

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, partner, officer, director, 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. As used in the preceding sentence, the term "person" includes, but is not limited to, directors and officers of corporations or members of partnerships who, either individually or jointly with others, have the control, supervision or responsibility of filing returns and making payment of the amount of tax imposed by this chapter. "Person" shall also include any agent or consignee of any individual or organization enumerated in this subdivision.

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, sanatoriums, nursing homes or senior citizens homes, meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to the handicapped and their spouses by governmental agencies, nonprofit organizations, agencies, or churches or pursuant to any program funded in whole or part through 42 USCA sections 3001 through 3045, wherever delivered, prepared or served, meals and lunches served at public and private schools, universities or colleges, or the occasional meal thereof by a charitable or church organization;

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(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 and intrastate toll service except such service provided by means of coin operated telephones; the tax imposed on amounts paid for telephone services is the liability of and shall be paid by the person paying for the services. Sales by municipal corporations in a proprietary capacity are included in the provisions of this clause.

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.

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, including charges up to 15 percent in lieu of tips, if the consideration for such charges is separately stated, but no deduction shall be allowed for charges for services that are part of a sale as defined in subdivision 3, clauses (b) to (f). A deduction may also be made 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 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 revenue of the state of Minnesota.

Subd. 13. "Agricultural production, as used in section 297A.25, subdivision 1(h)", includes, but is not limited to, horticulture; floriculture; raising of pets, fur bearing animals, research animals and horses.

Subd. 14. "Handicapped" means a permanent and total disability as defined in section 273.13, subdivision 7.

[*Ex1967 c 32 art 13 s 1; 1969 c 62 s 1,2; 1969 c 571 s 1,2; 1969 c 634 s 1; Ex1971 c 31 art 1 s 1; 1973 c 36 s 1; 1973 c 582 s 3; 1975 c 312 s 1,2; 1975 c 397 s 1; 1977 c 363 s 1*]

297A.02 IMPOSITION OF TAX. Except as otherwise provided in Extra Session Laws 1971, Chapter 31, Article 1, there is hereby imposed an excise tax of four percent of the gross receipts from sales at retail, as hereinbefore defined, made by any person in this state after October 31, 1971.

Notwithstanding the foregoing, the tax imposed hereby upon sales at retail through coin-operated vending machines shall be three percent of the gross receipts of such sales.

[*Ex1967 c 32 art 13 s 2; Ex1971 c 31 art 1 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 insofar as practicable and shall be collected by the seller from the purchaser 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 12 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; 1969 c 571 s 3; Ex1971 c 31 art 1 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. An applicant who has no regular place of doing business and who moves from place to place shall be considered to have only one place of business and shall attach such permit to his cart, stand, truck or other merchandising device. 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.

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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; 1969 c 571 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 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]

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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 shall include in his gross receipts the amount of the rental charged. Upon subsequent sale of such property, the seller shall include the entire amount of gross receipts received therefrom without deduction of amounts previously received as rentals.

[*Ex1967 c 32 art 13 s 12; 1971 c 151 s 1*]

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 four percent of the sales price of sales at retail of any of the aforementioned items made to such person after October 31, 1971, unless the tax imposed by section 297A.02 was paid on said sales price.

Motor vehicles subject to tax under this section shall be taxed at the fair market value at the time of transport into Minnesota if such motor vehicles were acquired more than three months prior to its transport into this state.

Notwithstanding any other provisions of sections 297A.01 to 297A.44 to the contrary, the cost of paper and ink products exceeding \$100,000 in any calendar year, used or consumed in producing a publication as defined in section 297A.25, subdivision 1, clause (i) is subject to the tax imposed by this section.

[*Ex1967 c 32 art 13 s 14; 1971 c 430 s 1; Ex1971 c 31 art 1 s 4; 1973 c 650 art 13 s 1*]

297A.15 COLLECTION AND PAYMENT; PENALTY. Subdivision 1. 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 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.

Subd. 2. Any retailer not maintaining a place of business in Minnesota as a prerequisite to receiving authorization from the commissioner to collect the use tax shall furnish, to the satisfaction of the commissioner, and in accordance with section 297A.28, adequate security to insure collections and payment of the tax. When so authorized, such retailer shall, except as otherwise provided in section 297A.16, collect the tax upon all tangible property sold to his knowledge for use within this state, as a retailer maintaining a place of business within this state collects such tax. Such authority and permit may be cancelled at any time, if the commissioner considers the security inadequate, or believes that such tax can be collected more effectively from the person using such property in this state.

Subd. 3. No agent, canvasser or employee of any retailer, not authorized by permit from the commissioner, shall collect the tax as prescribed herein, nor sell, solicit orders for, nor deliver, any tangible personal property in this state. Any such agent, canvasser or employee violating the provisions of sections 297A.14 to 297A.25 is guilty of a misdemeanor and shall be punished by a fine of not more than \$100 for each offense, or by imprisonment for not more than 30 days, or by both such fine and imprisonment.

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Subd. 4. The commissioner of revenue or his duly authorized agents are hereby authorized and empowered to seize and confiscate in the name of the state any truck, automobile or means of transportation not owned or operated by a common carrier, used in the illegal importation and transportation of any article or articles of tangible personal property by a retailer or his agent or employee who does not have a sales or use tax permit and has been engaging in transporting personal property into the state without payment of the tax. The commissioner may demand the forfeiture and sale of the truck, automobile or other means of transportation together with the property being transported illegally, unless the owner can establish to the satisfaction of the commissioner or the court that he had no notice or knowledge or reason to believe that the vehicle was used or intended to be used in any such violation. Within two days after the seizure, the person making the seizure shall deliver an inventory of the vehicle and property seized to the person from whom the seizure was made, if known, and to any person known or believed to have any right, title, interest or lien on the vehicle or property, and shall also file a copy with the commissioner. Within ten days after the date of service of the inventory, the person from whom the vehicle and property was seized or any person claiming an interest in the vehicle or property may file with the commissioner a demand for a judicial determination of the question as to whether the vehicle or property was lawfully subject to seizure and forfeiture, and thereupon the commissioner, within 30 days, shall institute an action in the district court of the county where the seizure was made to determine the issue of forfeiture. The action shall be brought in the name of the state and shall be prosecuted by the county attorney or by the attorney general. The court shall hear the action without a jury and shall try and determine the issues of fact and law involved. Whenever a judgment of forfeiture is entered, the commissioner may, unless the judgment is stayed pending an appeal to the supreme court, cause the forfeited vehicle and property to be sold at public auction as provided by law. If a demand for judicial determination is made and no action is commenced as provided in this subdivision, the vehicle and property shall be released by the commissioner and redelivered to the person entitled to it. If no demand is made, the vehicle and property seized shall be deemed forfeited to the state by operation of law and may be disposed of by the commissioner as provided where there has been a judgment of forfeiture. The forfeiture and sale of the automobile, truck or other means of transportation, and of the property being transported illegally therein, shall be and operate as a penalty for the violation of this chapter. After deducting the expense of keeping the vehicle and property, the fee for seizure, and the costs of the sale, the commissioner shall pay from the funds collected all liens according to their priority, which are established at the hearing as being bona fide and as existing without the lienor having any notice or knowledge that the vehicle or property was being used or was intended to be used for or in connection with any such violation as specified in the order of the court, and shall pay the balance of the proceeds into the state treasury to be credited to the general fund. The state shall not be liable for any liens in excess of the proceeds from the sale after deductions provided herein. Any sale under the provisions of this section shall operate to free the vehicle and property sold from any and all liens thereon, and appeal from such order of the district court will lie to the supreme court as in other civil actions.

For the purposes of this section, "common carrier" means any person engaged in transportation for hire of tangible personal property by motor vehicle, limited to (1) a person possessing a certificate or permit authorizing for-hire transportation of property from the interstate commerce commission or the Minnesota public service commission; or (2) any person transporting commodities defined as "exempt" in for-hire transportation; or (3) any person who pursuant to a contract with a person described in (1) or (2) above transports tangible personal property.

[Ex1967 c 32 art 13 s 15; 1969 c 915 s 1; 1975 c 397 s 2]

297A.16 COLLECTION OF TAX AT TIME OF SALE. Any corporation authorized to do business in Minnesota, any retailer as defined in section 297A.21, or any other retailer as the commissioner shall authorize pursuant to section 297A.15, upon making sales of any items enumerated in this chapter 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. Any such corporation or retailer shall not collect the tax from a purchaser who furnishes to such corporation or retailer a copy of a certificate issued by the commissioner authorizing such purchaser to pay any sales or use tax due on pur-

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chases made by such purchaser directly to the commissioner. The tax collected by such corporation or retailer pursuant to the provisions of this section shall be remitted to the commissioner as provided in other sections of this chapter.

Any corporation or any retailer required to collect the use tax and remit such tax to the commissioner pursuant to this section shall file with the commissioner an application for a permit pursuant to section 297A.04. Every such corporation or retailer shall furnish the commissioner with the name and address of all his agents operating in Minnesota and the location of each of his distribution or sales houses or offices or other places of business in this state.

[Ex1967 c 32 art 13 s 16; 1969 c 915 s 2]

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. Subdivision 1. 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. When, in the opinion of the commissioner, it is necessary for the efficient administration of sections 297A.14 to 297A.25 to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom he operates or from whom he obtains the tangible personal property sold by him, whether he is making sales in his own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard him as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of sections 297A.14 to 297A.25.

Subd. 2. "Retailer maintaining a place of business in this state", or any like term, shall mean any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state.

[Ex1967 c 32 art 13 s 21; 1969 c 915 s 3]

297A.211 COMMON CARRIERS AS RETAILERS. Subdivision 1. Every person, as defined in this chapter, who is engaged in interstate for-hire transportation of tangible personal property or passengers by motor vehicle may at their option, under rules and regulations prescribed by the commissioner, register as retailers and pay the taxes imposed by this chapter in accordance with this section. Persons referred to herein are: (1) persons possessing a certificate or permit authorizing for-hire transpor-

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tation of property or passengers from the interstate commerce commission or the Minnesota public service commission; or (2) persons transporting commodities defined as "exempt" in for-hire transportation in interstate commerce; or (3) persons who, pursuant to contracts with persons described in clauses (1) or (2) above, transport tangible personal property in interstate commerce. Persons qualifying under clauses (2) and (3) must maintain on a current basis the same type of mileage records that are required by persons specified in clause (1) by the interstate commerce commission.

Subd. 2. (a) Such persons, when properly registered as retailers, may make purchases in this state, or import property into this state, without payment of the sales or use taxes imposed by this chapter at the time of purchase or importation, provided that such purchases or importations come within the provisions of this section and are made in strict compliance with the rules and regulations of the commissioner.

(b) Any person described in subdivision 1 may elect to pay directly to the commissioner any sales or use tax that may be due under this chapter for the acquisition of mobile transportation equipment and parts and accessories attached or to be attached to such equipment.

(c) The total cost of such equipment and parts and accessories attached or to be attached to such equipment shall be multiplied by a fraction, the numerator of which is the mileage operated during the past calendar year within the state of Minnesota and the denominator is the total mileage operated during the past calendar year. The amount so determined shall be multiplied by the tax rate to disclose the tax due.

(d) Each such retailer shall make a return and remit to the commissioner the tax due for the preceding calendar month in accordance with the provisions of sections 297A.26 and 297A.27.

[1971 c 115 s 1; 1977 c 15 s 1; 1978 c 539 s 1]

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 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 four percent or more, then no tax shall be due from such person under section 297A.14.

[Ex1967 c 32 art 13 s 24; 1973 c 501 s 13]

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

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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 (i) which, without intermediate use, is shipped or transported outside Minnesota and thereafter used in a trade or business or is stored, processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property transported or shipped outside Minnesota and thereafter used in a trade or business outside Minnesota, and which is not thereafter returned to a point within Minnesota, except in the course of interstate commerce (storage shall not constitute intermediate use); or (ii) which the seller delivers to a common carrier for delivery outside Minnesota, places in the United States mail or parcel post directed to the purchaser outside Minnesota, or delivers to the purchaser outside Minnesota by means of the seller's own delivery vehicles, and which is not thereafter returned to a point within Minnesota, except in the course of interstate commerce;

(e) The gross receipts from the sale of packing materials used to pack and ship household goods, the ultimate destination of which is outside the state of Minnesota and which are 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 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, including returnable containers used in packaging food and beverage products, 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, research, development, design or 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 the production of road building materials. Such production shall not include painting, cleaning, repairing or similar processing of property except as part of the original manufacturing process. Machinery, equipment, implements, tools, accessories, appli-

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ances, 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; however, accessory tools, equipment and other short lived items, which are separate detachable units used in producing a direct effect upon the product, where such items have an ordinary useful life of less than 12 months, are included within the exemption provided herein;

(i) The gross receipts from the sale of and storage, use or other consumption in Minnesota of tangible personal property (except as provided in section 297A.14) which is used or consumed in producing 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 exempt;

(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 a state 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 rolling stock and the storage, use or other consumption of such property by railroads, freight line companies, sleeping car companies and express companies taxed on the gross earnings basis in lieu of ad valorem taxes. For purposes of this clause "rolling stock" is defined as the portable or moving apparatus and machinery of any such company which moves on the road, and includes, but is not limited to, engines, cars, tenders, coaches, sleeping cars and parts necessary for the repair and maintenance of such rolling stock.

(m) The gross receipts from sales of airflight equipment and the storage, use or other consumption of such property by airline companies taxed under the provisions of sections 270.071 to 270.079. For purposes of this clause, "airflight equipment" includes airplanes and parts necessary for the repair and maintenance of such airflight equipment, and flight simulators.

(n) The gross receipts from the sale of telephone central office telephone equipment used in furnishing intrastate and interstate telephone service to the public.

(o) The gross receipts from the sale of and the storage, use or other consumption by persons taxed under the in lieu provisions of chapter 298, of mill liners, grinding rods and grinding balls which are substantially consumed in the production of taconite, the material of which primarily is added to and becomes a part of the material being processed.

(p) 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 if the property purchased is to be used in the performance of charitable, religious or educational functions, or any senior citizen group organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholders;

(q) The gross receipts from the sale of caskets and burial vaults;

(r) The gross receipts from the sale of cigarettes.

(s) The gross receipts from the sale of an automobile or other conveyance if the purchaser is assisted by a grant from the United States in accordance with 38 United States Code, Section 1901, as amended.

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(t) The gross receipts from the sale to the licensed aircraft dealer of an aircraft for which a commercial use permit has been issued pursuant to section 360.654, if the aircraft is resold while the permit is in effect.

(u) The gross receipts from the sale of building materials to be used in the construction or remodeling of a residence when the construction or remodeling is financed in whole or in part by the United States in accordance with 38 United States Code, Sections 801 to 805, as amended. This exemption shall not be effective at time of sale of the materials to contractors, subcontractors, builders or owners, but shall be applicable only upon a claim for refund to the commissioner of revenue filed by recipients of the benefits provided in Title 38 United States Code, Chapter 21, as amended. The commissioner shall provide by regulation for the refund of taxes paid on sales exempt in accordance with this paragraph.

(v) The gross receipts from the sale of textbooks which are prescribed for use in conjunction with a course of study in a public or private school, college, university and business or trade school to students who are regularly enrolled at such institutions. For purposes of this clause a "public school" is defined as one that furnishes course of study, enrollment and staff that meets standards of the state board of education and a private school is one which under the standards of the state board of education, provides an education substantially equivalent to that furnished at a public school. Business and trade schools shall mean such schools licensed pursuant to section 141.25.

(w) The gross receipts from the sale of and the storage of material designed to advertise and promote the sale of merchandise or services, which material is purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside the state of Minnesota.

(x) The gross receipt from the sale of residential heating fuels in the following manner:

(i) all fuel oil, coal, wood, steam, propane gas, and L.P. gas sold to residential customers for residential use;

(ii) natural gas sold for residential use to customers who are metered and billed as residential users and who use natural gas for their primary source of residential heat, for the billing months of November, December, January, February, March and April;

(iii) electricity sold for residential use to customers who are metered and billed as residential users and who use electricity for their primary source of residential heat, for the billing months of November, December, January, February, March and April.

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 nonresident 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.

Subd. 5. The gross receipts from the sale or use of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of Minnesota shall be exempt from taxation under this chapter.

[Ex1967 c 32 art 13 s 25; 1969 c 881 s 18; 1971 c 123 s 1; 1971 c 124 s 1; 1971 c 740 s 2; 1971 c 853 s 17; Ex1971 c 31 art 1 s 5; 1973 c 75 s 1; 1973 c 452 s 1; 1973 c 582 s 3; 1973 c 650 art 13 s 2; 1974 c 11 s 1; 1974 c 155 s 1; 1978 c 721 art 1 s 1]

297A.251 TACONITE PLANT MATERIAL; EXEMPTIONS. Notwithstanding the provisions of this chapter, there shall be exempt from the tax imposed therein, all materials and supplies or equipment consumed in constructing or incorporated into the construction of a new taconite plant or the expansion of an existing plant the con-

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struction of which is commenced prior to February 1, 1975, which are purchased and used or consumed in connection with such construction, or incorporated into such taconite plant prior to July 1, 1978, provided that in the case of the expansion of an existing plant, such construction results in an increase in productive capacity of at least 10 percent.

[*Ex1971 c 31 art 30 s 10; 1974 c 556 s 26*]

297A.252 [Repealed, 1973 c 650 art 13 s 3]

297A.255 AIRCRAFT; PAYMENT OF TAXES PRIOR TO REGISTRATION AND LICENSING. Subdivision 1. Notwithstanding the provisions of section 297A.25, subdivision 1, clause (k), no aircraft shall be registered or licensed in this state unless the applicant presents proof that the sales or use tax imposed by this chapter has been paid or that said transaction is exempt from the imposition of the sales and use tax under that chapter.

Subd. 2. In the case of an aircraft purchased from a dealer holding a valid sales and use tax permit provided for by this chapter, the applicant shall present proof that the tax has been paid to such dealer.

Subd. 3. In the case of aircraft purchased from persons who are not the holder of valid sales and use tax permits under this chapter, the purchaser shall pay the tax to the department of revenue prior to registering or licensing such aircraft within this state. The commissioner of revenue shall issue his certificate stating that the sales and use tax in respect to the transaction has been paid.

Subd. 4. In the case of the purchase of an aircraft that is exempt under this chapter, the commissioner shall issue his certificate that no sales or use tax is due and owing in respect to such transaction.

[*1973 c 476 s 1; 1973 c 582 s 3*]

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.

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, and in addition shall contain a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid. 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.

Subd. 3. Every person liable for any tax imposed by this chapter, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such regulations, as the commissioner may from time to time prescribe. Any such return or statement shall include therein the information required by such regulations and by the forms prescribed by the commissioner. For the purpose of determining compliance with the provisions of this subdivision, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determination, whether such books, papers, rec-

ords, or memoranda are the property of or in the possession of such person or any other person or corporation. The commissioner shall further have power to require the attendance of any persons having knowledge or information in the premises, 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 27; 1969 c 633 s 1; 1969 c 654 s 2*]

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.

Where an extension of time for payment has been granted under this section, interest shall be payable at the rate provided in section 297A.39 from the date when such payment should have been made, if no extension had been granted, until such tax is paid.

[*Ex1967 c 32 art 13 s 30; 1969 c 67 s 1*]

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 reported as due on the taxpayers return, such excess shall be paid to the commissioner within 60 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. Except as otherwise provided in this chapter, 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 mail to the person making the return at the address given in his return, if any, or to his last known address, or a brief written statement of the computation of the tax may be personally served upon the taxpayer. Demand for immediate payment of the taxes contained in the written statement shall be made by the person making personal service.

[*Ex1967 c 32 art 13 s 31; 1969 c 66 s 1; 1969 c 545 s 1; 1971 c 509 s 1; 1978 c 767 s 37*]

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, upon written notice and demand, immediately file such return, or corrected return, and at the same time pay any tax due on the basis thereof. If such person shall fail 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 immediately paid upon written notice and demand. 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; 1969 c 632 s 1]

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 60 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 reason to believe 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, demand its immediate payment; and, if payment is not immediately made, collect the tax by any method prescribed in this chapter. It shall not be a defense to any assessment made under this section that the tax period has not terminated, or that the time otherwise allowed by law for filing a return has not expired, or that the notices otherwise required by law for making an assessment have not been given, or that the time otherwise allowed by law for taking or prosecuting an appeal or for paying the tax has not expired.

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.

Subd. 6. When any tax is due and payable as provided in this chapter the commissioner may issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person liable for said tax and to levy upon the rights to property of the person within the county and to return such warrant to the commissioner and pay to him the money collected by virtue thereof by a time to be therein specified, within 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the person and to levy upon the rights to property of the person within his county, except the homestead and household goods of the person and property of the person not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of section 550.37, and acts amendatory thereof, and shall sell so much thereof as is required to satisfy such taxes, interest, and penalties, together with his

costs; but such sales shall, as to their manner, be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain such part thereof as is required to satisfy the tax, interest, penalties and costs, and pays over any balance to the taxpayer. Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy providing for the collection of taxes required by this chapter.

[*Ex1967 c 32 art 13 s 33; 1969 c 544 s 1,2; 1978 c 767 s 33*]

297A.34 LIMITATIONS. Subdivision 1. Except as otherwise provided in this chapter, 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 to the post office address given in the return. 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.

Subd. 6. Where before the expiration of the time prescribed in subdivision 1 or for the assessment of the tax, the commissioner and the taxpayer consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

[*Ex1967 c 32 art 13 s 34; 1971 c 509 s 2,3*]

297A.35 REFUNDS. Subdivision 1. A person who has, pursuant to the provisions of this chapter, paid to the commissioner 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. Except as provided in subdivision 4 no such claim shall be entertained unless filed within two years after such tax was paid, 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 to such person at the address stated upon the claim. Any allowance shall include interest on the excess determined at a rate of six 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 commissioner of finance 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.

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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.

Subd. 3. A person who has paid an amount of tax to a retailer engaged in providing electricity in respect to the purchase for agricultural production of electricity which is exempt from tax under section 297A.25, subdivision 1, clause (h) may file a claim for refund of such tax with the commissioner, notwithstanding any other provision of this chapter. Such claim for refund shall be made pursuant to section 290.501.

Subd. 4. If the commissioner and the person required to file the return have within the periods prescribed in subdivision 1 consented in writing to any extension of time for the assessment of the tax under the provisions of section 297A.34, subdivision 6, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the taxpayer have consented to an extension for the assessment of the tax; provided, however, that the period within which a claim for refund may be filed shall not expire prior to two years after the tax was paid.

[*Ex1967 c 32 art 13 s 35; 1969 c 1049 s 1; 1971 c 446 s 1; 1971 c 509 s 4,5; 1973 c 492 s 14; 1975 c 377 s 36*]

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, 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 ten percent of the amount remaining unpaid.

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 ten percent specific penalty provided in subdivision 1 ten 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. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

Subd. 3. If any person wilfully fails to file any return or make any payment required by sections 297A.01 to 297A.44, or wilfully files a false or fraudulent return, or wilfully attempts in any manner to evade or defeat any such tax or payment thereof, 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 if the abatement exceeds \$500.

Subd. 7. The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate specified in section 270.75 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.

[*1965 c 698 s 1; Ex1967 c 32 art 13 s 39; 1969 c 97 s 8; 1969 c 573 s 1-4; 1975 c 377 s 37; 1976 c 134 s 78; 1977 c 307 s 29*]

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.

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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 county recorder of the county in which such real property is situated.

[Ex1967 c 32 art 13 s 40; 1976 c 181 s 2]

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 or for the purpose of collection of any such 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; 1971 c 55 s 3]

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, except in connection with a proceeding involving taxes due under this chapter from the taxpayer making such report or return or to comply with the provisions of section 297A.431 or where a question arises as to the proper tax applicable, that is, sales or use tax. In the latter instance, the commissioner may furnish information to a buyer and a seller with respect to the specific transaction in question. 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.

The commissioner may enter into an agreement with the commissioner or other taxing officials of another state for the interpretation and administration of the acts of their several states providing for the collection of a sales and/or use tax for the purpose of promoting fair and equitable administration of such acts and to eliminate double taxation.

Notwithstanding the above provisions of this section, the commissioner, at his discretion, in order to implement the purposes of this chapter, may furnish information on a reciprocal basis to the taxing officials of another state, or to the taxing officials of any municipality of the state of Minnesota which has a local sales and/or use tax.

[Ex1967 c 32 art 13 s 43; 1969 c 572 s 1; 1971 c 724 s 1; 1978 c 621 s 3]

297A.431 INQUIRIES RELATED TO APPLICATIONS FOR LIQUOR LICENSES. Any county or municipality may request the commissioner of revenue to certify whether or not an applicant for a license to be issued pursuant to section 340.01 or 340.13 is liable for any state or local taxes or assessments which were not

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paid when they became due. Upon a request from a county or municipality the commissioner shall certify to the county or municipality the information requested, but shall not certify that the license applicant is liable for any unpaid state or local taxes or assessments if an administrative or court action which questions the amount or validity of the unpaid taxes or assessments has been commenced, or if the appeal period to contest the taxes or assessments has not yet expired.

[1978 c 621 s 4]

297A.44 DEPOSIT OF REVENUES; COSTS OF ADMINISTRATION; APPROPRIATION. Subdivision 1. All revenues, including interest and penalties, derived 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 general fund.

Subd. 2. The costs of all refunds under sections 297A.01 to 297A.44 shall be paid from the general fund. So much as may be necessary therefor is hereby appropriated.

Subd. 3. [Repealed, 1969 c 399 s 51]

[Ex1967 c 32 art 13 s 44; 1969 c 399 s 38,39]

297A.51 [Repealed, Ex1971 c 31 art 31 s 1]

297A.52 [Repealed, Ex1971 c 31 art 31 s 1]

297A.53 [Repealed, Ex1971 c 31 art 31 s 1]

297A.54 [Repealed, Ex1971 c 31 art 31 s 1]

297A.55 [Repealed, Ex1971 c 31 art 31 s 1]

297A.56 [Repealed, Ex1971 c 31 art 31 s 1]

297A.57 [Repealed, Ex1971 c 31 art 31 s 1]

297A.58 [Repealed, Ex1971 c 31 art 31 s 1]

297A.59 [Repealed, Ex1971 c 31 art 31 s 1]

297A.60 [Repealed, Ex1971 c 31 art 31 s 1]