

CHAPTER 297A

GENERAL SALES AND USE TAXES

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297A.61 DEFINITIONS.

[For text of subs 1 and 2, see M.S.2004]

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

(b) Sale and purchase include:

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

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

(c) Sale and purchase include 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.

(d) Sale and purchase include the preparing for a consideration of food. Notwithstanding section 297A.67, subdivision 2, taxable food includes, but is not limited to, the following:

(1) prepared food sold by the retailer;

(2) soft drinks;

(3) candy;

(4) dietary supplements; and

(5) all food sold through vending machines.

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

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

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

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

(2) lodging and related services by a hotel, rooming house, resort, campground, motel, or trailer camp and the granting of any similar license to use real property in a specific facility, other than the renting or leasing of it for a continuous period of 30 days or more under an enforceable written agreement that may not be terminated without prior notice;

(3) nonresidential parking services, whether on a contractual, hourly, or other periodic basis, except for parking at a meter;

(4) the granting of membership in a club, association, or other organization if:

(i) 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

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

Granting of membership means both onetime 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;

(5) delivery of aggregate materials and concrete block by a third party if the delivery would be subject to the sales tax if provided by the seller of the aggregate material or concrete block; and

(6) services as provided in this clause:

(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) detective, security, burglar, fire alarm, and armored car services; but not including services performed within the jurisdiction they serve by off-duty licensed peace officers as defined in section 626.84, subdivision 1, or services provided by a nonprofit organization for monitoring and electronic surveillance of persons placed on in-home detention pursuant to court order or under the direction of the Minnesota Department of Corrections;

(v) pet grooming services;

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

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

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

In applying the provisions of this chapter, the terms "tangible personal property" and "sales at retail" include taxable services listed in clause (6), items (i) to (vi) and (viii), and the provision of these taxable services, unless specifically provided otherwise. Services performed by an employee for an employer are not taxable. Services performed by a partnership or association for another partnership or association are not taxable 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 the preceding sentence, "affiliated group of corporations" includes those entities that would be classified as members of an affiliated group under United States Code, title 26, section 1504, and that are eligible to file a consolidated tax return for federal income tax purposes.

(h) A sale and a purchase includes the furnishing for a consideration of tangible personal property or taxable services by the United States or any of its agencies or

instrumentalities, or the state of Minnesota, its agencies, instrumentalities, or political subdivisions.

(i) A sale and a purchase includes the furnishing for a consideration of telecommunications services, including cable television services and direct satellite services. Telecommunications services are taxed to the extent allowed under federal law.

(j) A sale and a purchase includes the furnishing for a consideration of installation if the installation charges would be subject to the sales tax if the installation were provided by the seller of the item being installed.

(k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer to a customer when (1) the vehicle is rented by the customer for a consideration, or (2) the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section 65B.29, subdivision 1, clause (1).

Subd. 4. **Retail sale.** (a) A "retail sale" means any sale, lease, or rental for any purpose, other than resale, sublease, or subrent of items by the purchaser in the normal course of business as defined in subdivision 21.

(b) A sale of property used by the owner only by leasing it to others or by holding it in an effort to lease it, and put to no use by the owner other than resale after the lease or effort to lease, is a sale of property for resale.

(c) A sale of master computer software that is purchased and used to make copies for sale or lease is a sale of property for resale.

(d) A sale of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair, or improvement of real property is a retail sale in whatever quantity sold, whether the sale is for purposes of resale in the form of real property or otherwise.

(e) A sale of carpeting, linoleum, or similar floor covering to a person who provides for installation of the floor covering is a retail sale and not a sale for resale since a sale of floor covering which includes installation is a contract for the improvement of real property.

(f) A sale of shrubbery, plants, sod, trees, and similar items to a person who provides for installation of the items is a retail sale and not a sale for resale since a sale of shrubbery, plants, sod, trees, and similar items that includes installation is a contract for the improvement of real property.

(g) A sale of tangible personal property that is awarded as prizes is a retail sale and is not considered a sale of property for resale.

(h) A sale of tangible personal property utilized or employed in the furnishing or providing of services under subdivision 3, paragraph (g), clause (1), including, but not limited to, property given as promotional items, is a retail sale and is not considered a sale of property for resale.

(i) A sale of tangible personal property used in conducting lawful gambling under chapter 349 or the State Lottery under chapter 349A, including, but not limited to, property given as promotional items, is a retail sale and is not considered a sale of property for resale.

(j) A sale of machines, equipment, or devices that are used to furnish, provide, or dispense goods or services, including, but not limited to, coin-operated devices, is a retail sale and is not considered a sale of property for resale.

(k) In the case of a lease, a retail sale occurs (1) when an obligation to make a lease payment becomes due under the terms of the agreement or the trade practices of the lessor or (2) in the case of a lease of a motor vehicle, as defined in section 297B.01, subdivision 5, but excluding vehicles with a manufacturer's gross vehicle weight rating greater than 10,000 pounds and rentals of vehicles for not more than 28 days, at the time the lease is executed.

(l) In the case of a conditional sales contract, a retail sale occurs upon the transfer of title or possession of the tangible personal property.

[For text of subs 5 to 36, see M.S.2004]

History: 2005 c 151 art 7 s 6,7; 1Sp2005 c 3 art 5 s 3,4

297A.64 RENTAL MOTOR VEHICLE TAX IMPOSED; RATE.

Subdivision 1. **Tax imposed.** A tax is imposed on the lease or rental in this state for not more than 28 days of a passenger automobile as defined in section 168.011, subdivision 7, a van as defined in section 168.011, subdivision 28, or a pickup truck as defined in section 168.011, subdivision 29. The rate of tax is 6.2 percent of the sales price. The tax applies whether or not the vehicle is licensed in the state.

[For text of subd 2, see M.S.2004]

Subd. 3. **Administration.** The retailer shall report and pay the tax imposed in subdivision 1 to the commissioner of revenue with the taxes imposed in this chapter. The tax imposed in subdivision 1 and the fee imposed in subdivision 2 are subject to the same interest, penalty, and other provisions provided for sales and use taxes under this chapter and chapter 289A. The audit, assessment, appeal, collection, enforcement, and administrative provisions of this chapter and chapters 270C and 289A, that apply to sales and use taxes, apply to the tax and fee.

Subd. 4. **Exemptions.** (a) The tax and the fee imposed by this section do not apply to a lease or rental of (1) a vehicle to be used by the lessee to provide a licensed taxi service; (2) a hearse or limousine used in connection with a burial or funeral service; or (3) a van designed or adapted primarily for transporting property rather than passengers. The tax and the fee imposed under this section do not apply when the lease or rental of a vehicle is exempt from the tax imposed under section 297A.62, subdivision 1.

(b) The lessor may elect not to charge the fee imposed in subdivision 2 if in the previous calendar year the lessor had no more than 20 vehicles available for lease that would have been subject to tax under this section, or no more than \$50,000 in gross receipts that would have been subject to tax under this section.

[For text of subd 5, see M.S.2004]

History: 1Sp2001 c 5 art 12 s 95; 2002 c 377 art 3 s 24; 1Sp2003 c 21 art 8 s 15; 2005 c 151 art 2 s 13; art 7 s 8; 1Sp2005 c 3 art 5 s 33

297A.668 SOURCING OF SALE; SITUS IN THIS STATE.

Subdivision 1. **Applicability.** The provisions of this section apply regardless of the characterization of a product as tangible personal property, a digital good, or a service; but do not apply to telecommunications services or the sales of motor vehicles. These provisions only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. These provisions do not affect the obligation of a seller as purchaser to remit tax on the use of the product.

[For text of subs 2 to 4, see M.S.2004]

Subd. 5. **Transportation equipment.** (a) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subdivision 2, notwithstanding the exclusion of lease or rental in subdivision 2.

(b) "Transportation equipment" means any of the following:

(1) locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(2) trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are:

(i) registered through the international registration plan; and

(ii) operated under authority of a carrier authorized and certified by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(3) aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate commerce; or

(4) containers designed for use on and component parts attached or secured on the transportation equipment described in items (1) through (3).

[For text of subds 6 and 7, see M.S.2004]

History: 2005 c 151 art 7 s 9,10

297A.67 GENERAL EXEMPTIONS.

[For text of subd 1, see M.S.2004]

Subd. 2. **Food and food ingredients.** Except as otherwise provided in this subdivision, food and food ingredients are exempt. For purposes of this subdivision, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients exempt under this subdivision do not include candy, soft drinks, food sold through vending machines, dietary supplements, and prepared foods. Food and food ingredients do not include alcoholic beverages and tobacco. For purposes of this subdivision, "alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume. For purposes of this subdivision, "tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. For purposes of this subdivision, "dietary supplements" means any product, other than tobacco, intended to supplement the diet that:

(1) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; and

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in items (i) to (v);

(2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(3) is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to Code of Federal Regulations, title 21, section 101.36.

[For text of subds 3 to 5, see M.S.2004]

Subd. 6. **Other exempt meals.** (a) Meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to handicapped persons and their spouses by governmental agencies, nonprofit organizations, or churches, or pursuant to any program funded in whole or in part through United States Code, title 42, sections 3001 through 3045, wherever delivered, prepared, or served, are exempt.

(b) Meals or drinks purchased for and served exclusively to children who are less than 14 years of age or disabled children who are less than 16 years of age and who are attending a child care or early childhood education program, are exempt if they are:

(1) purchased by a nonprofit child care facility that is exempt under section 297A.70, subdivision 4, and that primarily serves families with income of 250 percent or less of federal poverty guidelines; and

(2) prepared at the site of the child care facility.

Subd. 7. **Drugs; medical devices.** (a) Sales of the following drugs and medical devices are exempt:

(1) drugs for human use, including over-the-counter drugs;

(2) single-use finger-pricking devices for the extraction of blood and other single-use devices and single-use diagnostic agents used in diagnosing, monitoring, or treating diabetes;

(3) insulin and medical oxygen for human use, regardless of whether prescribed or sold over the counter;

(4) prosthetic devices;

(5) durable medical equipment for home use only;

(6) mobility enhancing equipment; and

(7) prescription corrective eyeglasses.

(b) For purposes of this subdivision:

(1) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages that is:

(i) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) intended to affect the structure or any function of the body.

(2) "Durable medical equipment" means equipment, including repair and replacement parts, but not including mobility enhancing equipment, that:

(i) can withstand repeated use;

(ii) is primarily and customarily used to serve a medical purpose;

(iii) generally is not useful to a person in the absence of illness or injury; and

(iv) is not worn in or on the body.

(3) "Mobility enhancing equipment" means equipment, including repair and replacement parts, but not including durable medical equipment, that:

(i) is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(ii) is not generally used by persons with normal mobility; and

(iii) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(4) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by Code of Federal Regulations, title 21, section 201.66. The label must include a "drug facts" panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation. Over-the-counter drugs do not include grooming and hygiene products, regardless of whether they otherwise meet the definition. "Grooming and hygiene products" are soaps, cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens.

(5) "Prescribed" and "prescription" means a direction in the form of an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed health care professional.

(6) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts, worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct physical deformity or malfunction; or
- (iii) support a weak or deformed portion of the body.

Prosthetic device does not include corrective eyeglasses.

[For text of subd 8, see M.S.2004]

Subd. 9. **Baby products.** Baby bottles and nipples, pacifiers, teething rings, and infant syringes are exempt.

[For text of subs 10 to 28, see M.S.2004]

Subd. 29. **Solar energy products.** A solar energy system, as defined in section 216C.06, subdivision 17, is exempt.

[For text of subs 30 and 31, see M.S.2004]

Subd. 32. **Cigarettes.** Cigarettes upon which a tax has been imposed under section 297F.25 are exempt.

History: 2005 c 151 art 7 s 11-13; 1Sp2005 c 3 art 5 s 5-7

297A.68 BUSINESS EXEMPTIONS.

[For text of subd 1, see M.S.2004]

Subd. 2. **Materials consumed in industrial production.** (a) Materials stored, used, or consumed in industrial production of personal property intended to be sold ultimately at retail are exempt, whether or not the item so used becomes an ingredient or constituent part of the property produced. Materials that qualify for this exemption include, but are not limited to, the following:

(1) chemicals, including chemicals used for cleaning food processing machinery and equipment;

(2) materials, including chemicals, fuels, and electricity purchased by persons engaged in industrial production to treat waste generated as a result of the production process;

(3) fuels, electricity, gas, and steam used or consumed in the production process, except that electricity, gas, or steam used for space heating, cooling, or lighting is exempt if (i) it is in excess of the average climate control or lighting for the production area, and (ii) it is necessary to produce that particular product;

(4) petroleum products and lubricants;

(5) packaging materials, including returnable containers used in packaging food and beverage products;

(6) accessory tools, equipment, and other items that are separate detachable units with an ordinary useful life of less than 12 months used in producing a direct effect upon the product; and

(7) the following materials, tools, and equipment used in metalcasting: crucibles, thermocouple protection sheaths and tubes, stalk tubes, refractory materials, molten metal filters and filter boxes, degassing lances, and base blocks.

(b) This exemption does not include:

(1) machinery, equipment, implements, tools, accessories, appliances, contrivances and furniture and fixtures, except those listed in paragraph (a), clause (6); and

(2) petroleum and special fuels used in producing or generating power for propelling ready-mixed concrete trucks on the public highways of this state.

(c) Industrial production includes, 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, the production of road building

materials, and the research, development, design, or production of computer software. Industrial production does not include painting, cleaning, repairing or similar processing of property except as part of the original manufacturing process.

(d) Industrial production does not include:

(1) the furnishing of services listed in section 297A.61, subdivision 3, paragraph (g), clause (6), items (i) to (vi) and (viii); or

(2) the transportation, transmission, or distribution of petroleum, liquefied gas, natural gas, water, or steam, in, by, or through pipes, lines, tanks, mains, or other means of transporting those products. For purposes of this paragraph, "transportation, transmission, or distribution" does not include blending of petroleum or biodiesel fuel as defined in section 239.77.

[For text of subs 3 and 4, see M.S.2004]

Subd. 5. Capital equipment. (a) Capital equipment is exempt. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

"Capital equipment" means machinery and equipment purchased or leased, and used in this state by the purchaser or lessee primarily for manufacturing, fabricating, mining, or refining tangible personal property to be sold ultimately at retail if the machinery and equipment are essential to the integrated production process of manufacturing, fabricating, mining, or refining. Capital equipment also includes machinery and equipment used primarily to electronically transmit results retrieved by a customer of an on-line computerized data retrieval system.

(b) Capital equipment includes, but is not limited to:

(1) machinery and equipment used to operate, control, or regulate the production equipment;

(2) machinery and equipment used for research and development, design, quality control, and testing activities;

(3) environmental control devices that are used to maintain conditions such as temperature, humidity, light, or air pressure when those conditions are essential to and are part of the production process;

(4) materials and supplies used to construct and install machinery or equipment;

(5) repair and replacement parts, including accessories, whether purchased as spare parts, repair parts, or as upgrades or modifications to machinery or equipment;

(6) materials used for foundations that support machinery or equipment;

(7) materials used to construct and install special purpose buildings used in the production process;

(8) ready-mixed concrete equipment in which the ready-mixed concrete is mixed as part of the delivery process regardless if mounted on a chassis, repair parts for ready-mixed concrete trucks, and leases of ready-mixed concrete trucks; and

(9) machinery or equipment used for research, development, design, or production of computer software.

(c) Capital equipment does not include the following:

(1) motor vehicles taxed under chapter 297B;

(2) machinery or equipment used to receive or store raw materials;

(3) building materials, except for materials included in paragraph (b), clauses (6) and (7);

(4) machinery or equipment used for nonproduction purposes, including, but not limited to, the following: plant security, fire prevention, first aid, and hospital stations; support operations or administration; pollution control; and plant cleaning, disposal of scrap and waste, plant communications, space heating, cooling, lighting, or safety;

(5) farm machinery and aquaculture production equipment as defined by section 297A.61, subdivisions 12 and 13;

(6) machinery or equipment purchased and installed by a contractor as part of an improvement to real property;

(7) machinery and equipment used by restaurants in the furnishing, preparing, or serving of prepared foods as defined in section 297A.61, subdivision 31;

(8) machinery and equipment used to furnish the services listed in section 297A.61, subdivision 3, paragraph (g), clause (6), items (i) to (vi) and (viii);

(9) machinery or equipment used in the transportation, transmission, or distribution of petroleum, liquefied gas, natural gas, water, or steam, in, by, or through pipes, lines, tanks, mains, or other means of transporting those products. This clause does not apply to machinery or equipment used to blend petroleum or biodiesel fuel as defined in section 239.77; or

(10) any other item that is not essential to the integrated process of manufacturing, fabricating, mining, or refining.

(d) For purposes of this subdivision:

(1) "Equipment" means independent devices or tools separate from machinery but essential to an integrated production process, including computers and computer software, used in operating, controlling, or regulating machinery and equipment; and any subunit or assembly comprising a component of any machinery or accessory or attachment parts of machinery, such as tools, dies, jigs, patterns, and molds.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Integrated production process" means a process or series of operations through which tangible personal property is manufactured, fabricated, mined, or refined. For purposes of this clause, (i) manufacturing begins with the removal of raw materials from inventory and ends when the last process prior to loading for shipment has been completed; (ii) fabricating begins with the removal from storage or inventory of the property to be assembled, processed, altered, or modified and ends with the creation or production of the new or changed product; (iii) mining begins with the removal of overburden from the site of the ores, minerals, stone, peat deposit, or surface materials and ends when the last process before stockpiling is completed; and (iv) refining begins with the removal from inventory or storage of a natural resource and ends with the conversion of the item to its completed form.

(4) "Machinery" means mechanical, electronic, or electrical devices, including computers and computer software, that are purchased or constructed to be used for the activities set forth in paragraph (a), beginning with the removal of raw materials from inventory through completion of the product, including packaging of the product.

(5) "Machinery and equipment used for pollution control" means machinery and equipment used solely to eliminate, prevent, or reduce pollution resulting from an activity described in paragraph (a).

(6) "Manufacturing" means an operation or series of operations where raw materials are changed in form, composition, or condition by machinery and equipment and which results in the production of a new article of tangible personal property. For purposes of this subdivision, "manufacturing" includes the generation of electricity or steam to be sold at retail.

(7) "Mining" means the extraction of minerals, ores, stone, or peat.

(8) "On-line data retrieval system" means a system whose cumulation of information is equally available and accessible to all its customers.

(9) "Primarily" means machinery and equipment used 50 percent or more of the time in an activity described in paragraph (a).

(10) "Refining" means the process of converting a natural resource to an intermediate or finished product, including the treatment of water to be sold at retail.

(11) This subdivision does not apply to telecommunications equipment as provided in subdivision 35, and does not apply to wire, cable, fiber, poles, or conduit for telecommunications services.

[For text of subs 6 to 25, see M.S.2004]

Subd. 28. Medical supplies. Medical supplies purchased by a licensed health care facility or licensed health care professional to provide medical treatment to residents or patients are exempt. The exemption does not apply to durable medical equipment or components of durable medical equipment, laboratory supplies, radiological supplies, and other items used in providing medical services. For purposes of this subdivision, "medical supplies" means adhesive and nonadhesive bandages, gauze pads and strips, cotton applicators, antiseptics, eye solution, and other similar supplies used directly on the resident or patient in providing medical services.

[For text of subs 29 to 34, see M.S.2004]

Subd. 35. Telecommunications equipment. (a) Telecommunications machinery and equipment purchased or leased for use directly by a telecommunications service provider primarily in the provision of telecommunications services that are ultimately to be sold at retail are exempt, regardless of whether purchased by the owner, a contractor, or a subcontractor.

(b) For purposes of this subdivision, "telecommunications machinery and equipment" includes, but is not limited to:

(1) machinery, equipment, and fixtures utilized in receiving, initiating, amplifying, processing, transmitting, retransmitting, recording, switching, or monitoring telecommunications services, such as computers, transformers, amplifiers, routers, bridges, repeaters, multiplexers, and other items performing comparable functions;

(2) machinery, equipment, and fixtures used in the transportation of telecommunications services, radio transmitters and receivers, satellite equipment, microwave equipment, and other transporting media, but not wire, cable, fiber, poles, or conduit;

(3) ancillary machinery, equipment, and fixtures that regulate, control, protect, or enable the machinery in clauses (1) and (2) to accomplish its intended function, such as auxiliary power supply, test equipment, towers, heating, ventilating, and air conditioning equipment necessary to the operation of the telecommunications equipment; and software necessary to the operation of the telecommunications equipment; and

(4) repair and replacement parts, including accessories, whether purchased as spare parts, repair parts, or as upgrades or modifications to qualified machinery or equipment.

(c) For purposes of this subdivision, "telecommunications services" means telecommunications services as defined in section 297A.61, subdivision 24, paragraphs (a), (c), and (d).

[For text of subd 36, see M.S.2004]

Subd. 37. Job opportunity building zones. (a) Purchases of tangible personal property or taxable services by a qualified business, as defined in section 469.310, are exempt if the property or services are primarily used or consumed in a job opportunity building zone designated under section 469.314. For purposes of this subdivision, an aerial camera package, including any camera, computer, and navigation device contained in the package, that is used in an aircraft that is operated under a Federal Aviation Administration Restricted Airworthiness Certificate according to Code of Federal Regulations, title 14, part 21, section 21.25(b)(3), relating to aerial surveying, and that is based, maintained, and dispatched from a job opportunity building zone, qualifies as primarily used or consumed in a job opportunity building zone if the imagery acquired from the aerial camera package is returned to the job opportunity building zone for processing. The exemption for an aerial camera package is limited to \$50,000 in taxes and the tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

(b) Purchase and use of construction materials, supplies, or equipment used or consumed in the construction of improvements to real property in a job opportunity

building zone are exempt if the improvements after completion of construction are to be used in the conduct of a qualified business, as defined in section 469.310. This exemption applies regardless of whether the purchases are made by the business or a contractor.

(c) The exemptions under this subdivision apply to a local sales and use tax regardless of whether the local sales tax is imposed on the sales taxable as defined under this chapter.

(d) This subdivision applies to sales, if the purchase was made and delivery received during the duration of the zone.

(e) Notwithstanding the restriction in paragraph (a), which requires items purchased to be primarily used or consumed in the zone, purchases by a qualified business that is an electrical cooperative located in Meeker County of equipment and materials used for the generation, transmission, and distribution of electrical energy are exempt under this subdivision, except that:

(1) the exemption for materials and equipment used or consumed outside the zone must not exceed \$200,000 in taxes; and

(2) no sales and use tax exemption is allowed for equipment purchased for resale.

For purposes of this paragraph, the tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 38. Biotechnology and health sciences industry zone. (a) Purchases of tangible personal property or taxable services by a qualified business, as defined in section 469.330, are exempt if the property or services are primarily used or consumed in a biotechnology and health sciences industry zone designated under section 469.334.

(b) Purchase and use of construction materials, supplies, or equipment used or consumed in the construction of improvements to real property in a biotechnology and health sciences industry zone are exempt if the improvements after completion of construction are to be used in the conduct of a qualified business, as defined in section 469.330. This exemption applies regardless of whether the purchases are made by the business or a contractor.

(c) The exemptions under this subdivision apply to a local sales and use tax regardless of whether the local sales tax is imposed on the sales taxable as defined under this chapter.

(d)(1) The tax on sales of goods or services exempted under this subdivision are imposed and collected as if the applicable rate under section 297A.62 applied. Upon application by the purchaser, on forms prescribed by the commissioner, a refund equal to the tax paid must be paid to the purchaser. The application must include sufficient information to permit the commissioner to verify the sales tax paid and the eligibility of the claimant to receive the credit. No more than two applications for refunds may be filed under this subdivision in a calendar year. The provisions of section 289A.40 apply to the refunds payable under this subdivision.

(2) The amount required to make the refunds is annually appropriated to the commissioner of revenue.

(3) The aggregate amount refunded to a qualified business must not exceed the amount allocated to the qualified business under section 469.335.

(e) This subdivision applies only to sales made during the duration of the designation of the zone.

Subd. 39. Preexisting bids or contracts. (a) The sale of tangible personal property or services is exempt from tax or a tax rate increase for a period of six months from the effective date of the law change that results in the imposition of the tax or the tax rate increase under this chapter if:

(1) the act imposing the tax or increasing the tax rate does not have transitional effective date language for existing construction contracts and construction bids; and

(2) the requirements of paragraph (b) are met.

(b) A sale is tax exempt under paragraph (a) if it meets the requirements of either clause (1) or (2):

(1) For a construction contract:

(i) the goods or services sold must be used for the performance of a bona fide written lump sum or fixed price construction contract;

(ii) the contract must be entered into before the date the goods or services become subject to the sales tax or the tax rate was increased;

(iii) the contract must not provide for allocation of future taxes; and

(iv) for each qualifying contract the contractor must give the seller documentation of the contract on which an exemption is to be claimed.

(2) For a construction bid:

(i) the goods or services sold must be used pursuant to an obligation of a bid or bids;

(ii) the bid or bids must be submitted and accepted before the date the goods or services became subject to the sales tax or the tax rate was increased;

(iii) the bid or bids must not be able to be withdrawn, modified, or changed without forfeiting a bond; and

(iv) for each qualifying bid, the contractor must give the seller documentation of the bid on which an exemption is to be claimed.

Subd. 40. Land clearing. Tree, bush, shrub, and stump removal are exempt when sold to contractors or subcontractors as part of a land clearing contract. For purposes of this subdivision, "land clearing contract" means a contract for the removal of trees, bushes, and shrubs, including the removal of roots and stumps, to develop a site. This exemption does not apply to land clearing of a portion of a site to allow for remodeling, improvement, or expansion of an existing structure.

Subd. 41. International economic development zones. (a) Purchases of tangible personal property or taxable services by a qualified business, as defined in section 469.321, are exempt if the property or services are primarily used or consumed in the international economic development zone designated under section 469.322.

(b) Purchase and use of construction materials, supplies, and equipment incorporated into the construction of improvements to real property in the international economic development zone are exempt if the improvements after completion of construction are to be used as a regional distribution center as defined in section 469.321 or otherwise used in the conduct of freight forwarding activities of a qualified business as defined in section 469.321. This exemption applies regardless of whether the purchases are made by the business or a contractor.

(c) The exemptions under this subdivision apply to a local sales and use tax, regardless of whether the local tax is imposed on sales taxable under this chapter or in another law, ordinance, or charter provision.

(d) The exemption in paragraph (a) applies to sales during the duration of the zone and after June 30, 2007, if the purchase was made and delivery received after the business signs the business subsidy agreement required under chapter 469.

(e) For purchases made for improvements to real property to be occupied by a business that has not signed a business subsidy agreement at the time of the purchase, the tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75 beginning in fiscal year 2008. The taxpayer must attach to the claim for refund information sufficient for the commissioner to be able to determine that the improvements are being occupied by a business that has signed a business subsidy agreement.

History: 2005 c 151 art 7 s 14-17; 1Sp2005 c 3 art 5 s 8-11; art 7 s 8,9; art 10 s 12

297A.70 EXEMPTIONS FOR GOVERNMENTS AND NONPROFIT GROUPS.

[For text of subds 1 to 7, see M.S.2004]

Subd. 8. **Regionwide public safety radio communication system; products and services.** Products and services including, but not limited to, end user equipment used for construction, ownership, operation, maintenance, and enhancement of the backbone system of the regionwide public safety radio communication system established under sections 403.21 to 403.34, are exempt. For purposes of this subdivision, backbone system is defined in section 403.21, subdivision 9. This subdivision is effective for purchases, sales, storage, use, or consumption for use in the first and second phases of the system, as defined in section 403.21, subdivisions 3, 10, and 11, and that portion of the third phase of the system that is located in the southeast district of the State Patrol and the counties of Benton, Sherburne, Stearns, and Wright.

[For text of subd 9, see M.S.2004]

Subd. 10. **Nonprofit tickets or admissions.** (a) Tickets or admissions to an event are exempt if all the gross receipts are recorded as such, in accordance with generally accepted accounting principles, on the books of one or more organizations whose primary mission is to provide an opportunity for citizens of the state to participate in the creation, performance, or appreciation of the arts, and provided that each organization is:

(1) an organization described in section 501(c)(3) of the Internal Revenue Code in which voluntary contributions make up at least the following percent of the organization's annual revenue in its most recently completed 12-month fiscal year, or in the current year if the organization has not completed a 12-month fiscal year:

(i) for sales made after July 31, 2001, and before July 1, 2002, for the organization's fiscal year completed in calendar year 2000, three percent;

(ii) for sales made on or after July 1, 2002, and on or before June 30, 2003, for the organization's fiscal year completed in calendar year 2001, three percent;

(iii) for sales made on or after July 1, 2003, and on or before June 30, 2004, for the organization's fiscal year completed in calendar year 2002, four percent; and

(iv) for sales made in each 12-month period, beginning on July 1, 2004, and each subsequent year, for the organization's fiscal year completed in the preceding calendar year, five percent;

(2) a municipal board that promotes cultural and arts activities; or

(3) the University of Minnesota, a state college and university, or a private nonprofit college or university provided that the event is held at a facility owned by the educational institution holding the event.

The exemption only applies if the entire proceeds, after reasonable expenses, are used solely to provide opportunities for citizens of the state to participate in the creation, performance, or appreciation of the arts.

(b) Tickets or admissions to the premises of the Minnesota Zoological Garden are exempt, provided that the exemption under this paragraph does not apply to tickets or admissions to performances or events held on the premises unless the performance or event is sponsored and conducted exclusively by the Minnesota Zoological Board or employees of the Minnesota Zoological Garden.

[For text of subds 11 to 16, see M.S.2004]

History: 1Sp2005 c 3 art 5 s 12,13

297A.71 CONSTRUCTION EXEMPTIONS.

[For text of subds 1 to 11, see M.S.2004]

Subd. 12. **Chair lifts, ramps, elevators.** Elevators and building materials used to install or construct chair lifts, ramps, and elevators are exempt, if they are authorized

by a physician and installed in or attached to the owner's homestead. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

[For text of subs 13 and 23, see M.S.2004]

Subd. 25. Poultry litter and other biomass generation facility construction materials and equipment. Materials and supplies used or consumed in, and equipment incorporated into, the construction, improvement, or expansion of a facility using biomass to generate electricity are exempt if:

- (1) the facility is designed to utilize poultry litter biomass or other biomass as established in section 216B.2424, as a primary fuel source; and
- (2) the facility generates power that will be sold under a contract approved by the public utilities commission in accordance with the biomass mandate imposed under section 216B.2424.

[For text of subs 30 to 32, see M.S.2004]

Subd. 33. Hydroelectric generating facility. Materials and supplies used or consumed in the construction of a hydroelectric generating facility that meets the requirements of this subdivision are exempt. To qualify for the exemption under this subdivision, a hydroelectric generating facility must:

- (1) utilize two turbine generators at a dam site existing on March 31, 1994;
- (2) be located on land within 1,500 feet of a 13.8 kilovolt distribution circuit; and
- (3) be eligible to receive a renewable energy production incentive payment under section 216C.41.

Subd. 34. Waste recovery facility. Materials and supplies used or consumed in, and equipment incorporated into, the construction, improvement, or expansion of a waste-to-energy resource recovery facility are exempt if the facility uses biomass or mixed municipal solid waste as a primary fuel to generate steam or electricity.

Subd. 35. Municipal utilities. Materials and supplies used or consumed in, and equipment incorporated into, the construction, improvement, or expansion of electric generation and related facilities used pursuant to a joint power purchase agreement to meet the biomass energy mandate in section 216B.2424 are exempt if the owner or owners of the facilities are a municipal electric utility or utilities or a joint venture of municipal electric utilities. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded under section 297A.75.

Subd. 36. Chatfield wastewater treatment facility. Materials and supplies used in and equipment incorporated into the construction, improvement, or expansion of a wastewater treatment facility owned by the city of Chatfield are exempt. This exemption is effective for purchases made before December 31, 2007.

History: 2005 c 151 art 7 s 18; 1Sp2005 c 3 art 5 s 14-17,32

NOTE: Subdivision 25 is effective for sales and purchases made after June 30, 2001, and before July 1, 2007. Laws 2001, First Special Session chapter 5, article 12, section 67, the effective date, as amended by Laws 2005, First Special Session chapter 3, article 5, section 32.

NOTE: Subdivision 33, as added by Laws 2005, First Special Session chapter 3, article 5, section 14, is effective for sales made after December 31, 2004, and on or before December 31, 2007. Laws 2005, First Special Session chapter 3, article 5, section 14, the effective date.

297A.72 EXEMPTION CERTIFICATES.

Subd. 2. Content and form of exemption certificate. An exemption certificate must be substantially in the form prescribed by the commissioner and:

- (1) be signed by the purchaser or meet the requirements of section 270C.304;
- (2) bear the name and address of the purchaser;
- (3) indicate the sales tax account number, if any, issued to the purchaser;
- (4) indicate the general character of the property sold by the purchaser in the regular course of business or the activities carried on by the organization; and

(5) identify the property purchased.

History: 2005 c 151 art 2 s 17

297A.75 REFUND; APPROPRIATION.

Subdivision 1. **Tax collected.** The tax on the gross receipts from the sale of the following exempt items must be imposed and collected as if the sale were taxable and the rate under section 297A.62, subdivision 1, applied. The exempt items include:

- (1) capital equipment exempt under section 297A.68, subdivision 5;
- (2) building materials for an agricultural processing facility exempt under section 297A.71, subdivision 13;
- (3) building materials for mineral production facilities exempt under section 297A.71, subdivision 14;
- (4) building materials for correctional facilities under section 297A.71, subdivision 3;
- (5) building materials used in a residence for disabled veterans exempt under section 297A.71, subdivision 11;
- (6) elevators and building materials exempt under section 297A.71, subdivision 12;
- (7) building materials for the Long Lake Conservation Center exempt under section 297A.71, subdivision 17;
- (8) materials, supplies, fixtures, furnishings, and equipment for a county law enforcement and family service center under section 297A.71, subdivision 26;
- (9) materials and supplies for qualified low-income housing under section 297A.71, subdivision 23; and
- (10) materials, supplies, and equipment for municipal electric utility facilities under section 297A.71, subdivision 35.

Subd. 2. **Refund; eligible persons.** Upon application on forms prescribed by the commissioner, a refund equal to the tax paid on the gross receipts of the exempt items must be paid to the applicant. Only the following persons may apply for the refund:

- (1) for subdivision 1, clauses (1) to (3), the applicant must be the purchaser;
- (2) for subdivision 1, clauses (4), (7), and (8), the applicant must be the governmental subdivision;
- (3) for subdivision 1, clause (5), the applicant must be the recipient of the benefits provided in United States Code, title 38, chapter 21;
- (4) for subdivision 1, clause (6), the applicant must be the owner of the homestead property;
- (5) for subdivision 1, clause (9), the owner of the qualified low-income housing project; and
- (6) for subdivision 1, clause (10), the applicant must be a municipal electric utility or a joint venture of municipal electric utilities.

Subd. 3. **Application.** (a) The application must include sufficient information to permit the commissioner to verify the tax paid. If the tax was paid by a contractor, subcontractor, or builder, under subdivision 1, clause (4), (5), (6), (7), (8), (9), or (10), the contractor, subcontractor, or builder must furnish to the refund applicant a statement including the cost of the exempt items and the taxes paid on the items unless otherwise specifically provided by this subdivision. The provisions of sections 289A.40 and 289A.50 apply to refunds under this section.

(b) An applicant may not file more than two applications per calendar year for refunds for taxes paid on capital equipment exempt under section 297A.68, subdivision 5.

Subd. 4. **Interest.** Interest must be paid on the refund at the rate in section 270C.405 from 90 days after the refund claim is filed with the commissioner for taxes paid under subdivision 1.

[For text of subd 5, see M.S.2004]

History: 2005 c 151 art 2 s 17; art 7 s 19; 1Sp2005 c 3 art 5 s 18-20

297A.815 MOTOR VEHICLE LEASES.

Subdivision 1. **Motor vehicle lease price; payment.** (a) In the case of a lease of a motor vehicle as provided in section 297A.61, subdivision 4, paragraph (k), clause (2), the tax is imposed on the total amount to be paid by the lessee under the lease agreement. The lessor shall collect the tax in full at the time the lease is executed or, if the tax is included in the lease and the lease is assigned, the tax is due from the original lessor at the time the lease is assigned. The total amount to be paid by the lessee under the lease agreement equals the agreed-upon value of the vehicle less manufacturer's rebates, the stated residual value of the leased vehicle, and the total value allowed for a vehicle owned by the lessee taken in trade by the lessor, plus the price of any taxable goods and services included in the lease and the rent charge as provided by Code of Federal Regulations, title 12, section 213.4, excluding any rent charge related to the capitalization of the tax.

(b) If the total amount paid by the lessee for use of the leased vehicle includes amounts that are not calculated at the time the lease is executed, the tax is imposed and must be collected by the lessor at the time the amounts are paid by the lessee. In the case of a lease which by its terms may be renewed, the sales tax is due and payable on the total amount to be paid during the initial term of the lease, and then for each subsequent renewal period on the total amount to be paid during the renewal period.

(c) If a lease is canceled or rescinded on or before 90 days of its execution or if a vehicle is returned to the manufacturer under section 325F.665, the lessor may file a claim for a refund of the total tax paid minus the amount of tax due for the period the vehicle is used by the lessee.

(d) If a lessee's obligation to make payments on a lease is canceled more than 90 days after its execution, a credit is allowed against sales tax or motor vehicles sales tax due on a subsequent lease or purchase of a motor vehicle if that lease or purchase is consummated within 30 days of the date the prior lease was canceled. The amount of the credit is equal to (1) the sales tax paid at the inception of the lease, multiplied by (2) the ratio of the number of full months remaining in the lease at the time of termination compared to the term of the lease used in calculating sales tax paid at the inception of the lease.

Subd. 2. **Lease originating in another state.** When the lease of a motor vehicle as defined in section 297A.61, subdivision 4, paragraph (k), clause (2), originates in another state, the sales tax under subdivision 1 shall be calculated by the lessor on the total amount that is due under the lease agreement after the vehicle is required to be registered in Minnesota. If the total amount to be paid by the lessee under the lease agreement has already been subjected to tax by another state, a credit for taxes paid in the other state is allowed as provided in section 297A.80.

History: 1Sp2005 c 3 art 5 s 21

297A.85 CANCELLATION OF PERMITS.

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

- (1) the permit holder has not filed a sales or use tax return for at least one year;
- (2) the permit holder has not reported any sales or use tax liability on the permit holder's returns for at least two years;
- (3) the permit holder requests cancellation of the permit; or
- (4) the permit is subject to cancellation pursuant to section 270C.722, subdivision 2, paragraph (a).

History: 2005 c 151 art 2 s 17

297A.86 [Repealed, 2005 c 151 art 1 s 117]

297A.87 FLEA MARKETS, SHOWS, AND OTHER SELLING EVENTS.*[For text of subd 1, see M.S.2004]*

Subd. 2. **Seller's permit or alternate statement.** (a) The operator of an event under subdivision 1 shall obtain one of the following from a person who wishes to do business as a seller at the event:

- (1) evidence that the person holds a valid seller's permit under section 297A.84;
- (2) a written statement that the person is not offering for sale any item that is taxable under this chapter; or
- (3) a written statement that this is the only selling event that the person will be participating in for that calendar year, that the person will be participating for three or fewer days, and that the person will make less than \$500 in total sales in the calendar year. The written statement shall include the person's name, address, and telephone number.

(b) The operator shall require the evidence or statement as a prerequisite to participating in the event as a seller.

Subd. 3. **Occasional sale provisions applicable under limited circumstances.** The isolated and occasional sale provision under section 297A.67, subdivision 23, applies, provided that the seller only participates for three or fewer days in one event per calendar year, makes \$500 or less in sales in the calendar year, and provides the written statement required in subdivision 2, paragraph (a), clause (3). The isolated and occasional sales provision under section 297A.68, subdivision 25, does not apply to a seller at an event under this section.

History: 2005 c 151 art 7 s 20,21

297A.92 SECURITY.*[For text of subd 1, see M.S.2004]*

Subd. 2. **Auctions of security.** The commissioner may sell property deposited as security at public auction if necessary to recover the amount required to be collected, including any interest and penalties. Notice of the sale must be served upon the person who deposited the security. It must be served personally, or by mail as prescribed for an order of assessment under section 270C.33, subdivision 8. After a sale any surplus above the amount due not required as security under this section must be returned to the person who deposited the security.

[For text of subd 3, see M.S.2004]

History: 2005 c 151 art 2 s 17

297A.93 [Repealed, 2005 c 151 art 1 s 117]**297A.99 LOCAL SALES TAXES.***[For text of subs 1 to 3, see M.S.2004]*

Subd. 4. **Tax base.** (a) The tax applies to sales taxable under this chapter that occur within the political subdivision.

(b) Taxable goods or services are subject to a political subdivision's sales tax, if they are sourced to the political subdivision pursuant to section 297A.668.

[For text of subs 5 to 8, see M.S.2004]

Subd. 9. **Enforcement; collection; and administration.** (a) The commissioner of revenue shall collect the taxes subject to this section. The commissioner may collect the tax with the state sales and use tax. All taxes under this section are subject to the same penalties, interest, and enforcement provisions as apply to the state sales and use tax.

(b) A request for a refund of state sales tax paid in excess of the amount of tax legally due includes a request for a refund of the political subdivision taxes paid on the

goods or services. The commissioner shall refund to the taxpayer the full amount of the political subdivision taxes paid on exempt sales or use.

(c) A political subdivision shall incur a legal debt to the state for refunds of local sales taxes made by the commissioner after a tax has terminated when the amount of the refunds exceeds the amount of local sales taxes collected for but not remitted to the political subdivision. The commissioner of revenue shall bill the political subdivision for this difference. The commissioner shall deposit the money in the state treasury and credit it to the general fund.

[For text of subds 10 to 12, see M.S.2004]

Subd. 12a. **Notification of use tax.** Any political subdivision imposing a local sales and use tax, which maintains an official Web site, must display on its main home page a link to a notice that residents and businesses in the political subdivision may owe a local use tax on purchases of goods and services made outside of the political subdivision limits. The notice must provide information, including a link to any relevant Department of Revenue Web site, on how the taxpayer may get information and forms necessary for calculating and paying the tax. If the political subdivision provides and bills for sewer, water, garbage collection, or other public utility services, the billing statement must also include at least once per year a notice that residents and businesses may owe a local use tax on purchases made outside of the political subdivision limits and provide information on how the taxpayer may get information and forms necessary for calculating and paying the tax.

[For text of subd 13, see M.S.2004]

History: 2005 c 151 art 7 s 22; 1Sp2005 c 3 art 5 s 22,23