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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2423

02/27/2014 Authored by Lesch, Freiberg, Simonson and Davnie
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; sales and use; modifying the applicability of the exemption
1.3 for certain construction contracts; clarifying the exemption for sales to
1.4 government; amending Minnesota Statutes 2012, section 297A.71, subdivision 1,
1.5 by adding a subdivision; Minnesota Statutes 2013 Supplement, section 297A.70,
1.6 subdivision 2; repealing Minnesota Rules, part 8130.1200, subpart 3.

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

1.8 Section 1. Minnesota Statutes 2013 Supplement, section 297A.70, subdivision 2,
1.9 is amended to read:

1.10 Subd. 2. **Sales to government.** (a) All sales, except those listed in paragraph (b),
1.11 to, on behalf of, or for use by the following governments and political subdivisions, or
1.12 to, on behalf of, or for use by the listed agencies or instrumentalities of governments and
1.13 political subdivisions, are exempt:

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

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

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

1.22 (4) the Metropolitan Council, for its purchases of vehicles and repair parts to equip
1.23 operations provided for in section 473.4051;

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

2.1 (6) public libraries, public library systems, multicounty, multitype library systems
 2.2 as defined in section 134.001, county law libraries under chapter 134A, state agency
 2.3 libraries, the state library under section 480.09, and the Legislative Reference Library.

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

2.5 ~~(1) building, construction, or reconstruction materials purchased by a contractor~~
 2.6 ~~or a subcontractor as a part of a lump-sum contract or similar type of contract with a~~
 2.7 ~~guaranteed maximum price covering both labor and materials for use in the construction,~~
 2.8 ~~alteration, or repair of a building or facility;~~

2.9 ~~(2)~~ (1) construction materials purchased by tax exempt entities or their contractors
 2.10 to be used in constructing buildings or facilities which will not be used principally by
 2.11 the tax exempt entities;

2.12 ~~(3)~~ (2) the leasing of a motor vehicle as defined in section 297B.01, subdivision 11,
 2.13 except for leases entered into by the United States or its agencies or instrumentalities;

2.14 ~~(4)~~ (3) lodging as defined under section 297A.61, subdivision 3, paragraph (g), clause
 2.15 (2), and prepared food, candy, soft drinks, and alcoholic beverages as defined in section
 2.16 297A.67, subdivision 2, except for lodging, prepared food, candy, soft drinks, and alcoholic
 2.17 beverages purchased directly by the United States or its agencies or instrumentalities; or

2.18 ~~(5)~~ (4) goods or services purchased by a local government as inputs to goods and
 2.19 services that are generally provided by a private business and the purchases would be
 2.20 taxable if made by a private business engaged in the same activity.

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

2.24 (d) As used in this subdivision, "local governments" means cities, counties, and
 2.25 townships.

2.26 (e) As used in this subdivision, "goods or services generally provided by a private
 2.27 business" include, but are not limited to, goods or services provided by liquor stores, gas
 2.28 and electric utilities, golf courses, marinas, health and fitness centers, campgrounds, cafes,
 2.29 and laundromats. "Goods or services generally provided by a private business" do not
 2.30 include housing services, sewer and water services, wastewater treatment, ambulance and
 2.31 other public safety services, correctional services, chore or homemaking services provided
 2.32 to elderly or disabled individuals, or road and street maintenance or lighting.

2.33 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
 2.34 June 30, 2014.

2.35 Sec. 2. Minnesota Statutes 2012, section 297A.71, subdivision 1, is amended to read:

3.1 Subdivision 1. **Scope.** (a) The gross receipts from the sale of, and storage,
3.2 distribution, use, or consumption of the tangible personal property contained in this
3.3 section are specifically exempted from the taxes imposed by this chapter.

3.4 (b) Building materials, equipment, and supplies and other items exempt under
3.5 this section are exempt regardless of whether purchased by the owner or a contractor,
3.6 subcontractor, or builder. Unless otherwise provided in this section, the exemption
3.7 on qualifying purchases may be claimed through the use of an exemption certificate
3.8 prescribed by the commissioner as defined in section 297A.72, or by applying for a refund
3.9 under section 297A.75.

3.10 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
3.11 June 30, 2014.

3.12 Sec. 3. Minnesota Statutes 2012, section 297A.71, is amended by adding a subdivision
3.13 to read:

3.14 **Subd. 49. Construction materials; local government exemption.** Building,
3.15 construction, or reconstruction materials used in constructing buildings or facilities used
3.16 principally by a school district or local government as defined under section 297A.70, and
3.17 materials used in the construction, reconstruction, repair, maintenance, or improvement of
3.18 public infrastructure of any kind, including, but not limited to, roads, bridges, culverts,
3.19 drinking water facilities, and wastewater facilities, are exempt.

3.20 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
3.21 June 30, 2014.

3.22 Sec. 4. **REPEALER.**

3.23 Minnesota Rules, part 8130.1200, subpart 3, is repealed.

3.24 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
3.25 June 30, 2014.

8130.1200 SALES OF BUILDING MATERIAL, SUPPLIES, OR EQUIPMENT.

Subp. 3. **Construction contracts with exempt entities.** For construction contracts with exempt entities:

A. The exemption from the tax on the sale of tangible personal property to the United States, as well as to corporations and other institutions exempt under Minnesota Statutes, sections 297A.67 to 297A.71, does not extend to building materials, supplies, and equipment purchased by a contractor under an agreement to erect a building or to alter, repair, or improve real estate for such exempt entity unless the sale is specifically exempted under section 297A.71. However, purchases of such building materials, supplies, and equipment by exempt entities are exempt from the sales and use tax.

Example. A school district enters into a contract with a contractor for school construction. The contractor purchases materials for this job from various suppliers. The construction is clearly an alteration or improvement to real property with material purchased by the contractor for use in constructing the school. These transactions constitute retail sales and are subject to the sales tax. Had the school district purchased the materials directly, the purchase of the materials by the school district would have been exempt.

B. If an exempt entity has entered into a fixed price construction contract which covers the complete structure including the materials, and the exempt entity furnishes some or all of the materials to the contractor for a credit against the contract price, a taxable sale occurs when the exempt entity transfers the materials to the contractor.

Example. A school district enters into a contract with a contractor for the construction of a school building. The contractor not only specified the price at which the contractor agreed to deliver the completed school, but made known to the school district the portion of the total cost of construction allocated to building materials and supplies. In addition, the contractor furnished the school district with the names of the several suppliers and the descriptions and price of each item or items furnished by each of such suppliers. Thereafter, the school district purchased the specified items at the price furnished by the contractor and made payments from its own funds to the suppliers. The material and supplies so purchased were thereafter delivered to the contractor and, in return, the school district received credit against the contract price for the payments made by it.

Although the initial purchase of the material and supplies by the school district is exempt, the transfer to the contractor is a transfer of title or possession and taxable as such for the following reason: the contractor has agreed to deliver a completed structure which necessarily includes the materials; during construction of the building the materials will be in the possession of the contractor, who bears the risk of any loss of such materials during construction; and a portion of the contract price is correspondingly reduced by the cost of the materials paid to the supplier by the school district.

C. The transfer of building materials by an exempt entity to its contractor for use in connection with a contract for the erection, alteration, repair, or improvement of realty is not deemed a retail sale (and is thus exempt from the sales or use tax) provided:

- (1) the contract is for labor only;
 - (2) all incidents of ownership to the building materials remain in the exempt entity at all times;
 - (3) the contractor bears no responsibility for inherent defects in the building materials;
- and
- (4) the contractor bears no risk of loss of any of the building materials.

D. An exempt entity, in addition to contracting with a contractor for the erection of a building or the alteration or repair of real estate, may appoint and designate the contractor as purchasing agent for such exempt entity in connection with the construction contract. In such situations the department will recognize the agency relationship asserted only if the written contract clearly sets forth:

- (1) that such appointment has been made;
- (2) that title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the owner or principal at point of delivery;
- (3) that the risk of loss with respect to such materials and supplies is that of the owner or principal; and

APPENDIX

Repealed Minnesota Rule: 14-4582

(4) that the owner or principal, and not the agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner.

In the event that the contract in question does not specify as to risk of loss, other competent evidence, such as insurance coverage, will suffice.

Any contractor who has been appointed agent for the purchase of materials and supplies, as specified above, shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the obligation for payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.