

HOUSE RESEARCH

Bill Summary

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Overview

This is the Department of Revenue bill. It makes a number of technical and minor policy changes in the tax law.

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Article 1: Property Taxes and Aids

Overview

This article makes a number of minor changes in the property tax and state aid laws. It provides that the cap on the market value credit for agricultural land with homestead and nonhomestead uses will be calculated in the same manner as the credit for residential properties and clarifies the deadline for adjusting LGA for boundary changes.

- 1 1 Homestead seasonal resorts.** Contains a technical change clarifying that for property tax purposes, the portion of the resort used for homestead purposes is class 1a (residential homestead).

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Beginning with taxes payable in 2006, homestead resort property is taxed on a market value limitation, rather than on a defined geographic area. This section merely clarifies how the homestead portion of the resort is classified. Effective for taxes payable in 2006 and thereafter.

- 2 **Nonhomestead seasonal resorts (class 4c).** Strikes obsolete language due to the changes made in 2005 to resort property. Effective taxes payable in 2006 and thereafter.
- 3 **Market value homestead credit, residential property.** Strike an obsolete reference, and make explicit the multiple pro-rations that must occur in the situation when a property is part homestead and part non-homestead, only one spouse occupies the homestead, or the married couple itself is only a part-owner. Does not change the amount of credit allowed for affected properties.
- 4 **Market value homestead credit, agricultural property.** Changes the market value homestead credit calculation and resulting credit amount for agricultural properties that are part homestead and part non-homestead to be consistent with the calculation for residential properties that are part homestead and part non-homestead. Has the effect of preventing a part owner from having a larger credit (and a lower tax) than a full owner of a same-valued homestead.
- 5 **Disparity reduction aid.** Strikes an obsolete provision. Directs the commissioner of revenue to delay for one year an aid adjustment related to changes in class rates, if information needed to make the adjustment in a timely manner is not available. Effective for taxes payable in 2006 and thereafter.
- 6 **Certificate of forfeiture.** Eliminates the requirement that county auditors retain a paper copy of each certificate of forfeiture, consistent with changes enacted in Laws 2005, chapter 5, modernizing recording and filing requirements. The auditor records the certificate with the county recorder or registrar, thus making it part of the county's formal land records. Effective day following final enactment.
- 7 **Certificate of forfeiture.** Replaces a reference to the "filed" certificate with a reference to a "recorded" certificate, consistent with section 0and to changes enacted in Laws 2005, chapter 4, modernizing recording and filing requirements. Effective the day following final enactment.
- 8 **Calculations and payments; LGA.** Makes explicit when LGA calculations will be adjusted for boundary changes. The required data must be available by July 15 of the year in which the calculation is made in order for the annexation adjustment to be included.

Article 2: Sales and Use Taxes

Overview

This article makes a large number of minor and clarifying changes in the sales and use tax.

- 1 1 **Sale and purchase; food, retail sale, affiliated groups.** Removes the "preparing" of taxable food from this definition. All food is taxable unless specifically included in a sales tax exemption. Also deletes reference to "sales at retail" in paragraph (g) and inserts the defined term "retail sale." Also makes technical changes to the definition of "members of an affiliated group" used in determining the exclusion for services between affiliated groups of corporations. Effective the day following final enactment.

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- 2 **Farm machinery.** Clarifies that in order to be included in the definition of "farm machinery," the machinery must be used in the agricultural production of tangible personal property intended to be sold ultimately at retail. This change is intended to restore language to the definition of farm machinery that was omitted during recodification of the sales tax. Effective the day following final enactment.
- 3 **Computer; definition.** Adds a definition of "computer" that will apply throughout the sales tax chapter. This same definition appears in current law but applies only to the definition of "prewritten software."
- 4 **Electronic; definition.** Adds a definition of "electronic" that will apply throughout the sales tax chapter. This same definition appears in current law but applies only to the definition of "prewritten software."
- 5 **Computer software; definition.** Adds a definition of "computer software" that will apply throughout the sales tax chapter. This same definition appears in current law but applies only to the definition of "prewritten software."
- 6 **Prewritten computer software.** Strikes definitions of "computer," "electronic," and "computer software" specific to the subdivision defining "prewritten computer software," since those terms will be defined for the sales tax chapter as provided in sections 0 to 0.
- 7 **Logging equipment; definition.** Codifies the current department interpretation of "logging equipment." Provides the machinery and equipment must be used in the commercial cutting or removal of timber or wood products to qualify as "logging equipment." Specifies the types of machinery that would and would not qualify as logging equipment. Effective the day following final enactment.
- 8 **Use tax.** Replaces references to "sales" price with references to "purchase" price, the correct measure in computing use tax. Also provides that if the sale of tangible personal property sold by a Minnesota retailer is sourced outside the state, the property is subject to the Minnesota use tax if the property returns to Minnesota, except if the property returns in the course of interstate commerce. Effective the day following final enactment.
- 9 **Multiple points of use.** Strikes the word "taxing" before "jurisdiction," for consistency with the Streamlined Sales Tax Agreement. Effective the day following final enactment.
- 10 **Mobile telecommunications service.** Corrects a reference to the federal Mobile Telecommunications Sourcing Act.
- 11 **Exempt meals at residential facilities.** Replaces undefined terms ("meals or drinks") with defined terms ("prepared food, candy, and soft drinks"). Clarifies that food sold through vending machines is not exempt.
- 12 **Exempt meals at schools.** Replaces undefined terms ("meals and lunches") with defined terms ("prepared food, candy, and soft drinks"). Clarifies that food sold through vending machines is not exempt.
- 13 **Other exempt meals.** Replaces undefined terms ("meals or drinks") with defined terms ("prepared food, candy, and soft drinks"). Clarifies that food sold through vending machines is not exempt.
- 14 **Computers prescribed for use by school.** Replaces the undefined term "personal computer," with the term "computer," for which a definition is provided in section 0.
- 15 **Maintenance of cemetery grounds.** Corrects a cross-reference.
- 16 **Sewing materials.** Clarifies that the term "clothing" as used in the definition of "sewing materials," is the definition provided in § 297A.67, subdivision 8.
- 17 **Materials consumed in industrial production.** Corrects a cross-reference.
- 18 **Materials used in providing certain taxable services.** Corrects a cross-reference.

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- 19 Capital equipment.** Corrects a cross-reference.
- 20 Job opportunity building zones.** Clarifies that the exemption for an aerial camera package is capped at \$50,000, regardless of the number of aerial camera packages qualifying for the exemption. Also clarifies that equipment must be incorporated into the construction of qualifying facilities in order to qualify for the exemption for construction materials, supplies, and equipment. Effective the day following final enactment for the provision relating to aerial camera packages and the provision relating to equipment incorporated into realty is effective for sales made after January 1, 2004.
- 21 Biotech and health sciences industry zone.** Clarifies that equipment must be incorporated into the construction of qualifying facilities in order to qualify for the exemption for construction materials, supplies, and equipment. Effective sales made after January 1, 2004.
- 22 Land clearing.** Includes in the definition of "site development" the construction of public roads, trails, and firebreaks. The definition is used to determine whether land clearing is exempt from tax. Also clarifies that the temporary amnesty provided last year for contractors that did not collect the tax on previous land clearing contracts only applies to contracts entered into before July 15, 2005.
- 23 International economic development zones.** Provides that state and local sales tax must be paid on (a) purchases before July 1, 2007, of building materials, supplies and equipment incorporated into the construction of real property in the international economic development zone, and (b) purchases of goods and services for use by a qualified business in the international trade zone if those purchases are made during the duration of the zone but before July 1, 2007. The qualified business or the contractor is then authorized to file a claim for refund of those taxes under general refund provisions in Minn. Stat. § 297A.75. No refunds are to be paid before July 1, 2007. Effective the day following final enactment.
- 24 Sales to government.** Replaces an undefined term ("meals") with defined terms ("prepared food, candy, and soft drinks"). Also corrects a cross-reference.
- 25 Sales to nonprofit groups.** Replaces an undefined term ("meals") with defined terms ("prepared food, candy, and soft drinks"). Also corrects a cross-reference.
- 26 Hospitals and outpatient surgical centers.** Replaces a reference to prepared food defined elsewhere with defined terms ("prepared food, candy, and soft drinks"). Also corrects a cross-reference.
- 27 Fund-raising sales by or for nonprofit groups.** Strikes the terms "gum" and "candy products" from the list of items that qualify for the exemption for fund-raising sales made by youth groups since they would all fall within the defined term "candy." Effective the day following final enactment.
- 28 Fun-raising events sponsored by nonprofit groups.** Replaces undefined terms ("food, meals, and drinks") with defined terms ("prepared food, candy, and soft drinks").
- 29 Statewide amateur athletic games.** Replaces undefined terms ("food, meals, and drinks") with defined terms ("prepared food, candy, and soft drinks").
- 30 Exemption certificates.** Removes the requirement that exemption certificates must contain a description of the general character of the property being sold by the purchaser in the regular course of business and must identify the property being purchased. These requirements are no longer required under the simplified exemption certificate process being used by the department. Effective the day following final enactment.
- 31 Tax collected.** Clarifies that sales tax must be collected on purchase of an aerial camera package and certain purchases by a Meeker County electrical cooperative. These purchases will be eligible for a sales tax refund under section 0. Laws 2005, 1st Special Session,

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chapter 3, provided for purchasers of these items to pay the sales tax and then claim a refund; this section along with sections 0 and 0 sets up a mechanism for implementing the exemption.

32 Sales tax refund. Include purchase of an aerial camera package and certain purchases by a Meeker County electrical cooperative in the list of items for which sales tax refund claims may be filed.

33 Application. Includes purchase of an aerial camera package and certain purchases by a Meeker County electrical cooperative in the list of items for which the seller must provide the purchaser with a statement of cost to be used in filing a refund claim as provided in section 0.

34 Motor vehicle lease price; payment. Provides that when a credit is claimed at the early termination of a motor vehicle lease upon which sales tax was paid at the origination of the lease, the credit cannot be transferred or assigned to another person. A person who was the lessee on a terminated lease must be the party who claims the credit on a subsequent lease or purchase of a motor vehicle. Effective for leases entered into after September 30, 2005.

35 Deposit of revenues. Corrects a cross-reference.

36 Exemptions; local sales tax. Strikes language that is obsolete and has been replaced by the sourcing rules found in § 297A.668. Effective the day following final enactment.

37 Repealer. Paragraph (a) repeals

- Minn. Stat. § 297A.68, subd. 15, which provides an exemption for property delivered or shipped outside Minnesota by the seller. This exemption is no longer needed since, under the sourcing rules found in section 297A.668, a sale will be sourced to the location where receipt by the purchaser occurs if the purchaser does not receive the item at the business location of the seller. Effective the day following final enactment.
- Minn. Stat. § 297A.68, subd. 18, which provides an exemption for custom computer software. This exemption is no longer needed since only prewritten computer software is defined as being tangible personal property. Custom computer software is not considered to be tangible personal property and is never subject to sales tax and therefore no exemption is necessary. Effective the day following final enactment.

Paragraph (b) repeals sales and use tax rules that are obsolete or that merely duplicate statutory language:

- part 8130.0400, subp. 3 (rental of equipment by contractors);
- part 8130.4800 (drugs, therapeutic and prosthetic devices);
- part 8130.5100 (gifts; transfers without monetary consideration);
- part 8130.5400 (clothing and wearing apparel); and
- part 8130.5800, subp. 6 (occasional meals).

Article 3: Special Taxes and Fees

Overview

This article allows the dry cleaner registration fee to be paid in quarterly installments, provides for a minimal deed tax on transfers to contractors to facilitate financing of improvements, and makes clarifying changes in the MinnesotaCare provider tax, the tax in lieu of the sales tax on cigarettes, and excise tax on flavored malt beverages.

- 1 **1 Registration fee; dry cleaner.** Allows the payment of the registration fee in four installments (due on the 18th of January, April, June, and October). Current law requires that the fee be paid a single annual payment on October 1st. Effective for tax returns and payments due on or after October 1, 2006.
- 2 **Deed tax; transfer to obtain financing.** Establishes a deed tax at \$1.65 for transfers of real property if the transfer is: (1) to a builder or contractor, (2) intended to be temporary, and (3) done solely to enable the builder or contractor to obtain financing to build an improvement on the conveyed property under a contract for improvement with the grantor that requires the conveyed property to be reconveyed to the grantor upon completion of and payment for the improvement. A transfer from the builder or contractor back to the grantor is also subject to a \$1.65 tax. Effective for deeds both executed and recorded on or after July 1, 2006.
- 3 **Housing with services establishment.** Clarifies that housing with services establishments are excluded from the definition of health care provider for purposes of the MinnesotaCare taxes. This exclusion is consistent with the tax's treatment under the definition of patient services. This exclusion replaces the exclusion for residential care homes licensed under chapter 144B, which has been repealed. Effective the day following final enactment.
- 4 **Separate statement of tax by wholesale drug distributors.** Clarifies that wholesale drug distributors who itemize the tax cannot do so in a deceptive or misleading manner. They must not separately state the tax obligation on bills when the amount received by the wholesale drug distributor is not subject to the MinnesotaCare tax. This provision now applies to hospitals, surgical centers, and health care providers. Effective the day following final enactment.
- 5 **Weighted average retail price.** Adds a definition of "weighted average retail price" for purposes of the per pack cigarette tax that is imposed on wholesalers in lieu of the retail sales tax. Clarifies that the commissioner's estimates include expected price inflation during the year in which the per pack amount will apply. Effective April 30, 2006.
- 6 **Distilled spirits; definition.** Updates the definition of distilled spirits to follow federal regulations. Classifies as a distilled spirit any beverage that would be classified as a flavored malt beverage except that:
 - ▶ the alcohol contribution from flavors and other non-beverage materials exceeds 49 percent of the product's alcohol content of the product; and
 - ▶ the beverage contains an alcohol content of more than 6 percent, 1.5 percentage points or more of which is derived from flavors or non-beverage ingredients.Effective July 1, 2006.
- 7 **Flavored malt beverage; definition.** Updates the definition of flavored malt beverage to

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follow federal regulations that provide that a flavored malt beverage may not include a beverage that derives more than 49 percent of its alcohol content from flavors and other non-beverage materials. Effective July 1, 2006.

Article 4: Taconite Production Tax

Overview

This article changes the taconite production tax base from a 3-year average of production to current year production tonnage. Distributions of the tax will continue to be made on the basis of a 3-year average of production. Residual distributions of the tax (in excess of the fixed allocations in statute) will be deposited only in the Douglas J. Johnson economic protection fund. (Present law allocates these residual distributions 2/3rd to the environmental protection fund and 1/3rd to the Douglas J. Johnson economic development fund.) Balances maintained in this fund will provide a cash flow reserve so that distributions can be made based on 3-year averages, even though the annual tax collections will fluctuate with changes in production.

- 1 **1 Appropriation.** Changes a statutory cross-reference to reflect the new funding mechanism for the taconite environmental protection fund provided in section 0.
- 2 **Funding guaranteed distribution level.** Provides that if taconite production tax revenues are not sufficient to make the required distributions, the Douglas J. Johnson economic protection trust fund will make up any deficiencies. Present law provides that the economic protection and environmental protection funds are used equally to make up deficiencies. Effective for taxes and distributions payable in 2007 and thereafter.
- 3 **Taconite economic development fund.** Clarifies that a producer's matching expenditures to qualify for the investment credit (or tax rebates to producers) must be compared to distributions based on *taxable* tons (current year production). Effective for taxes and distributions payable in 2007 and thereafter.
- 4 **Taconite production tax.** Converts the taconite production tax base from the 3-year average of production to the current year production. Updates the statutory tax rate to the 2005 production year amount (i.e., incorporating several years of indexing). The minimum rate (if part of the tax is held unconstitutional) is also updated to this rate. Provides if a facility closes and the property taxes on the facility would be higher than the production tax, the property tax exemption does not apply. Effective for taxes payable in 2006 for updated statement of rate, other changes effective for taxes payable in 2007 and thereafter.
- 5 **Division and distribution of proceeds.** Provides that the per-ton distributions of the taconite production tax will be made based on a three-year average of production. This is consistent with present law, where imposition of the tax is made on a three-year average of production. (Section 0 converts computation of the tax liability to a current year production basis.) The investment tax credit (or tax rebate to producers) would, however, be based on current year production, not the 3-year average.

The section replaces the residual distribution to the taconite environmental protection fund with a 25 cent per ton distribution (subdivision 9c). This distribution approximates historic funding levels from the remainder payments. All the production tax revenues not needed to

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make the fixed distributions required will be deposited into the Douglas J. Johnson economic protection trust fund. Obsolete language is eliminated.

Effective for taxes and distributions payable in 2007 and thereafter.

- 6 **State aid appropriation.** Makes a conforming change to calculation of the state aid that supplements production tax distributions, continuing calculation of the aid using a three-year average of production instead of taxable tons (current year production). Effective for taxes payable in 2007 and thereafter.
- 7 **Taconite school bonds; 1990.** Eliminates the appropriations from the taconite environmental protection fund to pay 1990 taconite bond authorization for various Iron Range school districts. As a result, these appropriations will come exclusively from the Douglas J. Johnson economic protection trust fund. This is consistent with the changes in section 0 that eliminate the residual distribution to the environmental protection fund. Also updates references to the Douglas J. Johnson economic protection trust fund to conform to the full and correct legal name of the fund. Effective for taxes payable in 2007 and thereafter.
- 8 **Taconite school bonds; 1996.** Makes the changes described in section 0 for the 1996 taconite bond authorization for various Iron Range school districts. Effective for taxes payable in 2007 and thereafter.
- 9 **Taconite school bonds; 1996.** Makes the changes described in section 0 for the 1996 taconite bond authorization for the Cook County school district. Effective for taxes payable in 2007 and thereafter.
- 10 **Taconite school bonds; 1996.** Makes the changes described in section 0 for the 1996 taconite bond authorization for the Grand Rapids school district. Effective for taxes payable in 2007 and thereafter.
- 11 **Taconite school bonds; 1998.** Makes the changes described in section 0 for the 1998 taconite bond authorization for the Mountain Iron-Buhl school district. Effective for taxes payable in 2007 and thereafter.
- 12 **Taconite school bonds; 2000.** Makes the changes described in section 0 for the 2000 taconite bond authorization for the Chisholm school district. Effective for taxes payable in 2007 and thereafter.
- 13 **Taconite school bonds; 2000.** Makes the changes described in section 0 for the 2000 taconite bond authorization for the Greenway-Coleraine school district. Effective for taxes payable in 2007 and thereafter.
- 14 **Taconite school bonds; 2000.** Makes the changes described in section 0 for the 2000 taconite bond authorization for the Lake Superior school district. Effective for taxes payable in 2007 and thereafter.
- 15 **IRRRB revenue bonds; 2005.** Makes the changes described in section 0 for the 2005 IRRRB revenue bond authorization. Effective for taxes payable in 2007 and thereafter.
- 16 **Repealer.** Repeals an obsolete production tax distribution provision. This will ensure that a note will appear in the Minnesota Statutes.

Article 5: Miscellaneous

Overview

This article makes a number of minor changes in various tax administration rules. These include clarifying the manner of assessing penalties when there is no underlying tax obligation, authorizing collection of sales and withholding taxes against successor businesses, and delaying the payment of interest on refunds, awarded by the Tax Court, of income taxes and certain sales tax refunds.

- 1 **1 Electronic means; definition.** Provides that "electronic means" includes by use of a touch-tone telephone.
- 2 **Electronically-filed returns; signatures.** Strikes reference to use of touch-tone phones made unnecessary by inclusion of touch-tone phones in the definition of "electronic means" in section 1.
- 3 **Orders of assessment.** Provides that penalties are assessed in the same manner as a tax order when there is no underlying tax obligation. This procedure applies to penalties such as a tax preparer penalty, penalty for submitting a materially incorrect W-4, penalty for filing frivolous liens against Department of Revenue employees, and penalties for failing to file certain information returns. Effective the day following final enactment.
- 4 **Business successor liability.** Clarifies that orders assessing successor liability are only made against businesses and not individuals. The statute provides a remedy for holding a successor business liable for the unpaid sales and withholding taxes of a former business. Under current law there, because of the definitions of "person" and "successor," there is some ambiguity as to whether successor liability applies to individuals. Effective the day following final enactment.
- 5 **Personal property exemption; liens.** Strikes language that exempts personal property from property subject to levy if a lien is in place or a tax judgment filed. A new subdivision explicitly providing the exemption of personal property is proposed in section 0. Effective the day following final enactment.
- 6 **Exempt property.** Adds a new subdivision exempting personal property from levy to satisfy a lien or tax judgment. This replaces the exemption stricken in section 0.
- 7 **Tax court awarded refunds; interest.** Changes the time when interest on a tax refund awarded by the Tax Court begins accruing from the date the overpayment was made to the date the overpayment was made unless a different date of accrual is otherwise provided in law. This makes interest accrual on these refunds consistent with income tax refunds, where interest starts 90 days after the due date of the return, and with sales tax refunds, where interest starts 90 days after the filing date of the refund claim. Effective the day following final enactment.
- 8 **Tax shelters; reportable transactions.** Clarifies that the due date of the tax return upon which reportable transactions must be disclosed is the extended due date of the tax return. Without this clarification some taxpayers would be required to file a copy of a federal disclosure form with the Department of Revenue prior to the time at which they are required to file it with the Internal Revenue Service. Effective for reportable transactions in which the taxpayer participated for taxable years ending before December 31, 2005.
- 9 **Scope of allocation rules.** Clarifies that deductions are assigned to Minnesota only when the deductions are definitely related to items of income that are assigned to Minnesota. Effective the day following final enactment.