

## CHAPTER 297A

### GENERAL SALES TAX AND DISTRIBUTION THEREOF

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#### 297A.01 DEFINITIONS.

*[For text of subs 1 and 2, see M.S.1982]*

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 other than manufactured homes used for residential purposes for a continuous period of 30 days or more, for a consideration in money or by exchange or barter. "Sales" also include the transfer of computer software, meaning information and directions which dictate the function to be performed by data processing equipment and which are sold without adaptation to the specific requirements of the purchaser. This type of computer software, whether contained on tape, discs, cards, or other devices, shall be considered tangible personal property;

(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. Notwithstanding section 297A.25, subdivision 1, clause (a), taxable food or meals include, but is not limited to, the following:

(i) heated food or drinks;

(ii) sandwiches prepared by the retailer;

(iii) single sales of prepackaged ice cream or ice milk novelties prepared by the retailer;

- (iv) hand-prepared or dispensed ice cream or ice milk products including cones, sundaes, and snow cones;
- (v) soft drinks and other beverages prepared or served by the retailer;
- (vi) gum;
- (vii) ice;
- (viii) all food sold in vending machines;
- (ix) party trays prepared by the retailers; and
- (x) all meals and single servings of packaged snack food, single cans or bottles of pop, sold in restaurants and bars;

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

(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; 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. The furnishing of water and sewer services for residential use shall not be considered a sale;

(g) The furnishing for a consideration of cable television services, including charges for basic monthly service, charges for monthly premium service, and charges for any other similar television services;

(h) Notwithstanding subdivision 4, and section 297A.25, subdivision 1, clause (h), the sales of horses including claiming sales and fees paid for breeding a stallion to a mare. This clause applies to sales and fees with respect to a horse to be used for racing whose birth has been recorded by the Jockey Club or the United States Trotting Association or the American Quarter Horse Association but shall not apply with respect to the sale of a horse bred and born in the state of Minnesota.

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. A sale of carpeting, linoleum, or other similar floor covering which includes installation of the carpeting, linoleum, or other similar floor covering is a contract for the improvement of real property. Aircraft and parts for the repair thereof purchased by a nonprofit, incorporated flying club or association utilized solely by the corporation by leasing such aircraft to shareholders of the corporation shall not be considered property purchased for resale. The leasing of the aircraft to the shareholders by the flying club or association shall not be considered a sale notwithstanding subdivision 3 if the tax imposed by this chapter was paid on the initial purchase as provided by this subdivision.

Leasing of aircraft utilized by a lessee for the purpose of leasing to others, whether or not the lessee also utilizes the aircraft for flight instruction where no separate charge is made for aircraft rental or for charter service, shall be considered a purchase for resale; provided, however, that a proportionate share of the lease payment reflecting use for flight instruction or charter service is subject to tax pursuant to section 297A.14.

*[For text of subds 5 to 15, see M.S.1982]*

**History:** 3Sp1982 c 1 art 6 s 1; 1983 c 327 s 1,2

NOTE: Subdivision 3, clause (h), as added by Laws 1983, chapter 327, section 1, is effective April 1, 1984. See Laws 1983, chapter 327, section 17.

### 297A.02 IMPOSITION OF TAX.

Subdivision 1. **Generally.** Except as otherwise provided in this chapter, there is imposed an excise tax of six percent of the gross receipts from sales at retail made by any person in this state.

Subd. 2. **Farm machinery.** Notwithstanding the provisions of subdivision 1, the rate of the excise tax imposed upon sales of farm machinery shall be four percent.

Subd. 3. **Liquor and beer sales.** Notwithstanding the provisions of subdivision 1, the rate of the excise tax imposed upon sales of intoxicating liquor, as defined in section 340.07, subdivision 2, and nonintoxicating malt liquor, as defined in section 340.001, subdivision 2, shall be 8.5 percent. Nonintoxicating malt liquor is subject to taxation under this subdivision only when sold at a on-sale or off-sale municipal liquor store or other establishment licensed to sell any type of intoxicating liquor.

**History:** 3Sp1982 c 1 art 6 s 2; 1983 c 342 art 6 s 4

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

*[For text of subd 1, see M.S.1982]*

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 eight cents or less, no tax shall be collected. Any person violating this provision shall be guilty of a misdemeanor.

*[For text of subd 3, see M.S.1982]*

**History:** 3Sp1982 c 1 art 6 s 3; 1983 c 342 art 6 s 5

### 297A.041 OPERATOR OF FLEA MARKETS; SELLER'S PERMITS REQUIRED; PENALTY.

The operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, or similar selling event, as a prerequisite to renting or leasing space on the premises owned or controlled by the operator to a person

desiring to engage in or conduct business as a seller, shall obtain evidence that the seller is the holder of a valid seller's permit issued pursuant to section 297A.04, or a written statement from the seller that he is not offering for sale any item that is taxable under this chapter.

Flea market, craft show, antique show, coin show, stamp show, comic book show, or similar selling event, as used in this section, means an activity involving a series of sales sufficient in number, scope, and character to constitute a regular course of business, and which would not qualify as an isolated or occasional sale pursuant to section 297A.25, subdivision 1, clause (k).

Any operator who fails or refuses to comply with the provisions of this section shall be subject to a penalty payable to the commissioner of revenue of \$100 for each day of each selling event that the operator fails to obtain evidence that the seller is the holder of a valid seller's permit issued pursuant to section 297A.04.

This section shall not apply to an operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, or similar selling event which is held in conjunction with a community sponsored festival which has a duration of four or fewer consecutive days no more than once a year.

**History:** 1983 c 327 s 3

**297A.05** [Repealed, 1983 c 301 s 235; 1983 c 327 s 16]

**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, is guilty of a gross misdemeanor.

Any person who engages in the business of making retail sales in Minnesota after revocation of the permit under section 297A.07, when the commissioner has not issued a new permit, is guilty of a felony.

**History:** 1983 c 294 s 8

**297A.121 USE OF EXEMPTION CERTIFICATES TO EVADE TAX; PENALTY.**

Any person who gives an exemption certificate for property which will be used for purposes other than the exemption claimed with the intent to evade payment to the seller of the amount of the tax applicable to the transaction shall be subject to a penalty payable to the commissioner of revenue of \$100 for each transaction where an improper use of an exemption certificate has occurred.

**History:** 1983 c 327 s 4

**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 imposed on every person in this state a use tax at the rate of six percent of the sales price of sales at retail of any of the aforementioned items unless the tax imposed by section 297A.02 was paid on the sales price. Notwithstanding the provisions of this paragraph, the rate of the use tax imposed upon the sales price of sales of farm machinery shall be four percent.

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

**History:** *3Sp1982 c 1 art 6 s 4; 1983 c 342 art 6 s 6*

#### **297A.15 COLLECTION AND PAYMENT; PENALTY.**

*[For text of subs 1 to 3, see M.S.1982]*

**Subd. 4. Seizure; court review.** The commissioner of revenue or his duly authorized agents are 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 establishes 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. 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, 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 in it, is 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. Any sale under the provisions

of this section shall operate to free the vehicle and property sold from any and all liens on it, and appeal from the order of the district court will lie as in other civil cases.

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 public utilities 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.

**History:** 1983 c 247 s 128

### 297A.211 COMMON CARRIERS AS RETAILERS.

*[For text of subs 1 and 2, see M.S.1982]*

Subd. 3. Any person who pays the tax to the seller as provided in section 297A.03 or pays the tax to the motor vehicle registrar as required by section 297B.02 and who meets the requirements of section 297A.211 at the time of the sale, except that the person has not registered as a retailer pursuant to section 297A.211 at the time of the sale, may register as a retailer, make a return, and file for a refund of the difference between the tax calculated under section 297A.02, 297A.14, or 297B.02 and the tax calculated under subdivision 2. The person must file for a refund within the time limitations provided in section 297A.35. Notwithstanding the provisions of section 297A.35, subdivision 1, interest shall be allowed for any refund allowed under this subdivision only from the date on which the person has both registered as a retailer and filed a claim for refund.

**History:** 1983 c 327 s 5

### 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, and food products which are not taxable pursuant to section 297A.01, subdivision 3, clause (c) and which are sold by a retailer, organized as a nonprofit corporation or association, within a place located on property owned by the state or an agency or instrumentality of the state, the entrance to which is subject to an admission charge. This exemption does not include the following:

(i) candy and candy products;

(ii) carbonated beverages, beverages commonly referred to as soft drinks containing less than 15 percent fruit juice, or bottled water other than noncarbonated and noneffervescent bottled water sold in individual containers of one-half gallon or more in size;

(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 (i) which, without intermediate use, is shipped or transported outside Minnesota by the purchaser 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); provided that the property is not subject to tax in that state or country to which it is transported for storage or use, or, if subject to tax in that other state, that state allows a similar exemption for property purchased therein and transported to Minnesota for use in this state; except that sales of tangible personal property that is shipped or transported for use outside Minnesota shall be taxed at the rate of the use tax imposed by the state to which the property is shipped or transported, unless that state has no use tax, in which case the sale shall be taxed at the rate generally imposed by this state; and provided further that sales of tangible personal property to be used in other states or countries as part of a maintenance contract shall be specifically exempt; 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, 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; 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. The term "publication" shall not include magazines and periodicals sold over the counter. 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, including sales in which title is retained by a seller or a vendor or is assigned to a third party under an installment sale or lease purchase agreement under section 465.71, 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. Sales exempted by this clause include sales pursuant to section 297A.01, subdivision 3, clauses (d) and (f). This exemption shall not apply to building, construction or reconstruction materials purchased by a contractor or



a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration or repair of a building or facility. This exemption does not apply to construction materials purchased by tax exempt entities or their contractors to be used in constructing buildings or facilities which will not be used principally by the tax exempt entities;

(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. For purposes of this clause, sales by a nonprofit organization shall be deemed to be "isolated or occasional" if they occur at sale events that have a duration of three or fewer consecutive days. The granting of the privilege of admission to places of amusement and the privilege of use of amusement devices by a nonprofit organization at an isolated or occasional event conducted on property owned or leased for a continuous period of more than 30 days by the nonprofit organization are also exempt. The exemption provided for isolated sales of tangible personal property and of the granting of admissions or the privilege of use of amusement devices by nonprofit organizations pursuant to this clause shall be available only if the sum of the days on which the organization and any subsidiary nonprofit organization sponsored by it that does not have a separate sales tax exemption permit conduct sales of tangible personal property, plus the days with respect to which the organization charges for the use of amusement devices or admission to places of amusement, does not exceed eight days in a calendar year. For purposes of this clause, a "nonprofit organization" means any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, no part of the net earnings of which inures to the benefit of a private individual;

(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 or association of groups that in general limits membership to persons age 55 or older and is 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. Sales exempted by this clause include sales pursuant to section 297A.01, subdivision 3, clauses (d) and (f). This exemption shall not apply to building, construction or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration or repair of a building or facility. This exemption does not apply to construction materials purchased by tax exempt entities or their contractors to be used in constructing buildings or facilities which will not be used principally by the tax exempt entities;

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

(r) 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.

(s) 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.

(t) 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.

(u) 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.

(v) 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.

(w) 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.

(x) The gross receipts from the sale or use of tickets or admissions to the premises of or events sponsored by an association, corporation or other group of persons which provides an opportunity for citizens of the state to participate in the creation, performance or appreciation of the arts and which qualifies as a tax-exempt organization within the meaning of Minnesota Statutes 1980, section 290.05, subdivision 1, clause (i).

(y) The gross receipts from either the sales to or the storage, use or consumption of tangible personal property by an organization of military service veterans or an auxiliary unit of an organization of military service veterans, provided that:

(i) the organization or auxiliary unit is organized within the state of Minnesota and is exempt from federal taxation pursuant to section 501(c), clause (19), of the Internal Revenue Code as amended through December 31, 1982; and

(ii) the tangible personal property which is sold to or stored, used or consumed by the organization or auxiliary unit is for charitable, civic, educational, or nonprofit uses and not for social, recreational, pleasure or profit uses.

(z) The gross receipts from the sale of sanitary napkins, tampons, or similar items used for feminine hygiene.

*[For text of subds 2 to 5, see M.S.1982]*

**History:** 1983 c 327 s 6; 1983 c 342 art 6 s 7

**297A.251** [Repealed, 1983 c 327 s 16]

**297A.253 SATELLITE BROADCASTING FACILITY MATERIALS; EXEMPTIONS.**

Notwithstanding the provisions of this chapter, there shall be exempt from the tax imposed therein all materials and supplies or equipment used or consumed in constructing, or incorporated into the construction of, a new facility in Minnesota for providing federal communications commission licensed direct satellite broadcasting services using direct broadcast satellites operating in the 12-ghz. band or fixed satellite regional or national program services, as defined in section 272.02, subdivision 1, clause (20), construction of which was commenced after June 30, 1983, and all machinery, equipment, tools, accessories, appliances, contrivances, furniture, fixtures, and all technical equipment or tangible personal property of any other nature or description necessary to the construction and equipping of that facility in order to provide those services.

**History:** 1983 c 342 art 9 s 2

**297A.254 DISTILLERY MATERIALS; EXEMPTION.**

Notwithstanding the provisions of this chapter, there shall be exempt from the tax imposed therein all materials and supplies or equipment used or consumed in constructing, or incorporated into the construction of, a new facility in Minnesota at which a licensed Minnesota manufacturer produces distilled spirituous liquors, liqueurs, cordials, and liquors designated as specialties regardless of alcoholic content, but not including ethyl alcohol, distilled with a majority of ingredients grown or produced in Minnesota, construction of which was commenced after

June 30, 1983. All machinery, equipment, tools, accessories, appliances, contrivances, furniture, fixtures, and all technical equipment or tangible personal property of any other nature or description necessary to the construction and equipping of that facility in order to provide those services is also exempt.

**History:** 1983 c 342 art 9 s 3

### **297A.26 TIME FOR PAYMENT TO COMMISSIONER; OFFSET AGAINST OTHER TAXES.**

*[For text of subs 1 and 2, see M.S.1982]*

Subd. 3. The sales tax return form must include printed notice in eight point type or larger that the return and payment must be received by the commissioner no later than the due date.

**History:** 1983 c 327 s 7

### **297A.27 RETURNS.**

Subdivision 1. Except as provided in section 297A.275, 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.

*[For text of subs 2 and 3, see M.S.1982]*

**History:** .1983 c 327 s 8

### **297A.275 ACCELERATED PAYMENT OF JUNE LIABILITY.**

Every vendor having a liability of \$1,500 or more in May 1982 or in May of each subsequent year, shall remit the June liability in the manner required by this section.

On or before June 25, 1982, or June 25 of each subsequent year, the vendor shall remit the actual May liability and one-half of the estimated June liability to the commissioner and file the return on a form prescribed by the commissioner.

On or before August 25, 1982, or August 25 of each subsequent year, the vendor shall submit a return showing the actual June liability and paying any additional amount of tax not remitted in June. A penalty is hereby imposed equal to ten percent of the amount of June liability required to be paid in June less the amount remitted in June. However, the penalty shall not be imposed if the amount remitted in June equals the lesser of (a) 45 percent of the actual June liability, or (b) 50 percent of the preceding May's liability.

**History:** 1983 c 327 s 9

### **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. In lieu of security, the commissioner may require a retailer to file a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility.

**History:** 1983 c 327 s 10

### **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 commissioner may use statistical or other sampling techniques consistent with generally acceptable accounting principles in examining the returns or records. 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.

*[For text of subd 2, see M.S.1982]*

**History:** 1983 c 327 s 11

### **297A.34 LIMITATIONS.**

*[For text of subds 1 to 3, see M.S.1982]*

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 at any time, and a proceeding in court for the collection of the tax must be begun within five years after the assessment.

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 24 months after the expiration of the period for the assessment of the tax;

(b) Not later than 24 months after final disposition of any appeal from the order of assessment.

*[For text of subd 6, see M.S.1982]*

Subd. 7. **Suspension of time; bankruptcy proceedings.** The period of time during which a tax must be assessed or collection proceedings commenced under this chapter shall be suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after notice to the commissioner of revenue that the bankruptcy proceedings have been closed or dismissed, or that the automatic stay has been terminated or has expired.

The suspension of the statute of limitations under this subdivision shall apply to the person against whom the petition in bankruptcy is filed, and to all other persons who may be wholly or partially liable for the tax under this chapter.

**History:** 1983 c 180 s 15-17

### 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 subject to the conditions specified in subdivision 5. 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.

*[For text of subd 2, see M.S.1982]*

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 the tax with the commissioner, notwithstanding any other provision of this chapter.

*[For text of subd 4, see M.S.1982]*

Subd. 5. If a vendor has collected from a purchaser and remitted to the state a tax on a transaction which is not subject to the tax imposed by this chapter, the tax shall be refundable to the vendor only if and to the extent that it will be credited to amounts due to the vendor by the purchaser or returned to the purchaser by the vendor.

**History:** 1983 c 327 s 12,13; 1983 c 342 art 6 s 8

**297A.39 PENALTIES.**

*[For text of subs 1 to 3, see M.S.1982]*

Subd. 4. **Penalties; failure to file or pay.** In addition to any other penalties prescribed, any person who willfully fails to make a return or willfully makes a false return or willfully fails to pay over taxes imposed by this chapter collected for or on behalf of the state, or attempts in any manner to evade or defeat the taxes imposed by this chapter is guilty of a gross misdemeanor unless the amount of the tax involved exceeds \$300, in which event he is 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 an officer, member or employee is under a duty to perform the act in respect to which the violation occurs. Notwithstanding the provisions of section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, upon any criminal offense specified in this subdivision, in the proper court within six years after the commission of the offense.

*[For text of subs 5 and 7, see M.S.1982]*

Subd. 8. **Penalty; false claim.** Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under this section, of a return, affidavit, claim, or other document, which is fraudulent or false as to any material matter, where the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event he is guilty of a felony. Any criminal offense under this subdivision may be prosecuted in the same manner and within the same period of limitations provided in subdivision 4.

**History:** 1983 c 294 s 9,10

**297A.391 PAYMENT OF TAX PENDING APPEAL.**

When a taxpayer appeals any liability assessed under this chapter to the tax court, and the amount in dispute is more than \$6,000, the entire amount of the tax, penalty, and interest assessed by the commissioner shall be paid at the time it is due unless permission to continue prosecution of the petition without payment is obtained as provided herein. The petitioner, upon ten days notice to the commissioner, may apply to the court for permission to continue prosecution of the petition without payment; and, if it is made to appear

(1) That the proposed review is to be taken in good faith;

(2) That there is probable cause to believe that the taxpayer may be held exempt from payment of the liability or that the liability may be determined to be less than 50 percent of the amount due; and

(3) That it would work a substantial hardship upon petitioner to pay the liability,

the court may permit the petitioner to continue prosecution of the petition without payment, or may fix a lesser amount to be paid as a condition of continuing the prosecution of the petition.

Failure to make payment of the amount required when due shall operate automatically to dismiss the petition and all proceedings thereunder unless the

payment is waived by an order of the court permitting the petitioner to continue prosecution of the petition without payment.

**History:** 1983 c 327 s 14

**297A.42 EXAMINERS; APPOINTMENT; POWERS.**

*[For text of subd 1, see M.S.1982]*

Subd. 2. **Powers.** The examiners shall have all the rights and powers conferred upon the commissioner by section 297A.41. The clerk of any court, upon demand of the commissioner or any examiner, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records or memoranda. The commissioner may also issue subpoenas. Disobedience of subpoenas issued under this chapter shall be punished by the district court of the district in which the subpoena is issued, or in the case of a subpoena issued by the commissioner, by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court.

**History:** 1983 c 180 s 18; 1983 c 359 s 24