

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 35

(SENATE AUTHORS: REST)

DATE	D-PG	OFFICIAL STATUS
01/14/2013	61	Introduction and first reading Referred to Taxes

1.1 A bill for an act
 1.2 relating to taxation; sales and use; reducing the sales and use tax rate; taxing
 1.3 digital products; amending Minnesota Statutes 2012, sections 297A.61,
 1.4 subdivisions 3, 10, 24, by adding subdivisions; 297A.62, subdivision 1.
 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 297A.61, subdivision 3, is amended to read:

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

1.9 (b) Sale and purchase include:

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

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

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

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

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

1.21 (1) prepared food sold by the retailer;

1.22 (2) soft drinks;

1.23 (3) candy;

1.24 (4) dietary supplements; and

2.1 (5) all food sold through vending machines.

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

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

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

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

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

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 the
2.32 delivery would be subject to the sales tax if provided by the seller of the concrete block; and

2.33 (6) services as provided in this clause:

2.34 (i) laundry and dry cleaning services including cleaning, pressing, repairing, altering,
2.35 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 including
3.9 services performed within the jurisdiction they serve by off-duty licensed peace officers as
3.10 defined in section 626.84, subdivision 1, or services provided by a nonprofit organization
3.11 for monitoring and electronic surveillance of persons placed on in-home detention
3.12 pursuant to court order or under the direction of the Minnesota Department of Corrections;

3.13 (v) pet grooming services;

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

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

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

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

3.28 Services performed by an employee for an employer are not taxable. Services performed
3.29 by a partnership or association for another partnership or association are not taxable if
3.30 one of the entities owns or controls more than 80 percent of the voting power of the
3.31 equity interest in the other entity. Services performed between members of an affiliated
3.32 group of corporations are not taxable. For purposes of the preceding sentence, "affiliated
3.33 group of corporations" means those entities that would be classified as members of an
3.34 affiliated group as defined under United States Code, title 26, section 1504, disregarding
3.35 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. Telecommunication
4.11 services include, but are not limited to, the following services, as defined in section
4.12 297A.669: air-to-ground radiotelephone service, mobile telecommunication service,
4.13 postpaid calling service, prepaid calling service, prepaid wireless calling service, and
4.14 private communication services. The services in this paragraph are taxed to the extent
4.15 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 59B.02, subdivision 11.

4.23 (l) A sale and a purchase includes the furnishing for a consideration of digital goods
4.24 or granting the right for a consideration to use digital goods on a temporary or permanent
4.25 basis, regardless of whether the purchaser is required to make continued payments for the
4.26 right. A digital good is furnished or used when the purchaser first accesses, downloads,
4.27 possesses, stores, opens, manipulates, or otherwise uses the digital good.

4.28 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
4.29 June 30, 2013.

4.30 Sec. 2. Minnesota Statutes 2012, section 297A.61, subdivision 10, is amended to read:

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

5.1 (b) Tangible personal property does not include:

5.2 (1) large ponderous machinery and equipment used in a business or production
5.3 activity which at common law would be considered to be real property;

5.4 (2) property which is subject to an ad valorem property tax;

5.5 (3) property described in section 272.02, subdivision 9, clauses (a) to (d); and

5.6 (4) property described in section 272.03, subdivision 2, clauses (3) and (5).

5.7 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
5.8 June 30, 2013.

5.9 Sec. 3. Minnesota Statutes 2012, section 297A.61, subdivision 24, is amended to read:

5.10 Subd. 24. **Telecommunications services.** (a) "Telecommunications services" means
5.11 the electronic transmission, conveyance, or routing of voice, data, audio, video, or any
5.12 other information or signals to a point, or between or among points.

5.13 (b) Telecommunications services include transmission, conveyance, or routing in
5.14 which computer processing applications are used to act on the form, code, or protocol
5.15 of the content for purposes of transmission, conveyance, or routing, without regard to
5.16 whether the service is referred to as voice over Internet protocol services or is classified by
5.17 the Federal Communications Commission as enhanced or value added.

5.18 (c) Telecommunications services do not include:

5.19 (1) data processing and information services that allow data to be generated,
5.20 acquired, stored, processed, or retrieved and delivered by an electronic transmission to
5.21 a purchaser when the purchaser's primary purpose for the underlying transaction is the
5.22 processed data or information;

5.23 (2) installation or maintenance of wiring or equipment on a customer's premises;

5.24 (3) tangible personal property;

5.25 (4) advertising, including, but not limited to, directory advertising;

5.26 (5) billing and collection services provided to third parties;

5.27 (6) Internet access service;

5.28 (7) radio and television audio and video programming services, regardless of the
5.29 medium, including the furnishing of transmission, conveyance, and routing of such
5.30 services by the programming service provider. Radio and television audio and video
5.31 programming services includes, but is not limited to, cable service as defined in United
5.32 States Code, title 47, section 522(6), and audio and video programming services delivered
5.33 by commercial mobile radio service providers, as defined in Code of Federal Regulations,
5.34 title 47, section 20.3;

5.35 (8) ancillary services; or

6.1 (9) digital products delivered electronically, including, but not limited to, software,
6.2 music, video, reading materials, or ring tones goods.

6.3 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
6.4 June 30, 2013.

6.5 Sec. 4. Minnesota Statutes 2012, section 297A.61, is amended by adding a subdivision
6.6 to read:

6.7 Subd. 49. **Digital goods.** (a) "Digital goods" means sounds, images, data, facts, or
6.8 information, or any combinations of them, that are delivered electronically, including, but
6.9 not limited to, specified digital products and digital codes.

6.10 (b) Digital goods do not include:

6.11 (1) telecommunications services;

6.12 (2) computer software; or

6.13 (3) the representation of a personal service in electronic form that primarily involves
6.14 the application of human effort originating after a customer request of service.

6.15 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
6.16 June 30, 2013.

6.17 Sec. 5. Minnesota Statutes 2012, section 297A.61, is amended by adding a subdivision
6.18 to read:

6.19 Subd. 50. **Digital code.** "Digital code" means a code obtained by any means that
6.20 provides a purchaser with the right to obtain one or more digital products, if all of the
6.21 digital products to be obtained through the use of the code have the same sales and use tax
6.22 treatment. Digital code does not include a code that represents a stored monetary value
6.23 that is deducted from a total as it is used by the purchaser. Digital code also does not
6.24 include a code that represents a redeemable card, gift card, or gift certificate that entitles
6.25 the holder to select digital products of an indicated cash value.

6.26 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
6.27 June 30, 2013.

6.28 Sec. 6. Minnesota Statutes 2012, section 297A.61, is amended by adding a subdivision
6.29 to read:

6.30 Subd. 51. **Specified digital products.** (a) "Specified digital products" means digital
6.31 audiovisual works, digital audio works, and digital books that are delivered electronically.

6.32 (b) For purposes of this subdivision:

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

7.3 (2) "digital audio works" mean works that result from the fixation of a series of
7.4 musical, spoken, or other sounds, including ring tones; and

7.5 (3) "digital books" mean works that are generally recognized in the ordinary and
7.6 usual sense as books.

7.7 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
7.8 June 30, 2013.

7.9 Sec. 7. Minnesota Statutes 2012, section 297A.62, subdivision 1, is amended to read:

7.10 Subdivision 1. **Generally.** Except as otherwise provided in subdivision 3 or in this
7.11 chapter, a sales tax of ~~6.5~~ ... percent is imposed on the gross receipts from retail sales as
7.12 defined in section 297A.61, subdivision 4, made in this state or to a destination in this
7.13 state by a person who is required to have or voluntarily obtains a permit under section
7.14 297A.83, subdivision 1.

7.15 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
7.16 June 30, 2013.