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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 3687

March 17, 2010

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The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; sales; clarifying that lodging includes certain services;
1.3 clarifying nexus standards; amending Minnesota Statutes 2008, sections
1.4 297A.61, subdivisions 3, 7, by adding subdivisions; 297A.66, by adding a
1.5 subdivision; 297A.68, by adding a subdivision.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2008, section 297A.61, subdivision 3, is amended to
1.8 read:

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

1.11 (b) Sale and purchase include:

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

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

1.17 (c) Sale and purchase include the production, fabrication, printing, or processing of
1.18 tangible personal property for a consideration for consumers who furnish either directly or
1.19 indirectly the materials used in the production, fabrication, printing, or processing.

1.20 (d) Sale and purchase include the preparing for a consideration of food.

1.21 Notwithstanding section 297A.67, subdivision 2, taxable food includes, but is not limited
1.22 to, the following:

1.23 (1) prepared food sold by the retailer;

1.24 (2) soft drinks;

1.25 (3) candy;

2.1 (4) dietary supplements; and

2.2 (5) all food sold through vending machines.

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

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

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

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

2.12 (2) lodging and related services by a hotel, rooming house, resort, campground,
2.13 motel, or trailer camp, including furnishing the guest of the facility with access to
2.14 telecommunication services, and the granting of any similar license to use real property in
2.15 a specific facility, other than the renting or leasing of it for a continuous period of 30 days
2.16 or more under an enforceable written agreement that may not be terminated without prior
2.17 notice and including accommodations intermediary services provided in connection with
2.18 other services provided under this clause;

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

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

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

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

2.27 Granting of membership means both onetime initiation fees and periodic membership
2.28 dues. Sports and athletic facilities include golf courses; tennis, racquetball, handball, and
2.29 squash courts; basketball and volleyball facilities; running tracks; exercise equipment;
2.30 swimming pools; and other similar athletic or sports facilities;

2.31 (5) delivery of aggregate materials by a third party, excluding delivery of aggregate
2.32 material used in road construction, and delivery of concrete block by a third party if
2.33 the delivery would be subject to the sales tax if provided by the seller of the concrete
2.34 block; and

2.35 (6) services as provided in this clause:

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

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

3.8 (iii) building and residential cleaning, maintenance, and disinfecting services and
3.9 pest control and exterminating services;

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

3.16 (v) pet grooming services;

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

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

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

3.28 In applying the provisions of this chapter, the terms "tangible personal property"
3.29 and "retail sale" include taxable services listed in clause (6), items (i) to (vi) and (viii),
3.30 and the provision of these taxable services, unless specifically provided otherwise.

3.31 Services performed by an employee for an employer are not taxable. Services performed
3.32 by a partnership or association for another partnership or association are not taxable if
3.33 one of the entities owns or controls more than 80 percent of the voting power of the
3.34 equity interest in the other entity. Services performed between members of an affiliated
3.35 group of corporations are not taxable. For purposes of the preceding sentence, "affiliated
3.36 group of corporations" means those entities that would be classified as members of an

4.1 affiliated group as defined under United States Code, title 26, section 1504, disregarding
4.2 the exclusions in section 1504(b).

4.3 For purposes of clause (5), "road construction" means construction of (1) public
4.4 roads, (2) cartways, and (3) private roads in townships located outside of the seven-county
4.5 metropolitan area up to the point of the emergency response location sign.

4.6 (h) A sale and a purchase includes the furnishing for a consideration of tangible
4.7 personal property or taxable services by the United States or any of its agencies or
4.8 instrumentalities, or the state of Minnesota, its agencies, instrumentalities, or political
4.9 subdivisions.

4.10 (i) A sale and a purchase includes the furnishing for a consideration of
4.11 telecommunications services, ancillary services associated with telecommunication
4.12 services, cable television services, direct satellite services, and ring tones.
4.13 Telecommunication services include, but are not limited to, the following services,
4.14 as defined in section 297A.669: air-to-ground radiotelephone service, mobile
4.15 telecommunication service, postpaid calling service, prepaid calling service, prepaid
4.16 wireless calling service, and private communication services. The services in this
4.17 paragraph are taxed to the extent allowed under federal law.

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

4.21 (k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer
4.22 to a customer when (1) the vehicle is rented by the customer for a consideration, or (2)
4.23 the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section
4.24 65B.29, subdivision 1, clause (1).

4.25 **EFFECTIVE DATE.** This section is effective the day following final enactment
4.26 and confirms the interpretation of the legislature that the original legislative intent of
4.27 the tax on lodging and related services applied to the full price and charges paid by the
4.28 final consumer for the occupancy, including any reservation or similar ancillary services
4.29 that are part of the transaction.

4.30 Sec. 2. Minnesota Statutes 2008, section 297A.61, subdivision 7, is amended to read:

4.31 Subd. 7. **Sales price.** (a) "Sales price" means the measure subject to sales tax, and
4.32 means the total amount of consideration, including cash, credit, personal property, and
4.33 services, for which personal property or services are sold, leased, or rented, valued in
4.34 money, whether received in money or otherwise, without any deduction for the following:

4.35 (1) the seller's cost of the property sold;

5.1 (2) the cost of materials used, labor or service cost, interest, losses, all costs of
5.2 transportation to the seller, all taxes imposed on the seller, and any other expenses of
5.3 the seller;

5.4 (3) charges by the seller for any services necessary to complete the sale, other than
5.5 delivery and installation charges;

5.6 (4) delivery charges, except the percentage of the delivery charge allocated to
5.7 delivery of tax exempt property, when the delivery charge is allocated by using either (i) a
5.8 percentage based on the total sales price of the taxable property compared to the total sales
5.9 price of all property in the shipment, or (ii) a percentage based on the total weight of the
5.10 taxable property compared to the total weight of all property in the shipment; and

5.11 (5) installation charges.

5.12 (b) Sales price does not include:

5.13 (1) discounts, including cash, terms, or coupons, that are not reimbursed by a third
5.14 party and that are allowed by the seller and taken by a purchaser on a sale;

5.15 (2) interest, financing, and carrying charges from credit extended on the sale of
5.16 personal property or services, if the amount is separately stated on the invoice, bill of sale,
5.17 or similar document given to the purchaser; and

5.18 (3) any taxes legally imposed directly on the consumer that are separately stated on
5.19 the invoice, bill of sale, or similar document given to the purchaser.

5.20 (c) Sales price includes consideration received by the seller from third parties if:

5.21 (1) the seller actually receives consideration from a party other than the purchaser
5.22 and the consideration is directly related to a price reduction or discount on the sale;

5.23 (2) the seller has an obligation to pass the price reduction or discount through to
5.24 the purchaser;

5.25 (3) the amount of the consideration attributable to the sale is fixed and determinable
5.26 by the seller at the time of the sale of the item to the purchaser; and

5.27 (4) one of the following criteria is met:

5.28 (i) the purchaser presents a coupon, certificate, or other documentation to the seller
5.29 to claim a price reduction or discount when the coupon, certificate, or documentation is
5.30 authorized, distributed, or granted by a third party with the understanding that the third
5.31 party will reimburse any seller to whom the coupon, certificate, or documentation is
5.32 presented;

5.33 (ii) the purchaser identifies himself or herself to the seller as a member of a group or
5.34 organization entitled to a price reduction or discount. A "preferred customer" card that is
5.35 available to any customer does not constitute membership in such a group; or

6.1 (iii) the price reduction or discount is identified as a third-party price reduction or
 6.2 discount on the invoice received by the purchaser or on a coupon, certificate, or other
 6.3 documentation presented by the purchaser.

6.4 (d) For services as defined in subdivision 3, paragraph (g), clause (2), sales price
 6.5 includes amounts charged for services provided by an accommodations intermediary
 6.6 delivered or provided in connection with services defined in subdivision 3, paragraph
 6.7 (g), clause (2).

6.8 **EFFECTIVE DATE.** This section is effective the day following final enactment
 6.9 and confirms the interpretation of the legislature that the original legislative intent of
 6.10 the tax on lodging and related services applied to the full price and charges paid by the
 6.11 final consumer for the occupancy, including any reservation or similar ancillary services
 6.12 that are part of the transaction.

6.13 Sec. 3. Minnesota Statutes 2008, section 297A.61, is amended by adding a subdivision
 6.14 to read:

6.15 Subd. 47. **Accommodations intermediary.** "Accommodations intermediary"
 6.16 means any person or entity, other than an accommodations provider, that facilitates the
 6.17 sale of lodging as defined in section 297A.61, subdivision 3, paragraph (g), clause (2),
 6.18 and that charges a room charge to the customer. The term "facilitates the sale" includes
 6.19 brokering, coordinating, or in any way arranging for the purchase of or the right to use
 6.20 accommodations by a customer.

6.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.22 Sec. 4. Minnesota Statutes 2008, section 297A.61, is amended by adding a subdivision
 6.23 to read:

6.24 Subd. 48. **Accommodations provider.** "Accommodations provider" means any
 6.25 person or entity that furnishes lodging as defined in section 297A.61, subdivision 3,
 6.26 paragraph (g), clause (2), to the general public for compensation. The term "furnishes"
 6.27 includes the sale of use or possession, or the sale of the right to use or possess.

6.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.29 Sec. 5. Minnesota Statutes 2008, section 297A.66, is amended by adding a subdivision
 6.30 to read:

6.31 Subd. 6. **Lodging services.** An accommodations intermediary shall collect sales
 6.32 and use tax and remit them to the commissioner under section 297A.77 for services

7.1 provided in connection with or for lodging located in this state. The accommodation
7.2 provider is deemed to be the agent of the accommodations intermediary for purposes of
7.3 establishing the intermediary's obligation to collect.

7.4 **EFFECTIVE DATE.** This section is effective for lodging and related services
7.5 provided after June 30, 2010.

7.6 Sec. 6. Minnesota Statutes 2008, section 297A.68, is amended by adding a subdivision
7.7 to read:

7.8 **Subd. 42. Lodging services purchased for resale.** Services purchased from an
7.9 accommodations provider for resale by an accommodations intermediary are exempt.

7.10 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
7.11 June 30, 2010.

7.12 Sec. 7. **TRANSITION PROVISION.**

7.13 (a) This section applies to sales and use tax imposed on accommodations
7.14 intermediaries for sales made before July 1, 2010, if the lodging was purchased by the
7.15 accommodations intermediary for resale and the accommodations provider imposed tax
7.16 under Minnesota Statutes, chapter 297A, on the sale. In computing the sales price for
7.17 the tax to be collected from the accommodations intermediary, the amount paid by the
7.18 accommodations intermediary to the accommodations provider is excluded.

7.19 (b) The provisions of this section apply to local taxes imposed under Minnesota
7.20 Statutes, section 469.190, or any special law.

7.21 (c) For purposes of this section, the terms defined under Minnesota Statutes, chapter
7.22 297A, apply.

7.23 **EFFECTIVE DATE.** This section is effective for sales and purchases made before
7.24 July 1, 2010.