

CHAPTER 297A

GENERAL SALES TAX AND DISTRIBUTION

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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 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;

(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. "Sale" does not include:

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(1) meals or drinks served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes, senior citizens homes, and correctional, detention, and detoxification facilities;

(2) 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; or

(3) meals and lunches served at public and private schools, universities, or colleges. Notwithstanding section 297A.25, subdivision 2, taxable food or meals include, but are 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, recreational areas, or athletic events, except a world championship football game sponsored by the national football league, and the privilege of having access to and the use of amusement devices, tanning facilities, reducing salons, steam baths, turkish baths, massage parlors, health clubs, and spas 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, intrastate toll service, and interstate toll service, if that service originates from and is charged to a telephone located in this state; the tax imposed on amounts paid for telephone services is the liability of and shall be paid by the person paying for the services. The furnishing for a consideration of access to telephone services by a hotel to its guests is a sale under this clause. 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 9, 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;

(i) The furnishing for a consideration of parking services, whether on a contractual, hourly, or other periodic basis, except for parking at a meter;

(j) The furnishing for a consideration of services listed in this paragraph:

(i) laundry and dry cleaning services including cleaning, pressing, repairing, altering, and storing clothes, linen services and supply, cleaning and blocking hats, and carpet, drapery, upholstery, and industrial cleaning. Laundry and dry cleaning services do not include services provided by coin operated facilities operated by the customer;

(ii) motor vehicle washing, waxing, and cleaning services, including services provided by coin-operated facilities operated by the customer, and rustproofing, undercoating, and towing of motor vehicles;

(iii) building and residential cleaning, maintenance, and disinfecting and exterminating services;

(iv) services provided by detective agencies, security services, burglar, fire alarm, and armored car services not including services performed within the jurisdiction they serve by off-duty licensed peace officers as defined in section 626.84, subdivision 1;

(v) pet grooming services;

(vi) lawn care, fertilizing, mowing, spraying and sprigging services; garden planting and maintenance; arborist services; tree, bush, and shrub planting, pruning, bracing, spraying, and surgery; and tree trimming for public utility lines.

The services listed in this paragraph are taxable under section 297A.02 if the service is performed wholly within Minnesota or if the service is performed partly within and partly without Minnesota and the greater proportion of the service is performed in Minnesota, based on the cost of performance. In applying the provisions of this chapter, the terms "tangible personal property" and "sales at retail" include taxable services and the provision of taxable services, unless specifically provided otherwise. Services performed by an employee for an employer are not taxable under this paragraph. Services performed by a partnership or association for another partnership or association are not taxable under this paragraph if one of the entities owns or controls more than 80 percent of the voting power of the equity interest in the other entity. Services performed between members of an affiliated group of corporations are not taxable. For purposes of this section, "affiliated group of corporations" includes those entities that would be classified as a member of an affiliated group under United States Code, title 26, section 1504, and who are eligible to file a consolidated tax return for federal income tax purposes; and

(vii) solid waste collection and disposal services as described in section 297A.45;

(k) A "sale" and a "purchase" includes the transfer of computer software, meaning information and directions that dictate the function performed by data processing equipment. A "sale" and a "purchase" does not include the design, development, writing, translation, fabrication, lease, or transfer for a consideration of title or possession of a custom computer program; and

(l) The granting of membership in a club, association, or other organization if:

(1) the club, association, or other organization makes available for the use of its members sports and athletic facilities (without regard to whether a separate charge is assessed for use of the facilities); and

(2) use of the sports and athletic facilities is not made available to the general public on the same basis as it is made available to members.

Granting of membership includes both one-time initiation fees and periodic membership dues. Sports and athletic facilities include golf courses, tennis, racquetball, handball and squash courts, basketball and volleyball facilities, running tracks, exercise equipment, swimming pools, and other similar athletic or sports facilities. The provisions of this paragraph do not apply to camps or other recreation facilities owned and operated by an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1986, for educational and social activities for young people primarily age 18 and under.

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 consid-

ered property purchased for resale. Master computer software programs that are purchased and used to make copies for sale or lease are considered property purchased for resale. Sales of building materials, supplies and equipment to owners, contractors, sub-contractors 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 be considered property purchased for resale. The leasing of the aircraft to the shareholders by the flying club or association shall be considered a sale.

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.

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 (l). 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 or the amount refunded either in cash or in credit for property returned by purchasers.

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 real property as a result of incorporation, attachment, or installation following its acquisition.

Personal property does not include:

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

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

(c) property described in section 272.02, subdivision 1, clause (8), paragraphs (a) to (d);

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

Tangible personal property includes computer software, whether contained on tape, discs, cards, or other devices.

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

Subd. 13. "Agricultural production," as used in section 297A.25, subdivision 9, 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 22.

Subd. 15. "Farm machinery" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in the production for sale, but not including the processing, of livestock, dairy animals, dairy products, poultry and poultry products, fruits, vegetables, forage, grains and bees and apiary products. "Farm machinery" includes

(1) machinery for the preparation, seeding or cultivation of soil for growing agricultural crops and sod, harvesting and threshing of agricultural products, harvesting or mowing of sod, and certain machinery for dairy, livestock and poultry farms;

(2) barn cleaners, milking systems, grain dryers, automatic feeding systems and similar installations, whether or not the equipment is installed by the seller and becomes part of the real property;

(3) irrigation equipment sold for exclusively agricultural use, including pumps, pipe fittings, valves, sprinklers and other equipment necessary to the operation of an irrigation system when sold as part of an irrigation system, except irrigation equipment which is situated below ground and considered to be a part of the real property;

(4) logging equipment, including chain saws used for commercial logging; and

(5) primary and backup generator units used to generate electricity for the purpose of operating farm machinery, as defined in this subdivision, or providing light or space heating necessary for the production of livestock, dairy animals, dairy products, or poultry and poultry products.

Repair or replacement parts for farm machinery shall not be included in the definition of farm machinery.

Tools, shop equipment, grain bins, feed bunks, fencing material, communication equipment and other farm supplies shall not be considered to be farm machinery. "Farm machinery" does not include motor vehicles taxed under chapter 297B, snowmobiles, snow blowers, lawn mowers except those used in the production of sod for sale, garden-type tractors or garden tillers and the repair and replacement parts for those vehicles and machines.

Subd. 16. **Capital equipment.** Capital equipment means machinery and equipment and the materials and supplies necessary to construct or install the machinery or equipment. To qualify under this definition the capital equipment must be used by the purchaser or lessee for manufacturing, fabricating, mining, quarrying, or refining a product to be sold at retail and must be used for the establishment of a new or the physical expansion of an existing manufacturing, fabricating, mining, quarrying, or refining facility in the state. For purposes of this subdivision, "mining" includes peat mining. Capital equipment does not include (1) machinery or equipment purchased or leased

to replace machinery or equipment performing substantially the same function in an existing facility, (2) repair or replacement parts, or (3) machinery or equipment used to receive or store raw materials.

Subd. 17. **Special tooling.** Special tooling means tools, dies, jigs, patterns, gauges and other special tools which have value and use only for the buyer and for the use for which it is made. An item has use or value only to the buyer if the item is not standard enough to be stocked or ordered from a catalog or other sales literature, but must be produced in accordance with special requirements peculiar to the buyer and not common to someone else whose conditions for possible use of the material are reasonably similar to the buyer's.

Subd. 18. **Custom computer program.** "Custom computer program" means a computer program prepared to the special order of the customer, either in the form of written procedures or in the form of storage media on which, or in which, the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program transferred. It includes those services represented by separately stated charges for modifications to an existing prewritten program that are prepared to the special order of the customer. It does not include a "canned" or prewritten computer program that is held or existing for general or repeated sale or lease, even if the prewritten or "canned" program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification. For purposes of this subdivision:

(1) "Storage media" includes punched cards, tapes, discs, diskettes, or drums on which computer programs may be embodied or stored;

(2) "Computer" does not include tape-controlled automatic drilling, milling, or other manufacturing machinery or equipment; and

(3) "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data processing equipment instructions necessary to solve a problem and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

History: *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; 1979 c 303 art 9 s 1; 1980 c 607 art 5 s 1; 1Sp1981 c 1 art 4 s 1,2; 1982 c 523 art 34 s 1; 1982 c 641 art 2 s 4; 3Sp1982 c 1 art 6 s 1; 1983 c 327 s 1,2; 1984 c 502 art 6 s 1-3; 1984 c 655 art 1 s 53; 1985 c 83 s 1; 1Sp1985 c 14 art 2 s 6; art 4 s 90; 1987 c 268 art 4 s 1-6; 1987 c 400 s 52; 1988 c 719 art 10 s 1; 1Sp1989 c 1 art 12 s 2; art 19 s 3; 1990 c 480 art 4 s 3,4; 1990 c 604 art 6 s 1,2*

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. **Machinery and equipment.** Notwithstanding the provisions of subdivision 1, the rate of the excise tax imposed upon sales of special tooling is four percent and upon sales of farm machinery is two 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 340A.101, subdivision 14, and nonintoxicating malt liquor, as defined in section 340A.101, subdivision 19, shall be 8.5 percent. Nonintoxicating malt liquor is subject to taxation under this subdivision only when sold at an on-sale or off-sale municipal liquor store or other establishment licensed to sell any type of intoxicating liquor.

Subd. 4. **Manufactured housing.** Notwithstanding the provisions of subdivision 1, for sales at retail of manufactured homes used for residential purposes the excise tax is imposed upon 65 percent of the sales price of the home.

History: *Ex1967 c 32 art 13 s 2; Ex1971 c 31 art 1 s 2; 1Sp1981 c 1 art 4 s 3; 3Sp1981*

c 2 art 5 s 1; 3Sp1982 c 1 art 6 s 2; 1983 c 342 art 6 s 4; 1984 c 502 art 6 s 4,5; 1984 c 655 art 1 s 54; 1Sp1985 c 14 art 2 s 7; 1987 c 384 art 2 s 1; 1Sp1989 c 1 art 12 s 3

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. 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. If the sales price of any sale at retail is eight cents or less, no tax shall be collected.

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.

History: *Ex1967 c 32 art 13 s 3; 1969 c 571 s 3; Ex1971 c 31 art 1 s 3; 1Sp1981 c 1 art 4 s 4; 3Sp1982 c 1 art 6 s 3; 1983 c 342 art 6 s 5; 1990 c 480 art 1 s 39*

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 the applicant's 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 289A.11, subdivision 3, 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 the applicant's place or places of business, and such other information as the commissioner may require. The application shall be filed by the owner, if a natural person; by a member or partner, if the owner be an association or partnership; by a person authorized to sign the application, if the owner be a corporation.

History: *Ex1967 c 32 art 13 s 4; 1969 c 571 s 4; 1986 c 444; 1990 c 480 art 1 s 46*

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

The operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, 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 under section 297A.04, or a written statement from the seller that the seller 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, convention exhibit area, 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 that would not qualify as an isolated or occasional sale under section 297A.25, subdivision 12.

This section does not apply to an operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event that is: (1) held in conjunction with a community sponsored festival that has a duration of four or fewer consecutive days no more than once a year; or (2) conducted by a nonprofit organization annually or less frequently.

History: 1983 c 327 s 3; 1985 c 83 s 2; 1986 c 444; 1990 c 480 art 1 s 40

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

297A.06 PERMIT.

After compliance with sections 297A.04 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 canceled or 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.

History: Ex1967 c 32 art 13 s 6; 1987 c 384 art 2 s 73; 1989 c 277 art 1 s 13

297A.065 CANCELLATION OF PERMITS.

The commissioner may cancel a permit when one of the following conditions occurs:

- (1) the permit holder has not filed a sales or use tax return for one year or more;
- (2) the permit holder has not reported any sales or use tax liability on the permit holder's returns for two or more years; or
- (3) the permit holder requests cancellation of the permit.

History: 1989 c 277 art 1 s 14

297A.07 REVOCATION OF PERMITS.

Whenever any person fails to comply with any provision of sections 297A.01 to 297A.44 or any rule 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 the person to show cause why the 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 rules. 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 rules.

History: Ex1967 c 32 art 13 s 7; 1985 c 248 s 70; 1986 c 444; 1987 c 268 art 17 s 25; 1989 c 184 art 2 s 27

297A.08 [Repealed, 1990 c 480 art 1 s 45]

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 that person 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.

History: Ex1967 c 32 art 13 s 9; 1986 c 444

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.

History: *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.

History: *Ex1967 c 32 art 13 s 11*

297A.12 IMPROPER USE OF SUBJECT OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE.

If a purchaser who gives an exemption certificate makes any use of the subject of the purchase other than for a purpose exempted by sections 297A.01 to 297A.44, such use shall be deemed a retail sale by the purchaser as of the time of first use by the purchaser, and the sales price to the purchaser shall be deemed the gross receipts from such retail sale. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the purchaser's 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.

History: *Ex1967 c 32 art 13 s 12; 1971 c 151 s 1; 1986 c 444*

297A.121 [Repealed, 1990 c 480 art 1 s 45]**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.

History: *Ex1967 c 32 art 13 s 13*

297A.14 USE TAX.

Subdivision 1. Imposition. For the privilege of using, storing or consuming in Minnesota tangible personal property or taxable services purchased for use, storage, or consumption in this state, a use tax is imposed on every person in this state at the rate of tax imposed under section 297A.02 on the sales price of sales at retail of the items, unless the tax imposed by section 297A.02 was paid on the sales price.

Subd. 2. Motor vehicles. 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: *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; 1Sp1981 c 1 art 4 s 5; 3Sp1982 c 1 art 6 s 4; 1983 c 342 art 6 s 6; 1984 c 502 art 6 s 6; 1Sp1985 c 14 art 2 s 8; 1987 c 268 art 4 s 7; 1990 c 480 art 4 s 5*

297A.141 LOCAL ADMISSIONS AND AMUSEMENT TAXES; EXEMPTION FOR ARTS ORGANIZATIONS.

No tax imposed by a local unit of government or imposed on sales taking place in a single named local unit of government on sales of admissions or amusements under

a law enacted prior or subsequent to the enactment of this provision, other than a general sales tax law, shall apply to amounts charged for admission to the premises of or events sponsored by a nonprofit arts organization.

History: 1980 c 607 art 5 s 4

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 given to the purchaser pursuant to section 297A.16 relieves the purchaser of further liability for the tax to which the receipt refers, unless the purchaser knows or has reason to know that the retailer did not have a permit to collect the tax.

Subd. 2. [Repealed, 1988 c 719 art 10 s 20]

Subd. 3. [Repealed, 1990 c 480 art 1 s 45]

Subd. 4. **Seizure; court review.** The commissioner of revenue or the commissioner's 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 the retailer's 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 the owner 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.

Subd. 5. Refund; appropriation. Notwithstanding the provisions of sections 297A.25, subdivision 42, and 297A.257 the tax on sales of capital equipment, and construction materials and supplies under section 297A.257, shall be imposed and collected as if the rate under section 297A.02, subdivision 1, applied. Upon application by the purchaser, on forms prescribed by the commissioner, a refund equal to the reduction in the tax due as a result of the application of the exemption under section 297A.25, subdivision 42, or 297A.257 shall be paid to the purchaser. In the case of building materials qualifying under section 297A.257 where the tax was paid by a contractor, application must be made by the owner for the sales tax paid by all the contractors, subcontractors, and builders for the project. The application must include sufficient information to permit the commissioner to verify the sales tax paid for the project. The application shall include information necessary for the commissioner initially to verify that the purchases qualified as capital equipment under section 297A.25, subdivision 42, or capital equipment or construction materials and supplies under section 297A.257. No more than two applications for refunds may be filed under this subdivision in a calendar year. Unless otherwise specifically provided by this subdivision, the provisions of section 289A.40 apply to the refunds payable under this subdivision. There is annually appropriated to the commissioner of revenue the amount required to make the refunds.

The amount to be refunded shall bear interest at the rate in section 270.76 from the date the refund claim is filed with the commissioner.

Subd. 6. Refund; appropriation. The tax on the gross receipts from the sale of items exempt under section 297A.25, subdivision 43, must be imposed and collected as if the sale were taxable and the rate under section 297A.02, subdivision 1, applied.

Upon application by the owner of the homestead property on forms prescribed by the commissioner, a refund equal to the tax paid on the gross receipts of the building materials and equipment must be paid to the homeowner. In the case of building materials in which the tax was paid by a contractor, application must be made by the homeowner for the sales tax paid by the contractor. The application must include sufficient information to permit the commissioner to verify the sales tax paid for the project. The contractor must furnish to the homeowner a statement of the cost of building materials and the sales taxes paid on the materials. The amount required to make the refunds is annually appropriated to the commissioner. Interest must be paid on the refund at the rate in section 270.76 from 60 days after the date the refund claim is filed with the commissioner.

History: *Ex1967 c 32 art 13 s 15; 1969 c 915 s 1; 1975 c 397 s 2; 1980 c 614 s 123; 1983 c 247 s 128; 1984 c 502 art 6 s 7; 1985 c 248 s 70; 1Sp1985 c 14 art 8 s 17; 1986 c 441 s 7; 1986 c 444; 1988 c 719 art 10 s 2,3; 1Sp1989 c 1 art 12 s 4,5; 1990 c 480 art 1 s 46*

297A.151 [Renumbered 270.73]

297A.16 COLLECTION OF TAX AT TIME OF SALE.

Any retailer who is required under section 297A.21 or authorized by the commissioner to collect the use tax upon making retail sales of any items enumerated in this chapter not exempted under sections 297A.01 to 297A.44 to which the use tax applies 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

retailer shall not collect the tax from a purchaser who furnishes to such retailer a copy of a certificate issued by the commissioner authorizing such purchaser to pay any sales or use tax due on purchases made by such purchaser directly to the commissioner. The tax collected by such retailer pursuant to the provisions of this section shall be remitted to the commissioner as provided in other sections of this chapter.

History: *Ex1967 c 32 art 13 s 16; 1969 c 915 s 2; 1986 c 444; 1988 c 719 art 10 s 4*

297A.17 STATUS AS DEBT.

The use tax required to be collected by the retailer shall be a debt from the purchaser to the retailer recoverable at law in the same manner as other debts.

History: *Ex1967 c 32 art 13 s 17; 1988 c 719 art 10 s 5; 1989 c 277 art 1 s 15; 1990 c 480 art 1 s 41*

297A.18 MINIMUM TAX.

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.

History: *Ex1967 c 32 art 13 s 18; 1987 c 268 art 4 s 8; 1990 c 480 art 1 s 42*

297A.19 [Repealed, 1989 c 277 art 1 s 35]

297A.20 [Repealed, 1990 c 480 art 1 s 45]

297A.21 REGISTRATION TO COLLECT USE TAX.

Subdivision 1. Retailer maintaining place of business in Minnesota. "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.

Subd. 2. Destination. The destination of a sale is the location to which the retailer makes delivery of the property sold, or causes the property to be delivered, to the purchaser of the property, or to the agent or designee of the purchaser by any means of delivery, including the United States Postal Service, a common carrier, or a contract carrier.

Subd. 3. Out-of-state retailer maintaining place of business in Minnesota. A retailer making retail sales from outside this state to a destination within this state and maintaining a place of business in this state shall file an application for a permit pursuant to section 297A.04 and shall collect and remit the use tax as provided in section 297A.16.

Subd. 4. Required registration by out-of-state retailer not maintaining place of business in Minnesota. (a) A retailer making retail sales from outside this state to a destination within this state and not maintaining a place of business in this state shall file an application for a permit pursuant to section 297A.04 and shall collect and remit the use tax as provided in section 297A.16 if the retailer engages in the regular or systematic soliciting of sales from potential customers in this state by:

(1) the distribution, by mail or otherwise, without regard to the state from which such distribution originated or in which the materials were prepared, of catalogs, periodicals, advertising flyers, or other written solicitations of business to customers in this state;

(2) display of advertisements on billboards or other outdoor advertising in this state;

(3) advertisements in newspapers published in this state;

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(4) advertisements in trade journals or other periodicals the circulation of which is primarily within this state;

(5) advertisements in a Minnesota edition of a national or regional publication or a limited regional edition in which this state is included of a broader regional or national publication which are not placed in other geographically defined editions of the same issue of the same publication;

(6) advertisements in regional or national publications in an edition which is not by its contents geographically targeted to Minnesota but which is sold over the counter in Minnesota or by subscription to Minnesota residents;

(7) advertisements broadcast on a radio or television station located in Minnesota;
or

(8) any other solicitation by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(b) The location within or without this state of vendors independent of the retailer which provide products or services to the retailer in connection with its solicitation of customers within this state, including such products and services as creation of copy, printing, distribution, and recording, is not to be taken into account in the determination of whether the retailer is required to collect use tax. Paragraph (a) shall be construed without regard to the state from which distribution of the materials originated or in which they were prepared.

(c) A retailer not maintaining a place of business in this state shall be presumed, subject to rebuttal, to be engaged in regular solicitation within this state if it (1) engages in any of the activities in paragraph (a) and makes 100 or more retail sales from outside this state to destinations within this state during a period of 12 consecutive months, or (2) makes ten or more retail sales totaling more than \$100,000 from outside this state to destinations within this state during a period of 12 consecutive months.

(d) A retailer not maintaining a place of business in this state shall not be required to collect use tax imposed by any local governmental unit or subdivision of this state and this section does not subject such a retailer to any regulation of any local unit of government or subdivision of this state.

Subd. 5. Voluntary registration by out-of-state retailer not maintaining place of business in Minnesota. A retailer making retail sales from outside this state to a destination within this state who is not required to collect and remit use tax may nevertheless voluntarily file an application for a permit pursuant to section 297A.04. If the application is granted, the retailer shall collect and remit the use tax as provided in section 297A.16 until the permit is canceled or revoked.

Subd. 6. Commissioner's discretion. (a) The commissioner may decline to issue a permit to any retailer not maintaining a place of business in this state, or may cancel a permit previously issued to the retailer, if the commissioner believes that the use tax can be collected more effectively from the persons using the property in this state. A refusal to issue or cancellation of a permit on such grounds does not affect the retailer's right to make retail sales from outside this state to destinations within this state.

(b) When, in the opinion of the commissioner, it is necessary for the efficient administration of sections 297A.14 to 297A.25 to regard a salesperson, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom the person obtains the tangible personal property sold, whether making sales personally or in behalf of that dealer, distributor, supervisor, employer, or other person the commissioner may regard the salesperson, representative, trucker, peddler, or canvasser 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.

History: *Ex1967 c 32 art 13 s 21; 1969 c 915 s 3; 1986 c 444; 1988 c 719 art 10 s 6; 1989 c 277 art 1 s 17*

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 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 transportation of property or passengers from the interstate commerce commission or the Minnesota public utilities 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. Persons who in the course of their business are transporting solely their own goods in interstate commerce may also register as retailers pursuant to rules prescribed by the commissioner and pay the taxes imposed by this chapter in accordance with this section.

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 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.

In computing the tax under this section "sales price" does not include the amount of any tax, except any manufacturer's or importer's excise tax, imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer.

(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 289A.11 and 289A.20, subdivision 4.

Subd. 3. A person who pays the tax to the seller under section 297A.03 or pays the tax to the motor vehicle registrar as required by section 297B.02 and who meets the requirements of this section at the time of the sale, except that the person has not registered as a retailer under this section 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.

Subd. 4. Notwithstanding subdivisions 1 to 3, the commissioner may enter into an agreement with the commissioner of public safety, whereby upon approval of both commissioners, the commissioner of public safety will collect the motor vehicle excise tax from persons defined in subdivision 1. For the purpose of collecting the tax, the commissioner of public safety shall act as the agent of the commissioner of revenue and shall be subject to all rules not inconsistent with the provisions of this chapter, that may be prescribed by the commissioner.

History: 1971 c 115 s 1; 1977 c 15 s 1; 1978 c 539 s 1; 1980 c 607 art 5 s 3; 1980 c 614 s 123; 1983 c 327 s 5; 1985 c 248 s 70; 1987 c 268 art 4 s 9,10; 1990 c 480 art 1 s 43,46

297A.212 RAILROAD ROLLING STOCK.

Railroad rolling stock used by a railroad operating in this state that is licensed as a common carrier by the Interstate Commerce Commission and used to transport persons or property in interstate or foreign commerce is subject to taxation under this chapter only to the extent provided in this section. The tax must be computed using the ratio of revenue ton miles of passengers, mail, express, and freight carried by the railroad within this state to the total number of revenue ton miles carried by the railroad within and without this state. This ratio must be determined at the close of the carrier's previous fiscal year. This ratio must be applied each month to the total amount of purchases of rolling stock used within and without this state by the railroad to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. "Railroad rolling stock" means all portable or moving apparatus and machinery of a railroad company and includes engines, cars, tenders, coaches, sleeping cars, and parts necessary for the repair and maintenance of the rolling stock.

History: 1987 c 268 art 4 s 11; 1988 c 719 art 10 s 7

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 that person may take from the purchaser an exemption certificate in accordance with sections 297A.09 to 297A.13.

History: Ex1967 c 32 art 13 s 22; 1986 c 444

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 the purchaser 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.

History: Ex1967 c 32 art 13 s 23; 1986 c 444

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 equal to or greater than the tax imposed in this state, then no tax shall be due from such person under section 297A.14.

History: Ex1967 c 32 art 13 s 24; 1973 c 501 s 13; 1Sp1981 c 1 art 4 s 6

297A.25 EXEMPTIONS.

Subdivision 1. The items contained in subdivisions 2 to 30 are specifically exempted from the taxes imposed by sections 297A.01 to 297A.44.

Subd. 2. **Food products.** 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) are exempt. This exemption does not include the following:

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(1) candy and candy products, except when sold for fundraising purposes by a non-profit organization that provides educational and social activities for young people primarily aged 18 and under;

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

Subd. 3. Medicines; medical devices. The gross receipts from the sale of prescribed drugs, prescribed medicine and insulin, intended for use, internal or external, in the cure, mitigation, treatment or prevention of illness or disease in human beings are exempt, together with prescription glasses, therapeutic, and prosthetic devices. "Prescribed drugs" or "prescribed medicine" includes over-the-counter drugs or medicine prescribed by a licensed physician. "Therapeutic devices" includes reusable finger pricking devices for the extraction of blood and blood glucose monitoring machines used in the treatment of diabetes. Nonprescription analgesics consisting principally (determined by the weight of all ingredients) of acetaminophen, acetylsalicylic acid, ibuprofen, or a combination thereof are exempt.

Subd. 4. Constitutional prohibitions. 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, are exempt.

Subd. 5. Outstate transport or delivery. The gross receipts from the following sales of tangible personal property are exempt:

(1) property 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 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

(2) property 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.

Subd. 6. Packing materials. 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, are exempt.

Subd. 7. Petroleum products. The gross receipts from the sale of and storage, use or consumption of the following petroleum products are exempt:

(1) products upon which a tax has been imposed and paid under the provisions of chapter 296, and no refund has been or will be allowed because the buyer used the fuel for nonhighway use, or

(2) products which are used in the improvement of agricultural land by constructing, maintaining, and repairing drainage ditches, tile drainage systems, grass waterways, water impoundment, and other erosion control structures.

Subd. 8. Clothing. The gross receipts from the sale of clothing and wearing apparel are exempt, except the following:

(1) all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semiprecious 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 hollowware and silver-plated hollowware; opera glasses; lorgnettes; marine glasses; field glasses and binoculars;

(2) 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;

(3) 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 chapter shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the case of babies;

(4) 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, salespeople's sample and display cases, purses, handbags, pocketbooks, wallets, billfolds, card, pass, and key cases and toilet cases.

Subd. 9. Materials consumed in production. 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 are exempt. Chemicals used for cleaning food processing machinery and equipment are included in this exemption. 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. Electricity used to make snow for outdoor use for ski hills, ski slopes, or ski trails is included in this exemption.

Subd. 10. Publications materials. 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 are exempt. For purposes of this subdivision, "publication" as used herein shall include, without limiting the foregoing, a legal newspaper as defined by 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.

Subd. 11. Sales to government. 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, the University of Minnesota, state universities, community colleges, technical colleges, state academies, the Minnesota center for arts education, and political subdivisions of the state are exempt. Sales exempted by this subdivision include sales under section 297A.01, subdivision 3, paragraph (f), but do not include sales under section 297A.01, subdivision 3, paragraph (j), clause (vii). 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. This exemption does not apply to the leasing of a motor vehicle as defined in section 297B.01, subdivision 5, except for leases entered into by the United States or its agencies or instrumentalities.

Subd. 12. Occasional sales. 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 are exempt.

Subd. 13. [Repealed, 1987 c 268 art 4 s 25]

Subd. 14. Airflight equipment. 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 are exempt. For purposes of this subdivision, "airflight equipment" includes airplanes and parts necessary for the repair and maintenance of such airflight equipment, and flight simulators.

Subd. 15. Taconite production materials. 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 are exempt.

Subd. 16. Sales to nonprofit groups. 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, are exempt. Sales exempted by this subdivision include sales pursuant to section 297A.01, subdivision 3, paragraphs (d) and (f), but do not include sales under section 297A.01, subdivision 3, paragraph (j), clause (vii). 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. This exemption does not apply to the leasing of a motor vehicle as defined in section 297B.01, subdivision 5.

Subd. 17. Caskets; vaults. The gross receipts from the sale of caskets and burial vaults are exempt.

Subd. 18. Automobiles; disabled veterans. The gross receipts from the sale of an automobile or other conveyance are exempt if the purchaser is assisted by a grant from the United States in accordance with United States Code, title 38, section 1901, as amended.

Subd. 19. Aircraft. 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 is exempt, if the aircraft is resold while the permit is in effect.

Subd. 20. Building materials; disabled veterans. The gross receipts from the sale of building materials to be used in the construction or remodeling of a residence are exempt when the construction or remodeling is financed in whole or in part by the United States in accordance with United States Code, title 38, 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 United States Code, title 38, chapter 21, as amended. The commissioner shall provide by rule for the refund of taxes paid on sales exempt in accordance with this subdivision.

Subd. 21. Textbooks. 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 are exempt. For purposes of this subdivision 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.

Subd. 22. Advertising materials. 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 are exempt. Mailing and reply envelopes and cards used exclusively in connection with the advertising and promotional materials are included in this exemption.

Subd. 23. Residential heating fuels. The gross receipts from the sale of residential heating fuels are exempt in the following manner:

- (1) all fuel oil, coal, wood, steam, hot water, propane gas, and L.P. gas sold to residential customers for residential use;
- (2) 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;
- (3) 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. 24. Nonprofit tickets or admissions. 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), are exempt.

Subd. 25. Veterans groups. 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 are exempt, provided that:

- (1) 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
- (2) 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.

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Subd. 26. **Feminine hygiene products.** The gross receipts from the sale of sanitary napkins, tampons, or similar items used for feminine hygiene, are exempt.

Subd. 27. **Manufactured homes.** The gross receipts from the sale of a manufactured home, as defined in section 327.31, subdivision 6, to be used by the purchaser for residential purposes are exempt, unless the sale is the first retail sale of the manufactured home in this state.

Subd. 28. **Waste processing equipment.** The gross receipts from the sale of equipment used for processing solid or hazardous waste at a resource recovery facility, as defined in section 115A.03, subdivision 28, are exempt.

Subd. 29. **Farm machinery repair parts.** The gross receipts from the sale of repair and replacement parts, except tires, used for maintenance or repair of farm machinery are exempt, if the part replaces a farm machinery part assigned a specific or generic part number by the manufacturer of the farm machinery.

Subd. 30. **School tickets or admissions.** The gross receipts from sales of tickets or admissions to regular season school games, events, and activities are exempt. For purposes of this subdivision, "school" has the meaning given it in section 120.101, subdivision 4.

Subd. 31. **Sales by government taxable.** This section shall not be construed to exempt the gross receipts from sales of tangible personal property or taxable services 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. 32. **Property brought into Minnesota by nonresident.** 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 the person's use, storage, or consumption are hereby exempted from the tax imposed by section 297A.14.

Subd. 33. **Road materials.** Nothing in this section shall exempt the gross receipts from sales of road building materials intended for use in state trunk highway or interstate highway construction, purchased by contractors.

Subd. 34. **Motor vehicles.** 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.

Subd. 35. **Food stamps.** The gross receipts from the sale of tangible personal property purchased with food stamps, coupons, or vouchers issued by the federal government under the Food Stamp Program are exempt. This exemption also applies to food purchased under the Special Supplemental Food Program for Women, Infants, and Children. The exemption provided by this subdivision is effective and applies only to the extent required by federal law.

Subd. 36. **Interstate WATS lines.** The gross receipts from the sale of long distance telephone services are exempt, if the service (1) consists of a wide area telephone line that permits a long distance call to an individual or business located in Minnesota to be made from a location outside of Minnesota at no toll charge to the person placing the call; or (2) entitles a customer, upon payment of a periodic charge that is determined either as a flat amount or upon the basis of total elapsed transmission time, to the privilege of an unlimited number of long distance calls made from a location in Minnesota to a location outside of Minnesota if the customer is a qualified provider of telemarketing services. As used in this subdivision, a "qualified provider of telemarketing services" is a telemarketing firm that derives at least 80 percent of its revenues from one or more of the following activities: soliciting or providing information, soliciting sales or receiving orders, and conducting research by means of telegraph, telephone, computer data base, fiber optic, microwave, or other communication system.

Subd. 37. **YMCA and YWCA memberships.** The gross receipts from the sale of memberships, including both one-time initiation fees and periodic membership dues,

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to an association incorporated under section 315.44 are exempt. However, all separate charges made for the privilege of having access to and the use of the association's sports and athletic facilities are taxable.

Subd. 38. Used motor oils. The gross receipts from the sale of used motor oils are exempt.

Subd. 39. Cross country ski passes. The gross receipts from the sale of cross country ski passes issued under sections 85.40 to 85.43 are exempt.

Subd. 40. State fair admissions. The gross receipts from the sale of tickets to the premises of or events sponsored by the state agricultural society and conducted on the state fairgrounds during the period of the annual state fair are exempt, provided that:

(1) the tax foregone under this subdivision is used exclusively for the purpose of making capital improvements to state-owned buildings and facilities on the state fairgrounds; and

(2) the tax foregone under this subdivision is matched in equal amount by proceeds from special assessments levied against commercial exhibits, concessions and rentals, and from other special user fees specifically designated for capital improvements.

Subd. 41. Bullet-proof vests. The gross receipts from the sale of bullet-resistant soft body armor that is flexible, concealable, and custom-fitted to provide the wearer with ballistic and trauma protection are exempt if purchased by a licensed peace officer, as defined in section 626.84, subdivision 1. The bullet-resistant soft body armor must meet or exceed the requirements of standard 0101.01 of the National Institute of Law Enforcement and Criminal Justice in effect on December 30, 1986, or meet or exceed the requirements of the standard except wet armor conditioning.

Subd. 42. Capital equipment. The gross receipts from the sale of capital equipment are exempt.

Subd. 43. Chair lifts, ramps, elevators. The gross receipts from the sale of chair lifts, ramps, and elevators and building materials used to install or construct them are exempt, if they are authorized by a physician and installed in or attached to the owner's homestead.

Subd. 44. Ambulances. The lease of a motor vehicle for use as an ambulance by an ambulance service licensed under section 144.802 is exempt.

Subd. 45. Ships used in interstate commerce. The gross receipts from sales of repair, replacement, and rebuilding parts and materials, and lubricants, for ships or vessels used or to be used principally in interstate or foreign commerce are exempt.

History: *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; 1979 c 191 s 1; 1980 c 607 art 5 s 2; 1Sp1981 c 1 art 4 s 7; 3Sp1981 c 2 art 5 s 2; 1982 c 523 art 15 s 2; art 34 s 2; 1982 c 641 art 2 s 5; 1983 c 327 s 6; 1983 c 342 art 6 s 7; 1984 c 502 art 6 s 8; 1984 c 525 s 2; 1984 c 548 s 3; 1984 c 644 s 55; 1984 c 655 art 1 s 55; 1985 c 83 s 3; 1985 c 248 s 70; 1Sp1985 c 10 s 86; 1Sp1985 c 14 art 2 s 9; 1986 c 444; 1987 c 268 art 4 s 12-17; 1987 c 384 art 2 s 74; 1988 c 719 art 10 s 8-15; 1989 c 209 art 2 s 1; 1989 c 246 s 2; 1989 c 277 art 1 s 18,19; 1989 c 329 art 12 s 6; 1Sp1989 c 1 art 12 s 6-8; art 19 s 4,5; 1990 c 480 art 4 s 6; 1990 c 556 s 5; 1990 c 604 art 6 s 3-5; 1990 c 612 s 13*

NOTE: The provisions of section 297A.35 apply to refunds claimed under subdivision 45, as added by Laws 1990, chapter 604, article 6, section 4. See Laws 1990, chapter 604, article 6, section 11.

- 297A.251** [Repealed, 1983 c 327 s 16]
- 297A.252** [Repealed, 1973 c 650 art 13 s 3]
- 297A.253** [Repealed, 1989 c 277 art 1 s 35]
- 297A.254** [Repealed, 1987 c 268 art 8 s 8]

297A.255 AIRCRAFT; PAYMENT OF TAXES PRIOR TO REGISTRATION AND LICENSING.

Subdivision 1. Notwithstanding the provisions of section 297A.25, subdivision 12, 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 a 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 a certificate that no sales or use tax is due and owing in respect to such transaction.

Subd. 5. There is specifically exempted from the provisions of this chapter the purchase or use of aircraft registered in the state of Minnesota by a corporation or partnership when the transfer constitutes a transfer within the meaning of section 351 or 721 of the Internal Revenue Code of 1986, as amended through December 31, 1989.

History: 1973 c 476 s 1; 1973 c 582 s 3; 1986 c 444; 1990 c 480 art 4 s 7

297A.256 EXEMPTIONS FOR CERTAIN NONPROFIT GROUPS.

Notwithstanding the provisions of this chapter, the following sales made by a "non-profit organization" are exempt from the sales and use tax.

(a)(1) All sales made by an organization for fundraising purposes if that organization exists solely for the purpose of providing educational or social activities for young people primarily age 18 and under. This exemption shall apply only if the gross annual sales receipts of the organization from fundraising do not exceed \$10,000.

(2) A club, association, or other organization of elementary or secondary school students organized for the purpose of carrying on sports, educational, or other extracurricular activities is a separate organization from the school district or school for purposes of applying the \$10,000 limit. This paragraph does not apply if the sales are derived from admission charges or from activities for which the money must be deposited with the school district treasurer under section 123.38, subdivision 2, or be recorded in the same manner as other revenues or expenditures of the school district under section 123.38, subdivision 2b.

(b) All sales made by an organization for fundraising purposes if that organization is a 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 and no part of the net earnings inure to the benefit of any private shareholders. This exemption shall apply only if the gross annual sales receipts of the organization from fundraising do not exceed \$10,000.

(c) The gross receipts from the sales of tangible personal property at, admission charges for, and sales of food, meals, or drinks at fundraising events sponsored by a nonprofit organization when the entire proceeds, except for the necessary expenses therewith, will be used solely and exclusively for charitable, religious, or educational purposes. This exemption does not apply to admission charges for events involving bingo or other gambling activities or to charges for use of amusement devices involving bingo or other gambling activities. For purposes of this clause, a "nonprofit organization" means any unit of government, corporation, society, association, foundation, or institution organized and operated for charitable, religious, educational, civic, fraternal, senior citizens' or veterans' purposes, no part of the net earnings of which enures to the benefit of a private individual.

If the profits are not used solely and exclusively for charitable, religious, or educational purposes, the entire gross receipts are subject to tax.

Each nonprofit organization shall keep a separate accounting record, including receipts and disbursements from each fundraising event. All deductions from gross receipts must be documented with receipts and other records. If records are not maintained as required, the entire gross receipts are subject to tax.

The exemption provided by this section does not apply to any sale made by or in the name of a nonprofit corporation as the active or passive agent of a person that is not a nonprofit corporation.

The exemption for fundraising events under this section is limited to no more than 24 days a year. Fundraising events conducted on premises leased or occupied for more than four days but less than 30 days do not qualify for this exemption.

History: 1Sp1985 c 14 art 2 s 10; 1987 c 268 art 4 s 18; 1988 c 719 art 10 s 16

297A.257 DISTRESSED COUNTIES; CAPITAL EQUIPMENT EXEMPTION.

Subdivision 1. Designation of distressed counties. (a) The commissioner of trade and economic development shall annually on June 1 designate those counties which are distressed. A county is distressed if it satisfies at least one of the following criteria:

(1) the county has an average unemployment rate of ten percent or more for the one-year period ending on April 30 of the year in which the designation is made; or

(2) the unemployment rate for the entire county was greater than 110 percent of the state average for the 12-month period ending the previous April 30, and 20 percent or more of the county's economy, as determined by the commissioner of jobs and training, is dependent upon agriculture; or

(3) for counties designated for periods beginning after June 30, 1986, but before July 1, 1988, at least 20 percent of the county's economy, as determined by the commissioner of jobs and training, is dependent upon agriculture and the total market value of real and personal property for the entire county for taxes payable in 1986, as determined by the commissioner of revenue, has decreased by at least 22 percent from the total market value of real and personal property for the entire county for taxes payable in 1984.

If, as a result of a plant closing, layoffs, or another similar event affecting a significant number of employees in the county, the commissioner has reason to believe that the average unemployment in the county will exceed ten percent during the one-year period beginning April 30, the commissioner may designate the county as distressed, notwithstanding clause (1).

(b) The commissioner shall designate a portion of a county containing a city of the first class located outside of the metropolitan area as a distressed county if:

(1) that portion of the county has an unemployment rate of ten percent or more for the one-year period ending on April 30 of the year in which the designation is made; and

(2) that portion of the county has a population of at least 50,000 as determined by the 1980 federal census.

(c) A county or the portion of a county designated pursuant to this subdivision shall be considered a distressed county for purposes of this section and chapter 116M.

(d) Except as otherwise specifically provided, the determination of whether a county is distressed must be made using the most current data available from the state demographer. The designation of a distressed county is effective for the 12-month period beginning July 1, except that designations made effective July 1, 1988, shall remain in effect until December 31, 1989, with respect to equipment placed in service by December 31, 1989. A county may be designated as distressed as often as it qualifies.

(e) The authority to designate counties as distressed expires for designations made effective July 1, 1988.

Subd. 2. Sales tax exemption. Purchase and use of capital equipment is exempt

from the sales and use tax imposed by this chapter if the capital equipment is placed in service in connection with the construction of a new or an expansion of an existing manufacturing facility in a distressed county or in the taconite tax relief area defined in section 273.134. Purchase or use of equipment for use in an existing plant qualifies under this section and section 297A.01, subdivision 16, as an expansion if either the production capacity of the plant is increased by at least 20 percent as a result or if the total capital investments made within a 12-month period exceed \$25,000,000. Purchases of capital equipment are exempt under this section only to the extent that the purchases of capital equipment for the project during the calendar year exceed \$100,000. The county is a distressed county for purposes of this subdivision if it was designated as a distressed county for the time period during which the contract to purchase the equipment was executed.

A county meeting only the criteria in paragraph (a), clause (3), of subdivision 1 is a distressed county for purposes of this subdivision if it was designated as a distressed county for the time period during which sales and use tax on capital equipment purchased became due and payable.

Subd. 2a. Exemption for construction materials. Construction materials and supplies are exempt from the tax imposed under this chapter, regardless of whether purchased by the owner or a contractor, subcontractor, or builder, if:

(a)(1) the materials and supplies are used or consumed in constructing a new manufacturing facility or expanding an existing one in a distressed county; and

(2) the total capital investment made within a three-year period exceeds \$75,000,000; or

(b)(1) the materials and supplies are used or consumed in constructing a new manufacturing facility or expanding an existing one within the taconite tax relief area defined in section 273.134; and

(2) the total capital investment made within a three-year period exceeds \$50,000,000.

A county is a distressed county for purposes of a project qualifying under this subdivision if it was designated as a distressed county at the time the initial contract to purchase the materials and supplies was executed.

Subd. 2b. Projects; continued exemption. If construction of a project is begun during a time period in which the county was designated as a distressed county and if the county ceases to be a distressed county, the provision of subdivisions 2 and 2a apply to the project as if the county were distressed for 12 months after the designation expired.

Subd. 3. Rulemaking authority. In order to carry out the purposes of this section, the commissioner of trade and economic development may adopt administrative rules under chapter 14. The commissioner may adopt emergency rules effective through December 31, 1986.

History: *1Sp1985 c 14 art 8 s 18; art 9 s 75; 1986 c 441 s 8; 1987 c 268 art 10 s 7-10; 1987 c 312 art 1 s 26 subd 2; 1Sp1989 c 1 art 12 s 9*

297A.258 PRIVATE SUPPLIERS OF PUBLIC SERVICES.

A private vendor that has entered into a service contract with a municipality under sections 471A.02 and 471A.03 is a political subdivision for purposes of determining the tax imposed under this chapter. This section applies only to the extent that the vendor is acting for the purposes of constructing, maintaining, or operating related facilities pursuant to the service contract.

The commissioner may provide for the issuance of a limited exemption certificate to a private vendor for purposes of administering this section. The commissioner may further require a vendor to obtain a certificate in order to qualify as a political subdivision under this section.

For purposes of this section, "private vendor," "service contract," and "related facilities" have the meanings given in sections 471A.02 and 471A.03.

History: *1986 c 465 art 4 s 1*

297A.259 LOTTERY TICKETS; IN LIEU TAX.

Sales of state lottery tickets are exempt from the tax imposed under section 297A.02. The state lottery division in the department of gaming must on or before the 20th day of each month transmit to the commissioner of revenue an amount equal to the gross receipts from the sale of lottery tickets for the previous month multiplied by the tax rate under section 297A.02, subdivision 1. The resulting payment is in lieu of the sales tax that otherwise would be imposed by this chapter. The commissioner shall deposit the money transmitted in the general fund as provided by section 297A.44 and the money must be treated as other proceeds of the sales tax. Gross receipts for purposes of this section mean the proceeds of the sale of tickets before deduction of a commission or other compensation paid to the vendor or retailer for selling tickets.

History: *1Sp1989 c 1 art 12 s 10*

297A.26 OFFSET AGAINST OTHER TAXES.

Subdivision 1. [Repealed, 1990 c 480 art 1 s 45]

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.

Subd. 3. [Repealed, 1987 c 268 art 17 s 42]

Subd. 4. [Repealed, 1990 c 480 art 1 s 45]

History: *Ex1967 c 32 art 13 s 26; 1983 c 327 s 7; 1987 c 268 art 4 s 19; art 17 s 27*

297A.27 [Repealed, 1990 c 480 art 1 s 45]

297A.275 [Repealed, 1990 c 480 art 1 s 45]

297A.28 SECURITY.

On finding it necessary to insure compliance with sections 297A.01 to 297A.44 the commissioner may require a retailer subject thereto to deposit with the commissioner security in such form and in such amount as the commissioner 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 commissioner of commerce as to solvency and responsibility.

History: *Ex1967 c 32 art 13 s 28; 1983 c 289 s 114 subd 1; 1983 c 327 s 10; 1984 c 655 art 1 s 92; 1986 c 444*

297A.29 [Repealed, 1990 c 480 art 2 s 18]

297A.30 [Repealed, 1990 c 480 art 1 s 45]

297A.31 [Repealed, 1990 c 480 art 1 s 45]

297A.32 [Repealed, 1990 c 480 art 1 s 45]

297A.33 JEOPARDY ASSESSMENT AND COLLECTION; PROTECTION AGAINST EVASION.

Subdivision 1. [Repealed, 1990 c 480 art 1 s 45]

Subd. 2. If the commissioner has reason to believe that the person required to file the return is about to leave the state or remove the person's 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, the commissioner may immediately declare such person's reporting period at an end and assess a tax on the basis of the commissioner's own knowledge or information available, demand its immediate payment; and, if payment is not immediately made, collect the tax by any method prescribed in chapter 270. 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. [Repealed, 1990 c 480 art 1 s 45]

Subd. 4. [Repealed, 1990 c 480 art 1 s 45]

Subd. 5. [Repealed, 1990 c 480 art 1 s 45]

Subd. 6. [Repealed, 1982 c 523 art 2 s 49]

History: *Ex1967 c 32 art 13 s 33; 1969 c 544 s 1,2; 1978 c 767 s 33; 1982 c 523 art 2 s 43; 1986 c 444*

297A.34 [Repealed, 1990 c 480 art 1 s 45]

297A.35 [Repealed, 1990 c 480 art 1 s 45]

297A.36 [Repealed, 1982 c 523 art 2 s 49]

297A.37 [Repealed, 1990 c 480 art 2 s 18]

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 rule 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 rules. 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 the retailer shall be given 30 days notice of the time and place of such hearing and the reason for the proposed order.

History: *Ex1967 c 32 art 13 s 38; 1985 c 248 s 70; 1986 c 444*

297A.39 PENALTY.

Subdivision 1. [Repealed, 1990 c 480 art 1 s 45]

Subd. 2. [Repealed, 1990 c 480 art 1 s 45]

Subd. 2a. [Repealed, 1990 c 480 art 1 s 45]

Subd. 3. [Repealed, 1990 c 480 art 1 s 45]

Subd. 4. [Repealed, 1990 c 480 art 1 s 45]

Subd. 5. [Repealed, 1990 c 480 art 2 s 18]

Subd. 6. [Repealed, 1982 c 523 art 2 s 49]

Subd. 7. [Repealed, 1990 c 480 art 1 s 45]

Subd. 8. [Repealed, 1990 c 480 art 1 s 45]

Subd. 9. Intentional disregard of law or rules. If any part of any underpayment resulting from an additional assessment is due to negligence or intentional disregard of the provisions of this chapter or rules of the commissioner of revenue (but without intent to defraud), there shall be added to the tax an amount equal to ten percent of the additional assessment. The penalty imposed by this subdivision must be collected as part of the tax and is in addition to any other penalties provided by this chapter. The amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid.

History: 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; 3Sp1981 c 2 art 5 s 4; 1982 c 523 art 2 s 44,45; 1983 c 294 s 9,10; 1Sp1985 c 14 art 16 s 5; 1986 c 444; 1987 c 268 art 17 s 30-33; 1Sp1989 c 1 art 12 s 11

297A.391 [Repealed, 1987 c 268 art 14 s 25]

297A.40 [Repealed, 1990 c 480 art 1 s 45]

297A.41 [Repealed, 1990 c 480 art 1 s 45]

297A.42 [Repealed, 1990 c 480 art 1 s 45]

297A.43 [Repealed, 1989 c 184 art 1 s 20]

297A.431 [Repealed, 1990 c 480 art 10 s 12]

297A.44 DEPOSIT OF REVENUES; COSTS OF ADMINISTRATION; APPROPRIATION.

Subdivision 1. (a) Except as provided in paragraphs (b), (c), and (d), 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.

(b) All excise and use taxes derived from sales and use of property and services purchased for the construction and operation of an agricultural resource project, from and after the date on which a conditional commitment for a loan guaranty for the project is made pursuant to section 41A.04, subdivision 3, shall be deposited in the Minnesota agricultural and economic account in the special revenue fund. The commissioner of finance shall certify to the commissioner the date on which the project received the conditional commitment. The amount deposited in the loan guaranty account shall be reduced by any refunds and by the costs incurred by the department of revenue to administer and enforce the assessment and collection of the taxes.

(c) All revenues, including interest and penalties, derived from the excise and use taxes imposed on sales and purchases included in section 297A.01, subdivision 3, paragraphs (d) and (l), clauses (1) and (2), must be deposited by the commissioner in the state treasury, and credited as follows:

(1) first to the general obligation special tax bond debt service account in each fiscal year the amount required by section 16A.661, subdivision 3, paragraph (b); and

(2) after the requirements of clause (1) have been met, the balance must be credited to the general fund.

(d) The revenues, including interest and penalties, derived from the taxes imposed on solid waste collection services as described in section 297A.45 shall be deposited by the commissioner in the state treasury and credited to the general fund to be used for funding solid waste reduction and recycling programs.

Subd. 2. [Repealed, 1990 c 480 art 1 s 45]

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

History: Ex1967 c 32 art 13 s 44; 1969 c 399 s 38,39; 1984 c 502 art 10 s 8; 1987 c 386 art 9 s 21; 1987 c 400 s 53; 1988 c 633 s 6; 1989 c 335 art 4 s 80; 1Sp1989 c 1 art 19 s 6

297A.45 SOLID WASTE COLLECTION AND DISPOSAL SERVICES.

Subdivision 1. **Definitions.** The definitions in sections 115A.03 and 297A.01 apply to this section.

Subd. 2. **Application.** The tax imposed by section 297A.02 applies to all public and private mixed municipal solid waste collection and disposal services. Notwithstanding section 297A.25, subdivision 11, a political subdivision that purchases collection or disposal services on behalf of its citizens shall pay the tax. If a political subdivision provides collection or disposal services to its residents at a cost in excess of the total direct charge to the residents for the service, the political subdivision shall pay the tax based on its cost of providing the service in excess of the direct charges. A person who transports mixed municipal solid waste generated by that person or by another person without compensation shall pay the tax at the disposal or resource recovery facility based on the disposal charge or tipping fee.

Subd. 3. **Exemptions.** (a) The cost of a service or the portion of a service to collect and manage recyclable materials separated from mixed municipal solid waste by the waste generator is exempt from the tax imposed in section 297A.02.

(b) The amount of a surcharge or fee imposed under section 115A.919, 115A.921, 115A.923, or 473.843 is exempt from the tax imposed in section 297A.02.

(c) Waste from a recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least 85 percent is exempt from the tax imposed in section 297A.02. To qualify for the exemption under this paragraph, the waste exempted must be collected and disposed of separately from other solid waste.

Subd. 4. **City sales tax may not be imposed.** Notwithstanding any other law or charter provision to the contrary, a home rule charter or statutory city that imposes a general sales tax may not impose the sales tax on solid waste disposal and collection services that are subject to the tax under this section.

History: *1Sp1989 c 1 art 19 s 7*

- 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]