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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 1980

March 23, 2009

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The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; sales and use; taxing digital products; amending Minnesota
1.3 Statutes 2008, section 297A.61, subdivision 3, by adding subdivisions; repealing
1.4 Minnesota Statutes 2008, section 297A.61, subdivision 45.

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

1.6 Section 1. Minnesota Statutes 2008, section 297A.61, subdivision 3, is amended to
1.7 read:

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

1.10 (b) Sale and purchase include:

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

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

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

1.19 (d) Sale and purchase include the preparing for a consideration of food.

1.20 Notwithstanding section 297A.67, subdivision 2, taxable food includes, but is not limited
1.21 to, the following:

1.22 (1) prepared food sold by the retailer;

1.23 (2) soft drinks;

1.24 (3) candy;

2.1 (4) dietary supplements; and

2.2 (5) all food sold through vending machines.

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

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

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

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

2.12 (2) lodging and related services by a hotel, rooming house, resort, campground,
2.13 motel, or trailer camp, including furnishing the guest of the facility with access to
2.14 telecommunication services, and the granting of any similar license to use real property
2.15 in a specific facility, other than the renting or leasing of it for a continuous period of
2.16 30 days or more under an enforceable written agreement that may not be terminated
2.17 without prior notice;

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

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

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

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

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

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

2.34 (6) services as provided in this clause:

2.35 (i) laundry and dry cleaning services including cleaning, pressing, repairing, altering,
2.36 and storing clothes, linen services and supply, cleaning and blocking hats, and carpet,

3.1 drapery, upholstery, and industrial cleaning. Laundry and dry cleaning services do not
3.2 include services provided by coin operated facilities operated by the customer;

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

3.6 (iii) building and residential cleaning, maintenance, and disinfecting services and
3.7 pest control and exterminating services;

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

3.14 (v) pet grooming services;

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

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

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

3.26 In applying the provisions of this chapter, the terms "tangible personal property"
3.27 and "retail sale" include taxable services listed in clause (6), items (i) to (vi) and (viii),
3.28 and the provision of these taxable services, unless specifically provided otherwise.

3.29 Services performed by an employee for an employer are not taxable. Services performed
3.30 by a partnership or association for another partnership or association are not taxable if
3.31 one of the entities owns or controls more than 80 percent of the voting power of the
3.32 equity interest in the other entity. Services performed between members of an affiliated
3.33 group of corporations are not taxable. For purposes of the preceding sentence, "affiliated
3.34 group of corporations" means those entities that would be classified as members of an
3.35 affiliated group as defined under United States Code, title 26, section 1504, disregarding
3.36 the exclusions in section 1504(b).

4.1 For purposes of clause (5), "road construction" means construction of (1) public
4.2 roads, (2) cartways, and (3) private roads in townships located outside of the seven-county
4.3 metropolitan area up to the point of the emergency response location sign.

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

4.8 (i) A sale and a purchase includes the furnishing for a consideration of
4.9 telecommunications services, ancillary services associated with telecommunication
4.10 services, cable television services, and direct satellite services, ~~and ring tones.~~

4.11 Telecommunication services include, but are not limited to, the following services,
4.12 as defined in section 297A.669: air-to-ground radiotelephone service, mobile
4.13 telecommunication service, postpaid calling service, prepaid calling service, prepaid
4.14 wireless calling service, and private communication services. The services in this
4.15 paragraph are taxed to the extent allowed under federal law.

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

4.19 (k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer
4.20 to a customer when (1) the vehicle is rented by the customer for a consideration, or (2)
4.21 the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section
4.22 65B.29, subdivision 1, clause (1).

4.23 (l) A sale and a purchase includes the furnishing for a consideration of specified
4.24 digital products and additional digital products and granting the right for a consideration
4.25 to use specified digital products and other digital products on a temporary or permanent
4.26 basis and regardless of whether the purchaser is required to make continued payments
4.27 for such right.

4.28 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
4.29 June 30, 2009.

4.30 Sec. 2. Minnesota Statutes 2008, section 297A.61, is amended by adding a subdivision
4.31 to read:

4.32 **Subd. 47. Specified digital products.** (a) "Specified digital products" means
4.33 digital audiovisual works, digital audio works, and digital books which are delivered
4.34 electronically.

4.35 (b) For purposes of this subdivision the following terms have the meaning given:

5.1 (1) "digital audiovisual works" mean a series of related images which, when shown
5.2 in succession, impart an impression of motion, together with accompanying sounds, if any;

5.3 (2) "digital audio works" mean works that result from the fixation of a series of
5.4 musical, spoken, or other sounds, including ringtones;

5.5 (3) "digital books" mean works that are generally recognized in the ordinary and
5.6 usual sense as books; and

5.7 (4) "ringtones" means digitized sound files that are downloaded onto a device and
5.8 that may be used to alert the customer with respect to a communication.

5.9 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
5.10 June 30, 2009.

5.11 Sec. 3. Minnesota Statutes 2008, section 297A.61, is amended by adding a subdivision
5.12 to read:

5.13 Subd. 48. **Other digital products.** "Other digital products" means the following
5.14 items when delivered electronically:

5.15 (1) greeting cards;

5.16 (2) finished artwork;

5.17 (3) periodicals; and

5.18 (4) video or electronic games.

5.19 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
5.20 June 30, 2009.

5.21 Sec. 4. **REPEALER.**

5.22 Minnesota Statutes 2008, section 297A.61, subdivision 45, is repealed.

5.23 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
5.24 June 30, 2009.

APPENDIX

Repealed Minnesota Statutes: 09-3021

297A.61 DEFINITIONS.

Subd. 45. **Ring tone.** "Ring tone" means a digitized sound file that is downloaded onto a device and that may be used to alert the customer of a telecommunication service with respect to a communication.