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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 349

01/19/2017 Authored by McDonald and Bahr, C., 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; repealing the tax on digital products; amending
1.3 Minnesota Statutes 2016, sections 297A.61, subdivisions 3, 4, 38; 297A.668,
1.4 subdivisions 1, 2, 6a, 7; 297A.669, subdivision 14a; repealing Minnesota Statutes
1.5 2016, section 297A.61, subdivisions 50, 51, 52, 53, 54, 55, 56.

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

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

1.8 Subd. 3. Sale and purchase. (a) "Sale" and "purchase" include, but are not limited to,
1.9 each of the transactions listed in this subdivision. In applying the provisions of this chapter,
1.10 the terms "tangible personal property" and "retail sale" include the taxable services listed
1.11 in paragraph (g), clause (6), items (i) to (vi) and (viii), and the provision of these taxable
1.12 services, unless specifically provided otherwise. Services performed by an employee for
1.13 an employer are not taxable. Services performed by a partnership or association for another
1.14 partnership or association are not taxable if one of the entities owns or controls more than
1.15 80 percent of the voting power of the equity interest in the other entity. Services performed
1.16 between members of an affiliated group of corporations are not taxable. For purposes of
1.17 the preceding sentence, "affiliated group of corporations" means those entities that would
1.18 be classified as members of an affiliated group as defined under United States Code, title
1.19 26, section 1504, disregarding the exclusions in section 1504(b).

1.20 (b) Sale and purchase include:

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

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

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

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

2.9 (1) prepared food sold by the retailer;

2.10 (2) soft drinks;

2.11 (3) candy;

2.12 (4) dietary supplements; and

2.13 (5) all food sold through vending machines.

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

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

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

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

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

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

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

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

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

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

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

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

3.15 (i) public roads;

3.16 (ii) cartways; and

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

3.19 (6) services as provided in this clause:

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

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

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

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

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

4.3 (v) pet grooming services;

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

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

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

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

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

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

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

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

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

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

5.8 Sec. 2. Minnesota Statutes 2016, section 297A.61, subdivision 4, is amended to read:

5.9 Subd. 4. **Retail sale.** (a) A "retail sale" means:

5.10 (1) any sale, lease, or rental of tangible personal property for any purpose, other than  
5.11 resale, sublease, or subrent of items by the purchaser in the normal course of business as  
5.12 defined in subdivision 21; and

5.13 (2) any sale of a service enumerated in subdivision 3, for any purpose other than resale  
5.14 by the purchaser in the normal course of business as defined in subdivision 21.

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

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

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

5.24 (e) A sale of carpeting, linoleum, or similar floor covering to a person who provides for  
5.25 installation of the floor covering is a retail sale and not a sale for resale since a sale of floor  
5.26 covering which includes installation is a contract for the improvement of real property.

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

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

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

6.5 (i) A sale of tangible personal property used in conducting lawful gambling under chapter  
6.6 349 or the State Lottery under chapter 349A, including, but not limited to, property given  
6.7 as promotional items, is a retail sale and is not considered a sale of property for resale.

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

6.11 (k) In the case of a lease, a retail sale occurs (1) when an obligation to make a lease  
6.12 payment becomes due under the terms of the agreement or the trade practices of the lessor  
6.13 or (2) in the case of a lease of a motor vehicle, as defined in section 297B.01, subdivision  
6.14 11, but excluding vehicles with a manufacturer's gross vehicle weight rating greater than  
6.15 10,000 pounds and rentals of vehicles for not more than 28 days, at the time the lease is  
6.16 executed.

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

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

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

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

6.32 (3) books and records are maintained primarily for tax purposes when the books and  
6.33 records identify taxable and nontaxable portions of the price, but the seller maintains other

7.1 books and records that identify different prices attributable to the distinct products included  
7.2 in the same bundled transaction.

7.3 (n) A sale of motor vehicle repair paint and materials by a motor vehicle repair or body  
7.4 shop business is a retail sale and the sales tax is imposed on the gross receipts from the retail  
7.5 sale of the paint and materials. The motor vehicle repair or body shop that purchases motor  
7.6 vehicle repair paint and motor vehicle repair materials for resale must either:

7.7 (1) separately state each item of paint and each item of materials, and the sales price of  
7.8 each, on the invoice to the purchaser; or

7.9 (2) in order to calculate the sales price of the paint and materials, use a method which  
7.10 estimates the amount and monetary value of the paint and materials used in the repair of  
7.11 the motor vehicle by multiplying the number of labor hours by a rate of consideration for  
7.12 the paint and materials used in the repair of the motor vehicle following industry standard  
7.13 practices that fairly calculate the gross receipts from the retail sale of the motor vehicle  
7.14 repair paint and motor vehicle repair materials. An industry standard practice fairly calculates  
7.15 the gross receipts if the sales price of the paint and materials used or consumed in the repair  
7.16 of a motor vehicle equals or exceeds the purchase price paid by the motor vehicle repair or  
7.17 body shop business. Under this clause, the invoice must either separately state the "paint  
7.18 and materials" as a single taxable item, or separately state "paint" as a taxable item and  
7.19 "materials" as a taxable item. This clause does not apply to wholesale transactions at an  
7.20 auto auction facility.

7.21 ~~(o) A sale of specified digital products or other digital products to an end user with or~~  
7.22 ~~without rights of permanent use and regardless of whether rights of use are conditioned~~  
7.23 ~~upon payment by the purchaser is a retail sale. When a digital code has been purchased that~~  
7.24 ~~relates to specified digital products or other digital products, the subsequent receipt of or~~  
7.25 ~~access to the related specified digital products or other digital products is not a retail sale.~~

7.26 ~~(p)~~ (o) A payment made to a cooperative electric association or public utility as a  
7.27 contribution in aid of construction is a contract for improvement to real property and is not  
7.28 a retail sale.

7.29 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
7.30 30, 2017.

7.31 Sec. 3. Minnesota Statutes 2016, section 297A.61, subdivision 38, is amended to read:

7.32 Subd. 38. **Bundled transaction.** (a) "Bundled transaction" means the retail sale of two  
7.33 or more products when the products are otherwise distinct and identifiable, and the products

8.1 are sold for one nonitemized price. As used in this subdivision, "product" includes tangible  
8.2 personal property, services, and intangibles, ~~and digital goods, including specified digital~~  
8.3 ~~products or other digital products~~, but does not include real property or services to real  
8.4 property. A bundled transaction does not include the sale of any products in which the sales  
8.5 price varies, or is negotiable, based on the selection by the purchaser of the products included  
8.6 in the transaction.

8.7 (b) For purposes of this subdivision, "distinct and identifiable" products does not include:

8.8 (1) packaging and other materials, such as containers, boxes, sacks, bags, and bottles,  
8.9 wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products  
8.10 and are incidental or immaterial to the retail sale. Examples of packaging that are incidental  
8.11 or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags, and express  
8.12 delivery envelopes and boxes;

8.13 (2) a promotional product provided free of charge with the required purchase of another  
8.14 product. A promotional product is provided free of charge if the sales price of another  
8.15 product, which is required to be purchased in order to receive the promotional product, does  
8.16 not vary depending on the inclusion of the promotional product; and

8.17 (3) items included in the definition of sales price.

8.18 (c) For purposes of this subdivision, the term "one nonitemized price" does not include  
8.19 a price that is separately identified by product on binding sales or other supporting  
8.20 sales-related documentation made available to the customer in paper or electronic form  
8.21 including but not limited to an invoice, bill of sale, receipt, contract, service agreement,  
8.22 lease agreement, periodic notice of rates and services, rate card, or price list.

8.23 (d) A transaction that otherwise meets the definition of a bundled transaction is not a  
8.24 bundled transaction if it is:

8.25 (1) the retail sale of tangible personal property and a service and the tangible personal  
8.26 property is essential to the use of the service, and is provided exclusively in connection with  
8.27 the service, and the true object of the transaction is the service;

8.28 (2) the retail sale of services if one service is provided that is essential to the use or  
8.29 receipt of a second service and the first service is provided exclusively in connection with  
8.30 the second service and the true object of the transaction is the second service;

8.31 (3) a transaction that includes taxable products and nontaxable products and the purchase  
8.32 price or sales price of the taxable products is de minimis; or



9.1 (4) the retail sale of exempt tangible personal property and taxable tangible personal  
9.2 property if:

9.3 (i) the transaction includes food and food ingredients, drugs, durable medical equipment,  
9.4 mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical  
9.5 supplies; and

9.6 (ii) the seller's purchase price or sales price of the taxable tangible personal property is  
9.7 50 percent or less of the total purchase price or sales price of the bundled tangible personal  
9.8 property. Sellers must not use a combination of the purchase price and sales price of the  
9.9 tangible personal property when making the 50 percent determination for a transaction.

9.10 (e) For purposes of this subdivision, "purchase price" means the measure subject to use  
9.11 tax on purchases made by the seller, and "de minimis" means that the seller's purchase price  
9.12 or sales price of the taxable products is ten percent or less of the total purchase price or sales  
9.13 price of the bundled products. Sellers shall use either the purchase price or the sales price  
9.14 of the products to determine if the taxable products are de minimis. Sellers must not use a  
9.15 combination of the purchase price and sales price of the products to determine if the taxable  
9.16 products are de minimis. Sellers shall use the full term of a service contract to determine if  
9.17 the taxable products are de minimis.

9.18 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
9.19 30, 2017.

9.20 Sec. 4. Minnesota Statutes 2016, section 297A.668, subdivision 1, is amended to read:

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

9.27 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
9.28 30, 2017.

9.29 Sec. 5. Minnesota Statutes 2016, section 297A.668, subdivision 2, is amended to read:

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

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

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

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

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

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

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

10.27 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
10.28 30, 2017.

10.29 Sec. 6. Minnesota Statutes 2016, section 297A.668, subdivision 6a, is amended to read:

10.30 Subd. 6a. **Multiple points of use.** (a) Notwithstanding the provisions of subdivisions 2  
10.31 and 3, a business purchaser that has not received authorization to pay the tax directly to the  
10.32 commissioner may use an exemption certificate indicating multiple points of use if:

11.1 (1) the purchaser knows at the time of its purchase of a ~~digital good~~, computer software  
 11.2 delivered electronically, or a service that the good or service will be concurrently available  
 11.3 for use in more than one taxing jurisdiction; and

11.4 (2) the purchaser delivers to the seller the exemption certificate indicating multiple points  
 11.5 of use at the time of purchase.

11.6 (b) Upon receipt of the fully completed exemption certificate indicating multiple points  
 11.7 of use, the seller is relieved of the obligation to collect, pay, or remit the applicable tax and  
 11.8 the purchaser is obligated to collect, pay, or remit the applicable tax on a direct pay basis.  
 11.9 The provisions of section 297A.665 apply to this paragraph.

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

11.14 (d) The purchaser shall provide the exemption certificate indicating multiple points of  
 11.15 use to the seller at the time of purchase.

11.16 (e) A purchaser that has received authorization to pay the tax directly to the commissioner  
 11.17 is not required to deliver to the seller an exemption certificate indicating multiple points of  
 11.18 use. A purchaser that has received authorization to pay the tax directly to the commissioner  
 11.19 shall follow the provisions of paragraph (c) in apportioning the tax due on a ~~digital good~~,  
 11.20 computer software delivered electronically, or a service that will be concurrently available  
 11.21 for use in more than one taxing jurisdiction.

11.22 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
 11.23 30, 2017.

11.24 Sec. 7. Minnesota Statutes 2016, section 297A.668, subdivision 7, is amended to read:

11.25 Subd. 7. **Advertising and promotional direct mail.** (a) Notwithstanding other  
 11.26 subdivisions of this section, the provisions in paragraphs (b) to (e) apply to the sale of  
 11.27 advertising and promotional direct mail. "Advertising and promotional direct mail" means  
 11.28 printed material that is direct mail as defined in section 297A.61, subdivision 35, the primary  
 11.29 purpose of which is to attract public attention to a product, person, business, or organization,  
 11.30 or to attempt to sell, popularize, or secure financial support for a person, business,  
 11.31 organization, or product. "Product" includes tangible personal property, a ~~digital product~~  
 11.32 ~~transferred electronically~~, or a service.

12.1 (b) A purchaser of advertising and promotional direct mail may provide the seller with  
12.2 one of the following:

12.3 (1) a fully completed exemption certificate as described in section 297A.72 indicating  
12.4 that the purchaser is authorized to pay any sales or use tax due on purchases made by the  
12.5 purchaser directly to the commissioner under section 297A.89;

12.6 (2) a fully completed exemption certificate claiming an exemption for direct mail; or

12.7 (3) information showing the jurisdictions to which the advertising and promotional direct  
12.8 mail is to be delivered to recipients.

12.9 (c) In the absence of bad faith, if the purchaser provides one of the exemption certificates  
12.10 indicated in paragraph (b), clauses (1) and (2), the seller is relieved of all obligations to  
12.11 collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the  
12.12 tax on any transaction involving advertising and promotional direct mail to which the  
12.13 certificate applies. The purchaser shall source the sale to the jurisdictions to which the  
12.14 advertising and promotional direct mail is to be delivered to the recipients of the mail, and  
12.15 shall report and pay any applicable tax due.

12.16 (d) If the purchaser provides the seller information showing the jurisdictions to which  
12.17 the advertising and promotional direct mail is to be delivered to recipients, the seller shall  
12.18 source the sale to the jurisdictions to which the advertising and promotional direct mail is  
12.19 to be delivered and shall collect and remit the applicable tax. In the absence of bad faith,  
12.20 the seller is relieved of any further obligation to collect any additional tax on the sale of  
12.21 advertising and promotional direct mail where the seller has sourced the sale according to  
12.22 the delivery information provided by the purchaser.

12.23 (e) If the purchaser does not provide the seller with any of the items listed in paragraph  
12.24 (b), the sale shall be sourced under subdivision 2, paragraph (f). Nothing in this paragraph  
12.25 limits a purchaser's obligation for sales or use tax to any state to which the direct mail is  
12.26 delivered.

12.27 (f) This subdivision does not apply to printed materials that result from developing  
12.28 billing information or providing any data processing service that is more than incidental to  
12.29 producing the printed materials, regardless of whether advertising and promotional direct  
12.30 mail is included in the same mailing.

12.31 (g) If a transaction is a bundled transaction that includes advertising and promotional  
12.32 direct mail, this subdivision applies only if the primary purpose of the transaction is the sale  
12.33 of products or services that meet the definition of advertising and promotional direct mail.

13.1 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
13.2 30, 2017.

13.3 Sec. 8. Minnesota Statutes 2016, section 297A.669, subdivision 14a, is amended to read:

13.4 Subd. 14a. **Prepaid wireless calling service.** "Prepaid wireless calling service," for  
13.5 purposes of this section, means a telecommunications service that:

13.6 (1) provides the right to utilize mobile wireless service as well as other  
13.7 nontelecommunications services, including ~~the download of digital products delivered~~  
13.8 ~~electronically, content, and ancillary services;~~

13.9 (2) must be paid for in advance; and

13.10 (3) is sold in predetermined units or dollars of which the number declines with use in a  
13.11 known amount.

13.12 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
13.13 30, 2017.

13.14 Sec. 9. **REPEALER.**

13.15 Minnesota Statutes 2016, section 297A.61, subdivisions 50, 51, 52, 53, 54, 55, and 56,  
13.16 are repealed.

13.17 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
13.18 30, 2017.

**297A.61 DEFINITIONS.**

Subd. 50. **Digital audio works.** "Digital audio works" means works that result from a fixation of a series of musical, spoken, or other sounds, that are transferred electronically. Digital audio works includes such items as the following which may either be prerecorded or live: songs, music, readings of books or other written materials, speeches, ring tones, or other sound recordings. Digital audio works does not include audio greeting cards sent by electronic mail. Unless the context provides otherwise, in this chapter digital audio works includes the digital code, or a subscription to or access to a digital code, for receiving, accessing, or otherwise obtaining digital audio works.

Subd. 51. **Digital audiovisual works.** "Digital audiovisual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. Digital audiovisual works includes such items as motion pictures, movies, musical videos, news and entertainment, and live events. Digital audiovisual works does not include video greeting cards sent by electronic mail. Unless the context provides otherwise, in this chapter digital audiovisual works includes the digital code, or a subscription to or access to a digital code, for receiving, accessing, or otherwise obtaining digital audiovisual works.

Subd. 52. **Digital books.** "Digital books" means any literary works, other than digital audiovisual works or digital audio works, expressed in words, numbers, or other verbal or numerical symbols or indicia so long as the product is generally recognized in the ordinary and usual sense as a "book." It includes works of fiction and nonfiction and short stories. It does not include periodicals, magazines, newspapers, or other news or information products, chat rooms, or weblogs. Unless the context provides otherwise, in this chapter digital books includes the digital code, or a subscription to or access to a digital code, for receiving, accessing, or otherwise obtaining digital books.

Subd. 53. **Digital code.** "Digital code" means a code which provides a purchaser with a right to obtain one or more specified digital products or other digital products. A digital code may be transferred electronically, such as through electronic mail, or it may be transferred on a tangible medium, such as on a plastic card, a piece of paper or invoice, or imprinted on another product. A digital code is not a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser, and it is not a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select a digital product of an indicated cash value. The end user of a digital code is any purchaser except one who receives the contractual right to redistribute a digital product which is the subject of the transaction.

Subd. 54. **Other digital products.** "Other digital products" means the following items when transferred electronically:

- (1) greeting cards; and
- (2) online video or electronic games.

Subd. 55. **Specified digital products.** "Specified digital products" means digital audio works, digital audiovisual works, and digital books that are transferred electronically to a customer.

Subd. 56. **Transferred electronically.** "Transferred electronically" means obtained by the purchaser by means other than tangible storage media. For purposes of this subdivision, it is not necessary that a copy of the product be physically transferred to the purchaser. A product will be considered to have been transferred electronically to a purchaser if the purchaser has access to the product.