

# MINNESOTA STATUTES 1967

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## GENERAL SALES TAX AND DISTRIBUTION THEREOF 297A.01

### CHAPTER 297A

#### GENERAL SALES TAX AND DISTRIBUTION THEREOF

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**297A.01 DEFINITIONS.** Subdivision 1. The following words, terms, and phrases when used in sections 297A.01 to 297A.44 shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

Subd. 2. "Person" includes any individual, firm, partnership, joint venture, association, cooperative, social club, fraternal organization, municipal or private corporation whether organized for profit or not, estate, trusts, business trusts, receiver, trustee, syndicate, the United States, the state of Minnesota, any political subdivision of Minnesota, or any other group or combination acting as a unit, and the plural as well as the singular number.

Subd. 3. A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

(a) Any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally, and the leasing of or the granting of a license to use or consume tangible personal property, for a consideration in money or by exchange or barter;

(b) 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;

(c) The furnishing, preparing or serving for a consideration of food, meals or drinks, not including hospitals, sanitoriums, nursing homes or senior citizens homes, meals served to students and teachers at public or private schools, or the occasional meal thereof by a charitable or church organization;

(d) The granting of the privilege of admission to places of amusement or athletic events and the privilege of use of amusement devices;

(e) The furnishing for a consideration of lodging and related services by a hotel, rooming house, tourist court, motel or trailer camp and of the granting of any similar license to use real property other than the renting or leasing thereof for a continuous period of 30 days or more;

(f) The furnishing for a consideration of electricity, gas, water, or steam for use or consumption within this state, or local exchange telephone service except

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such service provided by means of coin operated telephones including sales by municipal corporations in a proprietary capacity.

Subd. 4. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business. Property utilized by the owner only by leasing such property to others or by holding it in an effort to so lease it, and which is put to no use by the owner other than resale after such lease or effort to lease, shall be considered property purchased for resale. Sales 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 are "retail sales" or "sales at retail" in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise. Meals and lunches served at public and private schools, universities, or colleges shall not constitute a retail sale or a sale at retail.

Subd. 5. "Storage" includes any keeping or retention in Minnesota for any purpose except sale in the regular course of business or subsequent use solely outside Minnesota of tangible personal property.

Subd. 6. "Use" includes the exercise of any right or power over tangible personal property, or tickets or admissions to places of amusement or athletic events, purchased from a retailer incident to the ownership of any interest in that property, except that it does not include the sale of that property in the regular course of business.

Subd. 7. "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property or tickets or admissions to places of amusement or athletic events shipped or brought into Minnesota for the purpose of subsequently being transported outside Minnesota and thereafter used solely outside Minnesota, except in the course of interstate commerce, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property to be transported outside Minnesota and not thereafter returned to a point within Minnesota, except in the course of interstate commerce.

Subd. 8. "Sales price" means the total consideration valued in money, for a retail sale whether paid in money or otherwise, excluding therefrom any amount allowed as credit for tangible personal property taken in trade for resale, without deduction for the cost of the property sold, cost of materials used, labor or service cost, interest, or discount allowed after the sale is consummated, the cost of transportation incurred prior to the time of sale, any amount for which credit is given to the purchaser by the seller, or any other expense whatsoever. A deduction may be made for charges for services that are part of the sale and for interest, financing, or carrying charges, charges for labor or services used in installing or applying the property sold or transportation charges if the transportation occurs after the retail sale of the property only if the consideration for such charges is separately stated. There shall not be included in "sales price" cash discounts allowed and taken on sales, the amount refunded either in cash or in credit for property returned by purchasers within three months of its purchase or the amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

Subd. 9. "Gross receipts" means the total amount received, in money or otherwise, for all sales at retail as measured by the sales price. Gross receipts from sales may, at the option of the taxpayer, be reported on the cash basis as the consideration is received or on the accrual basis as sales are made.

Subd. 10. "Retailer" includes every person engaged in making sales at retail as herein defined.

Subd. 11. "Tangible personal property" means corporeal personal property of any kind whatsoever, including property which is to become a fixture or which is to lose its identity by incorporation in or attachment to real property.

Subd. 12. "Commissioner" means the commissioner of taxation of the state of Minnesota.

[*Ex1967 c 32 art 13 s 1*]

**297A.02 IMPOSITION OF TAX.** There is hereby imposed an excise tax of three percent of the gross receipts of any person from sales at retail, as hereinbefore defined, made in this state after July 31, 1967. In no case shall the tax im-

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posed hereby upon the seller exceed the amount of tax which he is authorized and required by law to collect from the purchaser.

[*Ex1967 c 32 art 13 s 2*]

### **297A.03 SEPARATE STATEMENT; COLLECTION FROM PURCHASER; ADVERTISING NO TAX; MINIMUM; UNIFORM TAX COLLECTION METHODS.**

Subdivision 1. The tax shall be stated and charged separately from the sales price or charge for service and shall be collected by the seller from the purchaser insofar as practicable and shall be a debt from the purchaser to the seller recoverable at law in the same manner as other debts.

Subd. 2. It shall be unlawful for any retailer to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer, or that it will not be added to the sales price or that, if added, it or any part thereof will be refunded except that in computing the tax to be collected as the result of any transaction amounts of tax less than one half of one cent may be disregarded and amounts of tax if one half cent or more may be considered an additional cent. If the sales price of any sale at retail is 16 cents or less, no tax shall be collected. Any person violating this provision shall be guilty of a misdemeanor.

Subd. 3. Agreements between competitive retailers or the adoption of appropriate rules or regulations by organizations or associations of retailers to provide uniform methods for adding such tax or the average equivalent thereof, and which do not involve price fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of any laws of Minnesota prohibiting such agreements. The commissioner may prescribe rules for such agreements.

[*Ex1967 c 32 art 13 s 3*]

### **297A.04 APPLICATIONS; MEMBER; VENDING MACHINES; FORM.**

Every person desiring to engage in the business of making retail sales within Minnesota shall file with the commissioner an application for a permit and if such person has more than one place of business, an application for each place of business must be filed. A vending machine operator who has more than one vending machine location shall nevertheless be considered to have only one place of business for purposes of this section. The commissioner may require any person or class of persons obligated to file a use tax return under section 297A.27, subdivision 2, to file application for a permit. Every application for a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. The application shall be filed by the owner, if a natural person; by a member or partner, if the owner be an association or partnership; by a person authorized to sign the application, if the owner be a corporation.

[*Ex1967 c 32 art 13 s 4*]

**297A.05 APPLICATION FEE.** At the time of making every application the applicant shall pay to the commissioner a fee of \$1 for each permit applied for.

[*Ex1967 c 32 art 13 s 5*]

**297A.06 PERMIT.** After compliance with sections 297A.04 and 297A.05, and 297A.28, when security is required, the commissioner shall issue to each applicant a separate permit for each place of business within Minnesota. A permit shall be valid until revoked but shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

[*Ex1967 c 32 art 13 s 6*]

**297A.07 REVOCATION OF PERMITS.** Whenever any person fails to comply with any provision of sections 297A.01 to 297A.44 or any regulation of the commissioner adopted under sections 297A.01 to 297A.44, the commissioner, upon hearing, after giving the person 30 days' notice in writing specifying the time and place of hearing and the reason for the proposed revocation and requiring him to show cause why his permit or permits should not be revoked, may for reasonable cause, revoke or suspend any one or more of the permits held by such person. The notice may be served personally or by mail in the manner prescribed for service of notice of a deficiency. The commissioner shall not issue a new permit after revocation except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the aforementioned provisions and regulations. The

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commissioner may condition the issuance of a new permit to such applicant on the supplying of such security in addition to that authorized by section 297A.28 as is reasonably necessary to insure compliance with the aforementioned provisions and regulations.

[*Ex1967 c 32 art 13 s 7*]

**297A.08 SALES WITHOUT PERMITS, VIOLATIONS.** A person who engages in the business of making retail sales in Minnesota without the required permit or permits, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor.

[*Ex1967 c 32 art 13 s 8*]

**297A.09 PRESUMPTION OF TAX; BURDEN OF PROOF.** For the purpose of the proper administration of sections 297A.01 to 297A.44 and to prevent evasion of the tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale is not a sale at retail is upon the person who makes the sale, but he may take from the purchaser an exemption certificate to the effect that the property purchased is for resale or that the sale is otherwise exempt from the application of the tax imposed by sections 297A.01 to 297A.44.

[*Ex1967 c 32 art 13 s 9*]

**297A.10 EXEMPTION CERTIFICATE, DUTY OF RETAILER.** The exemption certificate will conclusively relieve the retailer from collecting and remitting the tax only if taken in good faith from a purchaser who holds the permit provided for in section 297A.06.

[*Ex1967 c 32 art 13 s 10*]

**297A.11 CONTENT AND FORM OF EXEMPTION CERTIFICATE.** The exemption certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit if any issued to the purchaser and shall indicate the general character of the property sold by the purchaser in the regular course of business and shall identify the property purchased. The certificate shall be substantially in such form as the commissioner may prescribe.

[*Ex1967 c 32 art 13 s 11*]

**297A.12 IMPROPER USE OF SUBJECT OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE.** If a purchaser who gives an exemption certificate makes any use of the subject of the purchase other than for a purpose exempted by sections 297A.01 to 297A.44, such use shall be deemed a retail sale by the purchaser as of the time of first use by him, and the sales price to him shall be deemed the gross receipts from such retail sale. If the sole non-exempt use is rental while holding for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the sales price to him.

[*Ex1967 c 32 art 13 s 12*]

**297A.13 COMMINGLING EXEMPTION CERTIFICATE GOODS.** If a purchaser gives an exemption certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

[*Ex1967 c 32 art 13 s 13*]

**297A.14 USING, STORING OR CONSUMING TANGIBLE PERSONAL PROPERTY; ADMISSIONS; UTILITIES.** For the privilege of using, storing or consuming in Minnesota tangible personal property, tickets or admissions to places of amusement and athletic events, electricity, gas, and local exchange telephone service purchased for use, storage or consumption in this state, there is hereby imposed on every person in this state a use tax at the rate of three percent of the sales price of sales at retail of any of the aforementioned items made to such person after July 31, 1967, unless the tax imposed by section 297A.02 was paid on said sales price.

[*Ex1967 c 32 art 13 s 14*]

**297A.15 LIABILITY FOR PAYMENT, CONTINUATION.** 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 maintaining a place of business in Minnesota, or

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from a retailer who is authorized by the commissioner under such rules and regulations as he may prescribe, to collect the tax, given to the purchaser pursuant to section 297A.16 relieves the purchaser of further liability for the tax to which the receipt refers.

[*Ex1967 c 32 art 13 s 15*]

**297A.16 COLLECTION OF TAX AT TIME OF SALE.** Any corporation authorized to do business in Minnesota and any retailer maintaining a place of business in Minnesota, regardless of the residence of such corporation or retailer, upon making sales of any items enumerated in section 297A.14 for storage, use or other consumption in Minnesota not exempted under sections 297A.01 to 297A.44, shall at the time of making such sales collect the use tax from the purchaser and give to the purchaser a receipt therefor in the form of a notation on the sales slip or receipt for the sales price or in such other form as prescribed by the commissioner.

[*Ex1967 c 32 art 13 s 16*]

**297A.17 TAX TO BE COLLECTED; STATUS AS DEBT.** The use tax required to be collected by the retailer constitutes a debt owed by the retailer to Minnesota and shall be a debt from the purchaser to the retailer recoverable at law in the same manner as other debts.

[*Ex1967 c 32 art 13 s 17*]

**297A.18 ADVERTISING NO TAX; MINIMUM TAX.** It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the use tax or any part thereof will be assumed or absorbed by the retailer, or that it will not be added to the sales price or that, if added, it or any part thereof will be refunded except that in computing the tax to be collected as the result of any transaction amounts of tax less than one half of one cent may be disregarded and amounts of tax of one half cent or more may be considered an additional cent.

[*Ex1967 c 32 art 13 s 18*]

**297A.19 DISPLAY OF RULES.** The rules requiring use tax to be collected by the retailer from the purchaser shall be displayed as the commissioner may by regulation or otherwise require.

[*Ex1967 c 32 art 13 s 19*]

**297A.20 VIOLATIONS.** Any person violating sections 297A.16, 297A.18, or 297A.19 shall be guilty of a misdemeanor.

[*Ex1967 c 32 art 13 s 20*]

**297A.21 REGISTRATION; INFORMATION RELATING TO BUSINESS LOCATION.** Every retailer making retail sales for storage, use or other consumption in Minnesota shall register with the commissioner and give the name and address of all agents operating in Minnesota, the location of all distribution or sales houses, offices or other places of business in Minnesota, and such other information as the commissioner may require.

[*Ex1967 c 32 art 13 s 21*]

**297A.22 PRESUMPTION OF PURPOSE OF SALE, BURDEN OF PROOF.** For the purpose of the proper administration of sections 297A.01 to 297A.44 and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that all retail sales for delivery in Minnesota are for storage, use or other consumption in Minnesota until the contrary is established. The burden of proving the contrary shall be upon the person who makes the sale but he may take from the purchaser an exemption certificate in accordance with sections 297A.09 to 297A.13.

[*Ex1967 c 32 art 13 s 22*]

**297A.23 PROPERTY BROUGHT TO STATE; PRESUMPTION; BURDEN OF PROOF.** Any purchaser of tangible personal property or any items enumerated in section 297A.14 which are shipped or brought to Minnesota by him after July 31, 1967, shall have the burden of proving that the same were not purchased from a retailer for storage, use or consumption in Minnesota.

[*Ex1967 c 32 art 13 s 23*]

**297A.24 TAXES IN OTHER STATES.** If any article of tangible personal property or any item enumerated in section 297A.14 has already been subjected to a tax by any other state in respect of its sale, storage, use or other consumption in an amount less than the tax imposed by sections 297A.01 to 297A.44, then as to

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the person who paid the tax in such other state, the provisions of section 297A.14 shall apply only at a rate measured by the difference between the rate herein fixed and the rate by which the previous tax was computed. If such tax imposed in such other state was three percent or more, then no tax shall be due from such person under section 297A.14.

[*Ex 1967 c 32 art 13 s 24*]

**297A.25 EXEMPTIONS.** Subdivision 1. The following are specifically exempted from the taxes imposed by sections 297A.01 to 297A.44:

(a) The gross receipts from the sale of food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products;

(b) The gross receipts from the sale of prescribed drugs and medicine intended for use, internal or external, in the cure, mitigation, treatment or prevention of illness or disease in human beings and products consumed by humans for the preservation of health, including prescription glasses, therapeutic and prosthetic devices, but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein.

(c) The gross receipts from the sale of and the storage, use or other consumption in Minnesota of tangible personal property, tickets, or admissions, electricity, gas, or local exchange telephone service, which under the Constitution or laws of the United States or under the Constitution of Minnesota, the state of Minnesota is prohibited from taxing;

(d) The gross receipts from the sale of tangible personal property, the ultimate destination of which is outside the state of Minnesota and which is not thereafter returned to a point within Minnesota except in the course of interstate commerce.

(f) The gross receipts from the sale of and storage, use or consumption of petroleum products upon which a tax has been imposed under the provisions of Minnesota Statutes 1965, Chapter 296, whether or not any part of said tax may be subsequently refunded;

(g) The gross receipts from the sale of clothing and wearing apparel except the following:

(i) all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof; watches; clocks; cases and movements for watches and clocks; gold, gold-plated, silver, or sterling flatware or hollow ware and silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses and binoculars.

(ii) articles made of fur on the hide or pelt, and articles of which such fur is the component material or chief value, but only if such value is more than three times the value of the next most valuable component material.

(iii) perfume, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous and toilet powders. The tax imposed by this act shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the case of babies.

(iv) trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use by travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, salesmen's sample and display cases, purses, handbags, pocketbooks, wallets, billfolds, card, pass, and key cases and toilet cases.

(h) The gross receipts from the sale of and the storage, use, or consumption of all materials, including chemicals, fuels, petroleum products, lubricants, packaging materials, feeds, seeds, fertilizers, electricity, gas and steam, used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail, whether or not the item so used becomes an ingredient or constituent part of the property produced. Such production shall include, but is not limited to, 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 and road building. Such production shall not include painting, cleaning, repairing or similar processing of property except as part of the original manufacturing process. Ma-

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chinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures used in such production and fuel, electricity, gas or steam used for space heating or lighting, are not included within this exemption;

(i) The gross receipts from the sale of and storage, use or other consumption in Minnesota of tangible personal property which is used or consumed in or becomes an ingredient or component part of any publication regularly issued at average intervals not exceeding three months, and any such publication. For purposes of this subsection, "publication" as used herein shall include, without limiting the foregoing, a legal newspaper as defined by Minnesota Statutes 1965, Section 331.02, and any supplements or enclosures with or part of said newspaper; and the gross receipts of any advertising contained therein or therewith shall be exempt. For this purpose, advertising in any such publication shall be deemed to be a service and not tangible personal property, and persons or their agents who publish or sell such newspapers shall be deemed to be engaging in a service with respect to gross receipts realized from such newsgathering or publishing activities by them, including the sale of advertising. Machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures used in such publication and fuel, electricity, gas or steam used for space heating or lighting, are not included within this exemption;

(j) The gross receipts from all sales of tangible personal property to, and all storage, use or consumption of such property by, the United States and its agencies and instrumentalities or the state of Minnesota and its agencies, instrumentalities and political subdivisions;

(k) The gross receipts from the isolated or occasional sale of tangible personal property in Minnesota not made in the normal course of business of selling that kind of property, and the storage, use, or consumption of property acquired as a result of such a sale;

(l) The gross receipts from sales of tangible personal property to, and the storage, use or other consumption of such property by persons taxed on the gross earnings basis in lieu of ad valorem taxes under the provisions of Minnesota Statutes 1965, Chapters 294 and 295, and by persons taxed for ad valorem tax purposes under the in lieu provisions of Minnesota Statutes 1965, Chapter 298; provided, however, that the exclusion granted to persons taxed under the provisions of chapter 298, shall not apply to machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, supplies, fixtures and other tangible items purchased for the purposes of administration, including, but not limited to, management, accounting, advertising, industrial and public relations functions;

(m) The gross receipts from sales of tangible personal property to, and the storage, use, or other consumption of such property by persons taxed under the provisions of Minnesota Statutes 1965, Sections 270.071 to 270.079, inclusive;

(n) The gross receipts from the sale of tangible personal property to, and the storage, use or other consumption of such property by, any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes;

(o) The gross receipts from the sale of caskets and burial vaults.

Subd. 2. This section shall not be construed to exempt the gross receipts from sales of tangible personal property purchased from the United States or any of its agencies or instrumentalities, or the state of Minnesota, its agencies, instrumentalities or political subdivisions by ultimate consumers, and such purchases are hereby declared to be subject to tax, except as they may be otherwise exempted.

Subd. 3. All articles of tangible personal property brought into Minnesota by a person who was a non-resident of this state immediately prior to bringing such property into this state for his use, storage, or consumption are hereby exempted from the tax imposed by section 297A.14.

Subd. 4. Nothing herein shall exempt the gross receipts from sales of road building materials intended for use in state trunk highway or interstate highway construction, whether purchased by the state or its contractors.

[*Ex*1967 c 32 art 13 s 25]

**297A.26 TIME FOR PAYMENT TO COMMISSIONER; OFFSET AGAINST OTHER TAXES.** Subdivision 1. The taxes imposed by sections 297A.01 to 297A.44 shall be due and payable to the commissioner monthly on or before the 25th day of the month next succeeding the month in which the taxable event occurred or succeeding such other reporting period as the commissioner may prescribe.

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Subd. 2. The taxpayer may offset against the taxes payable with respect to any reporting period the amount of taxes imposed by sections 297A.01 to 297A.44 previously paid as a result of any transaction the consideration for which became a debt owed to the taxpayer which became uncollectible during such reporting period, but only in proportion to the portion of such debt which became uncollectible.

[*Ex1967 c 32 art 13 s 26*]

**297A.27 RETURNS.** Subdivision 1. On or before the 25th day of each month in which taxes imposed by sections 297A.01 to 297A.44 are payable, a return for the preceding reporting period shall be filed with the commissioner in such form as the commissioner may prescribe, verified by a written declaration that it is made under the criminal penalties for wilfully making a false return. Any person making sales at retail at two or more places of business may file a consolidated return subject to such regulations as the commissioner may prescribe.

Subd. 2. For purposes of the excise tax, a return shall be filed by every retailer. For the purposes of the use tax a return shall be filed by every retailer required to collect such tax and by every person purchasing any items, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax to a retailer required to collect the tax. All returns shall be signed by the person filing the return or by his agent duly authorized in writing.

[*Ex1967 c 32 art 13 s 27*]

**297A.28 SECURITY.** Whenever he deems it necessary to insure compliance with sections 297A.01 to 297A.44 the commissioner may require a retailer subject thereto to deposit with him security in such form and in such amount as he may determine but not more than twice the estimated average liability for the period for which the returns are required to be filed, or \$10,000, whichever amount is the lesser. The amount of security may be increased or decreased by the commissioner, subject to the limitations herein provided. The commissioner may sell property deposited as security at public auction if necessary in order to recover any tax or any amount required to be collected, including interest and penalties, if any. Notice of the sale must be served upon the person who deposited the security personally, or by mail in the manner hereinafter prescribed for the service of a notice of a deficiency. After any sale any surplus above the amount due not required as security under this section shall be returned to the person who deposited the security.

[*Ex1967 c 32 art 13 s 28*]

**297A.29 RULES AND REGULATIONS.** The commissioner shall promulgate all needful rules and regulations for the administration and enforcement of sections 297A.01 to 297A.44 not inconsistent with its provisions and such regulations shall have the force and effect of law.

[*Ex1967 c 32 art 13 s 29*]

**297A.30 EXTENSIONS.** The commissioner may extend the time for filing returns and remittance of tax, deficiencies and penalties for not more than 60 days. He may require a tentative return at the time fixed for filing the regularly required return and payment of a tax therewith on the basis of such tentative return.

[*Ex1967 c 32 art 13 s 30*]

**297A.31 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS.** Subdivision 1. The commissioner shall, as soon as practicable after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return that he deems necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax found to be due exceeds the amount of the tax that has been paid, such excess shall be paid to the commissioner within 30 days after notice of the amount and demand for its payment shall have been mailed to the person making the return. If the amount of the tax found due by the commissioner shall be less than that reported as due on the return, the excess shall be refunded to the person making the return in the manner provided by section 297A.35 (except that no demand therefor shall be necessary), if he has already paid the whole of such tax, or credited against any unpaid tax; provided, that no refundment shall be made except as provided in section 297A.35 after the expiration of three years after the filing of the return.

Subd. 2. The notices and demands provided for by sections 297A.31 and 297A.33 shall contain a brief statement of the computation of the tax and shall be sent by



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registered mail to the person making the return at the address given in his return, if any, and if no such address is given, then to his last known address.

[*Ex1967 c 32 art 13 s 31*]

**297A.32 FAILURE TO FILE RETURN.** If any person required by sections 297A.01 to 297A.44 to file any return shall fail to do so within the time prescribed, or shall make, wilfully or otherwise, an incorrect, false, or fraudulent return, he shall, on the written demand of the commissioner, file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay any tax due on the basis thereof. If such person shall fail within that time to file such return or corrected return, the commissioner shall make for him a return, or corrected return, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by such return) shall be paid within 10 days after the commissioner has mailed to such person a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

[*Ex1967 c 32 art 13 s 32*]

**297A.33 FAILURE TO PAY TAX, ACTIONS; PROTECTION AGAINST EVASION.** Subdivision 1. If any portion of a tax imposed by sections 297A.01 to 297A.44, including penalties thereon, is not paid within 30 days after it is required to be paid, the commissioner shall bring against the person liable for payment of such tax an action at law, in the name of the state, for the recovery of the tax and interest and penalties due in respect thereof under sections 297A.01 to 297A.44. Such action shall be brought in the district court of the judicial district in which lies the county of the residence or principal place of business within this state of the person required to file the return, or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named as such in the return, if any, made by such person shall be conclusive against him. If no such place is named in the return such action may be commenced in Ramsey county. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon execution issued in such an action.

Subd. 2. If the commissioner has reasonable grounds for believing that the person required to file the return is about to remove himself or his property from this state with the purpose of evading the tax and penalties imposed by sections 297A.01 to 297A.44, or that the collection of such tax will be jeopardized by delays incident to other methods of collection, he may immediately declare such person's reporting period at an end and assess a tax on the basis of his own knowledge or information available to him, mail such person written notice of the amount thereof, at his last known address, demand its immediate payment; and, if payment is not immediately made, collect the tax by the method prescribed in subdivision 1 hereof, except that it need not await the expiration of the periods of time therein specified.

Subd. 3. In addition to all other methods authorized for the collection of the tax, it may be collected in an ordinary action at law or in equity by the state against the person required to file a return.

Subd. 4. No suit shall lie to enjoin the assessment or collection of any taxes imposed by sections 297A.01 to 297A.44, or the interest and penalties imposed thereby.

Subd. 5. The tax, as assessed by the commissioner, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the person required to file the return to establish the incorrectness or invalidity of the assessment.

[*Ex1967 c 32 art 13 s 33*]

**297A.34 LIMITATIONS.** Subdivision 1. The amount of taxes assessable with respect to any taxable period shall be assessed within three years after the return for such period is filed. Such taxes shall be deemed to have been assessed within the meaning of this section whenever the commissioner shall have prepared a notice of tax assessment and mailed the same to the person required to file the return by certified or registered mail to the post office address given in the return.

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The record of such mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

Subd. 2. If the person required to file the return omits from the return a dollar amount properly includible therein which is in excess of 25 percent of the dollar amount reported in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within five years after the return was filed.

Subd. 3. For the purposes of this section and of section 297A.35, a return filed before the last day prescribed by law for filing thereof shall be considered as filed on such last day.

Subd. 4. In the case of a false or fraudulent return with intent to evade tax or of failure with the same intent to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time.

Subd. 5. Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun:

(a) Not later than nine months after the expiration of the period for the assessment of the tax;

(b) Not later than nine months after final disposition of any appeal from the order of assessment.

[*Ex1967 c 32 art 13 s 34*]

**297A.35 REFUNDS.** Subdivision 1. A person who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in subdivisions 1 and 5 of section 297A.33) an amount of tax for any period in excess of the amount legally due for that period, may file with the commissioner a claim for a refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid or collected, or within three years from the filing of the return, whichever period is the longer. The commissioner shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such person at the address stated upon the return. Any allowance shall include interest on the excess determined at a rate of four percent per annum from the date such excess was paid or collected until the date it is refunded or credited. If such claim is allowed in whole or in part, the commissioner shall credit the amount of the allowance against any taxes under sections 297A.01 to 297A.44 due from the claimant and for the balance of said allowance, if any, the commissioner shall issue his certificate for the refundment of the excess paid, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by sections 297A.01 to 297A.44, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose.

Subd. 2. If the claim is denied in whole or in part, the claimant may commence an action against the commissioner to recover the amount claimed. Such action may be brought in the district court of the district in which lies the county of the claimant's residence or principal place of business or if an estate or trust, of the principal place of its administration, or in the district court for Ramsey county. Such action may be commenced after the expiration of six months after the claim is filed if the commissioner has not then taken final action thereon, and shall be commenced within 18 months after mailing of the notice of the order denying the claim.

[*Ex1967 c 32 art 13 s 35*]

**297A.36 LIABILITY AGREEMENTS.** Subdivision 1. The commissioner, or any officer or employee of the state tax department authorized in writing by the commissioner, is authorized to enter into a signed agreement in writing with any person relating to the liability of such person, or of the person or estate for whom he acts, for any tax due under sections 297A.01 to 297A.44 for any taxable period ending prior to the date of the agreement.

Subd. 2. If such agreement is approved by the commissioner within such time as may be stated in the agreement, such agreement shall be final and conclusive; and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the matter agreed upon shall not be reopened nor the agreement modified, by any officer, employee, or agent of the state; and, in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment,

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abatement, refund, or credit made in accordance therewith, the agreement shall be conclusive and shall not be annulled, modified, set aside or disregarded.

[*Ex1967 c 32 art 13 s 36*]

**297A.37 ADMINISTRATION OF LAW.** The commissioner shall administer and enforce the assessment and collection of the taxes imposed by sections 297A.01 to 297A.44. He shall cause to be prepared blank forms for the returns required by sections 297A.01 to 297A.44, and shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him under sections 297A.01 to 297A.44. The commissioner may prescribe rules and regulations governing the qualification and practice before him of agents and attorneys under the provisions of sections 297A.01 to 297A.44 to the extent and in the manner provided by Minnesota Statutes 1965, Section 290.52. This shall in no way curtail the rights of individuals to appear in their own behalf or partners' or corporations' officers or employees to appear in behalf of their respective partnerships or corporations.

[*Ex1967 c 32 art 13 s 37*]

**297A.38 REVOCATION OF CORPORATE LICENSES TO DO BUSINESS IN STATE.** Whenever any retailer authorized to collect the tax herein imposed pursuant to section 297A.14, fails to comply with any of the provisions of sections 297A.01 to 297A.44 or any regulation of the commissioner prescribed and adopted under sections 297A.01 to 297A.44 the commissioner if such retailer is a corporation authorized to do business in this state under chapter 303, may, for reasonable cause, certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions or regulations. The secretary of state shall, upon receipt of such certified copy, revoke the license authorizing said corporation to do business in this state, and shall issue a new license only when such corporation shall have obtained from the commissioner an order finding that such corporation has complied with its obligations under sections 297A.01 to 297A.44. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given 30 days notice of the time and place of such hearing and the reason for the proposed order.

[*Ex1967 c 32 art 13 s 38*]

**297A.39 PENALTIES.** Subdivision 1. If any tax imposed by sections 297A.01 to 297A.44, or any portion thereof, is not paid within the time herein specified for the payment, or an extension thereof, or within 30 days after final determination of an appeal to the tax court relating thereto, there shall be added thereto a specific penalty equal to five percent of the amount remaining unpaid. The amount of said tax not timely paid, together with said penalty shall bear interest at the rate of four percent per annum from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as a part thereof.

Subd. 2. In case of any failure to make and file a return within the time prescribed by sections 297A.01 to 297A.44 or an extension thereof, unless it is shown that such failure is not due to wilful neglect, there shall be added to the tax in lieu of the five percent specific penalty provided in subdivision 1 five percent if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner as the tax due.

Subd. 3. If any person, with intent to evade the tax imposed by sections 297A.01 to 297A.44, shall fail to file any return required by sections 297A.01 to 297A.44, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to 50 percent of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties, civil and criminal, provided by this section.

Subd. 4. In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false return or wilfully fails to pay over taxes collected for or on behalf of the state, with intent to evade any tax imposed by sections 297A.01 to 297A.44, shall be guilty of a gross misdemeanor unless the amount of the tax involved exceeds \$100, in which event he shall be guilty

of a felony. The term "person" as used in this subdivision includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member or employee is under a duty to perform the act in respect to which the violation occurs.

Subd. 5. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 6. The commissioner shall have power to abate penalties when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general.

[1965 c 698 s 1; Ex1967 c 32 art 13 s 39]

**297A.40 PERSONAL DEBT; LIEN.** Subdivision 1. The tax imposed by sections 297A.01 to 297A.44, and interest and penalties imposed with respect thereto, shall become a personal debt of the person required to file a return from the time the liability therefor arises, irrespective of when the time for payment of such liability occurs. The debt shall, in the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, be that of such person in his official or fiduciary capacity only unless he shall have voluntarily distributed the assets held in such capacity without reserving sufficient assets to pay such tax, interest, and penalties, in which event he shall be personally liable for any deficiency.

Subd. 2. The tax imposed by sections 297A.01 to 297A.44, and interest and penalties imposed with respect thereto, shall become a lien upon all of the real property of the person required to file a return within this state except his homestead, from and after the filing by the commissioner of a notice of such lien in the office of the register of deeds of the county in which such real property is situated.

[Ex1967 c 32 art 13 s 40]

**297A.41 INVESTIGATORY POWERS.** For the purpose of determining the correctness of any return or of determining whether or not any person should have made a return or paid taxes hereunder, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda, which may be relevant to making such determinations, whether such books, papers, records, or memoranda, are the property of or in the possession of such person or any other person. He shall have power to require the attendance of any person having knowledge or information which may be relevant, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

[Ex1967 c 32 art 13 s 41]

**297A.42 EXAMINERS; APPOINTMENT; POWERS.** Subdivision 1. For the purpose of making such examinations and determinations, the commissioner may appoint such examiners as he may deem necessary.

Subd. 2. Such examiners shall have all the rights and powers conferred upon the commissioner by section 297A.41. The clerk of any court of record, or any justice of the peace, upon demand of the commissioner or any such examiner, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records or memoranda before such person. The commissioner may also issue such subpoenas. Disobedience of subpoenas issued under this chapter shall be punished by the district court of the district in which the subpoena is issued as for a contempt of the district court.

[Ex1967 c 32 art 13 s 42]

**297A.43 CONFIDENTIAL NATURE OF INFORMATION.** It shall be unlawful for the commissioner or any other public official or employee to divulge or otherwise make known in any manner any particulars disclosed in any report or return required by sections 297A.01 to 297A.44, or any information concerning the affairs of the person making the return acquired from his records, officers, or employees while examining or auditing under the authority of sections 297A.01 to 297A.44. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports and the contents thereof. Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

[Ex1967 c 32 art 13 s 43]

**297A.44 DEPOSIT OF REVENUES; COST OF ADMINISTRATION; APPROPRIATION.** Subdivision 1. All revenues, including interest and penalties, de-

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rived from the excise and use taxes imposed by sections 297A.01 to 297A.44 shall be deposited by the commissioner in the state treasury and credited to the property tax relief fund.

Subd. 2. The costs of administration of sections 297A.01 to 297A.44 and all refunds thereunder shall be paid from the property tax relief fund. So much as may be necessary therefor is hereby appropriated.

Subd. 3. Until moneys are available under the provisions of sections 297A.01 to 297A.44 and subdivision 2 becomes operative, the sum of \$700,000, or so much thereof as may be necessary, is hereby appropriated to the commissioner of taxation from the general revenue fund in the state treasury for the purpose of preparing to administer and to administer the provisions of sections 297A.01 to 297A.44; such sum to be available until expended. This subdivision is in effect upon final enactment.

[*Ex*1967 c 32 art 13 s 44]

**297A.51 DISTRIBUTION OF TAX PROCEEDS.** One fourth of the amount which the tax imposed by sections 297A.01 to 297A.44 raises annually shall be distributed to townships, cities, villages, boroughs, counties and school districts as provided in sections 297A.51 to 297A.60.

[*Ex*1967 c 32 art 5 s 1]

**297A.52 CERTIFICATION OF POPULATION OF MUNICIPALITY.** The secretary of state shall deliver to the state auditor, on or before July 1, 1967, and on or before July 1 in each year thereafter, a certified list of all the townships, cities, villages, boroughs of the state with their respective populations according to the latest federal census or such later census as authorized by Minnesota Statutes 1965, Section 297.13, Subdivision 7, or Section 275.45. In the case of municipalities incorporated after a federal census the population shown shall be that given in the incorporation census. Upon the taking of each federal census the secretary of state shall deliver to the state auditor a like certificate within 30 days after the governor has filed with him the certified copies of the census obtained from the director of the federal census.

[*Ex*1967 c 32 art 5 s 2]

**297A.53 CHANGE OF STATUS OF MUNICIPALITY; DATE FOR DETERMINING STATUS.** If any municipality changes its name or is dissolved, or if any new municipality is incorporated, the secretary of state shall immediately certify that fact to the state auditor, indicating in the case of a new municipality the population shown by the census taken before incorporation. If any municipality is consolidated with another municipality, the secretary of state shall likewise certify that fact to the state auditor, who shall issue his warrant to the consolidated municipality according to the combined population resulting. The determination of amounts payable under sections 297A.51 to 297A.60 shall however be based on the status of the governmental units on January 1 of each year.

[*Ex*1967 c 32 art 5 s 3]

**297A.54 ESTIMATE OF AVAILABLE AMOUNT.** On September 1 of each year, commencing in 1967, the state auditor shall estimate the amount available the following year for distribution to townships, cities, villages, boroughs, counties and school districts as provided in section 297A.51, which shall not be less than \$37,000,000 annually, by dividing the estimated amount for distribution by the total population in the state to determine a per capita distributive share.

[*Ex*1967 c 32 art 5 s 4]

**297A.55 CITIES OF THE FIRST CLASS; DISTRIBUTION TO CITY AND SCHOOL DISTRICT.** The state auditor shall determine the amount to be distributed to the cities of the first class, and the school districts contained therein, by multiplying the per capita distributive share by the population of each such city of the first class. The total amount available for each city of the first class as thus calculated shall be divided 66% percent to the city and 33% to the school district contained therein.

[*Ex*1967 c 32 art 5 s 5]

**297A.56 DISTRIBUTION TO REMAINING MUNICIPALITIES OTHER THAN SCHOOL DISTRICTS.** Using one half the amount remaining, the state auditor shall determine on a pro rata per capita basis, the amount to be distributed to each township, city (except cities of the first class), village and borough within

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the state. The amounts attributable on a per capita basis to unorganized townships shall be distributed to the county in which such township is located.

[*Ex1967 c 32 art 5 s 6*]

**297A.57 DISTRIBUTION TO REMAINING SCHOOL DISTRICTS.** Using the other one half of the amount remaining, the state auditor shall determine the amounts to be distributed to each school district in the state (except school districts located in cities of the first class) on a school census basis, giving an equal amount for each child between the ages of six and sixteen years, both years inclusive, residing in a district, such amount to be not less than \$20 for each child. Upon receipt of the levies certified from the school districts for the year 1967 and each year thereafter payable in the year 1968 and each year thereafter, the county auditor shall reduce the levy of each school district by the amount to be received by such district under this section.

[*Ex1967 c 32 art 5 s 7*]

**297A.58 NOTICE OF AMOUNTS DUE FOR FOLLOWING YEAR.** Notice of the amounts due in the following year shall be given to all townships, cities, villages, boroughs, counties and school districts by the state auditor prior to September 20, 1967 and prior to September 20 of each year thereafter.

[*Ex1967 c 32 art 5 s 8*]

**297A.59 ISSUANCE OF WARRANTS.** On or before June 15, 1968 and on or before November 15, 1968, and on or before June 15 and November 15 of each year thereafter, the state auditor shall issue his warrant in favor of the treasurer of each township, city, village, borough, county and school district in an amount equal to one-half the amount determined by the state auditor to be due annually under the terms of sections 297A.51 to 297A.60.

[*Ex1967 c 32 art 5 s 9*]

**297A.60 APPROPRIATION.** There is hereby annually appropriated from the "Property Tax Relief Fund" to the township, city, village, borough, county or school district entitled to such payments as are authorized under sections 297A.51 to 297A.60, sufficient moneys to make such payments.

[*Ex1967 c 32 art 5 s 10*]