

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **192**

January 22, 2009

Authored by Hilstrom

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; eliminating the imposition and refund of sales tax on capital
1.3 equipment; eliminating an obsolete provision; amending Minnesota Statutes
1.4 2008, sections 297A.68, subdivision 5; 297A.75.

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

1.6 Section 1. Minnesota Statutes 2008, section 297A.68, subdivision 5, is amended to
1.7 read:

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

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

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

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

1.21 (2) machinery and equipment used for research and development, design, quality
1.22 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

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

3.3 (d) For purposes of this subdivision:

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

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

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

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

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

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

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

3.35 (8) "Online data retrieval system" means a system whose cumulation of information
3.36 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.

EFFECTIVE DATE. This section is effective for sales and purchases made after June 30, 2009.

Sec. 2. Minnesota Statutes 2008, section 297A.75, is amended to read:

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) (1) building materials for an agricultural processing facility exempt under section 297A.71, subdivision 13;~~
- ~~(3) (2) building materials for mineral production facilities exempt under section 297A.71, subdivision 14;~~
- ~~(4) (3) building materials for correctional facilities under section 297A.71, subdivision 3;~~
- ~~(5) (4) building materials used in a residence for disabled veterans exempt under section 297A.71, subdivision 11;~~
- ~~(6) (5) elevators and building materials exempt under section 297A.71, subdivision 12;~~
- ~~(7) (6) 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) (7) materials and supplies for qualified low-income housing under section 297A.71, subdivision 23;~~
- ~~(10) (8) materials, supplies, and equipment for municipal electric utility facilities under section 297A.71, subdivision 35;~~

~~(11)~~ (9) equipment and materials used for the generation, transmission, and distribution of electrical energy and an aerial camera package exempt under section 297A.68, subdivision 37;

~~(12)~~ (10) tangible personal property and taxable services and construction materials, supplies, and equipment exempt under section 297A.68, subdivision 41;

~~(13)~~ (11) commuter rail vehicle and repair parts under section 297A.70, subdivision 3, clause (11); and

~~(14)~~ (12) materials, supplies, and equipment for construction or improvement of projects and facilities under section 297A.71, subdivision 40.

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)~~ and (2), the applicant must be the purchaser;

(2) for subdivision 1, clauses ~~(4), (7), (3)~~ and ~~(8)~~ (6), the applicant must be the governmental subdivision;

(3) for subdivision 1, clause ~~(5)~~ (4), the applicant must be the recipient of the benefits provided in United States Code, title 38, chapter 21;

(4) for subdivision 1, clause ~~(6)~~ (5), the applicant must be the owner of the homestead property;

(5) for subdivision 1, clause ~~(9)~~ (7), the owner of the qualified low-income housing project;

(6) for subdivision 1, clause ~~(10)~~ (8), the applicant must be a municipal electric utility or a joint venture of municipal electric utilities;

(7) for subdivision 1, clauses ~~(11)~~ (9) and ~~(12)~~ (10), the owner of the qualifying business; and

(8) for subdivision 1, clauses ~~(13)~~ (11) and ~~(14)~~ (12), the applicant must be the governmental entity that owns or contracts for the project or facility.

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 (3), (4), (5), (6), (7), (8), (9), (10), (11), or (12), ~~(13), or (14)~~, 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.~~

6.1 ~~(c)~~ (b) Total refunds for purchases of items in section 297A.71, subdivision 40,
6.2 must not exceed \$5,000,000 in fiscal years 2010 and 2011. Applications for refunds for
6.3 purchases of items in sections 297A.70, subdivision 3, paragraph (a), clause (11), and
6.4 297A.71, subdivision 40, must not be filed until after June 30, 2009.

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

6.8 Subd. 5. **Appropriation.** The amount required to make the refunds is annually
6.9 appropriated to the commissioner.

6.10 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
6.11 June 30, 2009.