The durable medical equipment sales tax background (SF268)

In 2007 the Minnesota Legislature passed the streamlined sales and use tax agreement. The compact was intended to ease sales and use tax collection for merchants and others doing business in multiple states, all of which had varying tax policies.

But like much well intended legislation, this one came with some unintended consequences. Within this state-to-state compact, there was an option to pay sales tax on kidney dialysis, or on some durable medical equipment. Since the DME industry did not have representation at the state Capitol at the time, the Legislature did not hear from them decided to select this tax. This was a break from Minnesota tax policy which for over 100 years had not taxed healthcare. However, the Department of Revenue failed to publicly publish a policy update for several years and did not become aware of the tax until the year 2010. Several providers faced multi-million dollar tax bills because they had not been collecting the tax that they were unaware of. As a result, providers did two things: they hired a lobbyist at the state Capitol and they appealed to the administrative law courts for relief from the error caused by the state Department of Revenue.

Unfortunately for the providers, there is no legal requirement for public or private health insurers to pay this sales tax, and they have been forced to pay the tax out of their own pockets. (Typically, almost all medical equipment and supplies are prescribed by health care providers). Furthermore, because none of the auditors at the Department of Revenue have any expertise in healthcare products and healthcare billing, their audits have varied widely and unfairly from provider to provider. Despite this being law for 15 years, the DOR has never accurately collected this tax, or been able to collect the tax at the levels prescribed in law. In other words, DOR has consistently issued revenue notes not based on the reality of previous tax collection years, but rather, based on the fantasy of fully collecting this tax as the law was written over 15 years ago. In fact, it may very well be the case that auditing costs around this tax have cost the DOR more than they have actually collected.

Eight years ago, the Legislature repealed the law as it pertains to public health insurance: Medicaid, Medicare, and MinnesotaCare. Due to the size of the revenue note, the Legislature was unable to repeal the tax on private health insurers. The current legislation would permanently correct the entire problem. The last revenue note was much more realistic than in past years, at approximately $400,000.

Repeal of this tax has always had broad, bipartisan, bicameral support. In 2022, the Senate did include this repeal in their tax bill, but since no tax bill was passed, the work continues in 2025.