and 289A.20, subdivision 4.

Subd. 3. Registration subsequent to payment of tax. A person who has paid the tax under this chapter or chapter 297B and who meets the requirements of this section at the time of the sale, but was not registered under this section at the time of the sale, may register as a retailer, make a return, and file for a refund of the difference between the tax calculated under this chapter or chapter 297B and the tax calculated under subdivision 2.

Subd. 4. Agreement with commissioner of public safety. Notwithstanding subdivisions 1 to 3, the commissioner may enter into an agreement with the commissioner of public safety whereby, upon approval of both commissioners, the commissioner of public safety shall collect the sales tax on motor vehicles from persons defined in subdivision 1. For the purpose of collecting the tax, the commissioner of public safety shall act as the agent of the commissioner of revenue and shall be subject to all rules consistent with this chapter that may be prescribed by the commissioner.

History: 2000 c 418 art 1 s 33; 2001 c 213 s 30; 1Sp2001 c 5 art 12 s 77

ENFORCEMENT

297A.91 SEIZURE; COURT REVIEW.

Subdivision 1. Seizure of property used in illegal transport. (a) If the retailer does not have a sales or use tax permit and has been engaging in transporting personal property into the state without payment of the tax, the commissioner of revenue or the commissioner's agents may seize in the name of the state any truck, automobile, or means of transportation not owned or operated by a for-hire carrier, used in the illegal

importation and transportation of any tangible personal property by a retailer or the retailer's agent or employee. The commissioner may demand the forfeiture and sale of the truck, automobile, or other means of transportation together with the property being transported illegally, unless the owner establishes to the satisfaction of the commissioner or the court that the owner had no notice or knowledge or reason to believe that the vehicle was used or intended to be used in any such violation.

(b) Within ten days after the seizure, the person making the seizure shall serve by certified mail an inventory of the vehicle and property seized on the person from whom the seizure was made, if known, and on any person known or believed to have any right, title, interest, or lien on the vehicle or property, at the last known address. The person making the seizure shall also file a copy of the inventory with the commissioner. The notice must include an explanation of the right to demand a judicial forfeiture determination.

Subd. 2. Court review of forfeiture. (a) Within 60 days after the date of service of the inventory, which is the date of mailing, the person from whom the vehicle and property were seized or any person claiming an interest in the vehicle or property may file a demand for a judicial determination of the question of whether the vehicle or property was lawfully subject to seizure and forfeiture.

(b) The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service or a copy of the complaint on the commissioner of revenue, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property or vehicle is \$7,500 or less, the claimant may file an action in conciliation court for its recovery. If the value of the seized property or vehicle is less than \$500, the claimant does not have to pay the conciliation court filing fee.

(c) The complaint must be captioned in the name of the claimant as plaintiff and the seized property or vehicle as defendant, and must state with specificity the grounds on which the claimant alleges the property or vehicle was improperly seized and the plaintiff's interest in the property or vehicle seized. No responsive pleading is required of the commissioner, and no court fees may be charged for the commissioner's appearance in the matter. The proceedings are governed by the Rules of Civil Procedure. Notwithstanding any law to the contrary, an action for the return of property or a vehicle seized under this subdivision may not be maintained by or on behalf of any person who has been served with an inventory unless the person has complied with this subdivision. The court shall hear the action without a jury and shall determine the issues of fact and law involved. If a judgment of forfeiture is entered and is not stayed pending an appeal, the commissioner may have the forfeited vehicle and property sold at public auction as provided by law.

Subd. 3. Treatment of seized property. If no demand for judicial determination is made, the vehicle and property seized are considered forfeited to the state by operation of law and may be disposed of by the commissioner as if there were a judgment of forfeiture. The forfeiture and sale of the automobile, truck, or other means of transportation, and of the property being transported illegally in it, are a penalty for the violation of this chapter. After deducting the expense of keeping the vehicle and property, the fee for seizure, and the costs of the sale, the commissioner shall pay liens from the funds collected. The commissioner shall pay all liens, according to their priority, that are established as being bona fide and as existing without the lienor having any notice or knowledge that the vehicle or property was being used or was intended to be used for or in connection with any such violation. The commissioner shall pay the balance of the proceeds into the state treasury to be credited to the general fund. The state is not liable for any liens in excess of the proceeds from the sale after allowable deductions. A sale under this section frees the vehicle and property sold from all liens.

History: 2000 c 418 art 1 s 34; 1Sp2001 c 5 art 12 s 78; art 18 s 3

297A.92 SECURITY.

Subdivision 1. **Amount of security.** To ensure compliance with the taxes imposed by this chapter, the commissioner may require a retailer subject to this chapter to deposit security with the commissioner. The security must be in the form and amount the commissioner requires, but not more than twice the retailer's estimated average liability for the period for which the returns are required to be filed, or \$10,000, whichever is less. The amount of security may be increased or decreased by the commissioner, subject to the limitations in this section.

Subd. 2. **Auctions of security.** The commissioner may sell property deposited as security at public auction if necessary to recover the amount required to be collected, including any interest and penalties. Notice of the sale must be served upon the person who deposited the security. It must be served personally, or by mail as prescribed for an order of assessment under section 289A.37, subdivision 5. After a sale any surplus above the amount due not required as security under this section must be returned to the person who deposited the security.

Subd. 3. **Bond.** In lieu of security, the commissioner may require a retailer to file a bond. The bond must be issued by a surety company authorized to transact business in this state and approved by the commissioner of commerce as to solvency and responsibility.

History: 2000 c 418 art 1 s 35; 1Sp2001 c 5 art 12 s 79

297A.93 JEOPARDY ASSESSMENT AND COLLECTION.

(a) If the commissioner has reason to believe that the person required to file the return is about to leave the state or remove the person's property from this state with the purpose of evading the tax and penalties imposed by this chapter, or that the collection of the tax will be jeopardized by delays incident to other methods of collection, the commissioner may immediately declare the person's reporting period at an end and assess a tax on the basis of the commissioner's own knowledge or information available. The commissioner may then demand immediate payment of the tax, and, if payment is not immediately made, collect the tax by any method prescribed in chapter 270.

(b) It is not a defense to an assessment made under this section that the tax period has not terminated, that the time otherwise allowed by law for filing a return has not expired, that the notices otherwise required by law for making an assessment have not been given, or that the time otherwise allowed by law for taking or prosecuting an appeal or for paying the tax has not expired.

History: 2000 c 418 art 1 s 36

DEPOSIT OF REVENUES**297A.94 DEPOSIT OF REVENUES.**

(a) Except as provided in this section, the commissioner shall deposit the revenues, including interest and penalties, derived from the taxes imposed by this chapter in the state treasury and credit them to the general fund.

(b) The commissioner shall deposit taxes in the Minnesota agricultural and economic account in the special revenue fund if:

(1) the taxes are derived from sales and use of property and services purchased for the construction and operation of an agricultural resource project; and

(2) the purchase was made on or after the date on which a conditional commitment was made for a loan guaranty for the project under section 41A.04, subdivision 3.

The commissioner of finance shall certify to the commissioner the date on which the project received the conditional commitment. The amount deposited in the loan guaranty account must be reduced by any refunds and by the costs incurred by the

Department of Revenue to administer and enforce the assessment and collection of the taxes.

(c) The commissioner shall deposit the revenues, including interest and penalties, derived from the taxes imposed on sales and purchases included in section 297A.61, subdivision 3, paragraph (g), clauses (1) and (4), in the state treasury, and credit them as follows:

(1) first to the general obligation special tax bond debt service account in each fiscal year the amount required by section 16A.661, subdivision 3, paragraph (b); and
(2) after the requirements of clause (1) have been met, the balance to the general fund.

(d) The commissioner shall deposit the revenues, including interest and penalties, collected under section 297A.64, subdivision 5, in the state treasury and credit them to the general fund. By July 15 of each year the commissioner shall transfer to the highway user tax distribution fund an amount equal to the excess fees collected under section 297A.64, subdivision 5, for the previous calendar year.

(e) For fiscal year 2001, 97 percent; for fiscal years 2002 and 2003, 87 percent; and for fiscal year 2004 and thereafter, 72.43 percent of the revenues, including interest and penalties, transmitted to the commissioner under section 297A.65, must be deposited by the commissioner in the state treasury as follows:

(1) 50 percent of the receipts must be deposited in the heritage enhancement account in the game and fish fund, and may be spent only on activities that improve, enhance, or protect fish and wildlife resources, including conservation, restoration, and enhancement of land, water, and other natural resources of the state;

(2) 22.5 percent of the receipts must be deposited in the natural resources fund, and may be spent only for state parks and trails;

(3) 22.5 percent of the receipts must be deposited in the natural resources fund, and may be spent only on metropolitan park and trail grants;

(4) three percent of the receipts must be deposited in the natural resources fund, and may be spent only on local trail grants; and

(5) two percent of the receipts must be deposited in the natural resources fund, and may be spent only for the Minnesota Zoological Garden, the Como Park Zoo and Conservatory, and the Duluth Zoo.

(f) The revenue dedicated under paragraph (e) may not be used as a substitute for traditional sources of funding for the purposes specified, but the dedicated revenue shall supplement traditional sources of funding for those purposes. Land acquired with money deposited in the game and fish fund under paragraph (e) must be open to public hunting and fishing during the open season, except that in aquatic management areas or on lands where angling easements have been acquired, fishing may be prohibited during certain times of the year and hunting may be prohibited. At least 87 percent of the money deposited in the game and fish fund for improvement, enhancement, or protection of fish and wildlife resources under paragraph (e) must be allocated for field operations.

History: 2000 c 418 art 1 s 37; 2000 c 488 art 3 s 29; 2001 c 185 s 33; 1Sp2001 c 2 s 146; 1Sp2001 c 5 art 12 s 80; 2002 c 353 s 2; 2003 c 128 art 1 s 154

LOCAL SALES AND USE TAXES

297A.95 COORDINATION OF STATE AND LOCAL SALES TAX RATES.

In preparing and distributing a sales tax schedule for use within a local jurisdiction with a separate general sales tax, the state Department of Revenue shall coordinate the state and local sales tax so that a sale of \$1 reflects a tax equal to the combination of the state and local sales tax rates. The combined sales tax on other sales amounts must also reflect the coordinated rather than the separate effects of the state and local sales taxes. The schedule must be coordinated as long as the local sales tax is in effect. If the

sales tax percentage is changed for either of the taxes, the schedule must be adjusted to reflect the change.

History: 2000 c 418 art 1 s 38

297A.96 LOCAL ADMISSIONS AND AMUSEMENT TAXES; EXEMPTION FOR NONPROFIT ORGANIZATIONS.

Amounts charged for admission to an event described in section 297A.70, subdivision 10, paragraph (a), are not subject to a tax imposed by a local unit of government or imposed on sales taking place in a single named local unit of government on sales of admissions or amusements, under a law other than a general sales tax law.

History: 2000 c 418 art 1 s 39; 2002 c 377 art 3 s 18

297A.97 [Repealed, 2003 c 127 art 6 s 18]

297A.98 LOCAL GOVERNMENTS EXEMPT FROM LOCAL SALES TAXES.

Notwithstanding any other law, ordinance, or charter provision, a political subdivision of the state is not required to pay any general sales tax imposed by a political subdivision of the state.

History: 2000 c 418 art 1 s 41

297A.99 LOCAL SALES TAXES.

Subdivision 1. **Authorization; scope.** (a) A political subdivision of this state may impose a general sales tax if permitted by special law or if the political subdivision enacted and imposed the tax before the effective date of section 477A.016 and its predecessor provision.

(b) This section governs the imposition of a general sales tax by the political subdivision. The provisions of this section preempt the provisions of any special law:

(1) enacted before June 2, 1997, or

(2) enacted on or after June 2, 1997, that does not explicitly exempt the special law provision from this section's rules by reference.

(c) This section does not apply to or preempt a sales tax on motor vehicles or a special excise tax on motor vehicles.

Subd. 2. **Local resolution before application for authority.** Before the governing body of a political subdivision requests legislative approval of a special law for a local sales tax that is administered under this section, it shall adopt a resolution indicating its approval of the tax. The resolution must include, at a minimum, information on the proposed tax rate, how the revenues will be used, the total revenue that will be raised before the tax expires, and the estimated length of time that the tax will be in effect. This subdivision applies to local laws enacted after June 30, 1998.

Subd. 3. **Requirements for adoption, use, termination.** (a) Imposition of a local sales tax is subject to approval by voters of the political subdivision at a general election.

(b) The proceeds of the tax must be dedicated exclusively to payment of the cost of a specific capital improvement which is designated at least 90 days before the referendum on imposition of the tax is conducted.

(c) The tax must terminate after the improvement designated under paragraph (b) has been completed.

(d) After a sales tax imposed by a political subdivision has expired or been terminated, the political subdivision is prohibited from imposing a local sales tax for a period of one year. Notwithstanding subdivision 13, this paragraph applies to all local sales taxes in effect at the time of or imposed after May 26, 1999.

Subd. 4. **Tax base.** (a) The tax applies to sales taxable under this chapter that occur within the political subdivision.

(b) Taxable services are subject to a political subdivision's sales tax, if they are performed either:

- (1) within the political subdivision, or
- (2) partly within and partly without the political subdivision and more of the service is performed within the political subdivision, based on the cost of performance.

Subd. 5. **Tax rate.** (a) The tax rate is as specified in the special law authorization and as imposed by the political subdivision.

(b) The full political subdivision rate applies to any sales that are taxed at a state rate, and the political subdivision must not have more than one local sales tax rate or more than one local use tax rate. This paragraph does not apply to sales or use taxes imposed on electricity, piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Subd. 6. **Use tax.** A compensating use tax applies, at the same rate as the sales tax, on the use, storage, distribution, or consumption of tangible personal property or taxable services.

Subd. 7. **Exemptions.** (a) All goods or services that are otherwise exempt from taxation under this chapter are exempt from a political subdivision's tax.

(b) The gross receipts from the sale of tangible personal property that meets the requirement of section 297A.68, subdivision 15, are exempt, except the qualification test applies based on the boundaries of the political subdivision instead of the state of Minnesota.

(c) All mobile transportation equipment, and parts and accessories attached to or to be attached to the equipment are exempt, if purchased by a holder of a motor carrier direct pay permit under section 297A.90.

Subd. 8. **Credit for other local taxes.** If a person paid sales or use tax to another political subdivision of this state on an item subject to tax under this section, a credit applies against the tax imposed under this section. The credit equals the tax the person paid to the other political subdivision for the item.

Subd. 9. **Enforcement; collection; and administration.** (a) The commissioner of revenue shall collect the taxes subject to this section. The commissioner may collect the tax with the state sales and use tax. All taxes under this section are subject to the same penalties, interest, and enforcement provisions as apply to the state sales and use tax.

(b) A request for a refund of state sales tax paid in excess of the amount of tax legally due includes a request for a refund of the political subdivision taxes paid on the goods or services. The commissioner shall refund to the taxpayer the full amount of the political subdivision taxes paid on exempt sales or use.

Subd. 10. **Use of zip code in determining location of sale.** The lowest combined tax rate imposed in the zip code area applies if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For the purposes of this subdivision, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code of the purchaser. Notwithstanding subdivision 13, this subdivision applies to all local sales taxes without regard to the date of authorization. This subdivision does not apply when the purchased product is received by the purchaser at the business location of the seller.

Subd. 11. **Revenues; cost of collection.** The commissioner shall remit the proceeds of the tax, less refunds and a proportionate share of the cost of collection, at least quarterly, to the political subdivision. The commissioner shall deduct from the proceeds remitted an amount that equals

(1) the direct and indirect costs of the department to administer, audit, and collect the political subdivision's tax, plus

(2) the political subdivision's proportionate share of the indirect cost of administering all taxes under this section, plus

(3) the cost of constructing and maintaining a zip code or geo-code database necessary for local sales tax collections under the Streamlined Sales and Use Tax Agreement in section 297A.995.

The initial cost of constructing a database under clause (3) shall be distributed among the cities with a local sales tax based on each city's population. The commissioner shall develop a method for distributing the cost of maintaining the database among the cities with a local sales tax based on the number of boundary changes for each city.

Subd. 12. Effective dates; notification. (a) A political subdivision may impose a tax under this section starting only on the first day of a calendar quarter. A political subdivision may repeal a tax under this section stopping only on the last day of a calendar quarter.

(b) The political subdivision shall notify the commissioner of revenue at least 90 days before imposing, changing the rate of, or repealing a tax under this section.

(c) The political subdivision shall change the rate of tax imposed under this section starting only on the first day of a calendar quarter, and only after the commissioner has notified sellers at least 60 days prior to the change.

(d) The political subdivision shall apply the rate change for sales tax imposed under this section to purchases from printed catalogs, wherein the purchaser computed the tax based upon local tax rates published in the catalog, starting only on the first day of a calendar quarter, and only after the commissioner has notified sellers at least 120 days prior to the change.

(e) The political subdivision shall apply local jurisdiction boundary changes to taxes imposed under this section starting only on the first day of a calendar quarter, and only after the commissioner has notified sellers at least 60 days prior to the change.

Subd. 13. Application. This section applies to all local sales taxes that were authorized before, on, or after June 2, 1997.

History: 2000 c 418 art 1 s 42; 1Sp2001 c 5 art 12 s 81-83; 2003 c 127 art 1 s 28-30

NOTE: The amendment to subdivision 9 by Laws 2001, First Special Session chapter 5, article 12, section 82, is effective for sales and purchases made after December 31, 2005. Laws 2001, First Special Session chapter 5, article 12, section 82, the effective date, as amended by Laws 2002, chapter 377, article 3, section 23.

297A.991 REPORTING OF SALES TAX ON MINNESOTA GOVERNMENTS.

Subdivision 1. Commissioner of revenue to report. For each fiscal year, the commissioner shall estimate the amount of revenues derived from imposing the tax under this chapter and chapter 297B on state agencies and political subdivisions. The commissioner shall report this amount to the commissioner of finance before the time for filing reports for the fiscal year with the United States Department of Commerce.

Subd. 2. Commissioner of finance to report. In reporting the sales tax and sales tax on motor vehicles collections to the United States Department of Commerce, the commissioner of finance shall exclude the estimated amount from the sales and motor vehicle collections. Sales tax and sales tax on motor vehicles revenues received from political subdivisions must be reported as intergovernmental grants or similar intergovernmental revenue. The amount of the sales tax and sales tax on motor vehicles paid by state agencies must be reported as reduced state expenditures.

History: 2000 c 418 art 1 s 43

297A.995 UNIFORM SALES AND USE TAX ADMINISTRATION ACT.

Subdivision 1. Title. This section may be cited as the Uniform Sales and Use Tax Administration Act.

Subd. 2. Definitions. As used in this section:

(a) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(b) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(c) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

Subd. 3. **Legislative finding.** The legislature finds that this state should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Subd. 4. **Authority to enter agreement.** The commissioner of revenue is authorized and directed to enter into the agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the commissioner is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The commissioner of revenue is further directed to negotiate the agreement with the express intention of ensuring uniform sales and use taxation as applied to like-kind transactions.

The commissioner is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The following officials are authorized to represent this state before the other states that are signatories to the agreement:

- (1) the commissioner or the commissioner's designee;
- (2) the chair of the house committee with jurisdiction over taxes or the house chair's designee; and
- (3) the chair of the senate committee with jurisdiction over taxes or the senate chair's designee.

Subd. 5. **Relationship to state law.** No provision of the agreement authorized by this bill in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

Subd. 6. **Agreement requirements.** The commissioner of revenue shall not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(a) **Uniform state rate.** The agreement must set restrictions to achieve more uniform state rates through the following:

- (1) limiting the number of state rates;
 - (2) eliminating maximums on the amount of state tax that is due on a transaction;
- and
- (3) eliminating thresholds on the application of state tax.

(b) **Uniform standards.** The agreement must establish uniform standards for the following:

- (1) the sourcing of transactions to taxing jurisdictions;
- (2) the administration of exempt sales;
- (3) the allowances a seller can take for bad debts; and
- (4) sales and use tax returns and remittances.

(c) **Uniform definitions.** The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(d) **Central registration.** The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) **No nexus attribution.** The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(f) **Local sales and use taxes.** The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) restricting and eliminating variances between the state and local tax bases;

(2) requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(3) restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(4) providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(g) **Monetary allowances.** The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(h) **State compliance.** The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(i) **Consumer privacy.** The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(j) **Advisory councils.** The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Subd. 7. **Cooperating sovereigns.** The agreement authorized by this bill is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Subd. 8. **Limited binding and beneficial effect.** (a) The agreement authorized by this bill binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with paragraph (a), no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state, on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or its application, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

Subd. 9. **Seller and third-party liability.** (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified

service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Subd. 10. **Relief from certain liability.** Notwithstanding subdivision 9, sellers and certified service providers are relieved from liability to the state for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider (1) relying on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments, or (2) relying on erroneous data provided by the state in its taxability matrix concerning the taxability of products and services.

History: *1Sp2001 c 5 art 12 s 84; 2002 c 377 art 3 s 19; 2003 c 127 art 1 s 31*