

CHAPTER 8130

DEPARTMENT OF REVENUE

SALES AND USE TAXES

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GENERAL PROVISIONS

8130.0110 SCOPE AND INTERPRETATION.

Subpart 1. **Interpretation of terms.** Minnesota Statutes, chapter 297A, hereinafter referred to as the Sales and Use Tax Law, imposes a tax on gross receipts from sales at retail

made after July 31, 1967, by any person. Terms not specifically defined in the Sales and Use Tax Law or this chapter will be given the meanings ascribed to them in accordance with legal, accounting, business, or common usage.

Subp. 2. Sales. Certain transactions defined in the Sales and Use Tax Law and this chapter constitute sales. All sales of tangible personal property are deemed to be retail sales or sales at retail unless made to purchasers who intend to resell the property to others in the regular course of business. The tax required to be collected by sellers on behalf of the commissioner is based upon the gross receipts from sales not specifically exempt. "Gross receipts" means the total amount received for all sales at retail as measured by the sales price as defined in this chapter.

Subp. 3. Use tax situations. The use tax complements the sales tax and basically applies to the following situations:

A. property to be used in Minnesota purchased outside this state in a transaction that otherwise would have been a taxable sale if it had occurred in Minnesota;

B. property purchased for resale or other nontaxable use and used by the purchaser for a taxable purpose; and

C. property purchased from a Minnesota vendor on which no sales tax was paid.

Subp. 4. Arrangement. This chapter is arranged by subject matter in the order that provisions relating to the entitled subject occur in the Sales and Use Tax Law. Where section numbers are cited, the reference is to Minnesota Statutes.

Statutory Authority: *MS s 297A.29*

8130.0120 PERSON DEFINED.

The term "person," as defined in Minnesota Statutes, section 297A.01, subdivision 2, includes the plural as well as the singular. The phrase "any other group or combination acting as a unit" includes groups engaged in a single project as well as those engaged in continuous or recurring activities. An example of such a group might be the faculty of a public school producing a play for the purpose of raising funds to be used for scholarships. Such a group of teachers is considered to be a person within the meaning of this part.

The term includes not only natural persons or individuals but all forms of organizations, associations, partnerships, trusts, cooperatives, and municipal corporations. In addition, officers, directors, and agents of a corporation or association are included in the definition, as well as agents of individuals.

The term "person" also includes manufacturer's representatives, consignees, and brokers.

The term "trustee," as used in Minnesota Statutes, section 297A.01, subdivision 2, includes a trustee or receiver appointed by a federal court exercising jurisdiction over the estate of a bankrupt.

Statutory Authority: *MS s 297A.29*

8130.0200 SALE BY TRANSFER OF TITLE.

Subpart 1. Delivery requirements. Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), provides that a transfer of title constitutes a sale. Title to goods passes from the seller to the buyer in any manner and on any condition explicitly agreed upon by the parties. However, no title to goods can pass under a contract for sale prior to identifying such goods as the exact goods to be delivered under the contract. Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods. Although the seller retains the legal title to the goods, title passes if the purchaser has the right to the use, possession, and enjoyment of such goods. The following rules are applicable.

A. Where the contract requires or authorizes the seller to send the goods to the buyer, but does not require the seller to deliver them at destination, title passes to the buyer at time and place of shipment.

B. Where the contract requires delivery at destination, title passes upon tender there.

C. Unless otherwise agreed, when the term is "f.o.b." (free on board) the place of shipment, title passes when the seller places the goods in the possession of the designated

carrier, or if there is no designated carrier, the seller places the goods in the possession of a common carrier after making a contract for their transportation that is reasonable in view of the circumstances and the nature of the goods.

D. Unless otherwise explicitly agreed, where delivery is to be made without moving the goods, and the seller is to deliver a document of title, title passes at the time when and where such document was delivered.

E. Unless otherwise explicitly agreed, where delivery is to be made without moving the goods, and the goods, at the time of contracting, are already identified, and no documents are to be delivered, title passes at the time and place of contracting.

Subp. 2. [Repealed, 18 SR 1891]

Subp. 3. **Revesting after rejection or revocation.** A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance, revests title to the goods in the seller. Such revesting occurs by operation of law and is not a sale. For example, where a customer holds a television set for a few days and thereafter returns it to the retailer, the retailer is not required to report the transaction, as there was no sale.

Subp. 4. **Mixed transaction.** A transaction involving performance of a repair service, and incident thereto, a transfer of tangible personal property to the purchaser is not considered a sale for sales and use tax purposes if:

A. the value of the property transferred is insignificant as compared to the total consideration; and

B. no separate charge is made for such property. In such cases, the service provider is regarded as rendering a nontaxable service. However, if a separate charge is made for the property transferred, a sale within the meaning of the Sales and Use Tax Law is deemed to have occurred.

Example. A jeweler uses a spring costing 25 cents to repair a watch. The jeweler bills the customer \$6 for repair services. Since the cost of the spring is insignificant in relation to the charge for repair services, no sale of the spring is considered to have been made. The jeweler is required to pay a use tax on the spring if the jeweler did not pay a sales tax at the time of purchase. However, if the jeweler bills separately for the spring, the jeweler must collect a sales tax from the customer.

Subp. 5. **Transfer of title of special tooling.** When a manufacturer acquires special tooling, as defined in Minnesota Statutes, section 297A.01, subdivision 17, which is not exempt under Minnesota Statutes, section 297A.25, subdivisions 1 and 9, the manufacturer may or may not acquire the special tooling for sale to the customer. If the special tooling is sold to the manufacturer's customer, by billing the customer for the special tooling or giving the customer the right to take possession of it, the sale is subject to the sales tax whether or not the customer is outside Minnesota, because the first beneficial use of it was made in Minnesota. If the manufacturer does not acquire the special tooling for sale to a customer, the manufacturer's purchase is subject to the sales tax.

In the case of either prime or subcontracts with the United States government, a Minnesota manufacturer is deemed the consumer of special tooling in the absence of an explicit agreement with the United States government as to title passage prior to use by the Minnesota manufacturer. If it is claimed by the manufacturer at the time of purchase that title passes immediately on purchase or manufacture of the tooling, mold, or die, the Minnesota manufacturer must provide, to the Department of Revenue on audit, one of the following as evidence:

A. if the contract is not classified, a copy of the contract between the contractor and the United States government which provides for immediate title transfer from the contractor to the United States government before use;

B. if the contract is classified, a signed statement from the contracting officer or the Department of Defense auditor that the contract in question includes provisions for immediate title transfer;

C. if the Minnesota manufacturer holds a subcontract with a prime contractor which provides for immediate title transfer to the prime contractor but not simultaneously

from the prime contractor to the United States government, the transfer of title to the prime contractor is the taxable event.

Subp. 6. **Other situations.** All other situations will be determined on the basis of the relevant facts.

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 1279; 18 SR 1891*

8130.0300 SALE BY TRANSFER OF POSSESSION.

In the ordinary course of business, in accordance with Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), a sale is usually evidenced by transfer of possession, either actual or constructive, from the seller to the buyer at the time the seller completes performance under the contract. The most obvious example of a sale by passing of both title and possession is a sale for cash at the time of delivery of the goods.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.0400 LEASES.

Subpart 1. **General rule; examples.** Any item which is taxable if sold is also taxable if leased. If an item is contracted for lease in Minnesota and physical possession of the item by the lessee occurs in Minnesota, a taxable transaction has occurred even if the lessee removes the property from the state for personal use. However, leased property which will be used in a trade or business outside Minnesota by the lessee without any intermediate use in Minnesota, and which will not be returned to Minnesota except in the course of interstate commerce, is exempt from tax.

All payments made pursuant to leases of tangible personal property, including mobile equipment such as motor vehicles, trailers, and contractor's equipment, constitute sales made in Minnesota if such property is either garaged or principally used, including use thereof in interstate commerce for delivery or other temporary purpose outstate, by the lessee at or from a Minnesota situs of the lessee.

Example 1. Motor Freight Line, a Minnesota company, leases ten tractor-trailers from a leasing company. The contract is signed at the Minnesota office of Motor Freight Line, and all payments under the lease are made from this office. Motor Freight Line uses seven of the tractor-trailers to haul freight in interstate commerce to and from its Minnesota freight depot. The remaining three tractor-trailers are used to haul freight in interstate commerce to and from Motor Freight Line's depot in Illinois. From time to time, the three tractor-trailers enter Minnesota in the course of the normal interstate commerce activities of Motor Freight Line. The lease price attributable to the seven tractor-trailers used to haul freight to and from the Minnesota freight depot constitutes a Minnesota sale. The lease price of the remaining three tractor-trailers does not constitute a Minnesota sale.

Example 2. Amalgamated Contractors, a Minnesota company, leases a heavy-duty crane for a construction job in Iowa on a monthly basis. The payments are made by Amalgamated to the lessor in Iowa. Subsequently, Amalgamated secures a construction contract in Minnesota and transfers the crane to the Minnesota site on June 15, 1968. Lease payments due while the crane is located in Minnesota are subject to Minnesota use tax although such payments continue to be made in Iowa.

Example 3. Peter Smith, a resident of Fargo, North Dakota, leases a chain saw from XYZ Rental-All, an equipment leasing firm, with an office only in Moorhead, Minnesota. Mr. Smith intends to use the saw at the residence in Fargo, and takes possession of the saw from the rental firm in Minnesota. A Minnesota sales tax is due and payable on this transaction.

Subp. 2. **Leases of drive-it-yourself automobiles, trailers, or other vehicles.** All lease payments made pursuant to leases executed in Minnesota for drive-it-yourself automobiles, trailers, or other vehicles on a mileage, hourly, or other time basis are taxable, irrespective of whether such vehicles are to be used exclusively in Minnesota or are to be used in other states. Thus, where the lessee delivers the vehicle to the lessor in a state other than Minnesota, either by express agreement with the lessor or without securing prior consent, a lease payment made to the lessor in such other state constitutes consideration for a Minnesota sale.

All lease payments made in Minnesota pursuant to leases executed in states other than Minnesota for drive-it-yourself automobiles, trailers, or other vehicles on a mileage, hourly, or other time basis do not constitute consideration paid for a Minnesota sale. Consequently, such payments are not subject to the Minnesota sales and use tax.

Example 1. A rental agency, located in Minnesota, leases an automobile to X. Thereafter, X drives the automobile to California and returns the vehicle to the rental agency's office in Los Angeles, and there pays the total lease charge of \$280. The lease charge constitutes a sale in Minnesota, and the rental agency is required to include the entire \$280 in its gross receipts subject to tax.

Example 2. A rental agency, located in New York, leases an automobile to Y. Thereafter, Y drives the automobile to Minnesota and returns the automobile to the rental agency's office in this state, and there pays the total lease charge of \$150. No part of the \$150 payment is subject to the Minnesota sales or use tax.

Subp. 3. Rentals of equipment. Contractors on occasion rent equipment temporarily idle to other contractors for short periods of time. Such rentals should be deemed to be occasional sales unless there are other factors which indicate clearly that the contractor leasing the equipment to others is engaged in the business of renting or leasing equipment.

Indications that a contractor is in the business of renting equipment include, but are not limited to, the following.

- A. The equipment is advertised as available for rent.
- B. The contractor otherwise actively solicits rental business.
- C. The equipment owned or otherwise controlled by the contractor is materially in excess of the amount normally required by the contractor in the performance of construction contracts over an extended period of time.
- D. The contractor regularly leases or rents equipment to others for extended periods of time.

Subp. 4. Services of operator furnished with rentals of equipment. For services of an operator furnished with the rental of equipment:

A. Certain types of equipment are only available with the services of an operator. For example, the hiring of a taxicab involves the concurrent hiring of a taxicab driver. The same is true with respect to bus companies and commercial airlines. The primary or chief activity of the taxicab company, or the bus line, or the airline, is furnishing transportation services. For all practical purposes, one cannot hire a taxicab or a bus or a commercial airline without accepting the services of a licensed operator. Consequently, the gross receipts from such transactions are not considered sales under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a).

B. There are enterprises which lease equipment either with or without operators. For example, a lessor of transport trucks will furnish a driver if the lessee so requests, or a lessor of heavy equipment will furnish an operator for a crane or caterpillar.

C. When a driver or operator is furnished along with the equipment, the lessor, by the lessor's employee or agent, retains control of the equipment. Accordingly, the lessor is considered to be furnishing a service rather than leasing the equipment, and the transaction is not considered to be a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a).

When a lessor utilizes equipment in furnishing such nontaxable services, no exemption for the purpose of resale is allowed on purchases of such equipment.

D. On occasion, an employee may use his or her own pickup truck to transport tools on behalf of the employer from one site to another. If the employee is not engaged in the business of leasing the truck, the transportation of the tools is, in effect, a service performed by the employee at the request of the employer. Any reimbursement to the employee is deemed to be nontaxable.

Subp. 5. Additional items or services furnished in connection with leases of drive-it-yourself equipment. If a lessor, in addition to granting a license to use or right of possession of leased property, contracts to furnish other items or services such as gasoline, oil, lubrication, maintenance (including replacement parts and labor for installation thereof or for

the repair of the property in question), license fees, highway use taxes, and insurance, the deductibility of such items will be determined under the following rules.

Items deductible from the lease price are gasoline, maintenance labor, public liability insurance, license fees, and highway use taxes. If these items are separately stated by description in the lease agreement and by specific amounts in either the lease agreement, billing, or invoice, they may be deducted in determining the amount of the lease payment subject to tax. If such items are separately stated by description only and without specification of amounts, a percentage of up to one-third of the lease payment may be deducted in determining the amount of the payment subject to tax, provided that the lessor has records that substantiate the accuracy of the percentage used.

Where the lease agreement does not specify such items, the entire payment is subject to tax.

Items not deductible under any circumstances are oil or lubrication, replacement parts, and collision and comprehensive insurance.

Subp. 6. Maintenance contract. Where under the terms of a contract a lessor of tangible personal property other than motor vehicles agrees to provide full maintenance of such property and the periodic payment is a single sum covering both rental of the property and the maintenance service, a portion of such sum may be deemed a charge for maintenance labor and deducted in determining the amount of the payment subject to tax. The deduction shall be at the lessor's cost for such labor based on actual experience.

Subp. 7. Leases to electing motor carrier. Effective July 1, 1971, motor carriers may elect under provisions of Minnesota Statutes, section 297A.211, to pay directly to the commissioner of revenue the tax due on the leasing of certain mobile transportation equipment and accessories used in interstate commerce. Lessors of such property need not collect the tax from the electing carriers who have been issued a motor carrier direct pay certificate. See part 8130.3500 for rules relating to the motor carrier direct pay certificate and describing the property for which the payment of tax by the lessee may be deferred.

Subp. 8. Leases to a joint venture. Charges for equipment furnished to a joint venture by the individual participants are not subject to the tax. Such charges are made for the purpose of allocating credit to the different members for providing the equipment.

Subp. 9. Lease distinguished from conditional sales contract; intent, surrounding circumstances, and other factors. For distinguishing a lease from a conditional sales contract:

A. Whatever interest is obtained by a lessee or purchaser is acquired under the terms of the agreement itself. Whether an agreement, which in form is a lease, is in substance a conditional sales contract depends upon the intent of the parties as evidenced by the provisions of the agreement read in the light of the facts and circumstances existing at the time the agreement was executed. In ascertaining such intent no single test, or any special combination of tests is absolutely determinative. No general rule, applicable to all cases, can be laid down. Each case must be decided in the light of its particular facts. In the absence of compelling persuasive factors of contrary implication, an intent warranting treatment of a transaction for tax purposes as a purchase and sale rather than as a lease or rental agreement may in general be said to exist if one or more of the following conditions are present:

(1) Portions of the periodic payments are made specifically applicable to an equity to be acquired by the lessee.

(2) The lessee will acquire title upon the payment of a stated amount of rentals which under the contract the lessee is required to make.

(3) The total amount which the lessee is required to pay for a relatively short period of use constitutes an inordinately large proportion of the total sum required to be paid to secure the transfer of the title.

(4) The agreed rental payments materially exceed the current fair rental value. This may be indicative that the payments include an element other than compensation for the use of property.

(5) The property may be acquired under a purchase option at a price which is nominal in relation to the value of the property at the time when the option may be exercised,

as determined at the time of entering into the original agreement, or which is a relatively small amount when compared with the total payments which are required to be made.

(6) Some portion of the periodic payments is specifically designated as interest or is otherwise readily recognizable as the equivalent of interest.

B. These agreements are generally cast in the form of chattel leases and vary greatly. An appropriate pattern is discernible, however, and many of the agreements may be loosely defined and grouped as follows:

(1) Short-term agreements which usually concern mobile equipment or relatively small articles of equipment. The compensation for use provisions in these agreements are usually expressed in terms of an hourly, daily, or weekly rental, and the rental rates are relatively high in relation to the value of the article. There may be an option to purchase the equipment at a price fixed in advance which will approximate the fair market value of the equipment at the time of the election to exercise the option. In this type of agreement, all costs of repairs, maintenance, taxes, insurance, etc., are obligations of the lessor.

(2) Agreements entered into by taxpayers engaged in the business of leasing personal property to others either as their principal business activity or incidental thereto. Under the terms of these agreements the amounts payable, called rental rates, are ordinarily based on normal operations or use, plus a surcharge for operations in excess of the normal stated usage. In some instances the rental is based on units produced or mileage operated. Termination of the agreement at stated periods is provided upon due notice by either party. If the agreement includes an option to purchase, the option price has no relation to the amounts paid as rentals.

(3) Agreements providing for a rental over a comparatively short period of time in relation to the life of the equipment. The agreed rental payments fully cover the normal purchase price plus interest. Title usually passes to the lessee upon the payment of a stated amount of rental or on termination of the agreement upon the payment of an amount which when added to the rental paid approximates the normal purchase price of the equipment plus interest.

(4) Agreements which provide for the payment of rental for a short original term in relation to the expected life of the equipment, with provision for continued use over substantially all of the remaining useful life of the equipment. During the initial term of the agreement, the rental approximates the normal purchase price of the equipment, plus interest, while the rentals during the remaining term or renewal period or periods are insignificant when compared to the initial rental. These agreements may or may not provide for an option to acquire legal title to the equipment upon the termination of the initial period or at any stated time thereafter.

(5) Agreements similar to the arrangement in subitem (4), but with the added factor that the manufacturer of the equipment purports to sell it to a credit or finance company, which either takes an assignment of such an existing agreement with the user or itself later enters into such agreement with the user. In some instances, the lessor may be a trustee acting for or on behalf of the original vendor.

C. The fact that the agreement makes no provision for the transfer of title or specifically precludes the transfer of title does not, of itself, prevent the contract from being held to be a sale of an equitable interest in the property.

D. Conditional sales of personal property are, in general, recordable under the various state recording acts if the vendor wishes to protect its lien against claims of creditors. However, the recording or failure to record such a sales contract is usually discretionary with the vendor and is not controlling insofar as the essential nature of the contract is concerned for tax purposes.

E. Agreements are usually indicative of an intent to rent the equipment if the rental payments are at an hourly, daily, or weekly rate or are based on production, use, mileage, or a similar measure and are not directly related to the normal purchase price, provided, if there is an option to purchase, that the price at which the equipment may be acquired reasonably approximates the anticipated fair market value on the option date. Thus, agreements of this type described in item B, subitems (1) and (2), will usually be considered leases, in the ab-

sence of other facts or circumstances which denote a passing of title or an equity of interest to the lessee.

F. In the absence of compelling factors indicating a different intent, it will be presumed that a conditional sales contract was intended if the total of the rental payments and any option price payable in addition thereto approximates the price at which the equipment could have been acquired by purchase at the time of entering into the agreement, plus interest and/or carrying charges. Agreements of the type described in item B, subitem (3), will generally be held to be sales of equipment.

G. If the sum of the specified rentals over a relatively short part of the expected useful life of the equipment approximates the price at which the equipment could have been acquired by purchase at the time of entering into the agreement, plus interest and/or carrying charges on such amount, and the lessee may continue to use the equipment for an additional period or periods approximating its remaining estimated useful life for relatively nominal or token payments, it may be assumed that the parties have entered into a sale contract, even though a passage of title is not expressly provided in the agreement. Agreements of the type described in item B, subitems (4) and (5), in general will be held to be sales contracts.

Subp. 10. Time of incidence of tax. For the time of incidence of the tax:

A. A lease of tangible personal property is a series of transactions in time units defined by the agreement of the parties. Gross receipts generated therefrom are taxable at the rate in effect at the time the obligation to pay becomes fixed under the agreement, and not at the time the payment must be or is in fact made. The initial obligation to pay becomes fixed upon the transfer of possession of the tangible personal property unless the agreement specifically sets forth another time. Subsequent obligations to pay become fixed either by the terms of the agreement, trade practices of the lessor, or practice in a course of dealing.

B. A lease of tangible personal property normally imposes upon the lessee multiple obligations. Each of these obligations may be treated separately by the agreement. The incidence of taxation upon each payment under the agreement will be determined by the obligation for which payment is made and the time at which such obligation to pay in fact arose.

C. Some obligations to pay arise by the execution of an agreement while other obligations arise by reason of the voluntary activities of the parties during the term of the agreement. For example, the lease of an automobile for a fixed period of months may give rise to an unconditional obligation to pay a minimum monthly amount and an additional obligation to pay for all miles driven in excess of a specified amount. In such cases the incidence of taxation on the minimum monthly amount would be determined at the time of transfer of possession while the incidence of taxation on the amount for excess mileage would be determined when the excess mileage was driven.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.0500 LICENSE TO USE.

Subpart 1. General rule. Where a privilege to possess, use, and enjoy tangible personal property is granted by the owner for a determinate time and on a fixed rental fee basis, or on some other basis that includes a fixed rental fee, and the owner surrenders possession and control under the terms of the agreement to the other party, such arrangement represents a lease. However, where the arrangement contemplates that the owner, for a consideration, will permit the other party to use the property, without the owner divesting physical possession thereof, such arrangement is included in the definition of the term "license to use" and thus represents a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a).

Example. A lumber dealer sells lumber of only standard dimensions because the majority of customers are building contractors and generally only require lumber in standard sizes. Whenever large lumber orders of nonstandard dimensions are received, the dealer will either cut the lumber and make an additional charge, or allow the contractor to use the sawing equipment on the dealer's premises for \$15 per hour. The charges made by the dealer, for the use of sawing equipment by the contractor, represent the granting of "a license to use" and are taxable.

Subp. 2. **Computer time exception.** The making available of a computer on a time-sharing basis for use by customers securing access by remote facilities shall not be considered granting of a "license to use." It shall be considered to be the providing of a nontaxable service.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.0600 CONSIDERATION.

Subpart 1. **Consideration in money.** As used in Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), "consideration in money" refers to the amount of money whether in the form of currency, coins, negotiable instruments, or scrip which the parties agree shall be paid by the purchaser.

Example 1. "M" manufacturer, purchases a machine for use in production. The manufacturer pays \$5,000 in cash and gives a \$20,000, 90-day promissory note drawn to the order of "V," vendor. The note bears interest at six percent. The consideration in money is \$25,000. The \$20,000 note is still deemed to be "consideration in money" even though "V," holds it until maturity, as "V" may convert the note, plus accrued interest, into cash by negotiation. The accrued interest that may be paid to "V," either at the time of negotiation or at the time of maturity, does not constitute "consideration in money" for sales tax purposes in respect of the sale of the machine.

Example 2. Same facts as in example 1, except that "V" discounts the \$20,000 promissory note at a bank for \$19,500. The consideration paid by "M" is \$25,000.

Transactions described in Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), are sales or purchases where effected by exchange or barter. The terms "exchange" and "barter" are used synonymously. (See part 8130.1500 for allowable exclusions from sales price.)

Subp. 2. **Trading stamps.** Trading stamps which may be redeemed for premiums constitute consideration in the form of scrip. Redemptions by customers of trading stamps for premiums are subject to sales tax unless the premium is exempt by statute, e.g. clothing. The basis of the tax is the fixed value of the trading stamps plus any cash required for the redemption of a particular premium.

Trading stamp companies are the users or consumers of trading stamps and similar materials, e.g. booklets, catalogs, etc., and must therefore pay tax on all purchases thereof. Purchases by trading stamp companies of premiums, i.e. merchandise to be exchanged for redeemed trading stamps, are exempt as purchases for resale.

The amount charged by a trading stamp company to a dealer for the privilege of distributing trading stamps which are redeemable by the trading stamp company either in cash or premiums is exempt.

Subp. 3. **Coupons.** Whether coupons constitute consideration in the form of scrip is dependent upon the nature of the coupon. Coupons will generally be one of two types:

A. coupons which are of such a nature that the retailer does not have recourse to a supplier, distributor, or product manufacturer for reimbursement. These coupons, upon tender to the seller, result in a reduction of the sales price by the seller and are not a part of the consideration paid. The net amount is subject to the tax;

B. coupons that are redeemed by the retailer who in turn is reimbursed by a supplier, distributor, or product manufacturer are scrip and a part of the consideration. The value of such coupons is included in the amount subject to the tax. The value of the coupon is equal to the difference between the normal selling price and the reduced selling price of the merchandise.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.0700 PRODUCING, FABRICATING, PRINTING, OR PROCESSING OF PROPERTY FURNISHED BY CONSUMER.

Subpart 1. **General.** A sales tax is assessed on the retail sale of tangible personal property. See Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a).

In addition, a sales tax is assessed on the production, fabrication, or processing of tangible personal property for retail consumers who furnish directly or indirectly the materials used in the production, fabrication, or processing. See Minnesota Statutes, section 297A.01, subdivision 3, paragraph (b).

Producing, fabricating, and processing include any operation which results in the creation or production of tangible personal property, or which is a step in a process or in a series of operations resulting in the creation or production of tangible personal property, except sales for resale.

Subp. 2. Repairs. Application of labor to tangible personal property so that such property may continue to be used in the same form and for the purpose for which acquired represents repairs and does not constitute producing, fabricating, or processing of property. Where the expenditure is made for the purpose of modifying, altering, or assembling it in some other manner, the application of labor thereto represents a sale under the provisions of Minnesota Statutes, section 297A.01, subdivision 3, paragraph (b).

Subp. 3. Tax applications.

A. Example 1. A customer enters into an agreement with an upholsterer whereby the latter will remove old fabric from the customer's living room sofa and replace it with fabric chosen by the customer. The cost agreed upon is \$300. Service charges are \$150, with the remaining \$150 representing the cost of the materials. As the reupholstering repair permits the customer to continue to use the sofa for the purpose for which it was acquired, only the \$150 for material represents a sale, provided the charges for materials are billed separately, and that such charges represent a reasonable sales price for such material were it purchased without the service charge for reupholstering. If the customer had furnished the material, no sale would have resulted.

B. Example 2. A customer furnishes material which is thereafter produced into a slipcover for sofa. The charge for producing the slipcover is a sale in accordance with Minnesota Statutes, section 297A.01, subdivision 3, paragraph (b), since it results in the modification of tangible personal property. If the customer had purchased material from the upholsterer, the entire cost to the customer would be a sale.

C. Example 3. Custom sawing of logs by a saw mill where logs are furnished by the customer constitutes a sale.

D. Example 4. Developing prints of home movies or stills for customers who furnish the exposed film constitutes a sale.

E. Example 5. Printing on paper stock furnished by customers constitutes a sale.

F. Example 6. Reproducing copies of typewritten or printed matter on a stock furnished by customers constitutes a sale.

G. Example 7. Recapping of a tire carcass supplied by the customer is a repair. If the materials and labor are separately stated, only the material portion is taxable. If no separation is shown on the invoice, the entire amount is taxable. These rules apply even though the new cap is of a different tread design, i.e. a snow tread cap applied over a summer tread, or vice versa. If a carcass is traded in for a recapped tire, the entire charge, less allowance for the trade-in is taxable. (See part 8130.1500.)

H. Example 8. Cutting and milling charges by a lumberyard or woodworking shop, and pipe cutting or threading charges by a hardware store or plumbing shop are taxable whether the materials are supplied by the buyer or the seller.

I. Example 9. Engraving of an item furnished by the customer is considered a service not subject to tax. This service engraving is to be differentiated from product engraving which is taxable. Product engraving is billed along with or included in the sales price by the seller at the time the item is sold.

J. Example 10. The entire amount charged for the initial electroplating, heat treating, or painting of tangible personal property furnished by the customer is taxable as fabrication labor.

K. Example 11. Collating and assembling done by stapling or using a similar process affixing items together is taxable. The punching, assembly, stamping, burning, electroplating, etc. of goods supplied by a customer is taxable.

L. Example 12. A locksmith changes a combination on a safe or changes the tumblers in a lock so that a different key must be used. The transaction is considered to be a non-taxable service and the locksmith is required to pay the sales or use tax on purchases of the parts and materials used to perform such service. However, retail sales of keys and parts which are billed separately are taxable.

M. Example 13. Additional types of fabrication charges which are taxable regardless of whether the customer or fabricator furnishes the materials include charges for the following:

- (1) assembling kits to produce a completed article;
- (2) bending glass tubing into neon signs;
- (3) bookbinding;
- (4) conversion of a vehicle into a stretch limousine;
- (5) drilling holes in bowling balls;
- (6) engraving when it is charged with or included in the sales price by the retailer;
- (7) firing of ceramics or china;
- (8) making of a fur coat from pelts, or gloves or a jacket from a hide;
- (9) making curtains, drapes, pillows, slipcovers, or other household furnishings;
- (10) laminating identification cards;
- (11) lumber cut to specifications and producing cabinets, counter tops, or other items from materials for customers;
- (12) matting and framing of art work;
- (13) printing and imprinting, including lithography, silk screen printing, multilithing, mimeographing, photostating, and similar processes;
- (14) photography, the taking of pictures and developing of films which result in sale of photographs or movies;
- (15) production of a sound recording or a motion picture;
- (16) rebuilt auto parts by a manufacturer of a previously manufactured article such as radiators, generators, carburetors, fuel pumps, transmissions, engine blocks, or similar parts;
- (17) steel fabrication, which may involve cutting the steel to length and size, bending and drilling holes in the steel to the specifications of a particular construction job when the end result of the fabrication is a modification of a previously manufactured article; and
- (18) taxidermy, the charges for stuffing and mounting.

Subp. 4. **Custom made goods.** The total proceeds of sale of custom made products are taxable, without deduction for labor costs, provided that the manufactured item remains personal property after installation. Labor charges to install manufactured items which become part of real property are not taxable.

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 1279; 18 SR 2483*

8130.0800 MEALS AND DRINKS.

Subpart 1. **In general.** Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), the furnishing, preparing, or serving for a consideration, of food, meals, or drinks is a taxable sale. However, such taxable sales do not include:

A. furnishing, preparing, or serving of food, meals, or drinks by hospitals, sanitariums, nursing homes, or senior citizens' homes;

B. serving of meals and lunches at public and private schools, universities, or colleges;

C. the furnishing, preparing, or serving of an occasional meal by a charitable or church organization; or

D. meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to the handicapped and their spouses by governmental agencies, nonprofit organizations, agencies, or churches or pursuant to any program funded in whole or part through United States Code, title 42, sections 3001 to 3045, wherever delivered, prepared, or served.

Subp. 2. **Criteria for determining taxability.** Whether a particular transaction constitutes the furnishing, preparing, or serving of food, meals, or drinks under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), and thus is taxable, or whether it constitutes the sale of food products under Minnesota Statutes, section 297A.25, subdivision 2, and thus is exempt, will depend upon a number of factors set forth below. For purposes of brevity and convenience, the furnishing, preparing, or serving of food, meals, or drinks taxed under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), will be referred to as sales of "taxable food," and sales of food products exempted under Minnesota Statutes, section 297A.25, subdivision 2, will be referred to as sales of "exempt food." Food prepared for immediate consumption, that is, food which will ordinarily be consumed without delay and without further preparation or storage, is generally described as a "meal." "Drinks" are generally thought of as alcoholic or other prepared liquids.

A. As a general rule, a sale of taxable food occurs when any of the following conditions exist:

- (1) the vendor is in the business of selling "meals" or "drinks";
- (2) the food sold is ready for immediate consumption;
- (3) the food sold is usually consumed on the vendor's premises; or
- (4) the vendor furnishes tables, counters, chairs, trays, glasses, cups, dishes, or other eating utensils.

B. As a general rule, a sale of exempt food occurs only if all of the following conditions exist:

- (1) the food is sold in an unheated state;
- (2) the food is of a type commonly sold in food stores such as supermarkets and grocery stores, which are not engaged in the prepared food business;
- (3) the food is sold in the same form, condition, quantities, and packaging as commonly sold in food stores; and
- (4) the food is of a type not otherwise taxable when sold by food stores.

C. Generally, food will be "taxable food" when furnished, prepared, or served by restaurants, cafeterias, delicatessens, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, drug stores, diners, bars, vending machines, drive-ins, mobile sales units, clubs, caterers, and similar businesses, including all those required to be licensed as eating places under Minnesota Statutes, section 157.03, regardless of whether or not meals or drinks are served regularly to the public by such vendors.

D. Food items which are ordinarily sold for immediate consumption will be taxable food where sold on a "take out" or "to go" order, packaged or wrapped, and taken from the premises for consumption elsewhere. However, soft drinks in large unopened containers (e.g. quart, gallon, carton, etc.) and prepackaged ice cream (e.g. pint, quart, gallon, or larger), whether packaged by the vendor or a supplier, are sales of exempt food, since, because of the volume and packaging, they are not ready for immediate consumption and are not customarily consumed on or near the vendor's premises.

E. Heated food or drink, regardless of form, condition, quantities, and packaging is taxable food. Chicken, barbecued spareribs, fish, spaghetti, pizza, chow mein, french fries, coffee, tea, etc., are taxable food whether sold by restaurants, caterers, food stores, or vending machines.

F. Cold sliced roast beef, corned beef, ham cold cuts, etc., although already cooked and ready to be eaten, are exempt food, provided they are sold in the same form, condition, quantities, and packaging commonly used by food stores, i.e., by the pound weight. Cold salads, beans, cole slaw, etc., are exempt food, provided they are sold by the pound, quart, or pint, as in food stores.

G. Sales of both taxable heated food and exempt unheated food in combination are taxable in full if sold as plates or packaged as dinners. For example, if an individual pur-

chases a quantity of cooked, heated chicken, two quarts of potato salad, and a pint of cold beans, and a separate amount is charged for each item, only the cooked, heated chicken will be taxable food; however, if the same items are sold in combination for a single unit price, the entire combination is "taxable food." Frozen or other packaged combinations of food commonly sold by food stores are exempt food.

H. Pretzels, potato chips, pies, frozen ice cream sundaes, and popsicles are exempt food when they are of the same type, and are sold in the same form, condition, quantities, and packaging as they are commonly sold in food stores. For example, all beverages dispensed in cups and milk sold in half-pint or one-third-quart containers are taxable food because food stores do not commonly sell beverages in cups or milk in small quantities. Pretzels and potato chips are sold by grocery stores in cartons containing six individual, lunch, or snack servings and these are exempt food; however, a tavern, cafeteria, or vending machine sells these individual servings separately and as they are not in the same quantity and packaging as sold in grocery stores, are taxable food.

I. Hand-prepared or dispensed ice cream cones and sundaes, from either soft or regular ice cream, are taxable food.

J. A vendor of exempt food may maintain facilities for the serving of "taxable food." The sales in each category must be recorded separately, either by means of separate sales areas and separate cash registers, or by other appropriate arrangements. For example, a department store sells food products and baked goods at retail, and operates a counter nearby where "meals" are served. The retail food section and the lunch counter record sales on separate cash registers located in their respective areas. Consequently, the food in the retail food section is "exempt food," and the food at the lunch counter is "taxable food."

K. A food store is engaged primarily in the sale of "exempt food" such as meat, fresh vegetables and fruits, canned goods, dairy products etc., which the purchasers carry away. However, a food store might also prepare "taxable food" on the premises, although there are no facilities for consuming it. For example, a supermarket sells chicken roasted on a rotisserie on the premises. Because the chicken is prepared by the vendor and sold in a heated state, the roasted chicken is "taxable food." However, bakery products, such as doughnuts, bread, and pastries prepared and sold by food stores and bakeries for home consumption are "exempt food."

L. A vendor engaged principally in the sale of "taxable food" may also sell "exempt food" when it is sold by the vendor in the original or unopened carton. For example, a customer orders and eats "taxable food" on the premises of a pancake house and then purchases a container of their specially prepared syrup to take home. The sale of the syrup is a sale of "exempt food."

M. Sales of candy and candy products are sales of "exempt food" wherever and by whomever made.

N. The gross receipts from charges for opening and serving of customer furnished beverages, i.e. "corkage," constitutes a taxable sale.

Subp. 3. Meals at hospitals, sanitariums, nursing homes, or senior citizens' homes. For meals at hospitals, sanitariums, nursing homes, or senior citizens' homes:

A. Meals furnished, prepared, or served on the premises are not taxable, only if they are furnished, prepared, or served by such institution.

For example, the ladies' auxiliary of a hospital operates a coffee shop on the premises. Although the ladies' auxiliary is a nonprofit organization the food and drinks at the coffee shop are taxable since they are not furnished, prepared, or served by the hospital itself.

B. "Hospital, sanitarium, or nursing home" means any institution, place, building, or agency in which accommodation is maintained, furnished, or offered for the hospitalization of the sick or injured, for maternity care, or for the care of three or more aged or infirm persons requiring or receiving chronic or convalescent care. The terms do not include hotels or other similar places that furnish only board or room or both to their guests.

C. A "senior citizens' home" is one that furnishes room, board, recreational facilities, and nursing attention to persons who have reached the age of 65, or who, for other reasons, enter such a home at an earlier age. A senior citizens' home may be operated either for profit or on a nonprofit basis.

Subp. 4. **Meals at schools.** Meals furnished, prepared, or served at public and private schools, universities, or colleges are nontaxable. Administrative offices located off the school premises are not considered part of the school and therefore meals served at those offices are taxable. A "public school" is one that furnishes courses of study, enrollment, and staff that meet the standards of the State Board of Education. A "private school" is one that provides an education substantially equivalent to that furnished at a public school, under the rules and standards of the State Board of Education.

Subp. 5. **Occasional meals by a charitable or church organization.** For occasional meals by a charitable or church organization:

A. The occasional furnishing, preparing, and serving, for a consideration, of a meal by a charitable or church organization is not taxable unless the activity is such that the organization is considered to be in the business of furnishing, preparing, or serving meals. This provision applies only to occasional meals by charitable or church organizations as defined in part 8130.6200, subparts 2 and 3. No provision is made for nontaxable occasional meals by educational organizations or other nonprofit groups such as Boy Scouts, American Legion, Jaycees, etc.

B. Any occasional meal conducted by a charitable or church organization either on its property or adjacent thereto is not taxable.

C. When a meal is conducted at a location other than its own or adjacent property, and is in operation for two or more days consecutively the charitable or church organization is in the business of furnishing, preparing, or serving meals at that location, and the meals there are taxable.

D. The furnishing, preparing, or serving, for a consideration, of meals by a charitable or church organization described in item C will not affect the nontaxable status of meals furnished, prepared, and served by the organization on its property or adjacent thereto. For example, First Church prepares and serves Sunday night suppers once a month for a consideration on its own premises. During the state fair, First Church operates a concession on the fair grounds at which it prepares and serves meals for a consideration for several consecutive days. The meals served at the fair grounds are not occasional meals and thus are taxable, but the monthly Sunday night suppers are not taxable.

E. Meals prepared or served by a hotel, catering firm, or other commercial enterprise for a charitable or church organization are not occasional meals. Thus, the consideration paid to the hotel or caterer for such meals by the organization, its members, or the general public is taxable.

F. When a meal by a charitable or church organization is taxable under item C or D or a meal by any other nonprofit organization is taxable as explained in item A, and the price is in excess of the normal selling price of such a meal, and a contribution to the organization is intended and is shown separately on the tickets or advertising, only the normal selling price of the meal is taxable. For example, a political party arranges a \$100 per plate dinner at a hotel to raise funds. The normal price of the dinner served is \$6. The taxable sales price is \$6 per dinner served; the remaining \$94 is a contribution to the political party.

Subp. 6. **Education programs and children's camps.** Tuition or fees paid for participation in educational programs provided by educational institutions or for attendance at children's camps licensed under Minnesota Statutes, sections 144.71 to 144.76, are not sales at retail within the provisions of the Sales and Use Tax Law. Such tuition or fees are consideration for recreational or educational services rendered and are not taxable.

Educational institutions and children's camps sponsoring or fostering such educational or recreational programs are not retailers of meals or lodging within the provisions of the Sales and Use Tax Law since the meals and lodging provided are incidental to the recreational and educational purposes of the programs. Consequently, the meals and lodging provided, if furnished on the premises of the educational institution or children's camp, are not taxable.

Subp. 7. **Meals furnished to employees.** If an employer furnishes meals to employees for a consideration, the transactions are taxable sales. However, if an employer furnishes meals to employees for no consideration, there is no taxable sale. Where exempt meals are served to others, for example, meals served at a public school, the meals served there to employees will also be exempt although such employees may be required to pay for the meals.

Subp. 8. Caterers. The term "caterer," as used herein, means a person, including those licensed under Minnesota Statutes, chapter 157, engaged in the business of preparing food, meals, or drinks and serving them on the premises designated by customers. The term "caterer" does not include employees hired by the day or hour. When an agreement provides that a caterer will prepare and serve food, as meals or buffet style, for a stated price per meal, for a lump sum or for a price per plate used, the transaction will be a taxable sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c).

A. Catered meals served at schools do not constitute taxable transactions.

B. Any charges made by a caterer for such items as tableware, tablecloths, tables, or chairs are taxable. If the customer has the option of having these items supplied by the caterer or otherwise arranging for them and the caterer's charge is adjustable accordingly, the furnishing of such items shall be considered to be the rental of tangible personal property and the caterer may rent or purchase such items exempt for resale. If the customer does not have the option of arranging for the furnishing of such items for a reduction in the caterer's charge, the entire charge shall be considered to be for the furnishing, preparing, or serving of meals for consideration. The caterer shall be regarded as using the items in rendering services rather than as leasing them. The resale exemption would not be applicable to the caterer's purchase thereof when the caterer's operations are conducted in this manner.

C. In the event that a caterer prepares or serves meals for an organization which resells the meals to its members or the general public, the transaction between the caterer and the organization is a taxable sale unless the organization:

- (1) holds a Minnesota sales and use tax permit;
- (2) is, itself, regularly engaged in the business of furnishing, preparing, or serving for a consideration food, meals, or drinks; and
- (3) furnishes to the caterer a properly completed resale exemption certificate, form ST-5.

Subp. 9. Fraternities and sororities. "Fraternities and sororities" are student social organizations operated at or near public or private schools, colleges, or universities. Fraternities, sororities, and other such groups of individuals who reside at common locations and jointly share household expenses of meals, room, and other items are not considered to be making taxable sales when meals are furnished to members and occasional guests.

However, when such groups hire a caterer to serve meals on the premises in accordance with subpart 8, the consideration paid for such meals represents a taxable sale.

Subp. 10. Meals served by transportation companies. The furnishing, preparing, or serving of food, meals, or drinks by railroad, pullman car, airline, or other transportation companies which are operated in or through the state of Minnesota are taxable sales when ordered within the boundaries of Minnesota, regardless of whether or not the meals so ordered are subsequently consumed in Minnesota. Where food or meals are served by a transportation company as part of its transportation service, and no separate charges are made therefore, no sale of a meal within the meaning of the Sales and Use Tax Law is deemed to have occurred. Thus, the transportation company may not purchase such prepared meals for resale and the sales of such meals in Minnesota to the transportation company are taxable retail sales.

Subp. 11. Cover or minimum charges. Cover or minimum charges, whether listed separately on the bill or collected as an admission fee or fixed charge, which entitle the patron to receive food, meals, drinks, entertainment, dancing, etc., are taxable. If food, meals, or drinks are furnished, prepared, or served at locations other than the place of business of the vendor or in a room other than a regular dining room, and an extra charge is made for such service, the entire amount is taxable.

Subp. 12. Tips. A tip given voluntarily by a customer to an employee of the retailer is not includible in the gross receipts of the retailer.

A. An amount paid as a service charge in lieu of a tip which is added to the customer's bill whether added by the customer or the retailer, is not subject to the sales tax if:

- (1) it is separately stated on the bill;
- (2) no part of the service charge goes directly to the vendor-employer as operating revenue; and

(3) all of the amount is directly distributed to "tip employees." "Tip employees" are those employees who by social custom of the area normally receive tip income as a supplement to their regular fixed wages.

B. In the event any of the foregoing conditions of this subpart are not met, the amount of the charge for which such conditions are not met will not be deductible from gross receipts of the retailer.

Subp. 13. **Purchases by vendors of meals and drinks.** The vendor of meals or drinks must pay the tax on all purchases of equipment and products used or consumed in the business, including fixtures, linens, silverware, glassware, steak markers, and paper products such as table cloths, place mats, towels, toilet tissue, and doilies. Vendors of meals are specifically excluded from the class of vendors considered to be engaged in production as defined in Minnesota Statutes, section 297A.25, subdivision 9; consequently, sales of electricity, gas, steam, and all other items (except food products and disposable containers as herein defined) to vendors of meals are taxable. Nonreusable items such as souffle cups, straws, ice, swizzle sticks, paper napkins, and paper, plastic, or wooden plates, cups, forks, toothpicks, etc., which are used or consumed by the customer as an integral part of the meal or drinks are considered sold therewith. Sales of such items for this purpose to persons engaged in the business of selling meals or drinks are, accordingly, sales for resale.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.0900 ENTERTAINMENT.

Subpart 1. **Admissions and use of amusement devices in general.** Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d), the granting of admission to places of amusement or athletic events, and the privilege of use of amusement devices constitute sales, where such places of amusement, athletic events, or amusement devices are located within Minnesota.

Subp. 2. **Examples; admissions.** Example 1. A purchases four tickets at the University of Minnesota athletic ticket office for a football game to be played at Madison, Wisconsin, between the University of Minnesota and the University of Wisconsin. The sale of the tickets to A does not constitute a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d).

Example 2. A purchases four tickets from the University of Iowa athletic ticket office for a football game to be played at Minneapolis, Minnesota, between the University of Minnesota and the University of Iowa. As the granting of the privilege of admission is at a place in Minnesota, the sale of the tickets to A constitutes a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d).

Admission charges to any places of amusement or athletic events within Minnesota, therefore, constitute a sale. The following partial list is illustrative:

A. admissions to all athletic events, including those staged by educational institutions;

B. admissions to musical concerts;

C. admissions to dances;

D. admissions to motion picture theaters or theaters presenting stage shows and plays;

E. admissions to golf courses and tennis courts;

F. admissions to skating rinks and swimming pools;

G. admissions to state, county, or other fairs;

H. admissions to carnival rides and hay and sleigh rides;

I. admission to bingo games and privilege of use of bingo cards; and

J. admissions to a museum.

Subp. 3. **Use of athletic equipment.** Consideration paid for the use of athletic or amusement devices or games constitutes a sale. Amusement devices are defined as "property used in whole or in part to obtain amusement, entertainment, or diversion." The following partial list is illustrative:

- A. use of billiard or pool tables;
- B. use of pinball machines, shuffleboards, etc.;
- C. use of bowling alleys;
- D. use of lift device on a ski slope;
- E. use of trapshooting facilities;
- F. use of golf driving range facilities, etc.;

G. privilege of selecting and listening to a recording on a mechanical device commonly referred to as a juke box.

Subp. 4. Entry fees. Entry fees are payments required as a condition to participation in a competitive event. That portion of an entry fee assignable to admissions or the use of amusement devices is a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d) and taxable. If the entry fee to a competitive event requiring admissions or the use of amusement devices does not separately state that portion of the fee assignable to them, the entire fee is taxable.

Subp. 5. Club dues. Membership dues to clubs such as country clubs, tennis clubs, and curling clubs are not taxable. This includes various forms of membership dues whether social and/or activity membership dues. However, payments to associations or organizations which only entitle the payee to attend concerts or events sponsored or held by the association each year are taxable as the granting of admissions to a place of amusement.

Subp. 6. Tours. The charges made for aircraft, bus, boat, sightseeing rides, or tours are considered nontaxable as being transportation services. They are not classified as the granting of the privilege of admission to places of amusement or the privilege of use of amusement devices.

Subp. 7. Carnival rides. The gross receipts are fully taxable. If a carnival or amusement company charges a lump sum fee to a sponsor, and the sponsor allows its patrons, members, etc. to avail themselves of the carnival or amusement rides free of charge, such lump sum charges are subject to sales tax. In such a case, the sponsor is considered to have been granted the privilege of admission.

Subp. 8. Recreational areas. A recreational area where no facilities are provided other than parking lots, fire pits, docks, tables, and facilities required for the preservation of the area itself is not considered a place of amusement; therefore, entry fees to such areas are not taxable. However, if the entry fees include the privilege of using tennis courts, golf courses, ski lifts, boats, snowmobiles, etc., all of which are furnished by the owner, the charges are taxable.

Statutory Authority: *MS s 297A.29*

8130.1000 LODGING.

Subpart 1. General rule. Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (e), furnishing for a consideration of lodging and related services by a hotel, rooming house, tourist court, motel, or trailer camp and the granting of any similar license to use real property other than the renting or leasing thereof for a period of 30 days or more constitute a sale. See part 8130.0800, subpart 6, for rules exempting lodging furnished in connection with educational programs and children's camps.

Subp. 2. Criteria. The following criteria will be applicable in determining whether a license to use real property for lodging purposes constitutes a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (e):

A. A lease of or license to use specific real property enforceable for a period of 30 days or more and which requires serving a notice of intention to so terminate either by the lessor or lessee of a period of at least 30 days prior thereto (or such shorter period as agreed to by the parties for violation of the lease conditions) does not constitute a sale even though the rent may be paid on a weekly or semimonthly basis.

B. A lease of or a license to use real property where the consideration therefor is paid or payable at periods of less than 30 days' duration, or where the parties are not bound by an enforceable contract to give prior notice of 30 days or more of intention to terminate constitutes a sale.

C. A person engaged in the furnishing of taxable lodging facilities, in determining the amount of consideration received subject to the tax, shall exclude therefrom separately stated charges for telephone service, but shall include as taxable consideration, amounts received for the use of a television set or other items of tangible personal property.

Example 1. Guest registers at hotel without entering into an enforceable agreement whereby the guest will occupy a room for a period in excess of 30 days. The guest occupies the room assigned for five full weeks. Thereafter, the guest settles the account and vacates the room. Although occupancy was in excess of the statutory period of 30 days, the transaction constitutes a sale in accordance with the above.

Example 2. Hotel, in addition to furnishing sleeping accommodations and related service to transients, leases rooms or suites to ten persons on a monthly basis. G, guest, occupies a small suite, and pays in advance on the first day of each month. The leasing of a suite to G does not constitute a sale, as a hotel also may be a lodging house, and G, who is a tenant at will, is required to give notice of termination of at least 30 days.

Example 3. T, tenant, rents an apartment from L without a lease. T pays rent weekly. Each of the parties is required to give notice of one week of intention to terminate. Consequently, this arrangement constitutes a sale, as the leasing of the premises to T is for a period of less than 30 days.

Example 4. Motel charges guest \$12 per day for a room. Guest makes three local telephone calls. Motel bills Guest for \$12 plus a separately stated charge of 45 cents for telephone calls, and \$1 for use of a television set. The taxable consideration paid by Guest is \$13 represented by the \$12 charge for the room and \$1 charge for the television set.

Example 5. If X company leases a specific room in a hotel or motel on a yearly basis for occasional use by employees or guests, the charge is exempt. If under the lease, a particular room is not reserved for the exclusive use of X company, the charge made therefor is taxable.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.1100 UTILITIES AND RESIDENTIAL HEATING FUELS.

Subpart 1. **Applicable law.** Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (f), the furnishing for a consideration of electricity, gas, water that is not for residential use, or steam for use or consumption within Minnesota are taxable sales.

Minnesota Statutes, section 297A.25, subdivision 23, exempts sales of residential heating fuels from the sales and use tax in the manner shown in items A to C:

A. all fuel oil, coal, wood, steam, hot water, propane gas, and LP gas sold to residential customers for residential use;

B. natural gas sold for residential use to customers who are metered and billed as residential users and who use natural gas for their primary source of residential heat for the heating season; and

C. electricity sold for residential use to customers who are metered and billed as residential users and who use electricity for their primary source of residential heat for the heating season.

Subp. 2. **Definitions.** The definitions in items A to F apply to this part.

A. "Billing month," for natural gas or electricity, means the month the bill is dated regardless of when the service was rendered. Billing month means the meter reading date if there is no date on the bill. If a utility uses a system of cycle billing and 12 revenue months per year, the billing month may be the utility's revenue month.

B. "Heating season" means the billing months of November, December, January, February, March, and April.

C. "Interruptible service credit" means a credit given by a utility company to a customer each month in exchange for the customer's agreement to shut down certain equipment during periods of high power usage.

D. "Primary source of residential heat" means the source which heats the largest square footage of floor space. When a user heats the same area with two sources of heat, each using different fuels, such as a home heated by wood which also has an electric heating sys-

tem, then the primary source of residential heat is the source which supplies more heat than any other source for the largest period of time during the heating season. The examples in subitems (1) to (3) illustrate this situation.

(1) "B" heats a home with natural gas. "B" adds an addition to the home, which is heated with electricity. The largest square footage of the floor space is heated with gas. Since only the fuel which provides the primary source of heat for the entire residence qualifies for the exemption, both fuels cannot be exempt. Here, the electricity is taxable and the natural gas is exempt because the primary source of heat for the entire residence is natural gas.

(2) "B" heats a home with natural gas. "B" adds an addition to the home, which is heated with electricity. The square footage of the part of the home that is heated with natural gas is equal to the square footage of the addition that is heated with electricity. Although neither is the primary source of heat, in this situation "B" may choose one source of heat to be considered the primary source.

(3) "B" uses fuel oil to heat a home, but uses electricity to provide additional heat in the basement. The fuel oil would be exempt as all fuel oil delivered to a home is exempt. The electricity would be taxable since electricity is not the primary source of heat for the residence.

E. "Residential use" means use for general household purposes including cooking and water heating. Residential use does not include use in travel trailers, motor homes, or other recreational vehicles.

F. "Residential users" or "residential customers" includes persons billed for sales of residential heating fuel for single-family homes, duplexes, townhouse units, condominium units or buildings, apartment units or buildings, nursing homes, intermediate care facilities, mobile homes, fraternity or sorority houses, rooming houses, seasonal cabins, group homes, city and county jails, and state-operated correctional facilities and regional treatment centers.

Subp. 3. Exemptions. The following are exempt from sales and use tax:

A. Electricity, gas, steam, or water that is used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail. See part 8130.5500 and Minnesota Statutes, section 297A.25, subdivision 9.

B. For the billing months of the heating season, natural gas or electricity sold for residential use to customers who are metered and billed as residential users and who use natural gas or electricity for their primary source of residential heat. When gas or electricity is exempt as a heating fuel, all other gas or electricity used through the same meter shall also be exempt for the six-month heating season. Each qualifying customer must receive six months of service exempt from taxation. See subpart 7 for tax treatment of residential customers on utility budget plans.

C. On a year-round basis, all fuel oil, coal, wood, steam, hot water, propane gas, and LP gas sold to residential customers for residential use. See subpart 7.

Subp. 4. Charges included in sales price. All charges associated with furnishing utilities or making utility service available, except fees for the safe drinking water testing program mandated by federal law, are considered part of the sales price and are subject to tax. If the utility service being provided is exempt from tax, the additional charges are also exempt. If the utility service being provided is partially exempt from tax, the additional charges will be exempt to the same extent the utility service is exempt. The following are examples of taxable charges that are included in the base on which the sales tax is charged. These charges are taxable even if minimal or no services are consumed:

- A. demand charge;
- B. fixed or basic monthly charge;
- C. franchise fee;
- D. fuel clause adjustment;
- E. minimum charge;
- F. reconnection fee;
- G. service charge;

- H. service connection charge;
- I. standby fee; and
- J. surcharge.

Subp. 5. Credits determined before and after the sale. Credits or dividends, such as capital contribution credits, interruptible service credits, and patronage dividends, are not included in the amount subject to sales tax if the credit and the amount of the credit are determined prior to the sale. These credits are included in the amount subject to sales tax if the credit or the amount of the credit is determined by events that happen after the sale has occurred. The examples in items A to C illustrate these situations.

A. An electric company and a manufacturer enter into an interruptible service agreement. Under this agreement, the manufacturer agrees to shut down certain machinery during peak electricity demand periods. In exchange, the electric company gives the customer a credit on each bill. This credit is a constant dollar amount and is based on the amount of kilowatts the manufacturer would conserve by shutting down the agreed upon machinery. The credit is given regardless of whether the manufacturer was required to shut down machinery during the period. Here, the credit is contracted for before the sale and should be subtracted from the sales price before sales tax is calculated.

B. A utility company and a manufacturer enter into an interruptible service agreement. Under this agreement, the manufacturer agrees to allow the utility company to control its water heaters during peak kilowatt demand periods and must use 500 kilowatts during the period. In exchange, the utility company gives the manufacturer an \$8 rebate each month. If 500 kilowatts are not used during the period, no rebate is given. The rebate can only be used as a credit against the next bill, and if service is not continued the credit is forfeited. In this case, whether a credit will be allowed is not determined until after the sale occurs. Therefore, the amount of the credit must be included in the sales price when calculating the amount of sales tax due.

C. The rate a utility cooperative charges its patrons includes a capital contribution in addition to the cost of providing services. The bylaws of the cooperative require that the excess of its revenue over its operating costs and other expenses are capital contributions paid by its patrons. At the end of each year, the amount of each patron's contribution is determined and credited to the patron's capital account. In this case, it is not determined until after the sale has occurred if a credit will be allowed, and if so, how much the credit will be. Therefore, the amount of the credit must be included in the sales price when calculating the amount of sales tax due.

Subp. 6. Commercial and residential use.

A. If a building houses both residential quarters and commercial operations and contains one meter for the entire building for either water, electricity, or natural gas, the water, electricity, or natural gas supplied will be considered to be for residential use if less than 50 percent of the square footage of the building is used for commercial operations. If 50 percent or more of the building is used for commercial operations, the utility service will be considered to be for commercial use.

B. If a building which houses both residential quarters and commercial operations contains one central heating plant for the entire building, heating fuels supplied to or for the heating plant will be considered to be used for residential use if less than 50 percent of the square footage of the building is used for commercial operations. If 50 percent or more of the building is used for commercial operations, the heating fuels will be considered to be for commercial use.

C. Examples of a residence that is also used as a commercial property:

(1) "B" owns a building with a restaurant on the first floor. "B" lives in an apartment on the second floor. There is one central heating plant for the entire building, and the primary source of heat is natural gas. The basement is not used as part of the commercial operation. Since less than 50 percent of the square footage is used for commercial purposes, the exemption applies.

(2) "C" owns and operates a resort. "C" has a home and four cabins which are heated by LP gas from one LP gas tank. The four cabins constitute a commercial business activity. There is only one common source of heat. The fuel supply to the common heating

plant is not regarded as used for residential use if the square footage of the four cabins exceeds that of the home. In determining the square footage of commercial use, the seasonal use must also be considered. Assume "C" has a 1,600 square foot home and four rental units of 750 square feet each that are available for rent six months of the year. In computing the square footage for commercial use, $4 \times (1/2 \text{ of } 750)$ or 1,500 is for commercial use; and as 1,600 square feet is for residential use, the heating fuel is exempt.

(3) "D" is a dentist who has a dental office in the home. "D's" home is heated with fuel oil. The fuel is exempt if the office occupies less than 50 percent of the square footage of the home.

(4) "B" owns a resort and uses LP gas to heat "B's" residence and five rental units from the same tank. At the end of the season, the rental units are closed down and only "B's" residence consumes LP gas. The rental units that are not operational during the winter should be included when determining if the customer is a residential user, but the seasonal use of the rental units is considered in determining if the commercial use exceeds 50 percent. See subitem (2).

(5) "C" owns a resort and rents out cabins on a weekly basis during the summer months. During the months of September through May, the cabins are rented as rental units on a monthly basis. The cabins are heated by propane fuel from one storage tank. Fuel used to heat the cabins rented on a monthly basis from September through May is exempt as residential heating fuel. However, fuel used during the summer months to operate cabins rented weekly is taxable. "C" may purchase the fuel exempt for residential heating, but must pay use tax on fuel during the summer months.

(6) "D" owns an apartment building that is heated with electricity. "D" is responsible for heating the entire building including all common areas. The residential heating fuel exemption would apply in this case. Apartment buildings and condominium units are considered to be residential. Therefore, sales of electricity used as a primary source of heat to owners of these buildings are exempt during the heating season. This is true even when the electricity is used by the building owner to heat common areas such as hallways and laundry rooms.

D. Where a building houses both residential quarters and commercial operations, a utility's good faith reliance upon its customer's claiming of the residential heating fuel exemption will relieve the utility from liability for the tax if it is later determined that the exemption was improperly claimed. The utility must exercise reasonable care and judgment before allowing the customer to use the exemption for the utility to be relieved of liability under this item.

Subp. 7. Residential heating fuels.

A. All fuel oil, coal, wood, steam, hot water, propane gas, and LP gas delivered to a residence is assumed to be used for residential heating and is exempt. All fuel oil, coal, wood, steam, hot water, propane gas, and LP gas that is not delivered to a residence is taxable. Heating fuels picked up by a customer are taxable unless the customer provides the retailer with a written statement indicating that the heating fuel is for residential heating purposes.

B. Sales of firewood are exempt as residential heating fuel whether delivered or picked up by the customer. Sales of firewood for recreational use, including camping and picnics, are taxable.

C. Sales of artificial fireplace logs are not exempt home heating fuel and are taxable.

D. Fuel used to heat fish houses is taxable since fish houses are not regarded as residences.

E. The monthly payments of residential customers on budget plans with a local utility will not change during the heating season. Sales tax is paid by the utility on actual consumption, not the monthly payments. Therefore, while residential customers will not pay sales tax on their heating fuel during the heating season, their monthly payments will remain the same.

Subp. 8. Sales of utility services by local governments to themselves. Effective June 1, 1992, items A and B apply when a local government sells utility services to other departments or divisions within the same unit of local government.

A. A utility that is operated by a local government as a separate corporation is considered a separate legal entity or person. Therefore, the sale of utility services by this entity to other departments within the local government are taxable sales.

B. A utility that is operated by a local government, but that is not separately incorporated, should not charge sales tax on sales of utility services to other departments or divisions within the same unit of local government. The transfer is merely a book transfer within one entity and no taxable sale has occurred.

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 1279; 18 SR 83*

8130.1200 SALES OF BUILDING MATERIAL, SUPPLIES, OR EQUIPMENT.

Subpart 1. General rule. Under Minnesota Statutes, section 297A.01, subdivision 4, sales of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders constitute retail sales and are thus taxable.

A. The term "building materials, supplies, and equipment," as used in these rules, refers to property intended to become part of a new building, structure, road or an addition, repair, improvement, or alteration to roads or real estate. A partial list of such materials includes gravel, blacktop, bricks, cement, steel beams and rods, electrical supplies, glass, woodwork, paint and paint supplies, pipes and valves, aluminum sheathing, wood and composition sheathing, lumber, plastics, roofing, and wallboards. Other property usually incorporated into a building or other types of real property includes lighting fixtures, plumbing and bathroom fixtures, furnaces, boilers and heating units for space heating, prefabricated cabinets, and central air conditioning units (for space cooling).

B. The term "real property" includes structures that are permanently affixed to real estate, such as buildings, fixtures, machinery, fences, railroad tracks, grain elevators, bridges, storage bins, silos, outdoor advertising signs, and billboards.

C. Other types of equipment may be incorporated into a new structure or added to an existing structure undergoing repairs, alterations, or improvements in order to enhance the attractiveness of the structure or to increase its rental or sales value. Examples of such equipment are built-in dishwashers, stoves and ranges, garbage disposal units, and air-conditioners installed in openings in outer walls.

Subp. 2. Contractors and construction activities. Contractors are generally classified into two broad groups: general contractors and subcontractors.

A. A "general contractor" is a person who contracts to furnish the necessary materials and labor for the performance of a construction contract, and generally is one who contracts to build the entire project or a major portion thereof, or who contracts to install special building equipment, or who repairs or remodels a limited area in a structure at a price that includes machinery, equipment, and installation charges. The person for whom the general contractor performs the work is generally the owner.

B. A "subcontractor" is a person who contracts to furnish the necessary materials and labor for the completion of a portion of the general construction contract at the job site. The subcontractor ordinarily contracts with the general contractor to perform a certain part of the work which the general contractor has undertaken to perform under the general construction contract.

C. The terms "contractor" and "subcontractor" are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors, for delivery at the job site without any requirement that they install such tangible personal property.

D. The term "construction contract" as used herein refers to a contract under the terms of which a contractor agrees to perform construction activities resulting in an alteration, repair, or improvement of real property. Where machinery or equipment is attached to real property in such a manner and with the intent that it becomes a nontemporary accession to the real property, the contract pursuant to which it is attached shall be regarded as a "construction contract." Any attachment of property by or for a lessor thereof to realty not owned by the lessor where the lessor retains title and ownership of the property shall be considered a temporary accession to the real property and such property therefore retains its character as tangible personal property.

The term "construction contract" shall not include any contract for a sale of machinery or equipment which the seller, pursuant to the contract, will attach to or install upon real property if:

(1) the machinery or equipment is of such size and installed in such a manner that it retains its character as personal property; or

(2) the purchaser is not the owner of the real property to which the property will be attached, and the machinery or equipment can be removed without material injury to the realty; or

(3) the title to the machinery or equipment passes from the seller to the purchaser prior to attachment to or installation on the real property.

E. Such construction activities do not include the sale and installation of an appliance, machinery, equipment, or other item of tangible personal property in such a manner as not to become a permanent part of the real estate. Computers shall be considered to retain their classification and identification as personal property when installed because of such factors as industry standards, custom and practice, usage, and uniqueness. Where a fixed price or lump sum construction contract provides for the incidental transfer of certain tangible personal property and the contractor sells such items only as a part of the construction project, the contractor is not regarded as a retailer provided that such personal property comprises an insubstantial portion of the total contract price.

Example 1. A dealer agrees to replace the old refrigerators with new models in a four-unit dwelling. The sale and installation of the refrigerators does not constitute a construction contract. The transaction represents a sale at retail to the owner of the four-unit dwelling.

Example 2. A computer manufacturer sells and leases computers and also installs them on the customer's property. The sale or lease of a computer, regardless of size, is a sale or lease of tangible personal property and the installation does not constitute a construction contract.

Example 3. A leasing company purchases a piece of equipment from company A and leases it to company B. Company A installs the equipment on the property of company B. The sale and installation of the equipment does not constitute a construction contract, since the owner of the equipment is not the same as the owner of the property to which the equipment was installed. The equipment is considered to be tangible personal property and the leasing company purchases the property exempt for resale and collects the sales tax on the lease payments from company B.

Subp. 3. Construction contracts with exempt entities. For construction contracts with exempt entities:

A. The exemption from the tax on the sale of tangible personal property to the United States or to the state of Minnesota, and to other public agencies, as well as to corporations and other institutions exempt under Minnesota Statutes, section 297A.25, does not extend to building materials, supplies, and equipment purchased by a contractor under an agreement to erect a building or to alter, repair, or improve real estate for such exempt entity. However, purchases of such building materials, supplies, and equipment by exempt entities are exempt from the sales and use tax.

Example. A village enters into a contract with a contractor for storm sewer construction. The contractor purchases materials for this job from various suppliers. The construction is clearly an alteration or improvement to real property with material purchased by the contractor for use in constructing the storm sewer. These transactions constitute sales at retail and are subject to the sales tax. The contractual relationship between the contractor and the village does not affect the validity of the sales tax imposed upon the contractor. Had the village undertaken such construction with its own employees, the purchase of the materials by the village would not have been subject to tax.

B. Where an exempt entity has entered into a fixed price construction contract which covers the complete structure including the materials, and the exempt entity furnishes some or all of the materials to the contractor for a credit against the contract price, a taxable sale occurs when the exempt entity transfers the materials to the contractor.

Example. A school district enters into a contract with a contractor for the construction of a school building. The contractor not only specified the price at which the contractor agreed

to deliver the completed school, but made known to the school district the portion of the total cost of construction allocated to building materials and supplies. In addition, the contractor furnished the school district with the names of the several suppliers and the descriptions and price of each item or items furnished by each of such suppliers. Thereafter, the school district purchased the specified items at the price furnished by the contractor and made payments from its own funds to the suppliers. The material and supplies so purchased were thereafter delivered to the contractor and, in return, the school district received credit against the contract price for the payments made by it.

Although the initial purchase of the material and supplies by the school district is not taxable, the transfer to the contractor is a transfer of title or possession and taxable as such for the following reason: the contractor has agreed to deliver a completed structure which necessarily includes the materials; during construction of the building the materials will be in the possession of the contractor, who bears the risk of any loss of such materials during construction; and a portion of the contract price is correspondingly reduced by the cost of the materials paid to the supplier by the school district.

C. The transfer of building materials by an exempt entity to its contractor for use in connection with a contract for the erection, alteration, repair, or improvement of realty is not deemed a retail sale (and is thus exempt from the sales or use tax) provided:

- (1) the contract is for labor only;
- (2) all incidents of ownership to the building materials remain in the exempt entity at all times;
- (3) the contractor bears no responsibility for inherent defects in the building materials; and
- (4) the contractor bears no risk of loss of any of the building materials.

D. An exempt entity, in addition to contracting with a contractor for the erection of a building or the alteration or repair of real estate, may appoint and designate the contractor as purchasing agent for such exempt entity in connection with the construction contract. In such situations the department will recognize the agency relationship asserted only if the written contract clearly sets forth:

- (1) that such appointment has been made;
- (2) that title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the owner or principal at point of delivery;
- (3) that the risk of loss with respect to such materials and supplies is that of the owner or principal; and
- (4) that the owner or principal, and not the agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner.

In the event that the contract in question does not specify as to risk of loss, other competent evidence, such as insurance coverage, will suffice.

Any contractor who has been appointed agent for the purchase of materials and supplies, as specified above, shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the obligation for payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.

Subp. 4. Contractor-retailer. A "contractor-retailer" is a person using building materials, supplies, and equipment in the performance of construction contracts, and in addition, is engaged in making sales at retail of building materials, supplies, and equipment.

A. A sale by a contractor-retailer of building supplies, materials, and equipment which sales does not provide for installation of the merchandise sold is a sales at retail.

B. A sale by a contractor-retailer of building supplies, materials, and equipment which sale provides for installation of the merchandise is a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials. Two separate contracts executed contemporaneously by a contractor-retailer providing individually for the sale and installation of building materials, supplies, and equipment shall be considered to be a single unified construction contract if that was the intent of the parties as evidenced by their

actions. A contractor-retailer who enters into a construction contract with an exempt entity shall pay tax based upon the cost of materials.

C. A contractor-retailer sells property under both of the following two circumstances.

(1) When certain property is sold without providing for installation, the sale constitutes a sale at retail. For example, the sale by a plumbing contractor of a water heater without installation is a sale at retail.

(2) When a contractor-retailer sells certain property either installed or without installation, at the purchasers' option, and such property is sold with installation which causes it to become incorporated as a part of the realty, that sale shall be regarded as a construction contract and tax shall be paid by the contractor-retailer upon the cost of materials. For the purposes of such a transaction, retailer is deemed to be contractor and the purchase of the supplies and equipment used in installing the property constitutes a retail sale to the contractor.

D. Persons primarily engaged in the making of retail sales of building materials, supplies, and equipment used in construction, alteration, repair, or improvement of real property, and who are also engaged as contractors in building, altering, repairing, or improving real property, shall report and pay their sales or use tax liability in accordance with the following.

(1) If at the time such person makes a purchase of specific items and knows of the use to which such items are to be put, the person shall either:

(a) furnish an exemption certificate if such items are being acquired for the purpose of resale; or

(b) pay the sales tax to the seller if the items in question are to be used by such person in the construction, alteration, repair, or improvement of real property.

(2) If at the time such person makes a purchase of certain items but does not know the precise utilization of such items, and if business activities during the prior calendar year reflect that 50 percent or less of such purchases were sold at retail, then the person shall pay the sales tax to the supplier on all such purchases. If the person later sells any of such items at retail, he or she may take a proper deduction on the sales and use tax return.

(3) If the person's business activities during the prior calendar year reflect that more than 50 percent of such purchases were sold at retail, he or she may use a resale exemption certificate for the purchase of all such items. The resale exemption certificate shall contain the purchaser's name, address, sales and use tax account number, and description of material to be purchased. In addition, the certificate must be signed and contain the following:

"I HEREBY CERTIFY: That I am a contractor-retailer engaged in the making of retail sales and also the construction, alteration, repair or improvement of real property and that I am reporting and paying my sales and use tax liability directly to the Commissioner of Revenue."

A vendor receiving a resale exemption certificate with the above notation thereon is relieved from the responsibility of collecting the tax, and the burden will be upon the purchaser to demonstrate that he or she comes within the provisions of this part.

E. The accounting records of a contractor-retailer must clearly reflect the use made of items purchased for both the preceding and current calendar year. These records should be in such form that the commissioner may determine readily that the proper sales and use tax liability is being reported and paid.

Example 1. In March 1972, a contractor-retailer purchased ten bathtubs at \$150 each and 20 bathroom sinks at \$40 each. As primarily a contractor, the contractor-retailer paid the sales tax due thereon. During this same month, the contractor-retailer sold at retail two bathtubs at \$200 each and five bathroom sinks at \$55 each. The contractor-retailer reports gross receipts from sales at retail of \$675. The sales tax due and owing from the contractor-retailer is \$27 (four percent of \$675). Since the contractor-retailer is entitled to offset the tax paid on the property sold at retail, the following calculation is made on form ST-1 (sales and use tax return) filed for the month of March 1972:

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Line 1 Gross sales	\$675.00
Line 2 Deductions (see line 19)*	\$500.00
Line 3 Net sales	<u>\$175.00</u>
Line 4 Purchases subject to use tax	\$ -0-
Line 5 Total taxable amount	\$175.00
Line 6 Total tax due	\$ 7.00

*Line 2 is calculated as follows:

Cost of goods sold:

2 bathtubs at \$150.00 each	\$300.00
5 bathroom sinks at \$40.00 each	<u>\$200.00</u>
Total cost of goods sold	\$500.00

A supplementary schedule reflecting the above calculations should be submitted with the return.

Example 2. A contractor-retailer purchased ten bathtubs at \$150 each and 20 bathroom sinks at \$40 each. Being primarily a retailer, the contractor-retailer paid no tax at time of purchase, but gave the supplier an exemption certificate. Thereafter, in March 1972, the contractor-retailer sold at retail two bathtubs at \$200 each and five bathroom sinks at \$55 each. In addition, the contractor-retailer utilized three bathtubs and six bathroom sinks in contracting activities. The contractor-retailer makes the following calculation on form ST-1 (sales and use tax return) filed for the month of March 1972 (for purposes of this example, it is assumed that in March 1972 no other sales were made at retail and no other material, etc., were used in contracting activities):

Line 1 Gross sales	\$ 675.00
Line 2 Deductions	\$ -0-
Line 3 Net sales	<u>\$ 675.00</u>
Line 4 Purchases subject to use tax*	\$ 690.00
Line 5 Total taxable amount	<u>\$ 1,365.00</u>
Line 6 Total tax due	\$ 54.60

*Line 4 is calculated as follows:

3 bathtubs purchased at \$150 each	\$ 450.00
6 bathroom sinks purchased at \$40 each	<u>\$ 240.00</u>
Total	\$ 690.00

A supplementary schedule reflecting the above calculations should be submitted with the return.

Subp. 5. Status of construction contracts on effective date of law. For the status of a construction contract on the effective date of a law:

A. If a contractor has entered into a fixed price or lump sum construction contract prior to June 2, 1967 (the first day after enactment of the Sales and Use Tax Law), which does not provide for payment of future taxes, the sale of building materials, supplies, etc., to such contractor will not result in a retail sale or sale at retail subject to the provisions of the Sales and Use Tax Law provided:

- (1) the building material, supplies, etc., were delivered to the contractor; or
- (2) the building material, supplies, etc., were identified by serial number or some other appropriate symbol, and segregated or set aside as the property sold by virtue of such contract; and
- (3) if either event stated in item A or B occurred prior to June 2, 1968.

Example. A contractor signs a lump sum contract with a realty company on April 15, 1967, whereby the contractor agrees to erect an office building for the realty company. The contract did not contain a provision for reimbursement of future taxes. The contractor places the following orders: concrete for the foundation; steel for the framework; aluminum sheets for the outer covering; and stainless steel doors for the main entrance.

Delivery of the concrete and steel for the framework was effected before May 15, 1968. The aluminum sheets were produced by the manufacturer, and after being properly identified on May 25, 1968, for the realty company building, were stored until July 15, 1968, and then delivered to the construction site. As a result of a backlog of orders, the manufacturer could not produce the stainless steel doors until September 1, 1968, although the order had been placed many months earlier.

The sale to the contractor of the concrete and steel framework constitutes a nontaxable transaction as the contract was entered into prior to June 2, 1967, and all subsequent events with respect to these sales occurred prior to June 2, 1968.

The sale to the contractor of the aluminum sheets constitutes a nontaxable transaction, as the conditions specified in items B and C, were satisfied.

The sale to the contractor of the stainless steel doors constitutes a retail sale or sale at retail subject to sales tax, as the conditions specified above were not satisfied.

B. In order to use the exemption from sales tax when a lump sum or fixed fee construction contract entered into prior to June 2, 1967 (pretax contract), is involved, a contractor is required to file a copy of the contract, together with form ST-7, at the offices of the Sales and Use Tax Division. Thereafter, the application will be reviewed and, if approved, an exemption will be granted to the contractor.

C. The exemption will be in the form of a certificate bearing an identifying number, and issued to the contractor. Such a certificate exempts only those building materials, supplies, and equipment purchased for incorporation into the structure for which the exemption was granted.

D. Where a contractor has entered into more than one such pretax contract, the contractor must submit a copy of the contract, and a copy of form ST-7 for each contract for which an exemption certificate is requested.

E. Where a general contractor retains subcontractors to perform part of the work incident to a pretax contract, and the general contractor has received an exemption certificate, the exemption from tax extends to building material, supplies, and equipment purchased by such subcontractor. The subcontractor may submit a photostatic copy of the general contractor's exemption certificate to the vendor.

Subp. 6. Sales of tangible personal property. The three percent rate of tax shall be applicable to sales of tangible personal property purchased for use in performing any written fixed price or lump sum construction contract which was enforceable prior to November 1, 1971, which makes no provision for allocation of future taxes and which unconditionally vests the rights and obligations of the parties thereto, provided the delivery of such tangible personal property is made prior to November 2, 1972.

A construction contract shall be considered enforceable prior to November 1, 1971, even though signed after October 31, 1971, if it is executed pursuant to a bid which could not be withdrawn as of October 31, 1971, without payment of penalty.

Tangible personal property used in performing a construction contract as described herein shall include all materials and equipment which become incorporated as part of the improvement to realty and any other tangible personal property purchased for and used and fully consumed in performing such contract. It shall also include any equipment rented solely for use in performance of such a contract.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.1300 USE.

Minnesota Statutes, section 297A.01, subdivision 6, defines "use" as the exercise of any right or power over tangible personal property purchased from a retailer incident to the ownership of any interest in that property, but it does not include the sale of such property in the

regular course of business. "Use" does not include storing personal property to be used in the ordinary course of an owner's trade or business where such personal property is subsequently shipped or delivered to an ultimate destination outside Minnesota without being put to intermediate use in this state and thereafter not returned to Minnesota except in the course of interstate commerce. (As used herein, the term "intermediate use" does not include processing, fabricating, or manufacturing into or incorporating into other tangible personal property or testing or modifying tangible personal property but includes consuming or enjoying the beneficial use of the property.)

Example 1. "X" company purchases 100 typewriters from an outstate vendor for delivery to its main office in Minnesota. Thereafter, 60 typewriters are put to use in offices in its several Minnesota locations, while the remaining 40 are placed in its Minnesota storage center. Subsequently, 30 of the remaining typewriters are shipped to "X" company's several offices outside Minnesota and the ten typewriters remaining are assigned to Minnesota offices. Consequently, "use" does not include the 30 typewriters shipped to ultimate destinations outside Minnesota.

Example 2. Same facts as in example 1 except that five of the typewriters assigned to Minnesota are subsequently shipped outside Minnesota after being used in this state for a period of time. Employing these five typewriters in Minnesota constitutes intermediate use. (See Minnesota Statutes, section 297A.14, regarding the imposition of the use tax with respect to property used in Minnesota.)

Statutory Authority: *MS s 297A.29*

8130.1400 TEMPORARY STORAGE AND USE IN MINNESOTA.

Where tangible personal property or tickets of admission to places of amusement or athletic events are shipped or brought into Minnesota for the purpose of subsequently being transported outside Minnesota, and such items are not intended to be returned to Minnesota except in the course of interstate commerce, definitions of "storage and use" (see Minnesota Statutes, section 297A.01, subdivisions 5 and 6, respectively) are not applicable thereto.

Similarly, where tangible personal property is shipped or brought into Minnesota for the purpose of being processed, fabricated, or manufactured into other tangible personal property, or is incorporated or attached to other tangible personal property, and thereafter transported outside Minnesota, and such property is not intended to be returned to Minnesota except in the course of interstate commerce, the definitions of storage and use are not applicable thereto.

Example 1. A purchases four tickets from the University of Minnesota's athletic ticket office for a football game to be played at Madison, Wisconsin between the University of Minnesota and the University of Wisconsin. As such tickets were shipped into Minnesota for the purpose of subsequently being used outside Minnesota and in fact must so be used or wasted, A's exercise of right or power over these tickets does not constitute either storage or use as defined in Minnesota Statutes, section 297A.01, subdivision 5 or 6, respectively.

Example 2. Z corporation purchased equipment in Wisconsin and requested that the vendor deliver the property to Z in Minnesota for inspection and testing. Upon completion of the tests on the equipment, which proved to be satisfactory, the equipment was shipped to Z factory in California. The testing and inspecting of the equipment in Minnesota does not constitute either storage or use as defined in Minnesota Statutes, section 297A.01, subdivision 5 or 6, respectively.

Statutory Authority: *MS s 297A.29*

8130.1500 REDUCTION IN SALES PRICE FOR PROPERTY TAKEN IN TRADE.

Excluded from the sales price is any amount allowed as a credit for tangible personal property taken in trade for resale. The payoff of the old contract does not affect the amount allowed on the trade-in; even if this indebtedness is included in the new contract. The property so accepted will qualify for the exclusion from the sales price provided both the following conditions are met:

A. such property is taxable under the Sales and Use Tax Law or the Motor Vehicle Excise Tax Law; and

B. such property is of a type normally sold in the regular course of such retailer's business.

Example 1. A dealer sells a new boat with a list price of \$3,000 to a customer. The dealer accepts the customer's used boat in trade and gives the customer a credit of \$1,000 therefor. As the conditions above are met, the credit qualifies for the exclusion. Consequently, the sales price is \$2,000.

Example 2. A farm implement dealer sells a combine to a farmer with a list price of \$4,000 and accepts in trade a used cornpicker for which a credit of \$300 is given. As the conditions above are met, the credit qualifies for the exclusion. Consequently, the sales price is \$3,700.

Example 3. An implement and livestock dealer sells a new tractor with a list price of \$2,000 and accepts in trade three steers for which a credit of \$750 is given. Although the second condition above is met, the first condition is not as steers sold by a livestock dealer are not taxable property. Consequently, the sales price of the tractor is \$2,000.

Example 4. A jeweler sells a diamond ring to a customer for \$2,000 and accepts in trade a new lady's fur coat for which a credit of \$2,000 is given. Although the first condition is met, the second condition is not met as the jeweler does not engage in the sale of fur coats in the regular course of business. Consequently, the sales price of the diamond ring is \$2,000.

Example 5. A mobile home dealer sells a customer a new mobile home with a list price of \$12,000. The customer trades in an old mobile home which has an existing loan of \$2,000 on it. The dealer agrees to include the payoff amount of the old contract in the new contract. The dealer allows \$5,000 for the trade-in of the customer's mobile home. The following represents the amount of financing the customer arranges for and the sales price is \$7,000:

List price	\$12,000
Less: Trade-in	5,000
	<hr/>
Sales price	\$ 7,000
Add: Payoff of old contract	2,000
	<hr/>
New contract	\$ 9,000

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.1600 DEDUCTIONS NOT ALLOWABLE IN COMPUTING SALES PRICE.

Subpart 1. **In general.** No exclusion or deduction is allowable in computing the sales price for the expenses described in subparts 2 to 5.

Subp. 2. **Cost of property sold and cost of transportation incurred prior to sale.** As a general rule, the cost of the property sold includes all costs incurred in acquiring the property, and any related expenses necessary to transport it to the location where it normally will be sold.

Example 1. An interior decorator recommends furniture for a customer's living room. The customer agrees to pay \$3,000 to the interior decorator for the articles recommended. The interior decorator thereafter orders furnishings from a manufacturer at a cost of \$1,800. No exclusion or deduction for cost of the property is allowed; consequently, the sales price is \$3,000.

Example 2. An implement dealer sells a new farm tractor to customer for \$8,000. Included in the price is a charge of \$150 representing transportation costs from the factory to the dealer. As no exclusion or deduction for cost of transportation incurred prior to sale is allowed, the sales price is \$8,000. See part 8130.1700, subpart 4, regarding transportation expense incurred after sale is consummated.

Example 3. A lumber dealer sells a carload of lumber to a building contractor at an agreed upon price of \$8,000 including the cost of transportation. The lumber is to be ordered and drop-shipped directly to the purchaser. No exclusion or deduction for cost of transportation is allowed even if the purchaser pays the transportation charges directly to the common carrier and deducts the same from the amount due the seller. The delivered price is the sales price.

Subp. 3. **Cost of material used; labor or service cost.** Certain tangible personal property purchased at retail may require either additional material or additional labor or service,

in order to be suitable for the purpose for which purchased, or because of a special request made by a customer. The charges for such labor or material may be included in the sale price or may be in addition thereto, depending upon the policy of the retailer or upon the nature of the property purchased and of the modifications required.

Example 1. A customer orders a fur coat from Furs, Inc. for \$800 which includes extensive alterations to be made in accordance with the customer's instructions. The cost of such alterations to Furs, Inc. is \$100. As no exclusion or deduction for the labor or material involved in the alterations is allowed, the sales price is \$800.

Example 2. A TV dealer sells a customer a color television receiver for \$700 installed. The installation and adjustments are performed by a service company which charges the TV dealer \$15. No exclusion or deduction for installation or adjustment labor involved is allowed since such charge is not separately stated. Consequently, the sales price is \$700.

Example 3. A customer orders a watch from a jeweler for \$250 and requests that initials be inscribed in diamond chips. The jeweler agrees to do so without charge for labor but charges the customer \$50 for the diamond chips used. As no exclusion or deduction is allowed for cost of materials used, the sales price is \$300.

Subp. 4. Interest. Interest paid by vendors or lessors to their creditors for borrowed funds used in the conduct of the business may not be deducted in determining the sales price subject to tax.

Example. A lessor and lessee enter into an agreement whereby the lessor will lease ten new 1968 trucks to the lessee at \$2,000 per year per truck. The effective date of the lease contract is January 1, 1968. The lessor finances the purchase of the trucks through a bank. The interest paid to the bank in 1968 by the lessor is \$4,000. No part of this interest paid is allowable as an exclusion or deduction from the lease payments required to be paid by the lessee. Consequently, the sales price of the retail sale represented by the lease for the year 1968 is \$20,000 (10 X \$2,000).

Subp. 5. Discounts. In computing sales price, the total consideration for the sale shall not be reduced by the discount allowed where the amount of the discount is determined by events that occur subsequent to consummation of the sale.

Example. A dealer sells a TV set to a customer for \$500 on credit on January 15, 1969. On May 1, 1969, the customer complains about the high price. The dealer grants a reduction of \$50 in sales price as a discount. This discount will not be allowed as a deduction. The sales tax is computed on \$500.

Statutory Authority: *MS s 297A.29*

8130.1700 DEDUCTIONS ALLOWABLE IN COMPUTING SALES PRICE.

Subpart 1. In general. The following charges or expenses in connection with a sale are allowable as deductions provided the amounts attributable to such charges are reasonable under the circumstances and are stated separately on the invoices submitted to the purchaser or consumer.

Subp. 2. Interest on unpaid balance; carrying or finance charge. A material proportion of sales made at retail are made on a credit basis, particularly where the property sold is classified as durable consumers goods. Purchases of such items as automobiles, refrigerators, furniture, or jewelry are financed by means of periodic payments, usually on a monthly basis. Consequently, each payment may contain three elements: interest on the unpaid balance; carrying or finance charges; and payments to be applied against the unpaid balance.

Example 1. A boat dealer sells a new boat to a customer for \$3,000. The customer agrees to pay \$100 per month for 36 months, representing \$450 interest at five percent for three years and \$150 for collision, fire, and theft insurance. Each payment made to the boat dealer represents the following: \$83.33 on unpaid balance; \$12.50 for interest; and \$4.17 for the insurance coverage. (Adjustments may be made for the fractional cents.) Consequently, the amount required to be reported by the boat dealer when payment of \$100 is made is \$83.33 if on the cash basis. If on the accrual basis, \$3,000 is reportable at the time of sale.

Example 2. Same facts as in example 1 except that the boat dealer, who is on the cash basis, discounted the customer's note at a bank before any payments were made by the customer and received \$2,970. The boat dealer thereafter is required to report the sales price of \$3,000 for the month in which the note was discounted at a bank.

Example 3. A department store sells various household furnishings and appliances to a consumer for \$1,000. The consumer agrees to pay six percent interest plus two percent finance and service charges on the unpaid balance and further agrees to pay \$100 per month. The first payment was made one month after the sale was consummated. The \$100 is allocated as follows:

	Payment	Principal	Interest & Finance & Carrying Charges	Balance
First month	\$100.00	\$93.33	\$6.67	\$906.67
Second month	100.00	93.96	6.04	812.71
Third month	100.00	94.58	5.42	718.13

If the department store is on the cash basis, it will report \$93.33, \$93.96, and \$94.58 for the first three months, respectively. If the department store is on the accrual basis, it will report \$1,000 in the month the sale is made.

Subp. 3. Installation charges for labor and services. Tangible personal property may be sold either uninstalled or installed. The labor or service charge for the installation is allowable as a deduction arriving at sales price, provided such charge is stated separately on the invoice and such installation charge is not a device for reducing the selling price materially below the normal price at which the property involved in the transaction is usually sold.

Example 1. A retailer advertises a free-standing kitchen range for \$250 without installation, and \$266 installed. A customer orders the range installed. The retailer's bill reflects a sale of a kitchen range for \$250 and installation charges of \$16. Consequently, the sales price is \$250.

Example 2. A tire shop sells a customer a new tire for \$40 and replaces the old tire with a new one. The bill reads, "1 New Super Deluxe Tire — \$40." As labor or service charges for mounting the new tire are not stated separately, the sales price is \$40.

Subp. 4. Transportation charges incurred after sale. The right to exclude transportation charges from the sales price refers to transportation occurring after the retail sale has been consummated, provided that such charges are stated separately on the invoice, and also provided that where the price at the place of sale is the same as the price delivered, no reduction from the total consideration paid shall be allowed in arriving at the sales price.

For purposes of the Sales and Use Tax Law, the particular terms of delivery of property sold at retail are immaterial in determining the amount of sales price subject to tax. All separately stated charges for transportation from the premises of retailers to their customers billed to the customers by retailers are deemed to occur after such retail sales have been consummated.

Example 1. A department store sells a suite of living room furniture to a customer for \$1,000. The policy of the department store, as expressed in advertisements, is to deliver all merchandise purchased by customers free within a radius of 25 miles, provided the sales price of the merchandise delivered is in excess of \$100. Although the cost of delivering the suite of living room furniture is \$25, no reduction in sales price will be allowed as the implication was the customer, who was within the 25-mile limits, would not be obligated to bear the cost of transportation.

Example 2. A building supplier sells insulation at \$3 per bag, cash and carry. A customer requires 50 bags but asks that the merchandise be delivered and agrees to pay the delivery charges. The building supplier delivers the merchandise with the supplier's own truck and then bills the customer as follows:

50 bags insulation at \$3 per bag	\$150
Shipping charges	20
Total	\$170

Example 3. Same as example 2, but the invoice reads as follows:

50 bags insulation at \$2.50 per bag	\$125
Shipping charges	45
Total	\$170

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The sales price will be deemed to be \$150 in both the above examples as the \$3 price is the cash and carry price offered to customers at vendor's place of business.

Subp. 5. Discounts. Discounts on sales are of three kinds: trade, quantity, and cash.

A. A trade discount is a deduction from the list or gross price for the purpose of arriving at the selling price, and generally is not recorded in the accounting records.

B. Quantity discounts are basically trade discounts. They are increased with the size of the purchase as an inducement to the customer to buy in large quantities. For example, list price—\$150 less 30 percent if purchased in quantities of five or more units. Selling price is \$105.

C. Cash discounts are those granted to credit customers as an inducement to pay the account early. Such cash discounts or sales discounts, as they are commonly called, are stated in such terms as 2/10, n/30. The credit terms 2/10, n/30 mean that a two percent discount may be subtracted from the amount owed if paid within ten days from the sales invoice date; otherwise, the full amount is due within 30 days from date of sales invoice.

Example. A customer purchases a typewriter for \$200. The terms are 2/10, n/30. The customer pays on the ninth day following receipt of the invoice, and deducts the cash discount of \$4. The sales price is \$196.

D. Vendors usually account for sales under the gross sales method, that is, by reflecting in sales the full amount of the sales price without any deduction for the discount to be given the purchaser for early payment. Under this method, sales discounts earned are treated as a reduction in the amount of gross receipts to be reported for the period in which such discounts are taken. Certain vendors use the net sales method in accounting for sales. Under this method, the vendor assumes that all customers will avail themselves of the discount allowed for early payment. Subsequently, if a customer fails to pay within the prescribed period and remits the full sales price (without deduction for the sales discount), the additional amount is credited to a descriptive account, for example, sales discounts forfeited. The total amount of discounts so forfeited shall be credited to gross receipts for the reporting period in which received.

Example. A retailer uses the net sales method of accounting for sales discounts. Sales for September (all subject to two percent, ten-day discount) are \$20,000. The retailer's books reflect the following summary:

Accounts Receivable	\$19,600	
Sales		\$19,600

Included in this total are sales of \$4,900 derived from gross sales of \$5,000 on which the ten-day discount period does not end prior to October. The gross receipts reportable are \$19,600.

In the following month of October, the retailer receives \$3,920 (representing \$4,000 in gross sales for which payment was made timely) and \$1,000 (representing \$1,000 in gross sales where discount was forfeited).

The books reflect the following summary in respect of these transactions:

Cash	\$ 4,920	
Accounts Receivable		\$ 4,900
Sales Discounts Forfeited		20

The \$20 of sales discounts forfeited are required to be included in the gross receipts reportable for October.

Subp. 6. Refunds for property adjustments. Where taxable property is returned, the retailer's gross receipts may be reduced in the month the property is returned by the amount of the sales price refunded, provided that the applicable sales tax has also been refunded. If the credit given for the returned merchandise is reduced by a handling charge, the entire amount of sales tax collected should be refunded and a reduction of gross sales for the full sales price should be taken on the sales and use tax return. Where a purchaser of taxable property makes a gift of such property, and subsequently the recipient of the gift returns the property to the vendor and requests a refund of the amount paid for the property, the recipient is entitled to a refund of the sales tax applicable to the amount of the sales price that is refunded.

Repossession of tangible personal property does not constitute a return of property. Merchandise that was sold on approval and later returned may be deducted from gross receipts.

Adjustments to the sales price because of unknown damage at the time of sale, i.e. scratches, dents, etc., but not detected until a later time, may be deducted from gross receipts.

For property returned prior to March 22, 1973, a reduction in gross receipts is allowable only if the property was returned within three months of the date of purchase.

Example 1. A hardware dealer sells a customer a lawnmower for \$100 on May 1, 1972. The customer pays \$100 plus \$4 sales tax. As the lawnmower was defective, it was returned to the hardware dealer on May 10, 1972, and \$104 was refunded to the customer. Gross receipts will be reduced by \$100.

Example 2. Retail Tires sells four new tires to a customer at \$40 each under guarantee on June 1, 1972. August 15, 1972, the customer returns one tire and is given a cash refund of \$30 plus \$1.20 tax. Retail Tires may reduce gross sales by the \$30 refunded on the August sales and use tax return.

Example 3. A purchases taxable personal property from a retailer at a price of \$100. A pays the retailer \$104 or (\$100 sales price, plus \$4 sales tax). A then makes a gift of the property to B. B returns the property to the retailer and requests a refund of the amount paid for the property. B (the donee of the gift) is entitled to a refund of \$104 (\$100 sales price, plus \$4 sales tax). The retailer may reduce gross sales by \$100 on the sales tax return for merchandise returned and thereby receive credit for the amount of refundment.

Example 4. A lumber company sells 20 redwood posts to a customer for \$100. A \$4 sales tax is charged and collected. The customer decides not to use the posts and returns them to the lumber company. The lumber company has a policy of refunding all but \$10 on all returned merchandise. This \$10 represents a handling fee for placing the merchandise back into stock. The lumber company is required to refund the customer the entire \$4 sales tax and claim a reduction of \$100 gross sales on its sales and use tax return.

Subp. 7. Taxes imposed by United States. The sales price shall be reduced by any tax imposed by the United States upon or with respect to retail sales, whether imposed upon retailers or consumers. This deduction does not apply to manufacturers' or importers' excise taxes.

Custom duties paid by a purchaser to the United States are not part of the consideration paid for retail sales and are thus, not includible in the sales price.

Example 1. A local telephone exchange service charge is \$5.70 plus U.S. excise tax of 57 cents. Only the \$5.70 is subject to Minnesota sales tax, since the federal excise tax is imposed upon the consumer. The total charge will thus be \$5.70 plus four percent of \$5.70 (i.e. 23 cents) plus the federal tax, 57 cents, or a total of \$6.50.

Example 2. A retailer sells brand X tires for \$28 plus applicable taxes. The federal manufacturers' excise tax is \$2.32. The Minnesota sales tax is four percent of \$30.32 (\$28 plus \$2.32) or \$1.21. Gross receipts reportable by the retailer in respect of this transaction are \$30.32.

Example 3. A retailer purchases a camera for \$500 in Europe and is required to pay a customs duty of \$37.50 thereon at the time of entry in the United States. The use tax due is four percent of the \$500 sales price of the retail sale, or \$20.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.1800 GROSS RECEIPTS DEFINED; METHOD OF REPORTING.

Subpart 1. Gross receipts. The sales tax is imposed upon the gross receipts from sales at retail. "Gross receipts" are herein defined as the total amount received in money or otherwise for all sales at retail (see Minnesota Statutes, section 297A.01, subdivision 4) as measured by the sales price. (See Minnesota Statutes, section 297A.01, subdivision 8.)

The person filing the return may report gross receipts either:

- A. on the cash basis as the consideration is received; or
- B. on the accrual basis as sales are made.

An election will be deemed to have been made to report gross receipts under the method of accounting on the basis of which the person filing the return regularly computes income

for tax purposes, unless he or she can demonstrate to the commissioner that a method of accounting for gross receipts subject to the sales tax (which differs from the method of accounting employed for other purposes) will not prevent or make difficult an orderly and systematic audit of the records by the commissioner. An application shall be made to the commissioner for permission to change the method of reporting.

Subp. 2. Cash basis. Where sales are made at retail on a strictly cash basis, the vendor shall report gross receipts on the basis of cash or other consideration received, minus the exclusions and deductions from the total consideration allowed under Minnesota Statutes, sections 297A.01, subdivision 8, and 297A.25.

Subp. 3. Accrual basis. A person who reports income on the accrual basis is required to report gross receipts as the sales are made, minus the exclusions and deductions from the total consideration allowed under Minnesota Statutes, sections 297A.01, subdivision 8, and 297A.25, regardless of when cash from such sales is received.

Example 1. A supermarket's gross sales for May 1968, are \$200,000, of which \$175,000 are represented by exempt products. In addition, cash refunds of \$1,000 for exempt products returned were made. The computation for the supermarket, which is on a cash basis, is as follows:

Gross receipts		\$200,000
Less: refunds for property returned		1,000
		<hr/>
Gross receipts adjusted		\$199,000
Sales of exempt property	\$175,000	
Less: refunds for exempt property returned	1,000	
	<hr/>	
		\$174,000
		<hr/>
Taxable gross receipts		\$ 25,000

Example 2. A department store has cash sales of \$500,000 and charge sales of \$750,000 for the month of October 1968. The department store reports on the accrual basis. Consequently, the department store reports as gross sales \$1,250,000 on the sales and use tax return it files for this month.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.1900 RETAILER.

Subpart 1. Defined. A "retailer" is any person engaged in making sales at retail. A "sale at retail" or a "retail sale" as defined in Minnesota Statutes, section 297A.01, subdivision 4, means a sale for any purpose other than resale in the regular course of business. Under Minnesota Statutes, section 297A.01, subdivision 3, a sale includes any one of a number of transactions not ordinarily considered to be retail activities. Consequently, the person making such a sale is deemed to be a retailer in accordance with Minnesota Statutes, section 297A.01, subdivision 10, and this part.

Subp. 2. Examples. For illustrative purposes, a partial listing of retailers follows:

- A. a person who leases automobiles, trucks, trailers, or tractors;
- B. a person who leases office equipment or computers;
- C. a person who leases machinery, heavy earth-moving equipment, or any other type of tangible personal property;
- D. a person who installs a truck body on a new chassis for a consumer;
- E. a person who binds printed sheets furnished by a consumer;
- F. a person who prints on paper stock furnished by a consumer;
- G. a person who furnishes, prepares, or serves food, meals, or drinks to a customer for a consideration (see Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), for exceptions);
- H. a person who grants the privilege of admission to a motion picture theater or any other place of amusement or recreation for a consideration, including plays, concerts, bowl-

ing alleys, golf courses, state or county fairs, professional or amateur athletic contests, skating rinks, etc.;

I. a person who furnishes music through mechanical devices such as juke boxes for a consideration;

J. a person who operates a hotel, rooming house, tourist court, motel or trailer camp, or who leases real property for lodging purposes for a period of less than 30 days (see Minnesota Statutes, section 297A.01, subdivision 3, paragraph (e));

K. a person who furnishes, for a consideration, electricity, gas, water, steam, or local exchange telephone service, or intrastate toll telephone service;

L. a person who sells or furnishes any type of tangible personal property or service constituting a sale other than a sale for resale as defined in Minnesota Statutes, section 297A.01; and

M. a person who machines castings, threads pipes, or processes lumber for customers who have furnished the material.

Statutory Authority: *MS s 297A.29*

8130.2000 [Repealed, 17 SR 2369]

8130.2100 WASTE COLLECTION AND DISPOSAL SERVICES.

Subpart 1. **General information.** Public and private mixed municipal solid waste collection and disposal services are subject to sales or use tax pursuant to Minnesota Statutes, section 297A.01, subdivision 3, clause (j), item (vii), and as described in Minnesota Statutes, section 297A.45.

The total general sales and use tax rate is 6.5 percent. This consists of a six percent rate imposed by Minnesota Statutes, section 297A.02, combined with a .5 percent local option sales tax imposed by Minnesota Statutes, section 297A.021.

Waste collection and disposal services are taxable whether charged directly to customers by private or public haulers or paid for through government imposed service fees or tax assessments.

Pursuant to Minnesota Statutes, section 297A.44, subdivision 1, paragraph (d), the revenues, including interest and penalties, which are derived from the taxes imposed on solid waste collection services are used to fund solid waste reduction and recycling programs.

Subp. 2. **Definitions.** For purposes of this part, the terms as defined in Minnesota Statutes, sections 115A.03 and 297A.01, apply.

A. "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

B. "Disposal" or "dispose" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

C. "Disposal facility" has the meaning given it in Minnesota Statutes, section 115.03, subdivision 10.

D. "Generator" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 12.

E. "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

F. "Political subdivision" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 24.

G. "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

H. "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

I. "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

J. "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

K. "Solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 31.

L. "Waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 34.

M. "Waste facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 35.

Subp. 3. Taxpayers. The person responsible for collecting and remitting the sales tax is the person who bills the customer for the waste collection services.

A. Commercial haulers who provide waste collection services and bill their customers must collect and remit the sales tax.

B. A governmental entity which provides waste collection services, either with its own vehicles or by contract with a commercial hauler, or which operates a landfill facility, and bills citizens directly for the cost of those services, must collect and remit the sales tax. If a governmental entity does not bill directly for these costs, the governmental entity must pay the sales tax. For example, if a governmental entity bills its citizens for the cost of waste collection or landfill services as a general service fee, without stating what services the fee arises from, the entity will be responsible for paying the sales tax.

If a governmental entity contracts with a commercial hauler for waste collection services and the amount paid by the governmental entity is more than the amount charged to citizens for those services, the governmental entity must pay the sales or use tax on the amount of the difference. Also, all direct and indirect expenses related to providing citizens with the waste disposal services must be accounted for in determining the cost of these services.

C. Landfill and transfer station operators are required to collect and remit the sales tax on all charges for the disposal of mixed municipal solid waste at their facilities, provided that commercial haulers who bill customers for waste disposal services and for the sales tax, or who provide these services pursuant to a contract with a governmental entity which collects and remits the sales tax, are not required to pay the sales tax to landfill operators if the hauler provides the landfill operator with a completed Commercial Hauler's Exemption Certificate.

Landfill and transfer station operators are not required to collect and remit the sales tax on charges billed to refuse-derived fuel plant operators for the disposal of waste which was previously subjected to sales tax. Refuse-derived fuel plant operators are required to provide landfill and transfer station operators with a letter from the Department of Revenue as proof of exemption from sales tax for disposal of this waste.

Subp. 4. Customers required to pay sales tax. All customers, except the federal government, are required to pay the sales tax on garbage collection services. This includes state and local government agencies, nonprofit organizations such as churches and nursing homes which are otherwise exempt from paying sales tax, and direct pay permit holders.

Haulers may not accept exemption certificates from customers in lieu of payment for the sales tax on garbage collection services. Sales to the federal government and its agencies are exempt from sales tax when the agency is billed directly and payment is made directly by the federal agency.

Subp. 5. Determining the amount of sales tax.

A. Surcharges or fees imposed by a city, town, or county pursuant to Minnesota Statutes, section 115A.919 or 115A.921, which are separately stated on the customer's bill are not subject to the sales tax. These surcharges and fees are charged to operators of mixed municipal solid waste facilities by a city, town, or county.

B. State landfill abatement fees imposed under Minnesota Statutes, sections 115A.923 and 473.843, upon operations of greater Minnesota and metropolitan mixed municipal solid waste landfills are not subject to the sales tax. These are fees used to fund the greater Minnesota and metropolitan area landfill abatement funds.

C. Costs associated with the management and operation of recycling enterprises are exempt from the sales tax according to the guidelines in subitems (1) and (2).

(1) Charges for collecting and managing recyclable materials that have been separated from other refuse by the customer are exempt. When recyclable materials have not been separated from mixed municipal solid waste by the customer, the entire charge for garbage collection services is taxable to the customer. Charges for collection and management

include all costs directly related to the service, including administrative expenses, wages, and collection vehicles.

(2) Charges for the collection of waste from a recycling facility which separates recyclable materials from nonrecyclable wastes are not taxable. However, this exemption only applies:

(a) if the volume of the nonrecyclable waste has been reduced by at least 85 percent by the recycling facility;

(b) to waste which is collected and disposed of separately from other solid waste; and

(c) to entities which collect the combined waste primarily for recycling purposes. This limitation prevents customers of commercial haulers from claiming this exemption if the haulers separate recyclables from other solid waste as an incidental or de minimis part of their operations.

D. Resource recovery facilities are not included in the exemption under item C.

Subp. 6. Administrative requirements.

A. All persons in subpart 4 who are required to collect and remit the sales tax must obtain a sales tax permit from the commissioner. If the person already holds a valid sales tax permit, it is not necessary to obtain a new one.

B. The permit holder must remit the collected sales tax to the office of the commissioner according to the reporting requirements of part 8130.7300.

C. Sales tax returns must be reported either on a cash method or accrual method basis using the same method of accounting as used for income tax purposes. A change in accounting methods may be required as described in part 8130.1800.

Subp. 7. Local sales tax. City or local general sales or use tax does not apply to waste collection services. A retailer is not required to register for the local sales tax unless the retailer makes other taxable sales, such as sales or leases of trash containers.

Statutory Authority: *MS s 270.06*

History: 17 SR 2008

ADMINISTRATION OF THE SALES TAX

8130.2300 IMPOSITION OF SALES TAX.

The measure of the tax imposed upon the seller is four percent of the gross receipts of such person from sales made at retail after October 31, 1971, except that in the case of sales made at retail through coin-operated vending machines, the tax imposed upon the seller shall be three percent of the gross receipts from sales of taxable items. Vending machines are any coin-operated devices dispensing food, drinks, or tangible personal property or providing amusement.

With respect to sales made after October 31, 1971, the actual-tax-collected method may not be used by the seller to reduce liability to an amount less than that computed on the basis of gross receipts, as set forth in this part.

Statutory Authority: *MS s 297A.29*

History: 17 SR 1279

8130.2350 COMPUTATION OF SALES TAX.

Compute the tax on the sales price to the nearest full cent. For sales under \$1, use the guidelines in items A to C.

A. In computing the tax to be collected on any transaction subject to a four percent rate, amounts of less than one-half cent may be disregarded and the amounts of one-half cent or more are considered as an additional cent. Thus, on a sale of 12 cents or less, the purchaser pays no tax; on a sale from and including 13 cents to and including 37 cents, the purchaser is required to pay one cent tax; on a sale from and including 38 cents to and including 62 cents, the purchaser is required to pay two cents tax; on a sale from and including 63 cents to and including 87 cents, the purchaser is required to pay three cents tax; on a sale from and including 88 cents to and including \$1.12, the purchaser is required to pay four cents tax; on a sale in

excess of \$1, the purchaser is required to pay four percent on each full dollar plus the appropriate amount from the brackets above.

B. In computing the tax to be collected on any transaction subject to a five percent rate, amounts of less than one-half cent may be disregarded and the amounts of one-half cent or more are considered as an additional cent. Thus, on a sale of nine cents or less, the purchaser pays no tax; on a sale from and including ten cents to and including 29 cents, the purchaser is required to pay one cent tax; on a sale from and including 30 cents to and including 49 cents, the purchaser is required to pay two cents tax; on a sale from and including 50 cents to and including 69 cents, the purchaser is required to pay three cents tax; on a sale from and including 70 cents to and including 89 cents, the purchaser is required to pay four cents tax; on a sale from and including 90 cents to and including \$1.09, the purchaser is required to pay five cents tax; and on a sale in excess of \$1, the purchaser is required to pay five percent on each full dollar plus the appropriate amount from the brackets above.

C. In computing the tax to be collected on any transaction subject to a six percent rate, amounts of less than one-half cent may be disregarded and the amounts of one-half cent or more are considered as an additional cent. Thus, on a sale of eight cents or less, the purchaser pays no tax; on a sale from and including nine cents to and including 24 cents, the purchaser is required to pay one cent tax; on a sale from and including 25 cents to and including 41 cents, the purchaser is required to pay two cents tax; on a sale from and including 42 cents to and including 58 cents, the purchaser is required to pay three cents tax; on a sale from and including 59 cents to and including 74 cents, the purchaser is required to pay four cents tax; on a sale from and including 75 cents to and including 91 cents, the purchaser is required to pay five cents tax; on a sale from and including 92 cents to and including \$1.08, the purchaser is required to pay six cents tax; and on a sale in excess of \$1, the purchaser is required to pay six percent on each full dollar plus the appropriate amount from the brackets above.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.2400 [Repealed, 15 SR 693]

8130.2500 APPLICATION FOR PERMIT TO MAKE RETAIL SALES.

Subpart 1. Duty to obtain a permit. The following persons making taxable sales within Minnesota, or sales outside the state for use, storage, or consumption in Minnesota must obtain a sales tax permit and collect the sales or use tax from the purchaser at the time of sale:

A. a retailer located in Minnesota;

B. a retailer maintaining a place of business in Minnesota;

C. a retailer making retail sales from outside this state to a destination within this state if the retailer engages in the regular or systematic soliciting of sales from potential customers in this state.

Subp. 2. Nontaxable retail activities. Where a person engages in retail activities which are exclusively nontaxable, it is not necessary to apply for or secure a permit.

If a charitable, religious, or educational organization makes or plans to make fundraising sales which are not exclusively nontaxable under Minnesota Statutes, section 297A.256, or any other part of Minnesota Statutes, chapter 297A, that organization must obtain a sales tax permit and collect the sales tax.

Subp. 3. Multiple locations. Where a person who is required to secure a permit has more than one place of business and the activities conducted at each place are subject to tax under the Sales and Use Tax Law, and the person elects to file a separate return for each place of business, a separate application must be filed for each business location. A permit will be issued which may be used only at the address indicated on the permit. A separate permit will be assigned to each place of business. Members of a group of corporations related by stock ownership, where the members are engaged in making sales at retail, must make individual applications.

Subp. 4. Consolidated return. If a person elects to file a consolidated return, a list containing the business name and address of each separate place of business must be submitted to the commissioner when applying for a permit. An application containing such a list constitutes an application for each listed business name and address. A permit will be issued for

each listed location. Each permit so issued will bear the same sales and use tax account number. If, thereafter, the person elects to file a separate return for any of the listed places of business, a new account number must be secured for the business location for which the separate return is filed. See part 8130.2600.

Subp. 5. Vending machines. Where the person required to secure a sales and use tax permit operates vending machines in more than one location, the person will not be required to secure a separate permit for each location. Vending machines include, but are not limited to, coin-operated or bill-operated machines that dispense food, candy, drinks, items of tangible personal property, or provide amusement and diversion.

Vending machines do not include the coin-operated services described in Minnesota Statutes, section 297A.01, subdivision 3, paragraphs (i) and (j).

Subp. 6. Information required. Application for a permit must contain the following information:

A. the legal form and name of organization; for example, individual, partnership, Minnesota corporation, foreign corporation, or association, and if a corporation, the state and date of incorporation;

B. date when taxable sales were first made or date when taxable sales are expected to begin;

C. name and mailing address to which sales tax forms are to be sent;

D. Minnesota Department of Revenue identification number, unless no such number was previously assigned, and the federal identification number, unless none has been assigned;

E. business name and location or appropriate name and location;

F. if there are two or more locations and the consolidated method is elected, each business name and address;

G. the date on which the fiscal year ends;

H. list of owners, partners, or principal officers, and home addresses and social security numbers of such individuals;

I. type of business; for example, retail trade, wholesale trade, manufacturing, motion picture theater, hotel, or bowling alley; and

J. whether business is operated seasonally and, if so, usual opening and closing dates.

Applications must be signed by the owner, if a natural person, by a partner if the applicant is a partnership, or by an owner, partner, or officer if the applicant is a corporation or an association.

Subp. 7. Change in ownership or name. Where there is a change in ownership or name, the following rules are applicable:

A. Sale of a business enterprise operated as a sole proprietorship requires a new application, although the business may be continued under the same name.

B. Admission of a new partner to a partnership requires a new application, even if the business is continued under the same name. Resignation, expulsion, or death of a partner requires a new application if the partnership is required to obtain a new federal identification number because of the resignation, expulsion, or death.

C. A change in the ownership of shares of stock of a corporation does not invalidate a permit issued to the corporation, as there has been no shifting of the liability for payment of sales and use tax.

D. A change in name of a business enterprise or a change in location, where there has been no change in ownership, means the permit holder must request a corrected permit from the department which reflects the changed name or address. The corrected permit will be issued upon request.

E. In the event of the death of a permit holder who was operating a business as a sole proprietor, the duly appointed and qualified estate representative of the decedent's estate can assume and use the decedent's Minnesota sales and use tax account number during the period of probate administration. However, if the decedent's business is sold or ownership is

assumed by a member of the decedent's family, a change of ownership occurs and a new Minnesota sales and use tax permit is required.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.2600 PERMIT WHEN VALID AND HOW DISPLAYED.

Subpart 1. Permit issued by commissioner. Generally, after the applicant has complied with the provisions of Minnesota Statutes, section 297A.04, the commissioner will issue a separate permit for each place of business for which application was made unless the commissioner, in order to assure compliance with the Sales and Use Tax Law, finds it necessary for the applicant to deposit security. In that event, the commissioner will issue the permits requested at the time the applicant has complied with the additional provisions regarding the security requested.

Subp. 2. When permit is valid. The permit issued is valid until revoked or canceled according to Minnesota Statutes, section 297A.065 or 297A.07, and is not assignable. The permit is valid only for use by the person in whose name it is issued and for the transaction of business at the place designated therein. Thus, where there has been a change of ownership, so that the liability for payment of the sales and use tax is shifted either wholly or in part, or where there has been a change in name or in location of the business enterprise, the permit is no longer valid. If there has been a change of ownership, the permit holder must apply for a new permit.

Subp. 3. Shifting or temporary locations. Where a permit holder is primarily engaged in taxable activities which require a change of location from place to place, the change in location will not be considered a change of address and the permit holder must display the permit at each temporary location when making taxable sales at that location. In the event the permit holder engages in taxable activities at two or more shifting or temporary locations within the same general area at the same time, the permit holder may display the original permit at one location and photocopies of the original permit at the other locations.

Subp. 4. Display of permits. A permit issued by the commissioner must at all times be conspicuously displayed. See subpart 3 for display of permits at shifting or temporary locations.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.2700 REVOCATION OF PERMITS.

Subpart 1. In general. The permit or permits issued to any person, hereinafter referred to as the permit holder, may be revoked or suspended by the commissioner if the permit holder fails to comply with any provisions of Minnesota Statutes, chapter 297A, or any rules adopted under that chapter. See Minnesota Statutes, section 297A.07.

Subp. 2. Hearing requirement. The commissioner cannot revoke the permit holder's permit or permits before granting a hearing. The hearing cannot be held unless the commissioner has served notice in writing at least 30 days before the date for the hearing. The commissioner may serve personal notice upon the permit holder or may make such service by regular mail. If service is made by mail, the notice provisions of Minnesota Statutes, section 289A.37, subdivision 5, will apply. The hearing, and any posthearing administrative procedures related to the hearing, will be conducted by the State of Minnesota Office of Administrative Hearings pursuant to the Administrative Procedure Act, Minnesota Statutes, chapter 14. The hearing will be held at the time and place specified in the notice of hearing.

Subp. 3. Surrender of permit. A permit revoked by the commissioner must be surrendered to the commissioner immediately upon notice of revocation.

Subp. 4. [Repealed, 15 SR 693]

Subp. 5. New application, or application for reinstatement of revoked permit. The commissioner may reinstate a revoked sales and use tax permit, or issue a new permit to a taxpayer whose permit had been revoked if the taxpayer:

A. files all unfiled sales and use tax returns;

B. pays with a certified check, cashier's check, or money order the entire balance of tax, penalty, and interest due;

C. deposits with the commissioner, security or a surety bond in an amount equal to three times the average monthly liability; and

D. signs an agreement to file timely returns and remit tax when due in the future to a named individual within the department. The agreement will specify the individual to whom the returns and payments must be sent. All payments must be made by certified check, cashier's check, or money order.

The commissioner will hold the security deposit described in item C for two years.

The commissioner will pay interest on any money deposited as security. The interest will be calculated from the date of deposit to the date of refund, or date of application to any outstanding tax liability, at a rate specified in Minnesota Statutes, section 270.76. The security deposit will be refunded to the taxpayer at the end of the two-year period unless the taxpayer has any unpaid tax liabilities. The commissioner may apply the security deposit to any unpaid tax liabilities.

Subp. 6. **Appeal.** An alternative procedure is available to the permit holder. The permit holder may appeal the commissioner's order revoking the permit or permits to the Minnesota Tax Court in accordance with Minnesota Statutes, chapter 271.

Subp. 7. **Disclosure.** The commissioner may identify the holder of a revoked sales tax permit and disclose information regarding the reasons for revocation. See Minnesota Statutes, section 270B.08.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *L 1984 c 640 s 32; 15 SR 693*

8130.2800 [Repealed, 15 SR 693]

8130.2900 PRESUMPTION THAT TAX MUST BE PAID.

Subpart 1. **General rule.** Minnesota Statutes, section 297A.09, provides that all gross receipts are presumed to be subject to tax unless the contrary is established. The burden of proving that a sale was not a sale at retail is upon the seller.

Subp. 2. **Overcoming the presumption.** For overcoming the presumption of subpart 1:

A. The presumption that a sale is a sale at retail may be overcome if the seller accepts and retains for the records an exemption certificate given by the purchaser, stating that the property purchased is for resale.

B. Under Minnesota Statutes, section 297A.10, if the seller accepts from the purchaser an exemption certificate to the effect that the property purchased is exempt under Minnesota Statutes, chapter 297A, the exemption certificate will relieve the retailer from the presumption that all gross receipts are subject to tax and from collecting and remitting the tax, if taken in good faith from the purchaser.

C. The presumption that all gross receipts are subject to tax may be overcome if the seller accepts from the purchaser an exemption certificate to the effect that the purchaser is exempt from paying the tax under the Sales and Use Tax Law.

D. The presumption that all gross receipts are subject to tax may be overcome if the seller accepts from the purchaser a copy of the direct pay permit issued to the purchaser, or a statement as provided in part 8130.3400, subpart 5.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3000 GOOD FAITH ACCEPTANCE OF EXEMPTION CERTIFICATES.

Subpart 1. **In general.** Minnesota Statutes, section 297A.09, creates a presumption that all gross receipts are subject to tax, but permits the seller to accept exemption certificates to the effect that the property was purchased for resale, or that the sale is otherwise exempt under the Sales and Use Tax Law.

Subp. 2. **Reasonable care.** Where a sale is made to a person claiming to purchase the property for resale, the presumption that the sale is subject to tax will be conclusively overcome only if the retailer accepts a resale exemption certificate in good faith from the purchaser. See Minnesota Statutes, section 297A.10. Although the seller is under no duty to ascertain beyond all reasonable doubt that the purchaser is acquiring the property for resale, the provi-

sion that the seller act in good faith requires the seller to exercise reasonable care and judgment before accepting the resale exemption certificate. The good faith provision requires that the seller accept only certificates meeting the requirements of Minnesota Statutes, section 297A.11.

Subp. 3. Awareness of business activity and specific nonexempt property. Where a sale is made to a person claiming that the property purchased is exempt under Minnesota Statutes, section 297A.25, the presumption that the sale is subject to tax will be conclusively overcome where the retailer takes a certificate of exemption in good faith from the purchaser. The seller will be considered to have exercised good faith provided the seller is aware of the type of business activity conducted by the purchaser, and provided the property claimed to be exempt is of a character normally used by the purchaser for an exempt purpose. The seller is under no duty to ascertain whether the property so purchased is, in fact, actually used for the exempt purpose.

Subp. 4. Acceptable exemption certificates. Vendors may accept the following in good faith:

A. certificates of exemption claiming exemption on purchases of airlight equipment, and flight simulators and parts necessary for the repair and maintenance of such equipment, where the certificates are taken from persons who state thereon that they are taxed under the provisions of Minnesota Statutes, sections 270.071 to 270.079, inclusive;

B. certificates of exemption claiming exemption on purchases of mill liners, grinding rods, and grinding balls where the certificates are taken from persons who state thereon that they are taxed under the in lieu provisions of Minnesota Statutes, chapter 298, and where the certificates state that the property will be substantially consumed in the production of taconite, while becoming a part of the material produced;

C. certificates of exemption claiming exemption on purchases of property which will be shipped or transported outside Minnesota by the purchaser without any intermediate use, which will be used in a trade or business outside Minnesota, and which state thereon that the property will not be returned to Minnesota except in the course of interstate commerce, if the property is not taxable in the state of destination and no exemption certificate is necessary in that state, or the property is not taxable in the state of destination if an exemption certificate is given to the vendor in that state and a copy of the destination state's exemption certificate is attached to the Minnesota certificate, or the property is to be used in the other state or country as part of a maintenance contract;

D. certificates of exemption claiming exemption on purchases of packing materials used to pack and ship household goods to destinations outside Minnesota and which will not be returned to Minnesota except in the course of interstate commerce;

E. certificates of exemption which state that the materials purchased are designed to advertise and promote the sale of merchandise or services, when the material is purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside of Minnesota;

F. certificates of exemption for equipment used for processing solid or hazardous waste at a resource recovery facility as defined in Minnesota Statutes, section 115A.03, subdivision 28. The purchaser must apply to the commissioner for the exemption certificate and supply sufficient documentation to support the application;

G. certificates of exemption covering certain purchases by veteran's organizations and their auxiliaries. The purchases must be for charitable, civic, educational, or nonprofit uses;

H. certificates of exemption for materials and supplies used or consumed in agricultural or industrial production of tangible personal property to be sold ultimately at retail. See Minnesota Statutes, section 297A.25, subdivision 9;

I. certificates of exemption for tangible personal property which will be resold;

J. certificates of exemption for repair or replacement parts used for the maintenance or repair of qualified farm machinery or logging equipment pursuant to Minnesota Statutes, section 297A.01, subdivision 15;

K. certificates of exemption for materials and supplies used or consumed in the production of newspapers and publications issued at average intervals of three months or less, pursuant to Minnesota Statutes, section 297A.25, subdivision 10;

L. certificates of exemption for commercial haulers of waste collection and disposal services;

M. certificates of exemption for property purchased for business use outside city limits, for use when a local tax is applicable;

N. certificates of exemption for repair, replacement, and rebuilding parts and materials for ships or vessels used or to be used principally in interstate or foreign commerce; and

O. certificates of exemption for lease of a motor vehicle for use as an ambulance by an ambulance service licensed under Minnesota Statutes, section 144.802.

Subp. 5. Religious and educational organizations. Where a sale of tangible personal property is made to an organization that is organized and operated exclusively for religious or educational purposes, the seller will be relieved from the duty of collecting and remitting the tax otherwise due on the sale if the seller receives a certificate of exemption from the organization stating to that effect, and provided that the seller is reasonably certain that the purchaser is a religious or educational organization entitled to the exemption. Thus, although the seller is not obligated to investigate to determine whether the purchaser is entitled to the exemption, the seller, either from past experience or from the seller's own general personal knowledge of the community and its affairs, should, in most cases, be able to determine whether the purchaser is the type of organization it claims to be and whether the purchase is to be used for religious or educational purposes. For example, the various schools and churches in any community are well known and, consequently, a seller would be reasonably certain that such a school or church making purchases of tangible personal property is entitled to exemption.

Subp. 6. Charitable organizations. Organizations claiming exemption as charitable organizations must establish their right to the exemption by making application to the commissioner for a certificate of exempt status. An application may also be made by religious and educational organizations wishing to obtain a certificate of exempt status as a convenience to themselves and their suppliers. A certificate of exempt status will be issued after the application and supporting documents are examined and approved. The certificate of exempt status will bear an exempt status number and the signature of an authorized official of the Department of Revenue. An organization holding a certificate of exempt status may reproduce the certificate as necessary to be furnished to its suppliers. A vendor may accept a copy of a certificate of exempt status in good faith from the organization to which it was issued.

Subp. 7. References and limitations.

A. See part 8130.6200 regarding criteria for determining whether or not organizations qualify for exemption as charitable, religious, or educational.

B. As described above, the certificate of exemption or certificate of exempt status is valid for purchases made on behalf of the exempt organization, but not for purchases made for the personal use of persons affiliated with or employed by the exempt organization. The seller may be reasonably certain that a sale is made to the exempt organization if the seller either bills the organization for the sales price, delivers the property to the location of the organization, or accepts payment by means of a check drawn by the organization.

C. Although the furnishing of meals or lodging is defined as a taxable sale by Minnesota Statutes, section 297A.01, subdivision 3, paragraphs (c) and (e), it is not a sale of tangible personal property and, thus, is not within the exemptions described in subparts 5 to 8 for sales of tangible personal property to governmental, charitable, religious, and educational organizations in Minnesota Statutes, section 297A.25, subdivisions 11 and 16. Accordingly, a certificate of exemption, certificate of exempt status, or governmental purchase order may not be accepted in good faith for such a sale, except in the case of sales directly to the United States government. See part 8130.5700. Meals furnished, prepared, or served at public and private schools, universities, or colleges, are governed under part 8130.0800.

D. Although the furnishing of admissions is defined as a taxable sale by Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d), it is not a sale of tangible personal

property and, thus, is not within the exemptions described in subparts 5 to 8 for sales of tangible personal property to governmental entities in Minnesota Statutes, section 297A.25, subdivision 11. Accordingly, a certificate of exemption, certificate of exempt status, or governmental purchase order may not be accepted in good faith for such a sale.

The sale of admissions under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d), to charitable, religious, or educational organizations in Minnesota Statutes, section 297A.25, subdivision 16, may be purchased exempt pursuant to subparts 5 and 6.

E. Both government entities, except for the United States government, and charitable, religious, or educational organizations, must pay sales tax on leases of motor vehicles pursuant to Minnesota Statutes, section 297A.25, subdivisions 11 and 16.

F. Both government entities, except for the United States government, and charitable, religious, or educational organizations must pay sales tax on solid waste collection and disposal services imposed pursuant to Minnesota Statutes, section 297A.01, subdivision 3, paragraph (j), item (vii).

G. A seller is not required to collect and remit the tax on sales of tangible personal property which the seller delivers to a common carrier for delivery to an outstate destination, or places the property in the United States mail or parcel post directed to a purchaser outstate, or delivers the property to a purchaser outstate by means of the seller's own delivery vehicles. No exemption certificate is required under these circumstances. However, adequate evidence of shipment or delivery to the out-of-state destination must be maintained by the seller.

Subp. 8. Sales to governmental entities. Where a sale of tangible personal property or sales governed by Minnesota Statutes, section 297A.01, subdivision 3, paragraph (f), is made to a governmental entity listed in Minnesota Statutes, section 297A.25, subdivision 11, the sale is exempt. The seller will be relieved of the duty of collecting and remitting the tax otherwise due on such property by accepting an authorized purchase order, payment voucher, or other document clearly showing that the purchaser is a governmental entity.

Subp. 9. [Repealed, 15 SR 693]

Subp. 10. [Repealed, 15 SR 693]

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3100 CONTENT AND FORM OF EXEMPTION CERTIFICATE.

Subpart 1. In general. Minnesota Statutes, section 297A.09, provides that a person who makes a sale may take from a purchaser an exemption certificate for exempt sales. If the certificate does not include the following five elements, the certificate will not be considered to have been accepted by the seller in good faith as required by Minnesota Statutes, section 297A.10. An exemption certificate must contain the following information:

- A. name and address of the purchaser;
- B. the account number of the permit issued to the purchaser, or, if no number, state reason;
- C. the general character of the property sold by the purchaser in the regular course of business;
- D. description of the property purchased; and
- E. signature of the purchaser.

See Minnesota Statutes, section 297A.11.

Subp. 2. Application to use exemption certificates.

A. A taxpayer must submit an application to the commissioner in order to obtain an exemption certificate to be used for the following exemptions or situations:

- (1) waste processing equipment used at a resource recovery facility;
- (2) direct payment of sales or use tax;
- (3) direct payment of tax by common carriers; and
- (4) purchases of tangible personal property or services by a charitable organization.

B. A taxpayer does not need to submit an application to the commissioner in order to obtain an exemption certificate to be used for the following exemptions:

- (1) agricultural or industrial production;
- (2) educational or religious organizations;
- (3) advertising material pursuant to Minnesota Statutes, section 297A.25, subdivision 22;
- (4) farm machinery repair or replacement parts, pursuant to Minnesota Statutes, section 297A.25, subdivision 29;
- (5) materials used in publications pursuant to Minnesota Statutes, section 297A.25, subdivision 10;
- (6) taconite production materials pursuant to Minnesota Statutes, section 297A.25, subdivision 15;
- (7) airlight equipment pursuant to Minnesota Statutes, section 297A.25, subdivision 14;
- (8) outstate transport or delivery pursuant to Minnesota Statutes, section 297A.25, subdivision 5;
- (9) business use outside a city limit – local taxes;
- (10) tangible personal property or services purchased for resale;
- (11) veterans' groups pursuant to Minnesota Statutes, section 297A.25, subdivision 25;
- (12) tipping fee sales tax exemption for commercial haulers of public and private mixed municipal solid waste;
- (13) fuels and energy used in agricultural or industrial production pursuant to Minnesota Statutes, section 297A.25, subdivision 9;
- (14) repair, replacement, and rebuilding parts and materials for ships or vessels used or to be used principally in interstate or foreign commerce; and
- (15) lease of a motor vehicle for use as an ambulance by an ambulance service licensed under Minnesota Statutes, section 144.802.

These certificates may be used for single purchases or for continuing future purchases. When used in this latter manner, the certificate is referred to as a blanket exemption certificate. Whether a certificate is a single purchase or blanket certificate is determined by marking the appropriate blank provided on the form.

Subp. 3. [Repealed, 15 SR 693]

Subp. 4. [Repealed, 15 SR 693]

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3200 NONEXEMPT USE OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE.

Subpart 1. Nonexempt use, use tax imposed. Under Minnesota Statutes, sections 297A.09 and 297A.10, the seller may accept an exemption certificate from the purchaser on items otherwise taxable under the Sales and Use Tax Law. Under Minnesota Statutes, section 297A.12, if the purchaser makes a nonexempt use of the property for which the purchaser had given an exemption certificate that use is considered a retail sale by the purchaser when the item is first used by the purchaser. The sales price (see Minnesota Statutes, section 297A.01, subdivision 8, regarding the calculation of sales price) must be reported as a purchase subject to use tax on the sales and use tax return.

If the purchaser does not have a sales tax permit and is not required to file a sales and use tax return, the purchaser must file a consumer's use tax return.

Use of the property for demonstration or display while holding it for sale or lease in the regular course of business is not a taxable use by the purchaser.

Subp. 2. **Temporary use.** If the purchaser temporarily uses the property other than for demonstration or display, while holding it for sale or lease, the use tax is calculated on the reasonable rental value of the property.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3300 FUNGIBLE GOODS FOR WHICH EXEMPTION CERTIFICATE GIVEN.

Subpart 1. **Defined.** Fungible goods are movable goods which may be estimated and replaced according to weight, measure, and number. Such goods comprise those belonging to the same class that do not have to be dealt with in specie (retaining existence as a distinct individual of a particular class). Common examples of fungible goods are grain in silos or elevators, oil in tanks, coal in hoppers, and lumber in piles. See Minnesota Statutes, section 297A.13.

Subp. 2. [Repealed, 15 SR 693]

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3400 DIRECT PAY PERMIT PROCEDURE.

Subpart 1. **Issuance.** The commissioner of revenue may issue a direct pay permit to certain persons who:

A. purchase substantial amounts of tangible personal property for business use under circumstances that normally make it difficult or impractical at the time of purchase to determine whether such property will be subject to the sales tax or whether the use thereof will be exempt; and

B. hold a sales and use tax permit.

Subp. 2. **Payment.** The holder of a direct pay permit must report and pay the applicable use tax directly to the commissioner instead of paying the sales tax to its vendors with respect to all materials purchased pursuant to a direct pay permit.

Subp. 3. **Application.** An application for a direct pay permit must be submitted to the commissioner of revenue. The application should be in the form of a letter containing the applicant's name, address, sales and use tax account number, description of the business, description of accounting system to reflect the proper amount of tax due, volume of purchases, and justification for adopting the direct pay method.

Subp. 4. **Qualification requirements.** To qualify for a direct pay permit, a business must demonstrate to the satisfaction of the commissioner that:

A. the nature of the business is such that the direct pay method will materially reduce the administrative work of collecting the tax;

B. the firm's accounting system will clearly reflect the proper amount of tax due;

C. the firm makes taxable purchases in sufficient volume to justify the expense of regular audits by the Department of Revenue; and

D. it is in the best interests of the state to issue the permit.

Each person whose application is approved will receive a direct pay permit which will be numbered, dated, and signed by the commissioner or the commissioner's delegated representative.

Subp. 5. **Holder's duties to vendors.** The holder of a direct pay permit must furnish a copy of the direct pay permit or a statement that the holder holds a direct pay permit, the number of the permit and the date issued, to each vendor from whom the holder purchases tangible personal property on which an exemption is claimed. The use of the permit will relieve the vendor from the responsibility of collecting the sales tax on sales made to a direct pay permit holder. Each person issued a direct pay permit must keep a current list of all vendors from whom purchases are made under the direct pay method, and, upon request by the commissioner, must submit such list for examination.

The holder of a direct pay permit must either issue the permit to all vendors required to collect Minnesota sales and use taxes (except those excluded in subpart 6), and accrue all

liability as a use tax, or maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales taxes paid to vendors in each reporting period.

If the holder of the permit chooses the latter alternative, then all purchases from any one supplier must be made either exempt or taxable. It is not permissible to request the vendor to assess the sales tax on only selected transactions.

Subp. 6. Certain transactions not permitted. A holder of a direct pay permit may never use it in connection with the following transactions:

- A. purchases of taxable food or beverages;
- B. purchases of taxable lodging or services related thereto;
- C. purchases of admissions to places of amusement or athletic events, or the privilege of use of amusement devices;
- D. purchases of motor vehicles taxed under Minnesota Statutes, chapter 297B; and
- E. purchases of any of the taxable services listed in Minnesota Statutes, section 297A.01, subdivision 3, paragraphs (g) to (l).

Subp. 7. Permit revocable and not transferable or assignable. A direct pay permit is not transferable nor may the use of a direct pay permit be assigned to a third party. The commissioner may revoke a direct pay permit at any time the permit holder fails to comply with the conditions under which the permit was granted or for any other reason constituting misuse of the permit. The direct pay permit may also be revoked where the commissioner determines that its continued use is contrary to the best interests of the state of Minnesota.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3500 MOTOR CARRIERS IN INTERSTATE COMMERCE.

Subpart 1. Direct payment and notice. Under Minnesota Statutes, section 297A.211, persons described in subpart 2 engaged in interstate for-hire transportation of property by motor vehicle may elect to pay sales and use taxes directly to the commissioner of revenue on mobile transportation equipment and parts and accessories attached or to be attached to such equipment. Electing carriers shall give notice of such election to the commissioner of revenue and shall pay taxes due in accordance with provisions of this part. Required notice shall be in the form of a letter setting forth the electing carrier's name, address, sales and use tax account number, and accompanied by the carrier's certificate of public convenience and necessity issued by the Interstate Commerce Commission or other evidence such as the file number issued by the Minnesota Department of Public Service to verify that it is a carrier engaged in transporting tangible personal property in interstate commerce.

Subp. 2. Persons included. For periods prior to April 7, 1977, persons referred to in subpart 1 includes only common carriers of tangible personal property and does not include carriers which possess permits as contract carriers issued by the Interstate Commerce Commission. Subsequent to April 6, 1977, persons referred to in subpart 1 include:

- A. persons possessing a certificate or permit authorizing for-hire transportation of property from the Interstate Commerce Commission or the Minnesota Department of Public Service;
- B. persons transporting commodities defined as exempt in for-hire transportation in interstate commerce; and
- C. persons who, pursuant to contracts with persons described in items A or B, transport tangible personal property in interstate commerce.

Persons engaged solely in the transportation of passengers and their baggage do not come within the provisions of Minnesota Statutes, section 297A.211.

Subp. 3. Motor carrier direct pay certificate. A motor carrier direct pay certificate will be issued to qualified electing carriers by the commissioner of revenue and will be effective as of the date shown on the certificate.

Subp. 4. Governing provisions. Carriers which elect to pay the Minnesota sales and use tax under the provisions of Minnesota Statutes, section 297A.211, shall be governed by the following:

A. They shall hold or must have applied for a Minnesota sales and use tax permit. Application for such a permit, form MB-A, should accompany the carrier's notice of election if none had previously been applied for.

B. Sales and use taxes due on the purchases and leases of tangible personal property other than mobile transportation equipment and parts and accessories attached or to be attached thereto shall be paid directly to retailers authorized to collect the Minnesota tax at the same time and in the same manner as though no election had been made. Such property may not be purchased or leased exempt under a motor carrier direct pay certificate.

C. Mobile transportation equipment intended for use both within and without Minnesota and parts and accessories attached or to be attached thereto may be purchased or leased tax free by presenting a copy of motor carrier direct pay certificate to the seller.

(1) Mobile transportation equipment includes trucks, tractors, and trailers used in interstate transportation.

(2) Parts and accessories attached or to be attached thereto includes refrigeration equipment, tires, batteries, repair parts, and any other property which is attached or affixed to such mobile transportation equipment.

(3) Not included in mobile transportation equipment and parts and accessories attached or to be attached thereto are equipment such as flashlights, flares, grease, oil, antifreeze, additives, containers used for packing and transporting customers' goods, dollies, pallets, hand trucks, forklift trucks, snowplows, local pickup and delivery vehicles, other warehouse and plant equipment, office supplies and equipment, etc.

D. Sales and use taxes due in respect of mobile transportation equipment and parts and accessories attached or to be attached thereto shall be paid directly to the commissioner of revenue by way of a return filed on or before the 25th day of the month following the purchase or rental of such property. Such return shall be made on form ST-1, sales and use tax return. On line 4 of such return there shall be shown the sum of:

(1) the sales price of items purchased or leased other than mobile transportation equipment and parts and accessories attached or to be attached thereto, which are subject to the use tax and upon which no sales or use tax has previously been paid; and

(2) an amount determined by multiplying the total cost of mobile transportation equipment and parts and accessories attached or to be attached thereto purchased or leased during the month by a fraction, the numerator of which is the road mileage operated during the past calendar year within Minnesota and the denominator of which is the total road mileage operated during the past calendar year. Mileage figures shall be based on records required to be maintained by the Interstate Commerce Commission. Persons qualifying for motor carrier direct pay certificate who are not subject to ICC regulations must, as a condition of qualification, maintain on a current basis the same type of mileage records that are required to be kept by persons subject to regulation by the ICC.

For purposes of the computation in subitem (2), the total cost of mobile transportation equipment and parts and accessories attached or to be attached thereto shall include the sales price of all such property purchased and the total payments for lease or rental (not including interchange between carriers) of such property for use in interstate commerce within or without Minnesota, irrespective of whether such property was physically present in Minnesota. Total road mileage operated during the past calendar year shall mean mileage operated by all such property including property which did not operate in Minnesota. For a new carrier without a prior year's mileage, an estimated ratio may be used subject to approval by the commissioner.

E. Where sales or use tax has been paid to another state on an item which is includable in the Minnesota return, a credit is allowable for such tax (limited to the Minnesota sales and use tax rate) in the same ratio as the cost of the item is included in the Minnesota tax base.

F. Withdrawal of an election to come under the provisions of Minnesota Statutes, section 297A.211, shall become effective only upon notice of such intent and return of the motor carrier direct pay certificate to the commissioner of revenue. If such election is withdrawn, subsequent reelection shall be effective only upon approval of the commissioner of revenue. Common motor carriers which do not elect to pay Minnesota sales and use tax under the provisions of Minnesota Statutes, section 297A.211, shall be governed by the following.

(1) Prior to January 1, 1972, carriers shall pay the sales and use tax directly to registered retailers on all purchases of mobile transportation equipment, parts, accessories, equipment, and supplies not exempt under the provisions of the Sales and Use Tax Law. If the retailer is not registered, the carrier shall pay the use tax directly to the commissioner of revenue.

(2) Subsequent to December 31, 1971, mobile transportation equipment subject to the motor vehicle excise tax under the provisions of Minnesota Statutes, chapter 297B, is not subject to the Minnesota sales and use tax. A motor vehicle excise tax, equal to the sales and use tax rate, is collected at the time such equipment is registered in Minnesota. On purchases of parts, accessories, equipment, and supplies, not exempt under provisions of the Sales and Use Tax Law, the carrier shall pay the sales and use tax directly to registered retailers. If the retailer is not registered, the carrier shall pay the use tax directly to the commissioner of revenue.

Statutory Authority: *MS s 297A.29*

History: *L 1995 c 233 art 4 s 4; L 1995 c 248 art 4 s 4*

8130.3600 FLEA MARKET OPERATORS.

Subpart 1. **In general.** The operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar event must obtain evidence that any person desiring to engage or conduct business on the premises owned or controlled by the operator holds a valid seller's sales tax permit or obtain a written statement from the seller that items offered for sale are not subject to sales tax. See Minnesota Statutes, section 297A.041.

Even if the operator of one of these events fails to obtain the required evidence, a seller making taxable sales at those events must still obtain a permit and collect the tax unless there is an applicable exemption in Minnesota Statutes, chapter 297A.

Subp. 2. **Form to use.** The commissioner has prepared a form, Flea Market Operators Certificate of Compliance, for use by operators for complying with this law. Show event operators are required to keep completed certificates as part of their business records.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

ADMINISTRATION OF THE USE TAX

8130.3800 IMPOSITION OF USE TAX.

The "use tax" is a compensating or complementary tax, reaching the use, storage, or consumption of certain items purchased for use in Minnesota.

The use tax shall be imposed in accordance with the applicable provisions of the Sales and Use Tax Law that are controlling with respect to the imposition of the sales tax.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3850 COMPUTATION OF USE TAX.

Compute the tax on the sales price to the nearest full cent. For sales under \$1, use the following guidelines:

A. In the computation of the amount of use tax to be collected on any transaction subject to a four percent rate, amounts of less than one-half cent may be disregarded and the amounts of one-half cent or more are considered as an additional cent. Thus, on a sale of 12 cents or less, the purchaser pays no tax; on a sale from and including 13 cents to and including 37 cents, the purchaser is required to pay one cent tax; on a sale from and including 38 cents to and including 62 cents, the purchaser is required to pay two cents tax; on a sale from and including 63 cents to and including 87 cents, the purchaser is required to pay three cents tax; on a sale from and including 88 cents to and including \$1.12, the purchaser is required to pay four cents tax; on a sale in excess of \$1, the purchaser is required to pay four percent on each full dollar plus the appropriate amount from the brackets above.

B. In the computation of the amount of tax to be collected on any transaction subject to a five percent rate, amounts of less than one-half cent may be disregarded and the

amounts of one-half cent or more are considered as an additional cent. Thus, on a sale of nine cents or less, the purchaser pays no tax; on a sale from and including ten cents to and including 29 cents, the purchaser is required to pay one cent tax; on a sale from and including 30 cents to and including 49 cents, the purchaser is required to pay two cents tax; on a sale from and including 50 cents to and including 69 cents, the purchaser is required to pay three cents tax; on a sale from and including 70 cents to and including 89 cents, the purchaser is required to pay four cents tax; on a sale from and including 90 cents to and including \$1.09, the purchaser is required to pay five cents tax; and on a sale in excess of \$1, the purchaser is required to pay five percent on each full dollar plus the appropriate amount from the brackets above.

C. In the computation of the amount of tax to be collected on any transaction subject to a six percent rate, amounts of less than one-half cent may be disregarded and the amounts of one-half cent or more are considered as an additional cent. Thus, on a sale of eight cents or less, the purchaser pays no tax; on a sale from and including nine cents to and including 24 cents, the purchaser is required to pay one cent tax; on a sale from and including 25 cents to and including 41 cents, the purchaser is required to pay two cents tax; on a sale from and including 42 cents to and including 58 cents, the purchaser is required to pay three cents tax; on a sale from and including 59 cents to and including 74 cents, the purchaser is required to pay four cents tax; on a sale from and including 75 cents to and including 91 cents, the purchaser is required to pay five cents tax; on a sale from and including 92 cents to and including \$1.08, the purchaser is required to pay six cents tax; and on a sale in excess of \$1, the purchaser is required to pay six percent on each full dollar plus the appropriate amount from the brackets above.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.3900 LIABILITY FOR PAYMENT OF USE TAX.

Subpart 1. **General rule.** Minnesota Statutes, section 297A.15, imposes upon the purchaser of tangible personal property used, stored, or consumed in Minnesota, liability for the use tax until the tax has been paid to Minnesota. However, where the purchaser can satisfy the commissioner that the tax has been collected from the purchaser by a retailer who is required under Minnesota Statutes, chapter 297A, to collect sales or use tax for Minnesota, or by a retailer authorized by the commissioner to collect the tax, the purchaser's liability for payment of the tax due is extinguished.

Subp. 2. **Collection authorization.** Where a seller who is not required to collect Minnesota sales or use tax indicates a willingness to collect a use tax on tangible personal property sold to persons located in Minnesota, authorization to do so may be granted to the seller provided the seller agrees:

A. to collect the use tax due from customers on storage, use, or consumption in Minnesota of taxable personal property in accordance with Minnesota Statutes, section 297A.16;

B. to file a Minnesota sales and use tax return for each month on or before the 20th day of the succeeding month (see Minnesota Statutes, section 289A.18), and to remit the use tax collected to Minnesota. (See Minnesota Statutes, section 289A.31); and

C. to maintain adequate records of all sales of taxable personal property made to persons within Minnesota.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.4000 COLLECTION OF TAX AT TIME OF SALE.

Subpart 1. **Duty to collect tax.** The following persons making taxable sales for use, storage, or consumption in Minnesota are required to collect the use tax from the purchaser at the time of sale, and give to the purchaser a receipt or other written or printed memorandum evidencing payment of the tax:

A. an out-of-state retailer maintaining a place of business in Minnesota;

B. a retailer who has voluntarily filed an application for a permit and has been granted one under Minnesota Statutes, section 297A.21, subdivision 5; or

C. a retailer making retail sales from outside this state to a destination within this state if the retailer engages in the regular or systematic soliciting of sales from potential customers in this state.

If the tax is not imposed under Minnesota Statutes, chapter 297A, because of exemptions enumerated therein, the retailer is not required to collect the tax.

Subp. 2. Retailer maintaining a place of business in Minnesota. "Retailer maintaining a place of business in Minnesota" is defined for purposes of this part as any retailer having or maintaining within Minnesota an office, distribution house, sales house, warehouse, a manufacturer's representative, salesperson, or any agent operating within this state under the authority of the retailer, whether the place of business or agent is located in Minnesota permanently or temporarily. Thus when a manufacturer's representative, salesperson, or agent is operating within Minnesota on behalf of the out-of-state retailer, the out-of-state retailer is required to have a permit, collect the Minnesota use tax from the customer, and remit the tax to the state of Minnesota. See Minnesota Statutes, section 297A.21, subdivision 1.

Subp. 3. Outstate business. Outstate business making deliveries to Minnesota customers in its own trucks is responsible for the collection and remittance of the use tax imposed on Minnesota buyers.

Subp. 4. Manufacturer's representative. When a manufacturer's representative takes the order and bills the purchaser and collects for the merchandise, the representative is then considered a vendor for purposes of administering the Minnesota Sales and Use Tax Law, and is required to have a permit and collect the sales tax from the customer.

Subp. 5. Penalty. Where an out-of-state vendor does not have a Minnesota sales and use tax permit, any manufacturer's representative, salesperson, agent, or employee of the vendor, who sells, solicits orders for, or delivers tangible personal property in this state for such vendors, is guilty of a misdemeanor. See Minnesota Statutes, section 289A.63, subdivision 6.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693; 17 SR 1279*

8130.4100 [Repealed, 15 SR 693]

8130.4200 REGISTRATION.

Subpart 1. Duty to obtain a permit. The following persons making sales of items subject to the imposition of the use tax under Minnesota Statutes, section 297A.14, are required to obtain a sales and use tax permit from the commissioner:

A. any retailer maintaining a place of business in Minnesota; or

B. any retailer making retail sales from outside this state to a destination within this state if the retailer engages in the regular or systematic soliciting of sales from potential customers in this state.

Subp. 2. [Repealed, 15 SR 693]

Subp. 3. Required information. Each applicant must furnish the commissioner with the names and addresses of all the applicant's agents operating in Minnesota and the location of each of the applicant's distribution and sales houses or offices or other places of business within this state.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.4300 PROPERTY BROUGHT INTO MINNESOTA.

Subpart 1. General rule. Except as provided in Minnesota Statutes, section 297A.25, subdivision 32 (which exempts personal property from the tax where brought in by a nonresident just prior to becoming a resident), Minnesota Statutes, section 297A.23, places the burden of proof on the purchaser of tangible personal property to prove that the items which were shipped or brought into Minnesota by such purchaser were not purchased from a retailer for storage, use, or consumption in Minnesota, and thus are not subject to Minnesota sales or use tax. Whether the property has been purchased for use in Minnesota usually will be determinable at or near the time of its purchase. Thus, a nonresident purchaser who can show

that property had been purchased and previously used in another state for a reasonable period of time before being brought into Minnesota for use therein, usually will be deemed to have satisfied the requirements of Minnesota Statutes, section 297A.23.

Subp. 2. Credit for tax paid to other state. Whether a use tax is due and payable to Minnesota depends upon whether a tax is legally imposed by some other state. The credit is limited to sales or use tax legally owed to another state of the United States. This credit is not allowed for taxes paid to governmental subdivisions or foreign countries. See Minnesota Statutes, section 297A.24.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.4400 CREDIT AGAINST USE TAX.

Subpart 1. General rule. Under Minnesota Statutes, section 297A.24, a credit is allowed against the use tax due under Minnesota Statutes, section 297A.14, from any person on any item purchased by the person where the item has previously been subjected to a sales or use tax in another state. The credit is allowed to the extent of the rate legally imposed on the item in the other state. If the tax paid in the other state is subject to refund by the other state, it is not legally imposed for purposes of this credit. If the rate imposed by the other state is equal to or higher than the rate imposed under Minnesota Statutes, section 297A.14, then no tax is due.

Calculation of use tax due is governed by Minnesota Statutes, section 297A.24. That section states that use tax provisions apply only at the rate measured by the difference between the rate fixed by Minnesota Statutes, section 297A.14, and the rate by which the previous tax was calculated in the other state. The maximum amount of tax which will be assessed by Minnesota according to Minnesota Statutes, section 297A.24, is the amount of tax calculated from the Minnesota rate. Use tax due to Minnesota is the tax prescribed by the rate in Minnesota Statutes, section 297A.14, less the rate paid in the state of purchase. If the sales tax imposed in the state of purchase is equal to or greater than the amount of Minnesota use tax, no Minnesota use tax is due.

Subp. 2. Erroneous tax payment. A Minnesota taxpayer who erroneously pays a sales tax to another state may not take a credit against the tax due Minnesota on the Minnesota return. Credit is allowed against the tax due Minnesota if the Minnesota taxpayer has legally paid a sales tax to another state and may only be taken by the person who paid the tax to the other state.

Subp. 3. Tax credit limitation. Credit for taxes paid to other states is limited to the sales and use tax paid to another state in the United States. This credit is not allowed for taxes paid to governmental subdivisions or foreign countries.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

EXEMPTIONS

8130.4700 FOOD PRODUCTS.

Subpart 1. Exemption. The Sales and Use Tax Law exempts the sale of food products for human consumption. However, a tax is imposed on the furnishing, preparing, or serving, for a consideration, of food, meals, or drinks. See part 8130.0800, subpart 2, for criteria determining taxability.

Subp. 2. Food products. "Food products" include, but are not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.

"Food products" also include the following items: baking powder and soda, breath mints, beverage powders, candy, edible cake decorations, cough drops, crackerjacks, chips (potato, corn, etc.), chip dip, cooking oils, cooking wine, flavoring, fizzies, freezer pop ingredients, food coloring, gelatin, ice cream, fruit juices, lozenges, malted milk powder, nuts,

nonalcoholic cocktail mixes, raisins, saccharin and other sweeteners, salad dressing, seasonings, condiments, herbs, relishes, sauces, gravies, sherbet, shortening, soft drinks, vanilla, vitamins, tonic water, and charged water.

Subp. 3. **Not food products.** Beer, alcoholic beverages, nonedible cake decorations, Easter egg dye, gum, garden seeds, ice cubes, pet food, softener salt, distilled water, and spring water are not food products.

Subp. 4. **Mixed products.** When a package contains both food and nonfood products (a holiday basket of food or candy, trays of assorted meats, cups or glasses filled with food items, etc.) the application of the tax depends upon the relative value of the components. When the retail value of the nonfood portion of the package is ten percent or more of the total retail value, tax applies to the retail value of the nonfood portion if its price is stated separately; if the price of the package is a lump sum, tax applies to the entire price. When the retail value of the nonfood portion of the package is less than ten percent of the total retail value, the entire package is exempt.

Statutory Authority: *MS s 297A.29*

8130.4800 DRUGS, THERAPEUTIC AND PROSTHETIC DEVICES.

Subpart 1. **In general.** Minnesota Statutes, section 297A.25, subdivision 3, provides for exemption from sales and use tax for therapeutic and prosthetic devices, prescription glasses, and similar products consumed by humans for the preservation of health. Also exempt are diagnostic materials for individual use and prescribed drugs and medicines (prescribed or nonprescribed) used in the cure, mitigation, treatment, or prevention of illness or disease in humans.

Devices which are not exempt because they are not inherently therapeutic include dental and surgical tools and apparatus, anesthesia equipment, diagnostic and monitoring equipment and materials, protective equipment, and items in general use, such as furniture, air conditioners, air filters, humidifiers not exclusively for use with inhalation therapy equipment, and exercise equipment.

Subp. 2. **Exempt drugs.** Items shall be deemed to be exempt drugs where they are used in the cure, mitigation, treatment, or prevention of illness or disease, or the treatment of an injury in humans, or to be consumed for the preservation of health in accordance with words, statements, or pictures on the labels of the containers of packages in which such items are sold.

Subp. 3. **Therapeutic and prosthetic devices are exempt.** To qualify for exempt status, a therapeutic device must not only be useful in the preservation of health, it must also serve to cure or heal. Exempt therapeutic devices are attached or applied to the bodies of human patients to alleviate injuries, illness, or disease, either directly or by administering a curative agent. Examples of exempt items are hypodermic syringes, oxygen tents, vaporizers, resuscitators, hospital beds, and equipment and supplies necessary for dialysis treatment.

Prosthetic devices are those which replace injured, diseased, or missing parts of the human body, either temporarily or permanently.

Subp. 4. **Cosmetics and toiletries.** Cosmetics, which are defined as articles intended to be rubbed, poured, sprinkled, or sprayed on, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering appearances are not exempt from the tax.

Toiletries are generally items used for shaving, hair dressing, and grooming purposes, and are somewhat analogous to cosmetics. Toiletries are not exempt from the tax.

Subp. 5. **Purchases by doctors of medicine and dentistry.** The purchase of materials, supplies, and equipment is subject to the sales and use tax unless the particular item purchased is itself an exempt item when purchased by an individual for the individual's own use.

A. For example, the purchase by such professionals for use in their own office of drugs and medicines would not be subject to tax, nor would the purchase of prosthetic devices such as artificial limbs or eyes be subject to tax.

B. The purchase by doctors of medicine and dentistry of materials such as pumice, tongue depressors, and stethoscopes, which are not in and of themselves exempt from the tax, would be subject to tax when purchased by such professionals.

C. Sales of tangible personal property to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from the sales tax. These include artificial teeth and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling material, teeth braces, and retainers.

D. The exemption does not apply to diagnostic equipment such as an X-ray machine, as this equipment is subject to tax.

Subp. 6. Sales and purchases by ophthalmologists, optometrists, and opticians: Sales of prescription glasses and items incidental thereto or which become parts thereof, such as carrying cases and contact lens solution, are exempt. Prescription glasses are any lenses ordered by a doctor of medicine or optometry for the correction of a patient's refractive error, for the improvement of a patient's vision, or for protective purposes. Only lenses which have been prescribed by an ophthalmologist or optometrist pursuant to an examination of the particular client are exempt, whether dispensed by the examining practitioner or by another practitioner or optician filling such prescription.

A. Over-the-counter sales of lenses and other tangible personal property without prescription therefor in accordance with the above are taxable. These include safety glasses, sunglasses, telescopes, binoculars, field glasses, opera glasses, lorgnettes, magnifying glasses, and jewelry, including spec chains.

B. Ophthalmologists and optometrists are primarily engaged in rendering professional services. The entire charge by them, comprised of fees for examining eyes and fitting glasses, and of the glasses sold pursuant thereto, are exempt whether separately stated or not. Practitioners who are engaged in sales solely of services and such prescribed glasses need not procure sales and use tax permits or file sales tax returns. Practitioners who engage in sales of taxable items in addition to services and prescribed glasses must obtain sales and use tax permits and must thereafter collect and remit taxes due thereon.

C. Opticians are primarily engaged in the business of selling tangible personal property at retail. The personal services they render are incidental thereto. They are, therefore, required to procure sales and use tax permits, and to collect and remit the tax on all sales at retail except sales of prescription glasses. Charges made by opticians for eye glasses and kindred products in filling prescriptions of ophthalmologists or optometrists are exempt.

D. Purchases by ophthalmologists, optometrists, and opticians of lenses and other items for resale to clients and customers are exempt. All purchases by them of machinery, equipment, instruments, tools, accessories, appliances, contrivances, furniture, and fixtures, and fuel, electricity, gas, or steam used for space heating or lighting, used or consumed in connection with their services or business are taxable.

Subp. 7. Guide list of exempt items. Exempt items are:

A. Drugs not requiring a prescription:

(1) analgesics (internal and external, for relief of pain or discomfort) such as Absorbine Jr., rubbing alcohol, Alka-Seltzer, aspirin, Ben-Gay, Bromo-Seltzer, Bufferin, Infra-rub, liniments, musterole, surin, and 666 Salve;

(2) antacids (for relief of acidity, stomach discomfort, indigestion) such as Alka-Seltzer, Alkoid, Bellans, Bisodol, Chooz, Co-gel, Creamalin, Gelusil, Milk of Magnesia, Roloids, soda mint, and Tums;

(3) antiseptics (the primary ingredient of such is used for treatment of infection) such as acne preparations, alcohol swabs, Bactine, boric acid, Campho-Phenique, Desenex, Fostex, Iodine, peroxide (three percent, not for bleaching hair or other toilet purposes), PhisoHex, rubbing alcohol, Sea Breeze, sodium perborate, tincture of green soap, tincture of iodine, tincture of mercurochrome, and tincture of merthiolate;

(4) astringents such as Burrow's Solution and styptic products;

(5) baby needs such as antiseptic powders, lotions and talcum powders, and oils and ointments;

(6) burn remedies (for treatment of burns or to relieve pain from burns, including sunburn) such as americaine, nupercainal ointment, Surfaccaine, Unguentine, Vaseline, and vitamin A-D ointment;

(7) cough and cold items such as aerosol inhalants, antihistamines such as Coricidin, Aspergum, cough or cold syrups, drops, tablets, and preparations, decongestants such as Contac, inhalants, lozenges, and rubs such as Vicks;

(8) dental and oral hygiene products such as analgesic toothache preparations and dental repair kits;

(9) diet aids (considered as foods) such as Metrecal, Nutrament, salt substitutes, and Sustagen;

(10) emollients (antiseptics, protective, antibiotic, and anti-inflammatory) such as antibiotic ointments, boric acid, Caladryl, calamine lotion, camphor ice, Kerodex Barrier Cream, lip ice, Lobana Loto Creme, and zinc oxide ointment;

(11) eye preparations (for healing, treatment, or other therapeutic use) such as contact lens solutions, drops, ointments, and washes;

(12) feminine and contraceptive needs such as creams, foams, jellies, pessaries, powders, prophylactic devices, and suppositories;

(13) first aid products (for treatment of infection or to relieve pain) such as back plaster, band-aid, foam and moleskin products (adhesive), mustard plaster, surgical cotton, surgical dressings, surgical gauze, and surgical tape;

(14) foot products (for treatment or prevention of infections or for removal of corns or calluses) such as athlete's foot preparations or treatments and corn pads and callus plasters;

(15) laxatives, cathartics such as Alophen pills, Ex-Lax, Feenamint, Milk of Magnesia, and mineral oil;

(16) miscellaneous dosage forms such as enema preparations, insulin, rectal preparations, and suppositories;

(17) vitamin-mineral products such as brewers yeast, cod liver oil, dietary supplements, Geritol, and therapeutic vitamins.

B. Therapeutic and prosthetic devices:

(1) first aid such as first aid kits and infrared lamps and bulbs;

(2) hypodermic syringes and needles;

(3) medical-surgical rubber goods such as catheters, heating pads, hot water bottles, ice bags, rubber gloves and finger cots, and surgical rubber goods (colostomy devices, etc.);

(4) miscellaneous medical-surgical, such as abdominal belts and supports, batteries (hearing aid), bed-wetting prevention devices, breast pumps, cotton tip applicators (Q-tips), elastic bandage, elastic stockings, elastic supports (wrist, ankle, knee), infant syringes, medical atomizers, nebulizers, and vaporizers, suspensories, and trusses;

(5) orthopedic devices such as braces, canes, crutches, splints, and wheel-chairs;

(6) surgical dressings and bandages such as elastic bandages.

C. Diagnostic agents (for individual use): Clinitest tablets; fever thermometers; Tes-Tape.

D. Miscellaneous: pesticides, such as Cuprex.

Subp. 8. Guidelist of taxable toiletries, cosmetics, and equipment. Taxable toiletries, cosmetics, and equipment:

A. General.

(1) Antiseptics, such as B.K. Powder, for general household cleaning agents such as Clorox bleach, Hilex, and Lysol; peroxide (20 percent) for bleaching hair and other toilet purposes.

(2) Astringents such as astringent aftershave products and astringent deodorants.

(3) Dental and hygiene products such as dental floss, liners, mouthwashes, stain removers, toothbrushes, and toothpastes and powders.

(4) Eye preparations such as cosmetics.

(5) Feminine and contraceptive needs such as belts, douche kits, sanitary napkins, and tampons.

(6) Foot products (for comfort, appearance, or cosmetic use) such as deodorizers and foot lotions (for cosmetic use).

(7) Miscellaneous items such as ultraviolet (sun) lamps and bulbs, air conditioners and purifiers, athletic supporters, atomizers for cosmetic and grooming use, baby and bathroom scales, bedpans, filter masks, humidifiers, massage appliances and furniture, medic alert bracelets, oxygen tanks, sheeting (plastic and rubber), tongue depressors, urinals, and whirlpool baths.

(8) Shaving products such as aftershave talcum powders and lotions, blades, razors, shaving cream, and soaps.

(9) Facial preparations such as face creams and makeup preparations and accessories.

(10) Fragrance preparations such as colognes, perfumes, and toilet-waters.

(11) Hair care items such as combs, curlers, dandruff shampoo, dyes, hats, lotions, rinses, shampoos (all kinds except on Rx), tints, and wave sets.

(12) Hand products such as beautifiers, and creams and lotions.

(13) Suntan preparations (for tanning) such as Bronze Tan, Coppertone, Sea and Ski tan, and Skol.

(14) Pesticides such as Black Flag spray or liquid, bug bombs, insect repellents such as 6-12, mothballs, rat poison, and D-Con.

B. Detailed listing: aftershave creams, lotions, or powders; almond meal and paste; antiperspirants; aromatic cachours (Sen Sen); astringents (aftershave, antiperspirants, cosmetic, etc.); atomizers (containing perfume and other taxable liquids); bandoline; bath crystals, bath milks, bath oils, bath powders, bath salts, bath tablets; bay rum; beauty creams, mask preparations, etc.; bleach creams and lotions (including freckle remover); bouquet liquids; breath sweeteners; brilliantines; bubble bath preparation; cleansing creams and lotions (including those for removing stains from the skin); cocoa butter (if advertised or labeled for toilet purposes); cold cream; colognes; compacts (containing rouge or powder), compact refill cosmetics; cosmetic stocking preparations and body paints; cuticle softeners and removers; depilatories; deodorants (even though having medicinal or curative value, if advertised or labeled for use as body deodorant); deodorants (for use in closets, bureau drawers, etc., and for imparting fragrance to clothing); dusting powders; essences (and extracts, perfume); eyebrow pencil, eyelash mascara (and eyelash and brow dyes), eye shadows; face creams, face lotions (and facial oils), face packs, face powders (loose and cake form); fingerwave lotions; floral essences; foundation makeup film; freckle removers; fuller earth (if recommended for toilet purposes); glycerine and rose water; hair bleaches, hair dressings, hair dyes, hair lotions, hair oils, hair pomades, hair removers, hair restoratives, hair sprays, hair straighteners, hair tints and rinses, hair tonics; hand creams, hand lotions; henna; hypoallergenic preparations (including cleaning preparations and soaps); Kleenex; lavender water; leg makeup; lip pomade, lipsticks, and lipstick refills; liquid face powder; liquid lip color; liquid stockings; manicure preparations; mascara; mittens (containing toilet powder); mustache wax; nail bleaches, nail polishes (paste, powder, and liquid); nail whitener; Noxema; olive oil (colored or perfumed, or recommended for toilet purposes); orange flower water; orris root; perfumes, perfume ingredient kits, perfume novelties (containing perfume); permanent waving creams, lotions, neutralizer, permanent waving kits; peroxide (regardless of strength, if for use in bleaching hair or for other toilet purposes); plucking creams (for use in connection with plucking hair); pore cleansers; powder bases (liquid and cream); protective creams (having toilet claims or used as skin creams or antiperspirants); rock salt bath crystals; rose water; rouges; sachets (containing powder or aroma-producing materials); scalp lotions and ointments (for use as treatment for dry, oily, or falling hair); shampoos (except Rx); skin balms, bleaches, creams, fresheners, lotions, oils, tonics, whiteners, stain removers; shaving preparations; sunburn preventatives (if recommended for use before exposure); talcum powder; texture creams; tissue creams; toilet ammonia; toilet creams; toilet lanolin; toilet waters; tucks; vanishing creams; Washettes; water softeners (perfumed or having toilet

claims); wave set (paste, powder, and lotion); witch hazel; and wrinkle removing or concealing preparations.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.4900 CONSTITUTIONAL EXEMPTIONS.

Subpart 1. Applicable law. Minnesota Statutes, section 297A.25, subdivision 4, exempts from the provisions of the Sales and Use Tax Law, the gross receipts from the sale of, and the storage, use, or other consumption in Minnesota of tangible personal property, tickets or admissions, electricity, gas, or local exchange telephone service which the state is prohibited from taxing under the United States Constitution or the state constitution.

Subp. 2. Intergovernmental immunity. The doctrine of intergovernmental immunity developed by the federal courts in their construction of the federal constitution precludes the state of Minnesota from imposing a tax upon the federal government, its agencies, and instrumentalities. For purposes of this part, the federal government, its agencies, and instrumentalities are referred to as the "federal government."

A. The following corporations are examples of entities whose purchases are exempt from Minnesota sales and use tax: Agricultural Credit Association, American Red Cross, Banks for Cooperatives, Commodity Credit Corporation, Export-Import Bank, Farm Credit Bank, Farm Security Administration, Farmers Home Administration, Farmers Home Corporation, Federal Credit Union, Federal Crop Insurance Corporation, Federal Deposit Insurance Corporation, Federal Farm Mortgage Corporation, Federal Home Loan Bank, Federal Land Bank Association, Federal Land Credit Association, Federal National Mortgage Association, Federal Reserve Bank, Federal Savings and Loan Insurance Corporation, Government National Mortgage Association, National Bank for Cooperatives, Production Credit Association, Reconstruction Finance Corporation, Tennessee Valley Authority, United States Housing Authority, and United States Maritime Commission.

B. A federally chartered bank or savings association is not a federal instrumentality or corporation. See subpart 6.

C. The fact that the expenses of an individual or organization are reimbursed wholly or in part by the federal government does not exempt the taxable items from sales or use tax. Purchases must be billed to and paid for directly by the federal government in order to be exempt. For example, meals and lodging billed to and paid for by the federal government are exempt. Meals and lodging billed to and paid for by a federal employee who is subsequently reimbursed by the federal government are taxable.

D. The federal government is not required to apply for a certificate of exempt status in order to make exempt purchases. Purchase orders, payment vouchers, or other evidence which clearly establish governmental status are sufficient to authorize an exempt purchase.

Subp. 3. Commerce clause. The commerce clause of the federal constitution precludes the imposition of a sales or use tax if the imposition of the tax unduly burdens interstate commerce.

Subp. 4. Due process clause. The due process clause of the 14th amendment of the federal constitution prohibits any state from attempting to tax the sale or use of tangible personal property when the sale or use occurs outside its territorial jurisdiction.

Subp. 5. Foreign consuls. Neither sales or use tax applies to the sale or use of tangible personal property sold to foreign consular officers, employees, or members of their families, to the extent that such persons are immune from the tax. Only sales tax exemption cards issued by the United States Department of State, Office of Foreign Missions, must be accepted and no other proof of exemption may be honored. A vendor making tax exempt sales to a consular official must enter the name of the purchaser and the number of the identification card on the invoice. This evidence must be retained by the retailer to support any deduction claimed on a sales tax return for sales to foreign consuls.

The extent of the exemption is determined by the exemption the consular official's country provides to United States personnel stationed there. A vendor making a sale must verify that the purchase qualifies for the exemption by checking the information given on the back of the card which indicates the extent of the exemption.

Subp. 6. Credit unions, banks, and savings and loans.

A. Purchases made by federal credit unions are exempt from sales and use tax. Purchases made by federally chartered banks and savings and loans are subject to sales and use tax. Sales made by federal credit unions and federally chartered banks and savings and loans are taxable under the provisions of the sales and use tax law.

B. Purchases made by state chartered credit unions, banks, and savings and loans are subject to sales and use tax. Sales made by state chartered credit unions, banks, and savings and loans are taxable under the provisions of the sales and use tax law.

Subp. 7. Sales by federal government. Sales of tangible personal property or taxable services by the federal government are subject to tax, except as they may be otherwise exempted. Purchasers of tangible personal property or services from the federal government must report and remit use tax on taxable purchases if the sales tax was not collected.

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 2864; L 1995 c 202 art 1 s 25*

8130.5000 PROPERTY SHIPPED OUT OF STATE.

Subpart 1. In general. From August 1, 1967, through May 21, 1973, sales of tangible personal property were exempt when the ultimate destination of such property was outside Minnesota and the property was not returned to Minnesota except in the course of interstate commerce. Ultimate destination as used in Minnesota Statutes, section 297A.25, subdivision 5, was defined by court decision to mean not the point of delivery to the buyer, but the point at which the beneficial use of the product would take place.

After May 21, 1973, Minnesota Statutes, section 297A.25, subdivision 5, as amended, grants an exemption in either of the following two situations:

A. For property for business or personal use which the seller delivers to a common carrier for delivery outside Minnesota, places in the United States mail or parcel post directed to the purchaser outside Minnesota, or delivers to the purchaser outside Minnesota by means of the seller's own vehicles, and which is not returned to Minnesota except in the course of interstate commerce.

B. For property which is shipped or transported outside of Minnesota by the purchaser without any intermediate use (except storage, processing, fabricating, or manufacturing into other property), is used in a trade or business outside Minnesota, and is not returned to Minnesota except in the course of interstate commerce.

Subp. 2. Adequate records requirement. In order to claim this exemption the seller must have adequate records to show that the seller caused the property to be delivered to the purchaser at a location outside Minnesota or the seller must obtain an exemption certificate from the purchaser stating that the first beneficial use of the property will occur outside Minnesota and that the property will not be returned to Minnesota thereafter unless in the course of interstate commerce.

Subp. 3. Intermediate use. As used herein the term "intermediate use" does not include storing, processing, fabricating, or manufacturing into, attaching to, or incorporating into other tangible personal property, but means a beneficial use consisting of consuming, enjoying, or using the property sold in a manner in which it was designed and manufactured to accomplish. For example, in the case of mobile transportation equipment, the first use would not include the using of such property to transport it immediately to a point outside of Minnesota. However, the purchase of replacement tires in Minnesota would be subject to tax.

Subp. 4. Exemption for advertising materials. Effective January 1, 1974, Minnesota Statutes, section 297A.25, subdivision 22, provides an exemption for advertising materials which are designed to advertise and promote the sale of merchandise or services if the material is purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside the state of Minnesota.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.5100 GIFTS; TRANSFERS WITHOUT MONETARY CONSIDERATION.

Subpart 1. General rule. Generally a person purchasing property to give away in any manner is the user or consumer thereof and is liable for the sales tax thereon.

Examples: all property given as personal gifts: calendars, catalogs, etc.

Except as provided in subparts 2 and 3, sales to any person in Minnesota of tangible personal property located in this state which such person gives to any other person as a gift are subject to the sales or use tax even though the vendor delivers the property directly to the donee at a point outside Minnesota and without regard to whether such delivery is made by mail, common carrier, or otherwise. It is deemed that such property is constructively delivered to the purchaser in Minnesota and that the transportation and delivery to the outstate destination is pursuant to a transfer by gift from the donor to the donee.

Subp. 2. Advertising exceptions. Sales to any person of tangible personal property which is designed to advertise and promote the sale of merchandise or services and which is transferred by the purchaser thereof without consideration to others located outside of Minnesota are not taxable. See part 8130.5000.

Subp. 3. Prize exception. Sales to any person of tangible personal property which the purchaser thereof will use as prizes or gifts for salespersons or other persons employed in such person's business outside of Minnesota are not taxable.

Statutory Authority: *MS s 297A.29*

History: 17 SR 1279

8130.5200 CARTONS AND CONTAINERS USED BY MOVING AND TRANSFER COMPANIES.

Subpart 1. From May 22, 1973. From May 22, 1973, packing materials used to pack and ship household goods to a destination outside of Minnesota and not returned to Minnesota except in the course of interstate commerce are exempt. An exemption certificate must be furnished to the seller when such packing materials are purchased.

Subp. 2. Before May 22, 1973. Prior to May 22, 1973, packing materials used to pack and ship household goods are taxable. In these situations the furnishing of cartons and containers for packing and safe transport of property by trucking concerns engaged in the business of transporting property for hire is a sale within the meaning of Minnesota Statutes, section 297A.01, subdivision 3, if an applicable tariff specifies that such cartons or containers become the property of the customer or if the customer is charged a specific amount therefor on the contract or billing. Also, if the property was transported from Minnesota to a point without this state, title to the cartons or containers is deemed to have passed to the customer in Minnesota prior to use of the cartons by the carrier for packing unless it could be demonstrated that title did not pass until delivery to the destination.

In the case of use of cartons or containers for packing within Minnesota, prior to May 22, 1973, where it could be demonstrated that title did not pass until delivery at an outstate destination, or where neither the ICC tariff, contract, nor billing indicated a sale of the cartons or containers, the carrier is subject to the use tax imposed by Minnesota Statutes, section 297A.14.

Statutory Authority: *MS s 297A.29*

8130.5300 PETROLEUM PRODUCTS.

Subpart 1. Fuels subject to Minnesota Statutes, chapter 296. An exemption from sales and use tax is provided for petroleum products upon which a tax has been imposed under Minnesota Statutes, chapter 296, regardless of whether any part of the tax is subsequently refunded. The tax imposed by Minnesota Statutes, chapter 296, applies to all gasoline (including aviation and marine gasoline), and special fuels for highway or aircraft use.

Subp. 2. Fuels not subject to Minnesota Statutes, chapter 296. All fuels not subject to the tax imposed by Minnesota Statutes, chapter 296, are subject to sales and use tax unless exempted under other provisions of the Sales and Use Tax Law.

Example. Trucking company is a bulk purchaser (as defined in Minnesota Statutes, section 296.01, subdivision 9) and orders 100,000 gallons of petroleum products in October 1968. It instructs the distributor to deliver 70,000 gallons to a storage tank used to supply such petroleum products to licensed motor vehicles owned and operated by it. The remaining 30,000 gallons are delivered to a storage tank used to supply fuel oil for heating trucking company's premises. For the month of October 1968, trucking company reports and pays the

special fuel (as defined in Minnesota Statutes, section 296.01, subdivision 34) excise tax on 70,000 gallons. Trucking company files a sales and use tax return (if it has a Minnesota sales tax account number) or a consumer's use tax return (if it has no such account number) and reports as taxable the 30,000 gallons of petroleum products used by it for space heating, and pays a tax based upon the price per gallon multiplied by the 30,000 gallons not subjected to the highway use tax. See Minnesota Statutes, section 297A.14 for application of use tax.

Statutory Authority: *MS s 297A.29*

History: *L 1992 c 575 s 53*

8130.5400 CLOTHING AND WEARING APPAREL.

Subpart 1. In general. Sales of clothing and wearing apparel are exempt from tax.

A. "Clothing and wearing apparel" means inner and outer wear, footwear, headwear, gloves and mittens, neckwear, hosiery, and similar items customarily worn on the human body for general use, and includes fabrics, thread, buttons, zippers, and other similar items which are to be directly incorporated into wearing apparel.

"Clothing and wearing apparel" does not include patterns, thimbles, needles, pins, and other sewing equipment, jewelry, handbags, cosmetics, articles normally used or worn only in conjunction with the particular sporting or athletic activity for which they were designed, or equipment designed for use or wear only in connection with a particular work activity of the user.

B. Minnesota Statutes, section 297A.25, subdivision 8, provides that an article made of fur or pelt is not considered to be clothing or wearing apparel and is, therefore, taxable. Articles made of fur or pelt and other materials are exempt only if the retail value of the fur or pelt is less than three times that of the next most valuable material. Clothing made of synthetic fur is exempt from tax.

Example 1. Retailer sells a wool coat which has a mink fur trimming. The retail value of the fur is \$40; the retail value of the wool material is \$90. The sale of the coat is exempt from tax.

C. Examples of exempt items: aprons (household and shop), baby blankets (used as babies' clothing), baby buntings, bathing suits and caps, belts, bibs, blankets (baby and receiving, used as babies' clothing), boots (not more than knee high), bridal wear, buntings, caps, corsets and corset laces, costumes (except masks), diapers, diaper inserts, disposable diapers, footlets, formal wear, garters and garter belts, girdles, gloves (not designed for a specific sport), hair bows and nets, handkerchiefs, hats, head scarves, hosiery, leotards, mittens, neck scarves, neckties, overshoes, receiving blankets (used as babies' clothing), roller bonnets, rubber gloves, rubber pants (baby), scarves (head and neck), sewing materials (buttons, fabric, lace, thread, yarn, zipper), shoes and shoe laces, shower caps and clogs, slippers, sneakers, suspenders, swimsuits and caps, tennis shoes, tights, uniforms (scout, Camp Fire Girls, police officers, firefighters, etc.).

D. Examples of taxable items: bags (overnight, beach, etc.), barrettes, billfolds, cosmetics (hair dyes, etc.), crib (blankets, sheets, mattress pads, rubber sheets, etc.), furs on the hide or pelts, hair clips, handbags, iron-on transfers or emblems, jewelry (bracelets, broaches, cufflinks, earrings, necklaces, pins, rings, tie clasps, and tacks), lapel pins, money belts, money clips, perfume, pocketbooks, purses, sewing equipment (knitting needles, patterns, pins, scissors, sewing machine, sewing needles, tape measure, thimbles), umbrellas, wallets, watchbands, watches, wigs.

Subp. 2. Athletic, sporting, and recreational articles. Certain articles which may be designed primarily for use while engaging in particular sports may also be worn for general use. For example, a motorcycle or snowmobile helmet may be worn by a user traveling to and from work, or by a farmer while being transported by snowmobile from one work area to another on the farm. Articles such as these are deemed to be clothing and wearing apparel. Sales thereof are exempt. Certain articles are normally used or worn only in conjunction with the particular sporting or athletic activity for which they are designed. For example, football helmets, pads, uniforms, and shoes are designed and commonly used for a specific athletic activity and are not commonly used for other purposes. Other items, such as athletic supporters, are commonly worn only in connection with sports activities. These items are not included within the category of clothing and wearing apparel. Sales thereof are taxable.

A. Examples of exempt items: ski, snowmobile, and motorcycle suits (pants, socks, jackets, gloves, helmets and liners, sweaters, etc.), shoe pacs, insulated boots, snowmobile boots, insulated underwear and coveralls, etc., caps and hats (ski, hunting, fishing, golf, and baseball), safety shields and visors (for snowmobile and motorcycle helmets when attached and sold as an inseparable part of the helmet, and the price is not stated separately), name patches or emblems (on suits and jackets when sold attached, and the price is not stated separately), bowling shirts, sweat shirts, sweat suits, bathing suits and caps, beach capes and coats, tennis (shorts, shirts, sweaters, dresses, and shoes), hunting (jackets and trousers, canvas or leather front, insulated or uninsulated, lined or unlined), camouflage parkas and trousers, rain wear (ponchos, jackets, parkas, shirts, and trousers), ballet and tap shoes, dancing costumes, gym suits and shorts, leotards and tights.

B. Examples of taxable items: ski boots (designed for skiing only), safety shields and visors detachable for snowmobiling or motorcycling if sold separately (that is, if helmet may be purchased with or without safety shield), goggles (nonprescription), name patches or emblems for suits and jackets if sold separately (that is, if snowmobile suit may be purchased with or without the name patches or emblems), uniforms (baseball, football, basketball, hockey, track, etc.), gloves (baseball, hockey, boxing, bowling, golf, etc.), shoes (bowling, baseball, football, track, golf, etc.), helmets (football, hockey, baseball, etc., baseball masks, chest protectors, or shin guards), shoulder pads and padding, athletic supporters, fishing boots (hip boots and waders), skin diving suits (goggles, fins, equipment, etc.), shell belts and vest, wading vests and jackets for fishing, hunting or game pouches and carriers, life preservers (vests, belts).

Subp. 3. **Safety and protective articles.** Articles designed primarily to provide safety or protection against injury, while the user is engaged in industrial or general job activities, are not included within the exemption provided for clothing and wearing apparel in Minnesota Statutes, section 297A.25, subdivision 8. These items are generally referred to as safety equipment and can be included within two or more of the following categories:

A. the article is principally purchased and used for the purpose of performing an industrial or general job activity;

B. the article cannot normally be purchased from retailers in the business of selling clothing and wearing apparel to the general public for everyday use; and

C. the articles contain materials that would not be needed if they were only subject to general everyday use. (i.e., Asbestos is not needed in gloves used for dress or to protect hands from general environmental conditions such as cold, moisture, dirt, etc. However, it is needed to protect hands from heat exposure not normally encountered in general everyday life such as that existing in foundry and steel making operations.)

Articles worn for general use as well as in industrial or general job activities and not includable in two of the above three categories, are considered to be within the exemption provided for clothing and wearing apparel and are exempt sales.

D. Examples of exempt items: coveralls, uniforms, work clothes, overshoes, work shoes, cloth gloves, safety glasses and goggles (prescription), hard hats and liners.

E. Examples of taxable items: breathing masks, ear and hearing protectors, face shields, reflective or asbestos items (vests, aprons, gloves, suits, etc.), welding helmets, safety glasses and goggles (nonprescription), safety belts, finger guards.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.5500 AGRICULTURAL AND INDUSTRIAL PRODUCTION.

Subpart 1. **Agricultural and industrial production.** There is a sales and use tax exemption for materials used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail. This exemption is found in Minnesota Statutes, section 297A.25, subdivision 9. The provisions of this part apply to those persons engaged in agricultural or industrial production. Agricultural and industrial production includes any step or steps in the production process. It also includes the production, fabrication, printing, or processing of tangible personal property for consumers for consideration, defined as a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (b).

Materials that are used or consumed in providing a service other than production, fabrication, printing, or processing of tangible personal property for retail sale are taxable.

Generally, the production process begins with the removal of raw materials from stock for the purpose of commencing activities effecting changes thereon in the course of producing the intended product. The production process ends when the completed state is achieved. The completed state includes the packaging of the individual product, but not palletizing or otherwise preparing the packaged product for shipment. If the product is not packaged, the process ends when it is placed into finished goods inventory. If the package is not placed into finished goods inventory prior to shipment, the process ends when the last process prior to loading for shipment has been completed.

Quality control, testing, design, and research and development activities are part of the production process. The production process does not include the storage and preservation of raw materials prior to commencement of the production process; the handling, movement, storage, and preservation of completed goods; or the painting, cleaning, repairing, and maintenance of equipment and facilities. Agricultural and industrial production does not include the preparation, cooking, mixing, or furnishing of meals. "Meals" means food which will ordinarily be consumed without delay and without further preparation or storage.

In the case of mining or quarrying, the production process begins with the removal of overburden from the site of the ore, mineral, peat deposit, or surface materials and ends when the last process before stockpiling is performed. If the product is not stockpiled before shipment, the production process ends when the last process before loading for shipment has been completed.

Subp. 2. **Exempt materials.** Minnesota Statutes, section 297A.25, subdivision 9, provides exemption for all materials used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail, whether or not the item so used becomes an ingredient or constituent part of the property produced. All materials that are ingredients or component parts of the product, and materials that act on or come in contact with the product but that are not machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, or fixtures, are within this exemption. Examples of such exempt materials are grinding compounds, polishing compounds, and lithographic printing plates. The phrase "used or consumed in agricultural or industrial production" also includes materials that are only used once in production and even though they have not been physically consumed will not be used again. Examples of such exempt materials that could qualify for this exemption are keylines, typeset used for printing, and paper pan and cake liners used for baking goods.

Subp. 3. [Repealed, 17 SR 2369]

Subp. 3a. **Chemicals and fertilizers.** The purchase or use of chemicals or fertilizers for use or consumption in agricultural or industrial production is not taxable.

The purchase of chemicals and fertilizers for application to agricultural crops to achieve soil fertilization, weed control, or elimination of crop disease, or to prevent or destroy pest infestation of growing crops is not taxable. The agricultural crops must be grown for sale or as feed for use or consumption in agricultural production.

The purchase of chemicals for the control or eradication of pests is exempt if used for the health and protection of those animals whose feed is exempt under subpart 11. For purposes of this subpart, "pest" means an insect, rodent, nematode, fungus, weed, terrestrial or aquatic plant, animal life, virus, bacteria, or other organism. Pest control chemicals include insecticides (fly sprays, fly tapes, louse killers), pesticides, and rodenticides (mouse, rat, and gopher poison).

Chemicals and fertilizers that are purchased for nonproduction use such as lawn fertilizers, weed control chemicals used in a lawn or garden, or insect spray for home use, are all taxable.

Herbicides and fertilizers that are purchased by farmers for use on land that is part of the Conservation Reserve Program or other specifically enumerated government program are exempted under Minnesota Statutes, section 297A.25, subdivision 9.

Detergents or other cleaning chemicals used in cleaning factory or farm buildings, including buildings used to house animals, are taxable. However, disinfectants that are not

merely detergent additives and that are applied to agricultural animals, or used to disinfect their surroundings to control or eradicate animal disease or pests, are not taxable.

Chemicals used for cleaning food processing machinery and equipment are also exempt. However, the chemicals used to clean the area surrounding the food processing machinery and equipment are taxable.

Chemicals that are used to clean tooling or equipment that is used in production are taxable because the chemicals are not used or consumed in the production process.

However, if applying the chemical to the tooling or equipment, other than for ordinary cleaning and maintenance, is required to manufacture the particular product, the purchase of that chemical is exempt.

Subp. 4. [Repealed, 17 SR 2369]

Subp. 4a. **Fuels, electricity, gas, steam, and water.** The purchase of fuel, electricity, gas, steam, and water that is used or consumed directly in agricultural or industrial production is not taxable. If these items are used for space heating or lighting, however, they are taxable.

The purchase of fuel, electricity, gas, steam, or water to power a machine or fixture that controls the lighting or climate of a building is taxable, unless the lighting or climate control is a special requirement necessary to produce that particular agricultural or industrial product. If the lighting or climate control is a special requirement, then the amount of fuel, electricity, gas, steam, or water used for that lighting or climate control is not taxable. The amount used must be determined by deducting the amount of fuel, electricity, gas, steam, or water used to maintain average lighting or climate control from the total amount used for lighting or climate control. "Average climate control" means a summer temperature range of 73 to 79 degrees Fahrenheit and a winter temperature range of 68 to 74.5 degrees Fahrenheit. "Average lighting" means the amount of wattage per square foot necessary to adequately light the area if lighting is not a special requirement necessary to produce a particular agricultural or industrial product.

There is a separate statutory exemption for electricity used to make snow for certain ski areas. See Minnesota Statutes, section 297A.25, subdivision 9.

Subp. 5. [Repealed, 17 SR 2369]

Subp. 5a. **Petroleum products and lubricants.** The purchase of petroleum products such as gasoline, diesel fuel, propane, grease, oil, or radiator antifreeze used or consumed in the operation of equipment used in the production of agricultural or industrial products, is exempt from the sales and use tax. Also exempt are lubricants such as penetrating oil, pulsator oil, and surge oil, and fuels such as propane, as long as they are used or consumed in the production process.

There is a separate statutory exemption for petroleum products used in the improvement of agricultural land by constructing, maintaining, and repairing drainage ditches, tile drainage systems, grass waterways, water impoundment, and other erosion control structures. See Minnesota Statutes, section 297A.25, subdivision 7.

Subp. 6. **Packaging materials.** Sales of materials to persons engaged in agricultural or industrial production for use in packaging, shipping, or delivering tangible personal property produced or manufactured by them are exempt. Packaging material includes nonreturnable containers, but does not include returnable containers except as otherwise specified in this subpart.

Packaging materials do not include reusable containers, reusable pallets, or other reusable materials that are used to ship tangible personal property between production facilities, or for handling, storing, or moving materials within the confines of business premises.

"Container" means the articles in which tangible personal property is placed for shipment and delivery, such as cartons, cans, and bags. Container does not include items that are used primarily to facilitate loading, unloading, handling, transportation, or storage of products, such as bakery delivery carts, bread trays, milk carts, and milk crates.

Items A to M govern the tax status of specific packaging materials and containers.

A. Price tags, shipping tags and address labels, packing slip envelopes, invoices, and advertising matter to be used in connection with the sale of property or to be enclosed with property sold are not packaging materials.

B. Labels that are used to identify the contents of a package are exempt. For example, a grocery store is engaged in production when it cuts and wraps meat or produce. The content labels that are used on the meat or produce are not taxable because they are packaging material. Price labels that do not contain any content information are not packaging materials and are taxable.

C. Returnable containers constitute equipment and generally are not within the scope of the exemption provided under Minnesota Statutes, section 297A.25, subdivision 9. However, purchases of returnable containers for use in packaging food and beverage products are within the exemption by specific statutory authorization. See Minnesota Statutes, section 297A.25, subdivision 9.

D. Returnable containers are designed and ordinarily used for more than one-time use as containers. They are customarily expected or required to be returned by customers to the vendor of the contents for reuse. Vendors commonly require a deposit or payment by the customer with the understanding that the amount of the deposit will be refunded either in cash or in credit when the container is returned to the vendor. Regardless of the condition or appearance of the container, it is a returnable container if the vendor requires a deposit or payment from the customer and if there is an express or implied agreement that the deposit will be refunded upon return of the container.

E. Deposits that are charged to customers as security for the return of containers are not subject to tax if separately stated on the invoice or billing.

F. Purchases of materials used to repair or recondition taxable returnable containers by the owners of those containers are taxable.

G. Nonreturnable containers are considered packaging material. The sale of nonreturnable containers used to package an article of tangible personal property for sale is exempt.

H. Internal packaging materials are those used inside of packages and containers in order to shape, form, preserve, stabilize, or protect the contents. All internal packaging materials purchased for use in packaging food and beverage products are exempt.

I. If the internal packaging materials are not being used to package food and beverage products, then the taxability of those packaging materials depends on whether they are returnable to the vendor. If the materials are returnable, then they are treated as machinery or equipment and are taxable. If the materials are not returnable, then they are not taxable.

J. External packaging materials are those used under, outside of, and among packages and containers to protect, brace, pad, or cushion the packages or containers against damage, motion, shock, or breakage while being shipped. These materials are commonly known as dunnage and are exempt when purchased for use in industrial or agricultural production of tangible personal property and used to ship products to customers. However, sales of these same items to vendors of transportation services are taxable unless otherwise exempted by Minnesota Statutes, sections 297A.01 to 297A.45. If the external packaging materials are not being used to package food and beverage products, then the taxability of those packaging materials depends on whether they are returnable to the vendor. If the materials are returnable, they are equipment and are taxable. If the external packaging materials are not returnable, they are not taxable.

K. External packaging materials do not include items that are used primarily to facilitate loading, unloading, handling, transportation, or storage of products, such as bakery delivery carts, bread trays, milk carts, and milk crates.

L. The taxability of skids and pallets depends on whether they are returnable to the vendor. The rules that apply to containers, under items C to G, and to external packaging, under items J and K, also apply to skids and pallets. If the skids and pallets are returnable, they are equipment and taxable. If the pallets and skids are not returnable, they are not taxable.

M. Sales of packaging materials, such as bags, wrapping paper, boxes, and clothes hangers, to vendors of services are not exempt under Minnesota Statutes, section 297A.25, subdivision 9. Meat locker operators are vendors of services when they cut meat furnished by their customers into smaller pieces, which they wrap and place in cold storage for the customers' convenience. Sales of wrapping paper, tape, and other materials to vendors for this

purpose are taxable. However, meat locker operators who also make retail sales as well as cutting meat furnished by their customers may purchase wrapping materials exempt for resale and report and pay use tax on the portion of the wrapping materials used in performing the cutting service.

Subp. 7. Road building materials. The definition of production found in Minnesota Statutes, section 297A.25, subdivision 9, includes the production of road building materials. When a manufacturer of road building materials purchases materials that will be used or consumed in the manufacturing of asphalt, bituminous mix, or other road building materials to be sold at retail, those purchases are not taxable. For purposes of this exemption, it does not matter that the road building materials will ultimately be sold for use in building parking lots and driveways. When that person sells the road building materials to someone who will use them to build or repair roads, or for any other nonexempt purpose, the entire sales price of the road building materials is subject to tax.

When a person produces road building materials for the person's own use in building or repairing roads, including a contract to build or repair roads for others, the materials used to produce the road materials are not exempt as materials used or consumed in industrial production. Because the person puts them to that person's own use in building, improving, or repairing roads, that person is not selling the road building materials at retail, as required for the exemption, but is engaged in improving real property. That person must pay sales or use tax on any materials used to make the road building materials that the person is going to use.

Subp. 8. Taxable equipment. The exemption provided by Minnesota Statutes, section 297A.25, subdivision 9, does not include machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, or fixtures used in production, or fuel, electricity, gas, or steam used for space heating or lighting. Accordingly, a sales or use tax is imposed on not only a machine itself but on any repair parts for it. The tool or accessory that performs the work of the machine, including saw blades, grinding wheels, cutters, files, molds, dies, patterns, jigs, printing plates, and similar items, are also taxable unless exempted under subpart 9 as short-lived separate detachable units.

Materials or fabrication labor purchased by a person engaged in agricultural or industrial production are taxable if used to manufacture or fabricate equipment, tools, or similar items which are not intended for resale, but for the person's own use in the production process. Examples of materials are plastic, metal, or wood used in making patterns or jigs, and sand used in making molds. However, if the equipment, tools, or similar items to be manufactured or fabricated would qualify under subpart 9 as short-lived separate detachable units, then the materials and fabrication labor are exempt.

Subp. 9. Separate detachable units. The exemption for industrial and agricultural production, provided under the provisions of Minnesota Statutes, section 297A.25, subdivision 9, includes accessory tools, equipment, and other short-lived items that satisfy the following conditions: (1) they are separate detachable units; (2) they are used in producing a direct effect upon the product; and (3) they have an ordinary useful life of less than 12 months.

All three conditions must be satisfied before an item is exempt. The item must be used to produce personal property intended to be sold ultimately at retail. If the item is used for maintenance purposes, or to produce other tooling for in-house use, it is not exempt. For purposes of this exemption, the words "separate detachable units," "used in producing a direct effect," and "ordinary useful life," have the meanings given them in items A to C.

A. "Separate detachable units" means accessory tools, equipment, or short-lived items that are attached to machinery when being used. These items are generally purchased separately from the purchase of the basic machine and do not include the basic machine and its component parts such as belts, pulleys, gears, shafts, and bearings. Examples of items considered to be separate detachable units include, but are not limited to, drill bits, cutting tools, grinding wheels, abrasive and polishing belts, sheets and discs, taps, reamers, printing plates, saw blades, and certain dies, jigs, patterns, and molds; however, if these items are included in the purchase price of the basic machine, and their cost is not separately stated, they are considered as part of the basic machine and taxable. Subsequent replacement of these items is exempt. Hand tools such as hammers, pliers, clamps, wrenches, screwdrivers, crowbars, soldering irons, knives, and power hand tools, are not separate detachable units and are not exempt. Attachments to hand tools are considered separate detachable units only if simi-

larly functioning items attached to machinery would be considered separate detachable units. Examples of hand tool attachments considered to be separate detachable units include drill bits, grinding wheels, sandpaper disks, and sawblades.

B. "Used in producing a direct effect" means accessory tools, equipment, and other short-lived items that are used or consumed in industrial or agricultural production in a manner that directly causes a physical or chemical change upon or within the materials being processed. Examples of items within this exemption include, but are not limited to, drill bits, cutting tools, grinding wheels, abrasive and polishing belts, sheets and discs, taps, reamers, printing plates, saw blades, and certain dies, jigs, patterns, and molds. Examples of items not exempt under this provision are conveyor belts and rollers that only serve to move the product from place to place.

The phrase "used in producing a direct effect upon the product" does not require a direct physical contact with the product. Items that do not come into contact with material being processed, and that are not the agents that by direct contact with the product produce physical or chemical changes, are considered to be used in producing a direct effect upon the product if their use serves the purpose of determining the shape, contour, configuration, content, or arrangement of content of the product, or any part of the product, being produced.

Such items are considered to be used in producing a direct effect since the desired change in the material being acted upon is accomplished only by the combined effect of the items acting in conjunction with other items that actually have the direct physical contact with the product.

Items that are used in creating and/or maintaining a condition that must prevail before a desired physical or chemical change can be effected on a product are not considered as being used to produce a direct effect; i.e., the physical or chemical change sought in the material being processed.

To illustrate the application of this rule, the following examples of qualifying and non-qualifying items are given in subitems (1) and (2).

(1) Qualifying items: Master tapes from which copies are made are the media that determine the arrangement of the magnetic materials on the copy and therefore qualify as "used in producing a direct effect" resulting in the reproduction; and photographic transparencies that are used in conjunction with light to produce a desired effect that the light alone would not produce. These transparencies qualify as "used in producing a direct effect upon the product."

(2) Nonqualifying items: Drill extension bars, drill chucks, and burner tips. These items might be considered separate detachable units, but they neither cause the physical or chemical change that might be associated with their use, nor is their use for the purpose of determining the shape, contour, configuration, content, or arrangement of content of the product, or any part of the product, being produced. They are used merely to hold or guide the item or process.

C. "Ordinary useful life" means the life of accessory tools, equipment, and other short-lived items measured by continuous use in production under normal conditions of the user. Continuous use under "normal conditions of the user" means normal but continuous use during the producer's normal business hours. Items that would otherwise qualify that are not used continuously but would last less than 12 months if production required continuous use are exempt. For example, a producer, whose normal conditions include a 15-hour business day, six days a week, uses a mold which otherwise qualifies under items A and B. If the mold had been used continuously during the producer's normal business hours of 15 hours a day, it would have been exhausted in four months. The four months is the mold's ordinary useful life. The producer, however, only uses the item for short production runs, a few days at a time, so it will not wear out for two years. This item qualifies even though the length of time retained is more than 12 months, since the item would not last 12 months if used continuously during the producer's normal business hours. An "ordinary useful life of less than 12 months" can be shown by providing evidence that prior purchases of similar items had useful lives of less than 12 months.

Junking, scrapping, wearing out, or disposing of the item is conclusive evidence of the end of its ordinary useful life. Keeping an item after it has been used is not evidence of contin-

ued useful life unless the item is reused or is held for reuse in the taxpayer's ordinary production process. Repair (as defined in part 8130.0700) of an item is not evidence of the end of that item's ordinary useful life. For example, when an item that has an ordinary useful life of two years needs a repair six months after it has been purchased, the repair does not mean the item's useful life is six months.

Subp. 10. Building materials. The purchase of materials or supplies used to construct, repair, or maintain agricultural or industrial buildings is taxable.

Subp. 11. Feeds. The purchase of feed, feed additives, and feed supplements for use or consumption in agricultural or industrial production is exempt. Such feeds are used or consumed in agricultural or industrial production if they are fed to (1) agricultural animals raised for sale; (2) animals kept for use in agricultural production; (3) farm work stock; and (4) the following animals while they are being raised for sale on a commercial basis: fur-bearing animals, animals used as a source of wool, pets, and research animals. "Agricultural animals" means cattle, sheep, swine, goats, horses, mules, dairy animals, poultry, honey bees, fish, or other animals that are commercially raised for sale. "Farm work stock" means animals, such as draft horses, mules, oxen, and herd dogs, which are used exclusively for farming. "Fur-bearing animal" means a fox, mink, fitch, chinchilla, karakul, marten, nutria, or fisher that is second or later generation raised in captivity. "Pet" means any domesticated animal normally maintained in or near the household of the owner and kept for affection and pleasure rather than for utility or profit. The purchase of feed is subject to tax if it is to be fed to animals that are not used or consumed in agricultural production, or to those animals, such as a pet or a riding horse, that are not being raised for sale on a commercial basis.

Subp. 12. Seeds. The purchase of seeds or plants to be used or consumed in agricultural or industrial production is not taxable. The purchase of lawn seeds or plants, flower seeds or plants, vegetable seeds or plants, or other similar seeds or plants, for nonproduction use, is taxable. Generally, tree seedlings purchased for windbreaks are not used or consumed in agricultural or industrial production and are taxable. Seeds and trees purchased by farmers for use on land that is part of the Conservation Reserve Program or other specifically enumerated government program are exempted under Minnesota Statutes, section 297A.25, subdivision 9.

Subp. 13. Agricultural production.

A. Under the provisions of Minnesota Statutes, section 297A.01, subdivision 13, the term "agricultural production," as used in Minnesota Statutes, section 297A.25, subdivision 9, includes, but is not limited to, the terms "horticulture," "floriculture," and "raising of pets, fur-bearing animals, research animals, and horses." Agricultural production also includes "aquiculture."

(1) "Horticulture" means the cultivation of a garden or an orchard; the science of growing fruits and vegetables and flowers or plants.

(2) "Agriculture" means the art or science of cultivating the soil, especially in fields or in large quantities, including the preservation of the soil; the planting of seeds; the raising and harvesting of crops; the rearing, feeding, and management of livestock; tillage; husbandry; and farming.

(3) "Floriculture" means the cultivation of flowering plants.

(4) "Aquiculture" means the cultivation of plants and animals in water for harvest, including hydroponics and raising fish in fish farms.

The activities defined in this item are agricultural production to the extent that the "person" as defined in Minnesota Statutes, section 297A.01, subdivision 2, commercially engages in the activities so described, or if the product of the activities is on a scale comparable with that of a commercial producer. The agricultural activity must result in the production of personal property intended to be sold ultimately at retail.

B. Generally, the sale of an animal is taxable because it is the sale of tangible personal property. However, there are some exceptions for certain animals associated with agricultural production. See item C. The purchase of animals for use as pets is taxable. The purchase of animals for use as breeding stock is taxable unless the offspring of that animal, if purchased separately, would otherwise be exempt under this subpart.

C. The purchase of animals that will be used or consumed in agricultural or industrial production is exempt. This includes animals used in research and development. It also includes domesticated animals that are purchased solely as a commercial source of wool, and domesticated fur-bearing animals purchased as a commercial source of pelts. "Solely as a commercial source of wool" means the animals are purchased for use other than as work animals, as pets, for show or exhibition, or for any purpose other than the processing or selling of the wool for profit. The purchase of animals which will be used as food for humans is exempt. The purchase of animals for the purpose of using them as an ingredient in a manufacturing process, such as for the production of food for animals or poultry, is exempt. Game animals and game birds, as defined in Minnesota Statutes, section 97A.015, constitute food for human consumption.

D. Generally, charges for breeding animals are not taxable. However, fees for the breeding of certain racing horses are taxable. See the provisions of Minnesota Statutes, section 297A.01, subdivision 3, clause (h).

The purchase of veterinarian services or drugs and medicines used in agricultural or industrial production is not taxable. See part 8130.8700 for more detail regarding veterinarian services. The purchase of semen to be used and consumed in agricultural production is exempt. The initial sale and subsequent refills of liquid nitrogen are treated as a sale of a chemical used in the processing of an agricultural product and are exempt. The sale or lease of liquid nitrogen tanks is taxable. Also taxable are semen supplies such as charts, office records, inseminating gloves, and inseminating catheters.

E. The purchase of farm machinery and equipment such as tractors, combines, corn pickers, milking machines, and other equipment used directly and principally in agricultural production is subject to sales tax at a statutorily reduced rate. See Minnesota Statutes, sections 297A.01, subdivision 15, and 297A.02, subdivision 2, for more details on farm machinery.

F. Equipment and machinery that do not qualify for the farm machinery reduced rate, such as trucks, trailers, air compressors, and ventilator fans, are subject to tax at the general rate. "Farm machinery" does not include repair or replacement parts. See Minnesota Statutes, section 297A.01, subdivision 15. Therefore, it is the general rule that repair or replacement parts of farm machinery are subject to tax at the general rate. Minnesota Statutes, section 297A.25, subdivision 29, however, specifically exempts the gross receipts from the sale of repair and replacement parts, except tires, which are assigned a specific or generic part number by the manufacturer of farm machinery that qualifies for the reduced rate referred to in item E. To qualify for this exemption, the purchaser must be in the business of agricultural production. See Minnesota Statutes, section 297A.25, subdivision 29.

G. The purchase of aquaculture production equipment such as automatic feed systems, net pens, fish counting equipment, oxygen generators, water diversion devices, and other new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in aquaculture production is subject to sales tax at the reduced rate imposed by Minnesota Statutes, section 297A.02, subdivision 2. Repair or replacement parts for aquaculture production equipment are subject to tax at the general rate. See Minnesota Statutes, sections 17.47, subdivisions 2 and 7, and 297A.01, subdivision 19, for more details on aquaculture and aquaculture production equipment.

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 1279; 17 SR 2369*

8130.5550 SPECIAL TOOLING.

Subpart 1. **General information.** Special tooling is taxed at a separate rate under Minnesota Statutes, section 297A.02, subdivision 2. "Special tooling" is defined by Minnesota Statutes, section 297A.01, subdivision 17, as tools, dies, jigs, patterns, gauges, and other special tools. Special tooling is tooling that is made to specific requirements to produce a part or a series of related parts, which are known at the time the special tooling is manufactured for a single customer. The special tooling itself must be unique. Regardless of whether tooling is fabricated for the purchaser or purchased for resale, if the tooling is available from a catalog, other sales literature, or over-the-counter, the tooling is standard and not special tooling.

Because special tooling does not need to produce a direct effect upon the product, nor does it need to have an ordinary useful life of less than 12 months, special tooling is usually different from accessory tools as defined in part 8130.5500, subpart 9, (separate detachable units). Certain special tooling may also be exempt from tax as separate detachable units or as accessory tools because the definitions are not exclusive. See subpart 3, item B.

Subp. 2. Component parts. Materials from which special tooling or component parts are produced by a seller of special tooling need not themselves be unique and useable only by the seller who produces special tooling. For example, metal used to produce special tooling need not be unique metal, only the special tooling produced from the metal needs to be unique. However, special tooling or components of special tooling must be unique, having value and use only for the buyer of special tooling.

Special tooling comprised of components qualifies for the separate rate to the extent of the purchase price of the unique components. Unique components are those components which are manufactured for the special tooling and are not standard or reusable. Components of special tooling which can be reused, either in special tooling or general applications, do not qualify for the separate rate.

Subp. 3. Nonqualifying items.

A. Machine tools and machinery are usually frames and motors which, through tools and special tooling, perform an action on materials to produce a product. They are commonly purchased in a standard configuration and can be used to produce parts for more than one customer. Attachments to machine tools and machinery that are used with the machine tool or machinery generally are not produced in accordance with special requirements of the purchaser of special tooling and do not qualify for the special tooling tax rate. They are not special tooling. Machine tools and machinery and their accessories can be used by any person other than the purchaser who wants to perform a function similar to the purchaser's. This quality excludes them from the definition of special tooling. Examples of machine tools and machinery include:

- (1) lathes;
- (2) mills;
- (3) machining centers;
- (4) grinders;
- (5) presses;
- (6) shears;
- (7) breaks;
- (8) die and mold machines; and
- (9) screw machines.

B. Accessory tools, as included within the definition of separate detachable units, are typically standard items which are loaded into a machine tool or hand-held machine and which produce a direct effect on the product. The definitional conditions required of exempt accessory tools in part 8130.5500 are that: they are separate detachable units; they are used in producing a direct effect upon the product; and they have an ordinary life of less than 12 months. These conditions are not the same as those for special tooling. Generally, accessory tools can be purchased from a catalog or over-the-counter without any special fabrication. Further, usually any person requiring the action of an accessory tool on a product can use the accessory tool, so it is not limited in use or value only to the buyer. For example, anyone who needs thread cut can use a tap, so it has general value and is not special tooling.

Although an accessory tool usually does not qualify as special tooling, the statutory definitions do not preclude tangible personal property from qualifying as both an accessory tool and special tooling. If, for example, a cutting tool is made for a special purpose which is unique to a single customer, it qualifies both as an accessory tool and special tooling. Examples of tools that are usually accessory tools are:

- (1) drill bits;
- (2) cutting tools;
- (3) grinding wheels;
- (4) abrasive and polishing belts;

- (5) taps;
- (6) reamers; and
- (7) saw blades.

Statutory Authority: *MS s 270.06*

History: *18 SR 1891*

8130.5600 PUBLICATIONS.

Subpart 1. **In general.** The exemption of certain gross receipts from the sales and use tax provided for by Minnesota Statutes, section 297A.25, subdivision 10, is related to publications regularly issued at average intervals not exceeding three months.

Generally the exemption applies to gross receipts from sales of:

- A. such publications;
- B. any advertising contained in or with such publications;
- C. tangible personal property (other than paper products or ink products), fuel, electricity, gas, or steam used or consumed in the production of any such publication. (See subpart 3 for rules regarding paper and ink.)

Machinery, equipment, etc.; furniture and fixtures; fuel, electricity, gas, or steam used for space heating or lighting are not exempt under this provision.

Subp. 2. **Publication defined.** The word "publication" encompasses only written or printed matter, such as a newspaper, magazine, or other printed periodical regularly issued at average intervals not exceeding three months.

"Publication" includes any legal newspaper as defined by Minnesota Statutes, chapter 331, together with any supplements or enclosures accompanying such newspaper or representing a part thereof. The term "newspaper" is limited to those publications commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest. The term does not include hand bills, circulars, flyers, or the like, unless distributed as a part of a newspaper as defined. The term "publication" includes so-called "shoppers guides" distributed by a publisher, where space in such publication generally is available to advertisers for the purpose of inducing readers to purchase goods or services from such advertisers.

House organs, trade, professional, and other types of magazines and journals regularly issued at average intervals not exceeding three months are included within the meaning of "publication." "Comic books" are "publications" if published serially under the same title at least once quarterly; however, comic books complete in themselves and without continuity of title and subject matter are not publications.

The following are representative of items not included within the meaning of "publication": books, including those issued at regular or stated intervals, e.g., books sold by a book-of-the-month or other club or organization; so called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues; price lists; hand bills; catalogs; programs; score cards; maps; sheet music; yearbooks; directories; bulletins; political newsletters issued during a campaign only, and not of a continuing nature at regular intervals not exceeding three months; loose leaf or similar personal service publications such as tax information services, labor information services, credit or financial information services (however, special reports not distributed generally are deemed personal services), law cases and briefs; realtors' descriptive listings, financial and statistical reports, unless published as a supplement or enclosure with or part of a legal newspaper.

Subp. 3. **Paper and ink.** Taxability of paper and ink products used in producing publications exempt under Minnesota Statutes, section 297A.25, subdivision 10, should be determined as follows.

- A. Purchases in period August 1, 1967 through October 31, 1971, are exempt.
- B. Purchases in period November 1, 1971 through December 31, 1973, are taxable except paper and ink used as specified in items D and E.
- C. Purchases subsequent to December 31, 1973, in excess of \$100,000 in any calendar year for use on any publication are taxable except when used as specified in items D and E.

D. Paper and ink used in printing an exempt publication of an exempt entity shall not be subject to tax whether such products are purchased by the exempt entity or by a printer who has contracted to print such publication.

E. The tax shall not apply to paper and ink used in printing any exempt publication as herein defined, which pursuant to a sale as defined in the Sales and Use Tax Law:

(1) is mailed or shipped to an out-of-state location of an out-of-state purchaser; or

(2) is mailed or shipped to an out-of-state subscriber whether the publisher is located in or outside of Minnesota.

Paper and ink purchased for use in producing any publication by a printer who is not also the publisher may be purchased by such printer exempt from sales and use tax provided the printer gives to the vendor an exemption certificate prescribed by the commissioner. The publisher of such a publication will be subject to a use tax based upon the cost of such paper and ink products, unless the publisher is exempt under items D and E.

The person deemed to be producing a publication is the owner and operator who controls the format and who charges advertisers for the privilege of inserting advertisements in a publication, whether or not he or she prints such publication or pays another to do the printing.

Subp. 4. **Gross receipts from advertising.** The statute specifically provides that the gross receipts from the sale of any advertising material in a publication as defined in Minnesota Statutes, section 297A.25, subdivision 10, shall also be exempt. It is further provided that such advertising shall be deemed to be the rendition of a service and not tangible personal property. Further, that persons or their agents engaged in the publication or sale of advertising material shall be deemed to be engaged in the rendition of a service with respect to the gross receipts realized from such news gathering or publishing activities including the sale of such advertising.

Statutory Authority: *MS s 297A.29*

History: 17 SR 1279

8130.5700 SALES TO EXEMPT ENTITIES, THEIR EMPLOYEES, OR AGENTS.

Subpart 1. **In general.** The exemptions provided in Minnesota Statutes, section 297A.25, subdivision 11, to the United States, its agencies and instrumentalities, or to any state and its agencies, instrumentalities, and political subdivisions, and the exemptions provided in Minnesota Statutes, section 297A.25, subdivision 16, to organizations operated exclusively for charitable, religious, or educational purposes, apply only to the sale or use of tangible personal property.

Subp. 2. **Meals, admissions, or lodging.** The furnishing for a consideration of meals, admissions, or lodging as provided in Minnesota Statutes, section 297A.01, subdivision 3, paragraphs (c), (d), and (e) is not considered the sale or use of tangible personal property.

No exemption from the sales and use tax is therefore allowed for meals, admissions, or lodging furnished to governmental entities or organizations exempted under Minnesota Statutes, section 297A.25, subdivision 16, their employees, or agents, even if the organization is billed directly and pays directly for such services, except that the federal government, its agencies, and instrumentalities are exempt under the intergovernmental tax immunity doctrine where they purchase meals and lodging directly.

Subp. 3. **Governmental agency relief orders.** No tax attaches to the delivery of tangible personal property to relief clients on orders issued by a governmental relief agency, provided that the charge thereon is made directly to the governmental agency. In such cases the sale of the property is a sale to the governmental unit. The merchant making such sales need not secure an exemption certificate from the governmental agency. Sales of merchandise and other items directly to an individual who is a relief client are not to be deemed sales to a governmental agency and are subject to tax unless otherwise exempt.

Statutory Authority: *MS s 297A.29*

8130.5800 ISOLATED OR OCCASIONAL SALES.

Subpart 1. **In general.** As provided in Minnesota Statutes, section 297A.25, subdivision 12, the sales or use tax does not apply to isolated or occasional sales of tangible personal

property made by a person who is not engaged in selling such property in the normal course of business. The term "isolated" is defined as standing alone or solitary. The term "occasional" is defined as occurring at infrequent intervals or as incidental or as casual; that is, as distinguished from events of a similar nature recurring with some degree of regularity.

Subp. 2. Isolated or occasional sales. The following transactions are considered to be isolated or occasional sales:

A. Infrequent sales of a nonrecurring nature made by a person not engaged in the business of selling tangible personal property.

Example 1. The sale of a used vacuum cleaner by a housewife to a neighbor.

Example 2. Sales by executors, administrators, trustees, and other fiduciaries in the liquidation of an estate, except inventory or stock in trade.

Example 3. Sales or executions pursuant to a court order or by a court officer.

B. Infrequent sales of a nonrecurring nature of tangible personal property acquired for use or consumption by the seller, and not sold in the regular course of business of such person.

Example 1. The sale of a typewriter by an insurance company which does not regularly dispose of such equipment.

Example 2. The sale of used machinery, fixtures, equipment, and similar items by a person engaged in a business or occupation such as manufacturing or operating a retail store, where such person does not sell such items in the regular course of business. Owner may retain services of auctioneer if sale is conducted on owner's premises and owner's identity is disclosed.

Example 3. The sales of an entire business by the owner thereof except that the transfer of inventory or stock in trade constituting a part of such sale is not exempt as an isolated sale.

Subp. 3. Nonisolated sales. The following are examples of transactions that are not considered isolated or occasional sales:

A. The sale of property held primarily for sales to customers in the ordinary course of trade or business.

Example 1. Leasing company sells a bulldozer to X which was previously used in its business by leasing to others. Inasmuch as leases constitute sales, leasing company is deemed to be in the business of selling this kind of property. The sale of the bulldozer to X is not an isolated or occasional sale.

B. The sale of stock in trade or other property of a kind which would properly be included by a manufacturer, wholesaler, retailer, jobber, or other vendor in inventory, even though such sales are infrequent and only comprise an insignificant fraction of the vendor's total business.

Example 1. Sporting goods store sells one power cruiser during the calendar year. The sale is taxable.

C. Sales which constitute an integral part of a business even though the sale of such tangible personal property is not the primary business of the seller (as the sale of repossessed property by a finance company).

D. The sale of by-products, waste, scrap, and other obsolete and used equipment by a person engaged in a business, when sales are regularly made to employees or to the public to dispose of these items.

Subp. 4. Garage sales and flea markets. A "garage sale" is a sale by a person or persons selling their excess personal belongings in a garage, porch, backyard, basement, etc. If the items sold have not been collected or purchased for the purpose of resale, the sales are isolated or occasional. A person who collects or purchases items for resale is deemed to be in business, and must obtain a sales and use tax permit and collect and remit tax on sales of taxable items.

A gathering of vendors selling their merchandise at one location is commonly referred to as a "flea market." A flea market differs from a garage sale in that the vendors collected or purchased or manufactured the merchandise with the intention of reselling it. Each vendor at a flea market must obtain a sales and use tax permit and collect and remit tax on sales of taxable merchandise.

A fee paid for leasing an area in a flea market is not a lease of personal property and is not taxable.

Admissions to flea markets are not taxable.

Subp. 5. Sales by nonprofit organizations. Sales of tangible personal property by nonprofit organizations at bazaars, fairs, picnics, rummage sales, or similar events will be deemed to be isolated or occasional if two nonconsecutive days of such sales or less are held in any calendar year. If more than two sales are held in any calendar year or if a sale is held for two or more consecutive days, all sales are subject to tax. If tangible personal property is sold at such an event by a person holding a sales and use tax permit, other than the nonprofit organization, the sales by such person would be taxable.

A sale made by a nonprofit organization at which only items exempt from tax under Minnesota Statutes, section 297A.25, subdivision 2, 3, or 8, are sold shall not be included as an event for purposes of this subpart.

Example 1. Nonprofit organization X conducts sales on two nonconsecutive days during the calendar year, the first on January 15, 1971, and the second on February 18, 1971. As no more than two such events of one day's duration each occurred during the calendar year, the sales made at such events are exempt as isolated or occasional sales.

Example 2. Nonprofit organization Y conducts a sale on April 15 and 16, 1971. Y does not conduct any other sales during 1971. As this event was longer than one day's duration, the sales made constitute sales in the regular course of business, and Y is required to secure a sales and use tax permit, collect the tax due, and remit same to the commissioner, unless such sales are otherwise exempt under the Sales and Use Tax Law.

Example 3. Nonprofit organization Z conducts a sale on March 15, 1971, and another sale on May 10, 1971. Z reports no gross receipts, pursuant to the provisions of this subpart exempting such sales. On December 5, 1971, Z conducts a sale of property taxable under the Sales and Use Tax Law. Consequently, sales made at this event, as well as the previous sales made on March 15, 1971, and May 10, 1971, are nonisolated sales, and Z is required to secure a sales and use tax permit and to report the gross receipts from all three events that occurred during the calendar year.

Example 4. Same facts as in example 3, except that the sale by nonprofit organization Z held on December 5, 1971, is a bake sale at which only exempt food products for home consumption are sold. The bake sale held on December 5, 1971, does not constitute a sales event; consequently, nonprofit organization Z has not exceeded the limitation of two events of a single day's duration, and the previous sales will be deemed to be isolated or occasional sales.

Subp. 6. Occasional meals. While the furnishing, preparing, or serving of meals or drinks for a consideration generally constitutes sales within the meaning of the Sales and Use Tax Law, such sales are not sales of tangible personal property and thus do not come under the exemption for "the isolated or occasional sale of tangible personal property" provided in Minnesota Statutes, section 297A.25, subdivision 12. However, occasional meals served by charitable or church organizations are specified in the statute as not being included in the meaning of sale and accordingly are exempt from tax. See part 8130.0800, subpart 5, regarding the status of meals by charitable or church organizations.

Subp. 7. Admissions. The granting of the privilege of admission to places of amusement or athletic events and the privilege of use of amusement devices is a taxable sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d). However, such sales are not sales of tangible personal property and thus do not come under the exemption for the isolated or occasional sale of tangible personal property provided in Minnesota Statutes, section 297A.25, subdivision 12.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.5900 ROLLING STOCK.

Subpart 1. General rule. The sales and use tax does not apply to sales of rolling stock to, and the storage, use, or other consumption of such property by railroads, freight line companies, sleeping car companies, and express companies which are subject to gross earnings taxes in lieu of ad valorem taxes.

Subp. 2. **Defined.** For purposes of this exemption, "rolling stock" includes all portable or movable equipment, apparatus, or machinery which moves on railroad tracks and all parts necessary for repair and maintenance of such property.

Fuels, lubricants, cooking utensils, glassware, flatware, linens, and all other items used or intended for use with rolling stock, that are not an integral part of such equipment, are not included within the meaning of rolling stock.

Motor vehicles and other portable or movable equipment which are not intended for use on railroad tracks shall not be included within the meaning of rolling stock.

Statutory Authority: *MS s 297A.29*

8130.6000 AIRFLIGHT EQUIPMENT.

Subpart 1. **General rule.** The sales and use tax does not apply to sales of aircraft equipment to, and the storage, use, or other consumption of such property by airline companies which are subject to tax under Minnesota Statutes, sections 270.071 to 270.079 (hereinafter aircraft property tax). The definitions of aircraft equipment contained in Minnesota Statutes, sections 270.071, and 297A.25, subdivision 14, are similar but are not coincident. This part identifies the aircraft equipment that is exempted from tax imposed by Minnesota Statutes, section 297A.02.

Subp. 2. **Definitions.** The definitions in this subpart apply to this part.

A. "Aircraft" means a contrivance used or designed for the navigation of or flight in the air.

B. "Aircraft equipment" means airplanes, aircraft communications and navigational equipment, flight crew equipment, flight simulators, hydraulics equipment, and all parts that are affixed thereto and become component parts thereof including hydraulic fluid, parts necessary for the repair and maintenance of the listed equipment, and any other property subject to assessment under Minnesota aircraft property tax. Aircraft equipment does not include lubricants, repair equipment and tools, ramp equipment, or other equipment such as broilers, dishes, food boxes, thermos jugs, blankets, and other equipment not subject to assessment under Minnesota aircraft property tax.

C. "Airline company" means a person who undertakes, directly or indirectly, to:

(1) engage in the business of transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights or on intermittent or irregularly timed flights;

(2) engage in the business of intermittent or irregularly timed flights, flights arranged at the convenience of an airline and a person contracting for transportation, or charter flights making three or more flights into or out of Minnesota in a year; or

(3) hold out to the public that it will undertake to transport property or persons as an air carrier, and enter into contracts wherein it binds itself to so transport property or persons.

Airline company does not include casual transportation for hire by aircraft commonly owned and used for private aircraft purposes if the person furnishing the transportation does not hold itself out to be engaged regularly in air transportation for hire.

D. "Indirectly" means to hold out to the public that a person will undertake to transport persons or property by air and enter into contracts with shippers wherein the person binds itself to discharge such undertakings with regard to particular shipments. Indirect air carriers include travel agents, tour operators, and social clubs which sell tours or air transportation, air freight forwarders and others who were subject to rate regulation, or others who operate very much like an air carrier.

Subp. 3. **Exemptions.** An airline company is exempt from sales and use tax when it purchases aircraft equipment if it is subject to Minnesota aircraft property tax on those purchases. The purchase of flight simulators is specifically exempted in Minnesota Statutes, section 297A.25, subdivision 14. If an airline company is exempt from aircraft property tax, its purchases of aircraft property are subject to sales and use tax imposed by Minnesota Statutes, chapter 297A.

Statutory Authority: *MS s 270.06; 297A.29*

History: *18 SR 2044*

8130.6100 [Repealed, L 1992 c 511 art 7 s 26]

8130.6200 CHARITABLE, RELIGIOUS, AND EDUCATIONAL ORGANIZATIONS.

Subpart 1. **Applicable law.** Minnesota Statutes, section 297A.25, subdivision 16, exempts from sales and use tax the gross receipts from the sale of tangible personal property to, and storage, use, or other consumption of such property by, any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes if the property purchased is to be used in the performance of charitable, religious, or educational functions.

No part of the net earnings may inure to the benefit of any private shareholders.

Sales of telephone service, electricity, gas, water, or steam pursuant to Minnesota Statutes, section 297A.01, subdivision 3, paragraph (f), and admission to places of amusement, recreational areas, or athletic events and the use of amusement devices and athletic or other facilities as provided for in Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d), are included in this exemption.

This exemption does not apply to the following sales or purchases:

A. Building, construction, or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration, or repair of a building or facility.

B. Construction materials purchased by exempt organizations or their contractors to be used in constructing buildings or facilities which will not be used principally by the exempt organizations.

C. Lease or purchase of a motor vehicle, as defined in Minnesota Statutes, section 297B.01, subdivision 5.

D. Meals and lodging. Although the furnishing of meals and lodgings are defined in Minnesota Statutes, section 297A.01, subdivision 3, paragraphs (c) and (e), as sales, they are not sales of tangible personal property and cannot be exempted under Minnesota Statutes, section 297A.25, subdivision 16, when purchased by a charitable, religious, or educational organization. See subpart 11.

E. Solid waste collection and disposal services pursuant to Minnesota Statutes, section 297A.01, subdivision 3, paragraph (j), clause (vii).

For purposes of brevity and convenience, charitable, religious, or educational purposes will be referred to as "exempt purposes," and a nonprofit organization, society, association, foundation, or institution organized and operated exclusively for exempt purposes will be referred to as an "exempt organization."

Subp. 1a. Construction materials purchased by an exempt organization.

A. For purposes of this part, "buildings or facilities which will not be used principally by an exempt organization" means buildings or facilities that will be used by the exempt organization for commercial purposes and not to carry out their exempt functions. For example, construction materials purchased by an exempt organization to be used in constructing a building which the exempt organization will lease to another is not used principally by an exempt organization even though the lease payments may be used for an exempt purpose.

B. Materials that are purchased by an exempt organization for use in the performance of its exempt function are included in the exemption under Minnesota Statutes, section 297A.25, subdivision 16. For example, construction materials purchased by an exempt organization for use in its program to weatherize homes for low-income persons may be purchased exempt by an exempt organization. Likewise, construction materials may be purchased exempt by an exempt organization for the building, construction, or reconstruction of qualified low-income housing projects which meet the HUD low-income housing criteria as defined under United States Code, title 42, chapter 8, as amended through December 31, 1990. For purposes of this part, "qualified low-income housing" means a qualified low-income housing project as defined in United States Code, title 26, chapter 1, section 42.

C. The exemption from tax under Minnesota Statutes, section 297A.25, subdivision 16, does not extend to building, construction, or reconstruction materials purchased by a

contractor under an agreement to erect a building or to alter, repair, or improve real estate for an exempt organization, even if the work contracted for is for use in the performance of the exempt organization's exempt function. See part 8130.1200.

Subp. 2. Charitable organizations. "Charitable" is used in its generally accepted legal sense to mean a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons. Charitable includes relief of the poor, underprivileged, and distressed, the care of the sick, the infirm, or the aged; the erection or maintaining of public buildings and monuments; lessening of the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; providing of qualified low-income housing to qualified persons; and combating of community deterioration and juvenile delinquency. To determine whether an organization qualifies for the charitable exemption, the factors in items A to F will be considered. Each case must be decided on its own particular facts, and it is not essential that every factor mentioned in items A to F be present for an organization to qualify as a charitable organization.

A. whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;

B. whether the entity involved is supported by donations and gifts in whole or in part;

C. whether the recipients of the "charity" are required to pay for the assistance received in whole or in part;

D. whether the income received from gifts and donations and charges to users produces a profit to the charitable institutions;

E. whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is available is one having a reasonable relationship to the charitable objectives;

F. whether the dividends, in form or substance, or assets upon dissolution are available to private interests.

Subp. 3. Religious organization. "Religious" refers to an institution that conducts worship services at regular intervals at an established place of worship that is owned, leased, or borrowed for that purpose, and organizations affiliated with or related to that institution, which exist exclusively for the furtherance of the religious purposes of the institution. The specific merits of a particular religion will not be compared or considered by the department when determining whether an organization is an exempt religious organization for purposes of the Minnesota sales and use tax. An organization claiming exempt status as a religious organization must be able to affirmatively establish its right to the exemption. Only if an organization clearly demonstrates that it is an organization created exclusively for religious purposes will it meet the requirements for tax-exempt status under Minnesota sales and use tax statutes. The criteria the department will use to determine whether an organization is a religious organization includes the criteria in items A to N. Each case must be decided on its own particular facts and it is not essential that every factor mentioned in items A to N be present for an organization to qualify as a religious organization.

A. a distinct legal existence;

B. a recognized creed and form of worship;

C. a definite and distinct ecclesiastical government;

D. a formal code of doctrine and discipline;

E. a distinct religious history;

F. a membership not associated with any other church or denomination;

G. a complete organization of ordained ministers ministering to their congregations;

H. ordained ministers selected after completing prescribed courses of study;

I. a literature of its own;

J. established places of worship;

K. regular congregations;

L. regular religious services;

M. Sunday schools for the religious instruction of the young;

N. schools for the preparation of its ministers.

Subp. 4. Educational organization. "Educational" means the instruction or training of individuals to improve or develop their capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community. Examples of educational institutions are primary and secondary schools, colleges and universities, and nonprofit professional and trade schools having a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on. Educational organizations include PTA, Boy Scouts, Girl Scouts, Camp Fire Girls, YMCA, YWCA, 4-H Clubs, and youth athletic and recreational programs such as Little League. Other educational institutions include museums, zoos, planetariums, symphony orchestras, historical societies, and other similar organizations.

An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion.

Subp. 5. Organization and operational tests. No organization will be considered exempt as a charitable, religious, or educational organization for sales and use tax purposes unless it is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1986. However, the determination of the Internal Revenue Service that an organization is a nonprofit and tax-exempt organization under the Internal Revenue Code, section 501(c)(3), for purposes of income taxation is not controlling on the issue of whether the organization is an exempt organization for sales and use tax purposes. Likewise, determinations by the Minnesota Department of Revenue that an organization is an exempt organization for income tax purposes does not, by itself, entitle the organization to an exemption from payment of sales and use tax. In order to be an exempt organization, an organization must be organized and operated exclusively for exempt purposes. The following tests will be used in determining whether or not an organization qualifies as an exempt organization:

A. An exempt organization may not be organized or operated for the purpose of making a profit which inures to the benefit of any private shareholder or individual. The organization must be able to demonstrate by its articles of incorporation or if unincorporated, a certified copy of its constitution and bylaws, and its financial statements that:

(1) no part of the net earnings of its activities inures to the benefit of any private shareholder, or individual member, and no part of its assets will directly or indirectly be transferred, in the event of dissolution of a corporation or termination of an unincorporated association, to its members, founders, or shareholders;

(2) it is supported and maintained at least in part by gifts, grants, and contributions, that is, one of its sources of support is donations, income from donations, and contributions and dues of members for which they receive no direct benefit, or it is supported by fees charged by an exempt organization for program services if the fees are based on ability to pay and the exempt organization provides services to individuals who would otherwise turn to government for such aid. "Program services" means those activities that the exempt organization was created to conduct and which, along with any activities commenced subsequently, form the basis of the organization's current exemption from tax.

The fact that an organization may receive voluntary contributions from those who benefit from its activities will not necessarily prevent its being an exempt organization. But if it is determined that the services rendered by the organization are conditioned upon the receipt of a contribution the services rendered may be regarded as a commercial activity. If this commercial activity is not subordinate to or incidental to the organization's charitable, religious, or educational activities, the organization does not qualify as an exempt organization since it is not organized or operated exclusively for exempt purposes.

The fact that an organization is nonprofit does not necessarily make it an exempt organization. The following are examples of nonprofit organizations that may not qualify for exemption: organizations attempting to influence legislation or participating in political campaigns; fraternal or beneficial societies; clubs organized and operated for pleasure, recreation, social, or other similar purposes; business associations; cemetery associations that are

not owned by religious organizations; civic and business clubs; homeowner's associations; lake improvement associations; professional and trade associations; retail and credit trade associations; trade unions; volunteer employee benefit associations; and veterans organizations. Thus, such organizations as Masons, Knights of Columbus, B'nai B'rith, League of Women Voters, Chambers of Commerce, American Legion, alumni clubs, computer clubs, fraternities and sororities, Jaycees, Lions Clubs, Odd Fellows, Orders of Eastern Star, ski clubs, unions, and VFW Posts are not exempt organizations.

B. If an organization, by the terms of its articles, has purposes that are broader than the exempt purposes specified in Minnesota Statutes, section 297A.25, subdivision 16, the fact that its actual operations have been exclusively in furtherance of exempt purposes is not sufficient to make it an exempt organization. Similarly, an organization that is organized exclusively for exempt purposes is not an exempt organization if a significant part of its operations are not in furtherance of its exempt purposes.

C. An organization is not an exempt organization if its attempts to influence legislation or intervene or participate in a political campaign (including the publishing or distributing of statements) cause it to lose its exemption from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1986.

D. An exempt organization must serve a public rather than a private interest. Thus, to gain exemption an organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the founder or organizer or their family, shareholders of the organization, or persons controlled directly or indirectly by such private interests. An organization which is organized or operated primarily for the benefit of its individual nonexempt members rather than for the benefit of the general welfare does not qualify for exemption.

E. The assets of an exempt organization must be dedicated to an exempt purpose. An organization is not an exempt organization if its net earnings are used in whole or in part to the benefit of shareholders or individuals who have a personal or private interest in the activities of the organization.

Subp. 6. Derivative organizations. An organization may qualify derivatively for exemption if its members are exempt organizations and the organization is organized and operated exclusively to assist its member organizations in carrying out their exempt purposes.

Subp. 7. Exemption certificates. Items A to C apply to the application for and the furnishing of exemption certificates.

A. A religious or educational organization may furnish properly completed certificates of exemption, forms ST-3, in making exempt purchases of tangible personal property. Charitable and youth athletic organizations must apply for and receive a certificate of exempt status, form ST-17, and furnish copies of that certificate in making exempt purchases of tangible personal property. As a matter of convenience for themselves and their suppliers, religious and educational organizations may also apply for and receive certificates of exempt status.

(1) Organizations that may furnish either form ST-3 or form ST-17 include churches, schools, and educational organizations such as scouts, 4-H Clubs, YMCAs, YWCAs, and PTAs.

(2) Organizations that must furnish form ST-17 include charitable organizations such as hospitals, nursing homes, day activity centers, United Way agencies, senior citizen groups, and youth athletic programs such as Little League and hockey.

B. The application for certificate of exempt status, form ST-16, is available upon request from the Taxpayer Information Division. The application must be fully executed and submitted with the necessary supporting documents. No charitable organization making purchases shall be entitled to make those purchases exempt from the sales and use tax unless a certificate of exempt status has been issued by the commissioner of revenue.

C. If the department is provided information sufficient to establish that an organization is organized and operated exclusively for an exempt purpose, exemption will be granted to the organization regardless of the purpose indicated in its application for certificate of exempt status. For example, if an organization claims exemption on the grounds that it is educational, exemption will not be denied if it is, in fact, charitable.

Subp. 8. Taxable sales to exempt organizations. Certain sales and rentals to exempt organizations remain taxable. Exempt organizations still owe the sales tax when purchasing meals, drinks, lodging, motor vehicles, or waste collection services, or when renting motor vehicles. Sales to exempt organizations are taxable if the items purchased are not used in the performance of the charitable, religious, or educational functions of the exempt organization. The benefits of tax-exempt status are confined strictly to the legal entity that has qualified for such status. Thus, sales to individuals who are affiliated with an exempt organization are taxable even if the sales would be exempt if made directly to the exempt organization.

Items A to D are examples of taxable sales.

A. Sales of all lawful gambling equipment and supplies to any organization conducting gambling activities in accordance with Minnesota Statutes, chapter 349, since this property is not used in the performance of exempt functions.

B. Furniture purchased by a church for use in its parsonage is exempt since it is purchased for use by persons that administer religious activities to the congregation. These items are not purchased for the personal use of any one specific person but rather for the operation of a religious organization.

C. Handbooks, leaders' workbooks, and camping equipment purchased by a Girl Scout troop in its own name and with troop funds are exempt. However, these items are taxable if sold directly to an individual scout.

D. An exempt organization buys a set of golf clubs for a retirement gift for a staff member. The golf clubs are taxable as the gift is not furthering the exempt purpose of the organization.

Subp. 9. Sales by exempt organizations. No organization is exempt from collecting the tax on taxable retail sales. If an exempt organization makes taxable retail sales, it must collect and remit tax on these sales unless the sales are exempt fundraising sales as provided for in Minnesota Statutes, section 297A.25, subdivision 2, clause (1), or 297A.256, or the sales are otherwise exempt under Minnesota Statutes, chapters 297A and 349.

A. Examples of taxable sales:

(1) craft or workshop items, including those sold by hospital auxiliaries and senior citizen clubs;

(2) religious books and cards;

(3) used, obsolete, or surplus merchandise sold on a regular basis, such as surplus office equipment or used library books;

(4) taxable meals (See subpart 11, item D.);

(5) rental of personal property on a regular or recurring basis.

B. Examples of nontaxable sales:

(1) land and buildings;

(2) membership dues, retreat fees;

(3) newspapers and magazines (published at least quarterly);

(4) textbooks sold to enrolled students and prescribed for use in a course of study;

(5) tuition, including day care and nursery school charges;

(6) nontaxable meals (See subpart 11, item D.);

(7) occasional sales (See Minnesota Statutes, section 297A.25, subdivision 12.).

Subp. 10. Volunteer fire departments. Volunteer fire departments may qualify for a Certificate of Exempt Status, form ST-17, if they qualify as a charitable organization and are a separate organization from the city. To be considered separate from the city, they must have either their own constitution or articles of incorporation. If a volunteer fire department has been approved for a Certificate of Exempt Status, its purchases are exempt in the manner provided in items A and B.

A. Exempt volunteer fire departments may purchase property exempt from sales tax and use tax if it is to be used exclusively to prevent fires in the community or to protect property in the community from fire. Subitems (1) to (6) are examples of items that an exempt volunteer fire department may purchase exempt:

- (1) fire trucks, ambulances, and accessories;
- (2) repair and replacement parts for fire trucks and ambulances;
- (3) fire protection clothing;
- (4) hand tools;

(5) conversion equipment installed on an existing fire truck if the equipment purchased is used for the prevention of or protection from fire of property in the community;

(6) water used to fill pumper fire trucks. The organization must be able to determine the amount of water that is used for general purposes if water from the station house is used. If the amount of water used for general purposes cannot be determined, the entire amount is taxable. If the amount of exempt water can be determined, the fire department could purchase all its water exempt from the sales tax and report use tax on the portion used for general purposes or it could file a statement with the seller claiming a partial exemption. This statement must certify:

- (a) they are a volunteer fire department;
- (b) the percentage of water that is used to fill pumper fire trucks; and
- (c) a statement describing how this percentage was determined. The

seller should exempt the portion claimed and charge sales tax on the remaining charge for water purchased.

B. Purchases made by an exempt volunteer fire department that are not used exclusively to prevent fires in the community or to protect property in the community from fire are taxable. For example, a washing machine used to wash fire protection clothing is taxable.

Subp. 11. Related information.

A. Many senior citizen groups are exempt from the sales and use tax. See part 8130.6900 and Minnesota Statutes, section 297A.25, subdivision 16.

B. Sales of tangible personal property to veterans organizations or their auxiliaries are exempt provided the property is used for charitable, civic, educational, or nonprofit uses and the organization is exempt from federal taxation pursuant to section 501(c), clause 19, of the Internal Revenue Code, as amended through December 31, 1992. See Minnesota Statutes, section 297A.25, subdivision 25.

C. Sales of sacramental wine for sacramental purposes in religious ceremonies are exempt if the wine is purchased from a nonprofit religious organization or from the holder of a sacramental wine license. See Minnesota Statutes, section 297A.25, subdivision 46.

D. Meals and lodging purchased or sold by an exempt organization are generally taxable. See part 8130.0800.

(1) Sales of meals by exempt organizations are generally taxable. For example, taxable meals include meals sold by civic clubs, fraternal and social groups, scout troops, and similar community associations. Meals sold by churches are also taxable, including meals sold at the Minnesota State Fair, at county festivals, or at a retreat center. Some sales of meals may qualify for exemption as fundraising sales. See subitem (2) and Minnesota Statutes, section 297A.256.

(2) Nontaxable meals are those sold: at qualified fundraising events sponsored by certain nonprofit organizations; at schools, colleges, and universities; by hospitals, sanitariums, nursing homes, and senior citizens' homes; and by and at children's camps licensed under Minnesota Statutes, sections 144.71 to 144.76. Meals or drinks served to individuals who are 60 years of age or over and their spouses, or to the handicapped and their spouses by exempt organizations under a program funded by the federal government under United States Code, title 42, sections 3001 to 3045, wherever delivered, prepared, or served are not taxable. See Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), clause (2).

(3) Purchases of meals by an exempt organization are generally taxable. For example, restaurant meals purchased for meetings are taxable when sold to an exempt organization.

(4) Charges for lodging sold to or purchased by exempt organizations are taxable unless furnished under an enforceable agreement for a continuous period of 30 days or more. See part 8130.1000. For example, the sale of lodging by a church to its members at a

retreat center is taxable. Purchases of lodging by an exempt organization for conventions are also taxable. Lodging provided by children's camps licensed under Minnesota Statutes, sections 144.71 to 144.76, is not taxable. See part 8130.0800, subpart 6.

E. The sale of memberships to camps or other recreation facilities for educational and social activities for young people primarily age 18 and under are exempt if they are owned and operated by an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1992. See Minnesota Statutes, section 297A.01, subdivision 3, paragraph (1), clause (2). The sale of memberships to an association incorporated under Minnesota Statutes, section 315.44, YMCAs, and YWCAs, are exempt. This includes one-time initiation fees and periodic membership dues. All separate charges for the privilege of having access to and the use of the association's sports and athletic facilities are taxable. See Minnesota Statutes, section 297A.25, subdivision 37.

F. While purchases of admissions provided for in Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d), are not taxable when purchased by exempt organizations, sales of admissions by exempt organizations are generally taxable. The following sales of admissions in subitems (1) to (3) are exempt.

(1) Tickets or admission to artistic performances sponsored by qualified tax-exempt organizations are exempt. This exemption includes sales of tickets or admission by public schools, private schools, colleges, and universities for concerts, plays, and similar artistic events sponsored by the schools. See Minnesota Statutes, section 297A.25, subdivision 24.

(2) Tickets or admission to regular season school games, events, and activities are exempt. See Minnesota Statutes, section 297A.25, subdivision 30.

(3) Admission to the premises of or events sponsored by a nonprofit arts organization are exempt from imposition of local government sales tax. See part 8130.0900 and Minnesota Statutes, section 297A.141.

G. Receipts from bingo, raffles, and other gambling activities are subject to the tax imposed on lawful gambling. See Minnesota Statutes, section 349.212.

H. A nonprofit organization that is exempt from federal income taxation under subchapter F of the Internal Revenue Code is not considered to be a trade or business. Therefore, sales of items previously used in the operation of the exempt organization may still qualify for the isolated or occasional sale exemption. However, if an exempt organization operates a trade or business that has little or no relationship to its exempt purposes except to provide funds to carry out those purposes, these activities are considered to be a trade or business. In these instances, the sale of any equipment sold in connection with the trade or business operated by an exempt organization is taxable. See part 8130.5800 and Minnesota Statutes, section 297A.25, subdivision 12.

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 1279; 18 SR 391; L 1993 c 375 art 8 s 14*

8130.6300 CASKETS, BURIAL VAULTS, URNS FOR CREMAINS, AND MEMORIALS.

Subpart 1. Caskets, burial vaults, and urns for cremains exempt. The gross receipts from sales of caskets, burial vaults, and urns for cremains, used for human burial, are not subject to tax, whether made by a distributor to an undertaker or cemetery association, or by an undertaker or cemetery association to the general public. No exemption certificate need be offered by the purchaser.

Subp. 2. Exemption not applicable to memorials. Treatment:

A. Sales of tombstones, markers, or other memorials and the foundation upon which such tombstones, markers, and other memorials are placed, including the material used in setting the memorials in the cemetery, are considered sales of tangible personal property, and subject to the Sales and Use Tax Law. Memorial dealers are the retailers of such property. The tax applies to the entire amount charged, without deduction therefrom of the production cost of cutting, shaping, polishing, or lettering the memorial. However, charges for inscriptions upon a stone subsequent to its erection, constitute receipts from personal services, which, if stated separately, are deductible from the total charge.

B. If the seller agrees to install the memorial in a cemetery, the charge for transporting the memorial to the cemetery and for the labor of setting the memorial in the cemetery are not taxable if such charges are stated separately. If the transportation or installation labor charges are not separately stated, the tax is applicable to the entire sales price.

C. Where a cemetery constructs the foundation upon which a memorial is to be placed, and collects the charges therefor from the memorial dealer, who then either collects that amount as a separate charge from a customer or includes it in the total charge for the memorial, the memorial dealer is the retailer of the foundation and must collect and remit the tax on the charges made therefor. The cemetery, under such circumstances, is merely acting for the memorial dealer.

D. In the event that the cemetery collects the charges for foundations directly from customers of the memorial dealer, the cemetery is the retailer and must collect and remit the tax with respect to the charges made for the completed foundation.

E. Sales to memorial dealers and cemeteries of materials, including sand, gravel, cement, and supplies, which are used in the processing of tombstones, markers, or other memorials, and the erection of foundations on which finished tombstones, markers, or other memorials are placed, and which become component parts thereof, are exempt as sales used in industrial production. Sales to memorial dealers and cemeteries of tools, equipment, and supplies which do not become component parts of finished foundations, tombstones, markers, or other memorials are taxable. (See Minnesota Statutes, section 297A.25, subdivision 9.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.6400 DISABLED VETERANS; PURCHASES OF AUTOMOBILES AND OTHER CONVEYANCES.

Subpart 1. **General rule.** Minnesota Statutes, section 297A.25, subdivision 18, provides exemption for the gross receipts from the sale of an automobile or other conveyance to a disabled veteran if the purchaser is assisted by a grant from the United States in accordance with United States Code, title 38, section 1901, as amended.

This exemption is effective for the purchase of vehicles and the purchase of any qualifying adaptive equipment purchased with federal assistance after June 30, 1971. The exemption shall be applicable for a vehicle as well as adaptive equipment even though the grant was limited to assistance in purchasing only adaptive equipment for such vehicle.

Subp. 2. **Procedure.** To effect the exemption, the following procedure should be followed:

A. Have VA form 21-4502 (Application for Automobile or Other Conveyance) or VA form 10-1394 (Application for Adaptive Equipment - Motor Vehicle) completed in full by all parties concerned.

B. When the completed VA form 21-4502 or VA form 10-1394 and copies of the seller's invoices are furnished to the Veterans Administration, the appropriate Veterans Administration official will stamp and sign one copy of the seller's invoice certifying that the purchase was made under the provisions of United States Code, title 38, section 1901, as amended, and return it to the seller with the check in payment of the allowable amount. The seller should keep the copy of the invoice for the seller's records, to verify that the sale was properly exempt.

Subp. 3. **Motor vehicle excise tax.** Effective January 1, 1972, sales of automobiles or other conveyances (which are subject to Minnesota registration) are no longer subject to sales and use tax but are subject to the motor vehicle excise tax under the provisions of Minnesota Statutes, chapter 297B. A disabled veteran purchasing such items with adaptive equipment after December 31, 1971, with funds provided by the Veterans Administration under the provisions of United States Code, title 38, section 1901, as amended, should attach to the motor vehicle purchaser's certificate upon registration either a copy of VA form 21-4502 or VA form 10-1394 with all sections of the form completed. The procedure for

obtaining exemption for other conveyances that are not subject to the motor vehicle excise tax and for adaptive equipment remains the same as in subpart 2.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.6500 AIRCRAFT COMMERCIAL USE PERMIT.

Subpart 1. **In general.** An aircraft dealer who is licensed in accordance with Minnesota Statutes, section 360.63, may make application, under the provisions of Minnesota Statutes, section 360.654, for an aircraft commercial use permit. Application for the aircraft commercial use permit, form ST-22, is available upon request from the Department of Revenue. To obtain an aircraft commercial use permit, the dealer must complete an application, form ST-22, for each aircraft for which the dealer needs a permit. There is a \$20 fee for each permit applied for, and the permit will be issued only for an aircraft purchased after June 4, 1971.

Subp. 2. **Scope.** The permit entitles the dealer to use the aircraft, purchased exempt for the purpose of resale, for commercial purposes without payment of the use tax which otherwise would be due. It is not necessary for a dealer who purchases an aircraft for the purpose of resale to obtain an aircraft commercial use permit if the sole use is rental without an operator or demonstration in efforts to sell.

Commercial use includes any use of an aircraft in the normal course of business, such as charter service, freight transportation, and flight instructions.

Commercial use does not include personal use of the aircraft. If an aircraft is put to any personal use, the dealer becomes liable for payment of the use tax.

Subp. 3. **Limitation.** The aircraft commercial use permit may be obtained only for aircraft purchased for resale but used temporarily in revenue producing activities such as charter, instruction, crop spraying, or similar activities. This does not include the aircraft that are capitalized and listed on depreciation schedules for income tax purposes. The capitalization of assets and depreciation thereof denotes the intention to use property other than for sales inventory purposes.

Subp. 4. **Permit expiration.** The aircraft commercial use permit expires one year from the date the aircraft is purchased, regardless of the date the permit is issued. The dealer becomes liable for the use tax for the month in which the permit expires, and the purchase price must be reported on line 4 of the dealer's sales and use tax return, form ST-1. The aircraft commercial use permit must be returned with form ST-1. No credit or refund is given for the \$20 fee originally paid.

Subp. 5. **Sale of aircraft.** When the dealer sells the aircraft, the selling price must be included in gross sales. The fact that the aircraft commercial use permit has not expired or that the dealer has reported and paid use tax on the aircraft has no effect on the taxability of the sale. The dealer must return the aircraft commercial use permit (unless previously returned) when the dealer files the sales and use tax return for the month in which the sale was made. No credit or refund is given for the \$20 fee originally paid.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279; L 1995 c 233 art 4 s 5; L 1995 c 248 art 4 s 5*

8130.6600 DISABLED VETERANS; PURCHASE OF BUILDING MATERIALS.

Subpart 1. **General rule.** Minnesota Statutes, section 297A.25, subdivision 20, of the Minnesota Sales and Use Tax Law provides exemption for the gross receipts from the sales and purchase of building materials after June 30, 1971, to be used in the construction or remodeling of a residence for a disabled veteran when the construction or remodeling is financed in whole or in part by the United States in accordance with United States Code, title 38, sections 801 to 805, as amended.

Subp. 2. **Procedure.** The exemption is not allowed when the building materials are sold to the contractor, subcontractor, builder, or owner, but will be allowed to the recipient of the benefits provided in United States Code; title 38, sections 801 and 805, as amended, upon the filing of a claim for refund, accompanied by the following documents to substantiate the validity of such claim:

A. copies of the Analysis and Review of Application for PH Grant (VA form 26-4559), which is available from the regional VA office, and claimant's letter of approval, VA form FL 26-38 (3072);

B. copies of invoices or other evidence substantiating building material costs and payment of applicable sales taxes in the case of materials purchased directly by the claimant;

C. copies of invoices or other evidence substantiating building material costs and payment of applicable sales taxes in the case of materials purchased by a contractor or a subcontractor.

The claim for refund shall be filed on form ST-11dv, which form is available upon request from the Department of Revenue.

A claim must be filed within three years from the date the building materials were purchased. A claim will not be entertained for materials purchased prior to July 1, 1971. Interest shall be payable from the date of filing such claim.

Statutory Authority: *MS s 297A.29*

8130.6700 TEXTBOOKS.

Subpart 1. **In general.** Minnesota Statutes, section 297A.25, subdivision 21, exempts the sale of textbooks which are prescribed for use in a course of study in a public or private school, college, university, business or trade school to regularly enrolled students.

Subp. 2. **Definitions.** For the purposes of this part, the following words, terms, and phrases shall have the meanings ascribed to them below:

A. "Textbooks which are prescribed for use in a course of study" are defined as any book or other printed instructional material which is specifically required for a course of study. Encyclopedias, dictionaries, and school supplies such as paper, pencils, and folders are not included within this definition.

B. "Public school" is defined as one that furnishes courses of study, enrollment, and staff that meet standards of the State Board of Education.

C. "Private school" is defined as one which under the standards of the State Board of Education provides an education substantially equivalent to that furnished at a public school.

D. "Business and trade schools" are defined as those schools licensed pursuant to Minnesota Statutes, section 141.25.

E. "College" is defined to include all professional schools, paramedical, and other paraprofessional schools and nursing schools.

F. "Regularly enrolled student" is defined as one enrolled in a course of study at a qualifying educational institution with tuition, if required, currently paid. This definition includes correspondence, extension, full-time, and part-time students.

Subp. 3. **Criteria for determining taxability; exemption certification.** As a general rule, the sale of all textbooks shall be regarded as taxable. However, if a purchaser certifies that the book to be purchased is specifically required for a course of study at a qualifying educational institution and that the purchaser is a regularly enrolled student at such institution, the book may be purchased exempt. Such certification must contain the student's signature, the date, the purchase price of the exempt book, and the following statement:

"I HEREBY CERTIFY: That I am a regularly enrolled student in a course of study at a public or private school, college, university, business or trade school, and that the textbooks purchased exempt on this date are specifically required for a course of study at such educational institution."

A vendor receiving such certification from a purchaser is relieved from the responsibility of collecting the tax, provided the vendor accepts the certification in good faith and retains the certification in the vendor's records.

Compliance with this part may consist of a listing of student's signatures, purchase dates, and purchase amounts entered beneath the certification statement.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.6800 [Repealed, L 1992 c 511 art 7 s 26]

8130.6900 SENIOR CITIZEN ORGANIZATIONS.

A 1974 amendment to Minnesota Statutes, section 297A.25, subdivision 16, effective August 1, 1974, allows an exemption to any senior citizen group organized and operated exclusively for pleasure, recreation, and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholder. Senior citizen groups are eligible for exempt status if they meet two requirements. One, they must be formally organized for pleasure, recreation, or other nonprofit purpose. Two, they must limit their membership to senior citizens who have attained the age of 65 years or over. To receive exempt status certificate (ST-17) a senior citizen group must make application on form ST-16.

Statutory Authority: *MS s 297A.29*

8130.7000 [Repealed, 18 SR 83]

PAYMENTS, RETURNS, ASSESSMENTS, AND COLLECTIONS**8130.7300 WHEN TAX IS DUE.**

Subpart 1. General rule. Generally, except for the accelerated payment of the June liability, sales and use taxes imposed under law are due and payable at the office of the commissioner monthly on or before the 20th day of the month immediately following the month in which the taxable event or events occurred. See Minnesota Statutes, section 289A.20, subdivision 4.

Subp. 2. Other reporting periods. In addition, under authorization granted to the commissioner by law (see Minnesota Statutes, section 289A.20, subdivision 4), the commissioner may authorize other reporting periods.

A. The authorizations may be granted provided:

(1) the person desiring to file on other than a monthly basis must apply to file quarterly or annual Minnesota sales and use tax returns, with the Taxpayer Information Division.

(2) The person applying for authorization to file on a quarterly basis must have had average sales and use tax liability of less than \$250 per month for the six-month period preceding the period for which the change in filing is requested as adjusted under item B. The person applying for authorization to file an annual return must have had an average sales and use tax liability of less than \$25 per month for the preceding one-year period as adjusted under item B.

B. The commissioner will annually recalculate the maximum liability amounts for quarterly or annual filing, using the percentage calculated pursuant to Minnesota Statutes, section 290.06, subdivision 2d, paragraph (b). If the maximum liability amount so calculated is more than \$50 above the maximum liability amount for quarterly filing then in effect, the maximum liability amount for quarterly filing will be increased \$50. The maximum liability amount for annual filing will be increased by \$5 each time the quarterly maximum liability amount is increased.

C. If authorization to file on other than a monthly basis has been granted by the commissioner, the tax due thereunder must be paid at the office of the commissioner on or before the 20th day of the month immediately following the close of the authorized period.

D. If the person is applying for a new sales tax permit and has no history of tax liability, application for authorization may be made on the permit application. The person must estimate whether the expected liability will average less than \$250 per month, for quarterly filing, as adjusted under item B, or less than \$25 per month, for annual filing, as adjusted under item B.

Subp. 3. Revocation of filing period. Authorizations granted by the commissioner to file sales and use tax returns, either on a quarterly or annual basis, may be revoked if:

A. the person granted the authorization is either delinquent in filing the return or in paying the tax due;

B. the person's tax liability exceeds \$750 for any subsequent quarter where the filing of quarterly returns has been authorized, or where the person's tax liability exceeds \$300 for any subsequent calendar year where an annual return has been authorized; or

C. the commissioner determines that the procedures authorized under this part unduly jeopardize the orderly and efficient administration of the Sales and Use Tax Law.

In the event that authorization to file returns and pay the tax due thereon, either on a quarterly or annual basis, is revoked by the commissioner, the person whose authorization has been revoked shall thereafter file the return and pay the tax due thereon on a monthly basis in accordance with this part.

When the filing amounts in subpart 2, item A, are adjusted by the commissioner under subpart 2, item B, the amounts in this subpart must be adjusted proportionately by the commissioner.

In the event that a person authorized to file on a quarterly or annual basis ceases to engage in a kind of business which requires that a return be filed under the Sales and Use Tax Law, the person must file a final return by the 20th day of the month following the discontinuance of such business.

Subp. 4. Accelerated payment of June liability. Some persons are required to file an estimated June sales tax return early using an estimated June sales and use tax return. A person whose May sales tax liability is \$1,500 or more must file an estimated June tax return. The law requires these persons to pay one-half of the estimated June tax by June 20 each year, when the May return is filed.

A person required to make the estimated June tax payment must file the regular June return and pay the balance of the June payment by August 20, which is also the due date of the July return. This payment may be paid at any time before the due date. The taxpayer must file separate returns for the months of June and July. No estimated June tax payment is required if the May tax liability is less than \$1,500.

Taxpayers who are not required to make the estimated June tax payment must file the June return by July 20.

Subp. 5. Local sales and use tax procedure. Retailers located outside of cities that impose local sales and use taxes are not required to remit the local use taxes until the amount of local use tax collected is \$10 or more. See Minnesota Statutes, section 289A.20, subdivision 4.

When the amount of local use tax collected is \$10 or more, the total amount of local use tax must be remitted to the commissioner with a local sales and use tax return at the time of the retailer's next regular periodic payment.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.7400 UNCOLLECTIBLE DEBT DEDUCTION.

Subpart 1. General rule. Ordinarily, a deduction for uncollectible debts is allowed only for a person who is reporting on the accrual method of accounting for sales and use tax purposes. However, if a cash basis taxpayer accepts an unsecured check in payment for a sale, reports the sale, and subsequently determines that the check is uncollectible, the taxpayer is entitled to an uncollectible debt deduction. Uncollectible debts (commonly referred to as bad debts) will be recognized as a deduction for sales tax purposes only when given recognition by a direct charge-off for federal income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. Consequently, no anticipatory or statistical method of estimating future uncollectible debts will be allowed by the commissioner. See Minnesota Statutes, section 297A.26, subdivision 2.

Subp. 2. Deduction determination. If a debt becomes uncollectible, either in whole or in part, in a reporting period subsequent to the period in which the transaction that gave rise to the uncollectible debt occurred, the retailer may deduct the uncollectible debt from the gross receipts for the reporting period in which the uncollectible debt is determined to be uncollectible in accordance with the following rules.

A. If the uncollectible debt arose in respect of a sale required to be included in gross receipts, subject to a tax imposed under the Sales and Use Tax Law, the entire amount of the debt remaining uncollected is allowed as a deduction.

B. If the uncollectible debt arose in respect of a sale partly subject to the tax imposed under the Sales and Use Tax Law and partly exempt thereunder, the amount of the uncollectible debt allowed as a deduction is the amount derived by multiplying the uncollectible debt by the percentage that the taxable sale bears to the total sales.

C. If the uncollectible debt arose in respect of two or more sales made at successive intervals, payments made before the date the debt became uncollectible must be applied, first to the earliest sale upon which there is an unpaid balance, and to following sales in successive order.

Subp. 3. **Excess carryover.** In the event that the seller is entitled to an uncollectible debt deduction in excess of the amount the seller is required to report for the month in which the debt is determined to be uncollectible, the balance of the deduction may be used in a subsequent month.

Subp. 4. **Repossessions.** In the case of repossessions, an uncollectible debt deduction is allowable only to the extent that the pro rata portion of all payments and credits, attributable to the cash sales price of the merchandise is less than the net contract balance (after excluding unearned insurance and finance charges) at the date of repossession.

Subp. 5. **Recovery of uncollectible debts previously deducted.** If an uncollectible debt deduction is taken and the taxpayer subsequently collects the debt in whole or in part, the amount collected must be included in the first return filed after collection, and the amount of tax thereon must be paid with the return.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.7500 RETURNS AND RECORDS.

Subpart 1. **Sales and use tax return.** Any person to whom the commissioner has issued a permit under Minnesota Statutes, sections 297A.04 and 297A.06, must file a sales and use tax return prescribed by the commissioner. The sales and use tax return and instructions issued as a guide thereto are available from the commissioner. The return must be signed either by the permit holder or by a person having the control, supervision, or responsibility of filing returns and making payment of the sales and use tax.

Subp. 2. **Consumer's use tax return.** Any person required to file a use tax return under Minnesota Statutes, section 289A.11, subdivision 3, and who has not been issued a sales and use tax permit, must file a consumer's use tax return, on or before the 20th day of the month immediately following the month in which the property subject to use tax was first brought into Minnesota.

Subp. 3. **Consolidated returns permitted.** Under Minnesota Statutes, section 289A.11, subdivision 1, if the person required to file a return has two or more places of business at which the person engages in transactions subject to tax, the person may elect to file a consolidated sales and use tax return, for all such places of business under the following conditions:

A. the taxpayer has been granted a sales and use tax account number by the commissioner;

B. the taxpayer furnishes to the commissioner a list containing the business name and address and reporting information specified in subpart 5 for each separate place of business; and

C. the taxpayer makes available at the address used by the taxpayer on the consolidated return the information pertinent to each separate place of business in order that the commissioner may be able to perform a proper audit with respect to the return so filed.

Subp. 4. **Time and place of filing.** Under Minnesota Statutes, section 289A.18, subdivision 4, all tax returns must be filed at the office of the commissioner on or before the 20th day of the month immediately following the month for which the taxes are due, unless authorization has been granted to the person required to file either on a quarterly or annual basis. Where a quarterly or annual filing is authorized, the return is required to be filed at the office of the commissioner on or before the 20th day of the month immediately following the close of the period authorized. If any return required under the provisions of the Sales and Use Tax Law becomes due upon a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is filed or received upon the next succeeding regular business day.

Subp. 5. **Reporting requirements.** Reporting requirements are:

A. All sales and use tax returns filed shall show total gross sales in any manner related to Minnesota business (not including the sales tax collected) on line one of the return without any exclusions except for the following:

- (1) charges for personal services rendered;
- (2) labor or service charges for installing or applying goods sold if separately stated;
- (3) charges for interest, financing, and transportation incurred after the sale if separately stated;
- (4) trade-in allowances;
- (5) cash discounts and cash or credit refunds on taxable property returned by customers;
- (6) installment payments on conditional or credit sales previously reported;
- (7) labor used in repairing, which does not include altering, modifying, or assembling tangible personal property if separately stated;
- (8) isolated or occasional sales of tangible personal property; and
- (9) leases of real property, if the lease is not for lodging or similar use for a period of less than 30 days, subject to part 8130.1000 and leases of manufactured homes used for residential purposes for a continuous period of 30 days or more.

All exclusions from line one must be supported by the taxpayer's accounting records.

B. All gross sales included in line one of the return but not subject to tax under the provisions of the Sales and Use Tax Law must be itemized on the reverse side of the return. The total of itemized deductions must be shown on line two of the return. The itemized deductions must be supported by the taxpayer's accounting records and cannot be computed by subtracting line three from line one of the return.

C. All sales revenues taxable under the provisions of the Sales and Use Tax Law must be shown on line three of the return, and the amount must be computed by subtracting line two (deductions) from line one (gross sales).

D. All purchases not previously taxed by the vendor, and subject to the tax under the provisions of the Sales and Use Tax Law must be shown on line four of the return without regard to the location of the vendor.

E. The sum of net sales from line three plus taxable purchases from line four must be shown on line five of the return.

F. The amount on line five of the return multiplied by the current tax rate computes the amount of tax due that must be shown on line six of the return.

G. All liquor sales that are subject to a tax rate greater than the general sales tax rate must be shown on line seven of the return. The amount on line seven must also be included in gross sales on line one.

H. The amount of additional tax due on liquor sales must be shown on line eight of the return. The tax is computed by multiplying the amount on line seven by the tax rate on line eight of the return.

I. The sum of sales and use tax due from line six plus the additional liquor tax due from line eight must be shown on line nine of the return.

J. If an incorrect amount of tax was reported in a previous period, an adjustment may be entered on line 11. A detailed explanation of the adjustment must be submitted with the return. The explanation must include the following:

- (1) name;
- (2) sales and use tax account number;
- (3) the period(s) in which the incorrect amount of tax was reported;
- (4) computation to arrive at amount of adjustment; and
- (5) the reason(s) for the adjustment (attach pertinent supporting documents).

The amount of the overpayment being taken as an adjustment on line 11 must not exceed the amount of tax due on line 9. The amount of the adjustment which exceeds the tax due on line 9 must be taken as line 11 adjustment on a subsequent return.

Overpayments in excess of \$1,000 must not be entered on line 11. Refunds of overpayments must be requested by filing a claim for refund.

Subp. 6. Records; general. Every seller, retailer, and person storing, using, or otherwise consuming in this state tangible personal property or taxable services as defined in Min-

nesota Statutes, section 297A.01, subdivision 3, purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state must keep adequate and complete records showing:

A. gross receipts from sales or lease payments from leases of tangible personal property (including any services that are a part of the sale or lease) made within Minnesota irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable;

B. all deductions allowed by law and claimed in filing returns; and

C. total purchase price of all sales or purchases as defined in Minnesota Statutes, section 297A.01, subdivision 3, purchased for sale or consumption or lease in Minnesota.

These records must include the normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns.

Subp. 7. Records; microfilm. Microfilm reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, etc., are not acceptable in lieu of original records. However, microfilm reproductions of supporting records of details, such as sales invoices, purchase invoices, credit memoranda, etc., may be maintained providing the following conditions are met:

A. appropriate facilities are provided for preservation of the films for periods required;

B. microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed;

C. the taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for purposes of verification of tax liability; and

D. proper facilities are provided for the ready inspection and location of the particular records including modern projectors for viewing and copying the records.

A posting reference must be on each invoice. Credit memoranda must carry a reference to the documents evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transactions for which exemption is sought.

Subp. 8. Electronic data processing records. "Electronic data processing records" include punched cards, magnetic tapes, magnetic disk packs, computer disks, and other machine-sensible data media used for recording, consolidating, and summarizing accounting transactions and records within a taxpayer's electronic data processing system. These records are required to be retained so long as their contents may be material in the administration of any provision of the Sales and Use Tax Law. The commissioner shall decide the materiality of any such records, and if the materiality of any record is questionable, then the record must be retained. It is not required that taxpayers retain the same data on two or more machine-sensible media. If there is a duplication of data between two or more electronic data processing media, the taxpayer must maintain a complete set of all the records on at least one of the media.

These requirements apply to any taxpayer who maintains any records on an electronic data processing media. The records to be maintained are as follows.

A. A general ledger, with source references, to coincide with financial reports for sales tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers must be maintained.

B. Invoices, vouchers, and other records which support the summary accounting data. These records must be identified and made available to the department upon request.

C. The records which provide the opportunity to trace any transaction back to the original source or forward to a final total. If printouts are not made at the time of processing, then the system must have the ability to reconstruct these transactions.

D. A general description or documentation of the electronic data processing portion of the accounting system. This includes but is not limited to:

(1) standard programming conventions and procedures including flowcharting conventions, decision table conventions, coding conventions, standard glossary and standard abbreviations, standard programming techniques, and debugging procedures and techniques;

(2) documentation of the system including a problem statement, systems flowcharts, operator instructions, record layouts, program flowcharts and sense switches, program listings, test data, and approval and changes log; and

(3) standard operating procedures and control procedures, including the reconciliation of electronic data processing controls to nonelectronic data processing controls, error listings and error logs, and any other controls, either electronic data processing or manual, used to ensure accurate and reliable processing.

Any taxpayer retaining disbursement or revenue records on electronic data processing records for any individual original transactions, or any summary of the transactions subject to the tax under the provisions of the Sales and Use Tax Law must separately show the amount of sales tax paid or the amount of sales tax collected. It is permissible, however, to group all taxable sales or all taxable purchases into various accounts, all of which are taxable, providing that if a nontaxable transaction is combined with a taxable transaction in the same account, then, with respect to each individual transaction, the tax is separately shown in the electronic data processing record.

An electronic data processing system must include a method of producing visible and legible paper records from the electronic data processing records which will provide the necessary information for verification of the taxpayer's tax liability.

Production of these paper records does not eliminate the necessity of maintaining the corresponding electronic data processing records as required by the first paragraph of this subpart.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.7600 SECURITY: NOTICE FROM COMMISSIONER.

Subpart 1. **In general.** In order to assure payment of the tax due, the commissioner may require that sufficient security be deposited with the commissioner by a retailer required to remit payment of the tax under the Sales and Use Tax Law.

Subp. 2. [Repealed, 15 SR 693]

Subp. 3. [Repealed, 15 SR 693]

Subp. 4. [Repealed, 15 SR 693]

Subp. 5. **Notice of sale.** Notice of sale of such security must be served either personally upon the person who deposited the security or by mail in the same manner as used with respect to service of notice in Minnesota Statutes, section 289A.37, subdivision 5.

Subp. 6. **Notice of requirement.** Whenever the commissioner requires a security deposit under Minnesota Statutes, section 297A.07 and 297A.28, the commissioner must so notify, in writing, the person from whom the deposit is required. The written notification must be signed either by the commissioner or an authorized representative. The notice must set forth the amount of security and the basis upon which the required amount was computed.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.7700 EXTENSION OF TIME TO FILE RETURN.

Subpart 1. **General rule.** Whenever the commissioner believes good cause exists, the commissioner may, upon application, extend the time for filing a return. The extension only applies to filing of the return, not payment of the tax. The tax must still be paid on the original due date. The extension shall not exceed 60 days from the date on which the return is due. (See Minnesota Statutes, sections 289A.18, subdivision 4, and 289A.19, subdivision 5, regarding due dates for filing returns.)

Subp. 2. [Repealed, 15 SR 693]

Subp. 3. **Conditions.** Extension may be granted subject to the following conditions:

A. the extension request must be filed on or before the due date for filing the return, must be in writing, and contain the taxpayer's name, account number, and reason for request;

B. separate applications must be made for each return (blanket requests for extensions will not be granted);

C. the extension request must be signed by the applicant or the applicant's duly authorized agent; and

D. the extension request must be forwarded to the Minnesota Department of Revenue, Taxpayer Information Division, Mail Station 4453, Saint Paul, Minnesota 55146-4453, and submitted in an envelope marked "Extension Request."

When the extension request is approved or denied, the applicant will be informed of the determination in writing.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.7800 [Repealed, L 1990 c 480 art 1 s 45]

8130.7900 RETURN FILING; FAILURE TO FILE.

Subpart 1. Duty to file returns. The following persons making taxable sales or taxable use of tangible personal property in Minnesota, or holding a sales and use tax permit, must file returns pursuant to Minnesota Statutes, chapter 289A:

A. any retailer located in Minnesota;

B. any retailer maintaining a place of business in Minnesota;

C. any retailer who has voluntarily filed an application for a permit and has been granted one under Minnesota Statutes, section 297A.21, subdivision 5;

D. any retailer making retail sales from outside this state to a destination within this state if the retailer engages in the regular or systematic soliciting of sales from potential customers in this state;

E. a purchaser making use of items obtained with an exemption certificate for other than the exempt purpose (see Minnesota Statutes, section 297A.12);

F. a person upon whom liability for use tax is imposed by Minnesota Statutes, section 297A.14; and

G. any person holding a direct pay permit.

Subp. 2. Failure to file. Any person described in subpart 1 who is required to file a return and fails to do so within the time prescribed by law or by rule, or who files an incorrect, false, or fraudulent return, must, upon the written demand of the commissioner, file the return required or the corrected return, as the case may be, within 30 days after the written demand for the return has been mailed to the person, and at the same time pay any tax due on the basis of the return.

Subp. 3. Failure to comply with demand. If the person upon whom the written demand has been made fails to comply with the demand, the commissioner, through knowledge and information that is obtained through testimony or by any other means available to the commissioner, will prepare a return or corrected return and assess a tax on the basis of that return. The tax assessed must be paid within ten days after the commissioner has mailed to the person a written notice of the amount assessed and a demand for its payment.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.8000 TIME LIMITATION ON ASSESSMENT AND COLLECTION.

Subpart 1. In general. Except as otherwise provided in the Sales and Use Tax Law and except for circumstances referred to in other rules pertinent to Minnesota Statutes, section 289A.38, the assessment of tax for any period for which a tax is due must be made within three and one-half years from the date the return was filed. A return filed before the last day prescribed by law for filing thereof will be considered as filed on the last day.

Subp. 2. [Repealed, 15 SR 693]

Subp. 3. [Repealed, 15 SR 693]

Subp. 4. Omission of 25 percent. In the case of omission from the return of a dollar amount properly includable therein which is in excess of 25 percent of the tax reported in the return the tax may be assessed or a proceeding in court for the collection of the tax may be begun at any time within six and one-half years after the return was filed. See Minnesota Statutes, section 289A.38, subdivision 6.

A. The dollar amount reported in the return shall mean the total amount of tax as shown on the return.

B. For purposes of computing the dollar amount of the omission there cannot be included amounts disallowed as deductions or unreported retail sales which would constitute allowable deductions in determining net taxable sales. The computation of the percentage of omission is the percentage derived by dividing the dollar amount of tax not reported on the return by the dollar amount of tax that was reported on the return.

Subp. 5. [Repealed, 15 SR 693]

Subp. 6. Waivers. The commissioner and the taxpayer may consent to an extension of the period in which the tax may be assessed, by a written waiver executed by both parties either within three and one-half years after the return was filed or, in the case of an omission of an amount as specified in subpart 4, within six and one-half years after the return was filed. The period agreed upon may be extended by subsequent waivers in writing made before the expiration of the period previously agreed upon. See Minnesota Statutes, section 289A.42, subdivision 1.

Subp. 7. Collection of tax by court action. When the assessment of tax is made within the period of limitation as prescribed in subparts 1, 4, and 6, the tax due and owing may be collected by a proceeding in court, provided that the action is instituted within five years after the assessment of the tax. See Minnesota Statutes, section 270.68, subdivision 1.

The period of time for collection proceedings is subject to suspension. See Minnesota Statutes, section 289A.41.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.8100 CLAIM FOR REFUND.

Subpart 1. In general. A person, as defined in Minnesota Statutes, section 297A.01, subdivision 2, who has overpaid sales or use tax for any period, may file a claim for refund with the commissioner for the amount of the overpayment. The claim for refund must be submitted on a department form as prescribed by the commissioner and be completed in the manner prescribed therein. The claim must set forth in detail the grounds for each adjustment and the facts supporting those grounds.

Subp. 2. Requirements for refund claim. Conditions to be met before the commissioner will entertain a claim for refund:

A. The person filing a claim for refund must have paid the tax and filed the sales and use tax return upon which the claim is based directly to the commissioner (or the tax was collected from such person other than by means of court action in district court, either at law or in equity by the commissioner), except the following:

(1) A person who has paid tax on electricity used in agricultural production that is exempt from taxation under Minnesota Statutes, section 297A.25, subdivision 9, may file a claim for refund with the commissioner if the tax was paid to the retail rural electric cooperative association based in Aitkin county. See Laws of Minnesota 1986, chapter 399, article 1, section 5.

(2) A disabled veteran who purchases building materials or on whose behalf a contractor, subcontractor, or builder purchases building materials for use in the construction or remodeling of the veteran's residence, when the construction or remodeling is financed in whole or in part by the United States in accordance with United States Code, title 38, sections 801 to 805, as amended, may claim a refund directly from the commissioner. A veterans's claim for refund form is available upon request from the Department of Revenue for use by disabled veterans in making claims. See part 8130.6400, and Minnesota Statutes, section 297A.25, subdivision 20.

(3) Since July 1, 1984, the sales and use tax on capital equipment is initially paid at the six percent rate. In order to obtain the refund of sales and use tax paid on the pur-

chases of qualifying capital equipment, the purchaser must file a claim for refund form with the commissioner. The claim is filed with the Business Trust Tax Unit, Department of Revenue. No adjustment for the tax paid on capital equipment will be allowed as credit against tax due on current sales and use tax returns being filed by a Minnesota sales and use tax permit holder.

Refund claims may include more than one purchase of machinery or equipment. However, no more than two claims will be accepted from a purchaser in a calendar year. See Minnesota Statutes, section 297A.15, subdivision 5.

Interest on capital equipment refunds or credits begins to accrue on the date the claim is filed. See Minnesota Statutes, section 289A.56, subdivision 4. For purposes of calculating the interest due, a claim is not considered filed until sufficient documentation to process the claim is submitted to the commissioner.

When filing a claim for refund for purchases of qualifying capital equipment, the purchaser must provide sufficient documentation to substantiate the allowance of the requested refund. The following information must be submitted with the completed claim for refund form:

(a) a Minnesota tax identification number or, if none, the purchaser's social security number;

(b) a description of the business activity including an explanation of the circumstances (for example, opening a new production facility, expansion of an existing facility, or whether or not the equipment purchased replaces existing equipment) under which the claim is filed;

(c) a description of the property purchased and how it will be used in the production process;

(d) a copy of the purchase invoice for each equipment purchase and written evidence of payment of the six percent tax or such other evidence as the commissioner deems necessary;

(e) for leased equipment, a copy of the invoice showing sales tax paid on the lease payments and a copy of the lease agreement; and

(f) if a use tax was accrued and reported for the equipment purchase, verification that the use tax was reported to the state of Minnesota, including evidence of payment of the six percent tax.

(4) The owner of homestead property may file a refund claim directly with the commissioner if a chair lift, ramp, or elevator was installed or constructed on the owner's homestead pursuant to Minnesota Statutes, section 297A.25, subdivision 43.

(5) A common carrier that has applied for a direct pay certificate under the provisions of Minnesota Statutes, section 297A.211, may file a claim for refund of tax previously paid to a seller. This refund will be calculated according to the provisions of Minnesota Statutes, section 297A.211, subdivision 3, and interest will be calculated according to the provisions of Minnesota Statutes, section 289A.56, subdivision 5.

B. A claim for refund must be filed within two years after the tax was paid in full, or within three and one-half years from the date prescribed for filing the return, whichever period expires later. See Minnesota Statutes, section 289A.40, subdivision 1. If the commissioner and the claimant have consented to extend the time for assessment of tax under Minnesota Statutes, section 289A.42, subdivision 1, the claim may be filed within the extended period. For purposes of ascertaining whether a claim for refund is timely filed with the commissioner, a return filed before the date on which the return was due will be determined to have been filed on the date when due. A return postmarked on the date due will be determined to have been filed as of that date.

C. A claim filed by a corporation must bear the signatures and titles of the officers having the authority to sign for the corporation.

Whenever it is necessary to have the claim executed by an attorney or agent on behalf of the claimant, an original, executed power of attorney specifically authorizing the agent or attorney to sign the claim on behalf of the claimant must accompany the claim.

If a return is filed by a person who dies after filing a return, and a refund claim is filed by a legal representative of the decedent, certified copies of the letters testamentary, letters of

administration, or other similar evidence must be filed with the claim to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing the return was filed by the fiduciary and that the latter is still acting in such capacity.

If a vendor has collected from a purchaser and remitted to the state a tax on a transaction that is not subject to tax under Minnesota Statutes, chapter 297A, the tax, and any interest earned on the tax, is refundable to the vendor only if and to the extent that the vendor submits written evidence that the tax and interest will be returned by the vendor to the purchaser or credited to amounts due to the vendor by the purchaser.

Subp. 3. Commissioner action. Action taken by the commissioner after a claim for refund is filed:

A. Upon receipt of a claim for refund, the commissioner will examine the return and make any investigation or examination of any of the accounts and records pertaining to the claim that the commissioner considers necessary. The commissioner will then prepare written findings, either denying or allowing the claim, in whole or in part, and will mail a notice to the person filing the claim at the address stated on the return or to any other address furnished by the claimant in writing.

B. The amount allowed by the commissioner as a refund is first applied against any sales or use tax owed to the commissioner by the claimant, and any remaining balance due the claimant may be applied against any other delinquent tax liability owed by the claimant. Interest will be computed on the amounts refunded or credited from the date of overpayment to the date when the refund or credit is authorized by the commissioner, except for capital equipment claims and claims pursuant to Minnesota Statutes, section 297A.25, subdivision 43. See Minnesota Statutes, sections 289A.56, subdivision 4, and 297A.15, subdivisions 5 and 6.

The interest rate on overpayments will be the interest rate that the commissioner establishes under Minnesota Statutes, section 270.75, subdivision 5, to be charged on unpaid taxes. The interest rate will be adjusted annually and will become effective annually when the interest rate on unpaid taxes changes. See Minnesota Statutes, sections 270.76 and 289A.56, subdivision 1.

C. If a claim for refund made by a vendor is based upon overpayment of sales tax by a purchaser to the vendor, the commissioner, for purposes of ascertaining the validity of the claim, may request substantiation of the overpayment by the purchaser, or examine the purchaser's records. If the commissioner is unable to establish the validity of the overpayment after conducting an examination of the purchaser's records, the commissioner will deny the claim.

Subp. 4. [Repealed, 15 SR 693]

Subp. 5. **One dollar limitation.** No refund will be made where the amount is \$1 or less.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.8200 [Repealed, 15 SR 693]

8130.8300 ABATEMENT AND INTEREST ON UNPAID LIABILITIES.

Subpart 1. **Interest.** Interest on unpaid liabilities will accrue at the rate as periodically adjusted by the commissioner pursuant to Minnesota Statutes, section 270.75, subdivision 5.

Subp. 2. **Late payment.** The amount of tax not timely paid together with the penalty imposed thereon will bear the applicable rate of interest from the time the tax should have been paid until paid. "Timely paid" means paid on or before the due date as provided by law. See Minnesota Statutes, section 289A.55.

Subp. 3. [Repealed, 15 SR 693]

Subp. 4. [Repealed, 15 SR 693]

Subp. 5. [Repealed, 15 SR 693]

Subp. 6. **Abatement of penalties and interest.** Under Minnesota Statutes, section 270.07, subdivision 1, the commissioner has the power to abate penalties and interest when,

in the commissioner's opinion, the failure to timely pay the tax or timely file the return is due to reasonable cause. The exercise of this power is subject to the approval of the attorney general if the abatement exceeds the amount specified in Minnesota Statutes, section 270.07, subdivision 1. All requests for abatement of penalties and/or interest must be in writing and must set forth the reasons for the failure to file the return and pay the tax timely.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

8130.8400 LIMITATIONS ON DISCLOSURE OF SALES AND USE TAX INFORMATION.

Subpart 1. General rule. The particulars disclosed in any report or sales and use tax return as well as any information acquired from the records or from officers or employees concerning affairs of the person filing the return may not be divulged or made known other than to persons qualified or authorized under the Sales and Use Tax Law. Any person violating Minnesota Statutes, chapter 270B, is guilty of a gross misdemeanor.

Subp. 2. Statistics. The secrecy provision of Minnesota Statutes, chapter 270B, does not prohibit the commissioner from publishing statistics regarding sales and use tax returns in cases where the statistics do not identify in any manner the persons who filed the returns.

Subp. 3. Inquiry as to a named retailer. The secrecy provisions will not be violated where the commissioner or one of the commissioner's employees, with respect to any inquiry regarding the issuance of a permit to a named retailer, advises the person making the inquiry whether or not a permit has been issued to the named retailer. The commissioner or commissioner's employee may also furnish the sales and use tax account number, date of issuance of the permit, whether the permit has been canceled or revoked, name and address of the permit holder, and the business name and location. See Minnesota Statutes, section 270B.08.

Subp. 4. Information for Multistate Tax Commission audits. The commissioner is authorized on a reciprocal basis to exchange information with the taxing officials of another state or with the taxing officials of any municipality of this state which has a local sales or use tax. The commissioner is also authorized to exchange information with the Multistate Tax Commission for the Multistate Tax Commission to audit corporate sales and use tax returns. See Minnesota Statutes, section 270B.12.

Subp. 5. Relation to other tax laws. To ensure consistent application and enforcement of all tax laws administered by the commissioner, the commissioner is also authorized by Minnesota Statutes, section 270.065, to use information on sales and use tax returns to administer laws relating to other taxes under the commissioner's jurisdiction. The commissioner may also use any information in the commissioner's possession relating to other taxes to administer the Sales and Use Tax Law.

Subp. 5a. Contracts with private vendors. The commissioner is authorized to contract with outside vendors for the processing of sales and use tax returns and the payment of sales and use taxes. Any private and nonpublic data disclosed to a vendor will be administered by the vendor consistent with the secrecy provisions of Minnesota Statutes, chapter 270B. See Minnesota Statutes, section 270B.13.

Subp. 5b. License clearance. The commissioner is authorized to notify a licensing authority of the state or a political subdivision that issues, transfers, or renews a license for the conduct of a profession, occupation, trade, or business, that an applicant owes the state taxes, if the applicant taxpayer owes \$500 or more in delinquent taxes, penalties, or interest. See Minnesota Statutes, section 270B.07.

Subp. 5c. Revocation of permits. The commissioner is authorized to disclose information identifying the holder of a revoked permit and the basis for the revocation. See Minnesota Statutes, section 270B.08.

Subp. 5d. Liquor posting. The commissioner must submit to the commissioner of public safety, by the 15th of each month, a list of all liquor retailers who are required to withhold or collect tax imposed by Minnesota Statutes, section 290.92 or 297A.02, and who are 30 days or more delinquent in either filing a tax return or paying the tax. See Minnesota Statutes, sections 270.73 and 270B.12, subdivision 4.

Subp. 5e. **Liquor license applications.** Any county or municipality may request the commissioner to certify whether an applicant for a license to be issued under Minnesota Statutes, section 340A.403 or sections 340A.404 to 340A.406, is liable for any state or local taxes or assessments that were not paid when they became due. See Minnesota Statutes, section 297A.431.

Subp. 6. **Motor vehicle excise tax.** The commissioner may furnish the Motor Vehicle Division, Department of Public Safety, all information necessary to administer the motor vehicle excise tax, Minnesota Statutes, chapter 297B.

Statutory Authority: *MS s 297A.25; 297A.27; 297A.29*

History: *15 SR 693*

CERTAIN BUSINESSES AND ACTIVITIES

8130.8700 VETERINARIANS.

Subpart 1. **In general.** The veterinarian is primarily engaged in the business of rendering professional services to the owners of domestic animals, through care, medication, and treatment of such animals. The veterinarian is the user and consumer of all such items of tangible personal property as drugs, medicines, bandages and dressings, serums, tonics, and vitamins used in connection with the performance of services unless the veterinarian bills the customer separately for the services rendered and the materials used in the course of rendering such services. The veterinarian may accept unit or blanket exemption certificates from persons engaged in agricultural production for such sales that are billed separately or for other retail sales of the above items where services are not rendered in connection with the sales.

Subp. 2. **Retail sale.** Retail sales by the veterinarian of items that are not used or consumed in agricultural production are taxable. For example, worm pills sold for treatment of the family pet dog would be taxable.

Subp. 3. **Mixed transaction.** If the veterinarian both sells and administers a drug or medicine to an animal, merely charges for services and absorbs the cost of drugs and other materials in a service charge, no tax should be charged by the veterinarian. The veterinarian is the consumer of such drugs and materials and the sale of the drugs or material by the supplier to the veterinarian is a taxable retail sale.

Subp. 4. **Reporting period.** If the sales tax was not paid on purchases of such items at time of purchase from suppliers because purchased for resale, the veterinarian must report the use tax due thereon in the sales and use tax return covering the period in which professional use was made of the item by the veterinarian.

Statutory Authority: *MS s 297A.29*

History: *17 SR 1279*

8130.8800 COMMERCIAL ARTISTS AND PHOTOGRAPHERS.

Subpart 1. **General rule.** Commercial artists and photographers engaged in the creation or production of art work for sale to advertisers, printers, and others for reproduction, display, or use in the preparation or production of advertising or industrial materials, designs, etc., are regarded as retailers for sales and use tax purposes. Consequently, sales by them of drawings, sketches, paintings, illustrations, photographs, motion picture films, audio and video tapes, negatives, transparencies, mats, plates, engravings, designs, lettering, signs, show cards, posters, assemblies (key lining and paste-ups), and all other forms of tangible personal property are subject to the sales and use tax, whether or not the materials utilized are furnished by the customer. The tax applies to the total price charged, including amounts attributable to personal services of models, assistants, etc., and to preliminary art which becomes physically incorporated into finished art as for example, when the finished art is made by inking directly over a pencil sketch or drawing. Separately stated charges for preliminary art, in the form of roughs, visualizations, comprehensives, and layouts, when the preliminary art does not become physically incorporated into finished art shall be considered charges for services and not subject to tax.

Subp. 2. **Retouching.** Retouching constitutes a step in the process of preparing photographs or other art work for reproduction and is done to improve the quality of the re-

productions. Tax applies to charges for photo retouching unless it can be clearly demonstrated that the retouching is done only for the purpose of repairing or restoring a photograph to its original condition.

Subp. 3. Items consumed in production. Since commercial artists and photographers are engaged in the production of tangible personal property intended to be sold ultimately at retail, purchases by them of items which are used or consumed in such production, whether or not the items so used become ingredients or constituent parts of the property produced, are exempt from the tax in accordance with the provisions of Minnesota Statutes, section 297A.25, subdivision 9. Machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, and fixtures used in such production and fuel, electricity, gas, or steam used for space heating or lighting, are not included within this exemption.

Commercial artists and photographers are users or consumers of, and must pay tax on, materials utilized in the preparation or production of preliminary or creative art work used to display ideas to prospective customers where no contract is made for sales of finished art to the customer.

Subp. 4. Exemption certificate. An exemption certificate submitted by a purchaser and accepted in good faith by a commercial artist and/or photographer pursuant to part 8130.3000 shall be sufficient to relieve responsibility to collect the tax.

Statutory Authority: *MS s 297A.29*

8130.8900 FLORISTS AND NURSERIES.

Subpart 1. Taxable transactions. The following transactions are subject to sales or use tax:

A. Sales at retail by florists, nurseries, or other producers or vendors of flowers, wreaths, bouquets, potted plants, hospital baskets, funeral designs, seeds, nursery seedling stock, trees, shrubs, plants, sod, soil, bulbs, sand, rock, and all other floral or nursery products, whether grown by such vendors or not, are taxable sales of tangible personal property.

When a florist or nursery prepares a floral arrangement for a customer, the entire transaction is taxable, including all charges for labor and materials even if separately stated on the bill.

When a florist or nursery prepares a floral arrangement for a customer who has provided the flowers or other materials, the labor charge by the florist or nursery constitutes fabrication labor and is taxable.

B. Retailers of floral or nursery products who also perform lawn, garden, arborist, tree, bush, and shrub services must collect tax on those services. Lawn, garden, arborist, tree, bush, and shrub services are taxable pursuant to Minnesota Statutes, section 297A.01, subdivision 3, paragraph (j), clause (vi). These services are taxable even though the services are provided incident to the sale of tangible personal property.

C. Purchases of machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures, and fuel, electricity, gas, or steam used for space heating or lighting are taxable unless purchased for resale.

D. When a Minnesota florist or nursery sells flowers or other tangible personal property to an out-of-state customer and delivers the items to the customer or a third person within this state, that transaction is taxable. An out-of-state customer is one who is not physically present in Minnesota when placing the order. This item only applies to orders taken directly from the customer by the Minnesota florist or nursery. This item does not apply to telegraphic orders as described in subpart 3.

E. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to someone other than the person who made the purchase, the transaction is taxable even if delivery is to a point outside of Minnesota. The transaction is a sale at retail made in this state and thus is subject to sales tax.

Subp. 2. Exempt transactions. The following transactions are not subject to sales or use tax:

A. Sales of trees, plants, seeds, or similar items to persons for use in agricultural production of tangible personal property for resale are exempt (upon presentation of proper exemption certificates to the vendors). For example, stock purchased for the purpose of re-

forestation where forest products will be later harvested in the form of Christmas trees, posts, poles, pulpwood, etc., are exempt. See part 8130.5500.

B. Purchases by florists, nurseries, or other like producers or vendors of plants and other tangible personal property which are ultimately sold with the plants, including nonreturnable containers, descriptive labels, stickers, and cards affixed to such containers, peat moss, sand, gravel, crushed rock, shavings, sticks, trellises, and plant ties, to be placed in pots or cans with plants, are exempt as purchases for resale. Purchases of nursery stock, seeds, plants, spray materials, and fertilizers to grow nursery stock for resale are exempt as items to be used or consumed in agricultural production. Purchases of electricity and fuel used or consumed in production are also exempt, except that the portion used for space heating or lighting is taxable. See part 8130.5500.

C. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to the customer outside the state by common carrier, parcel post, United States mail, or the florist's or nursery's own delivery vehicles, the transaction is exempt.

Subp. 3. **Telegraphic orders.** When florists or nurseries conduct transactions through a florist telegraphic delivery association, or otherwise by telephone, telegraph, or other means of communication with other florists or nurseries, the following rules apply in the application of the tax:

A. Where an order for flowers, wreaths, or other tangible personal property is taken from a customer by a Minnesota florist or nursery and transmitted to another florist or nursery located within or outside of Minnesota for delivery, the florist or nursery which initially takes the order from the customer is required to collect the tax.

B. Minnesota florists or nurseries who receive orders from other florists or nurseries, whether located within or outside this state, for delivery of flowers, wreaths, or other tangible personal property to locations either within or outside of Minnesota, are not required to collect the tax.

C. The sales tax does not apply to telegraph or telephone charges if such charges are separately stated from the price of the flowers or other tangible personal property ordered by the customer.

However, the tax does apply to relay or handling charges paid to the florist or nursery which sends an order whether these charges are separately stated or not.

The sales tax does not apply to transportation charges to the extent they are separately stated and the transportation occurs after the retail sale.

Subp. 4. [Repealed, 16 SR 2055]

Statutory Authority: *MS s 270.06; 297A.29*

History: *16 SR 2055*

8130.9000 SOFT WATER EQUIPMENT AND SERVICE DEALERS.

Subpart 1. **Sales.** Receipts from sales of water softening equipment and tanks which are permanently affixed by the dealer to real property leased or owned by the purchaser are considered sales of equipment for the improvement of real property and are exempt from the Minnesota sales tax. Sales to dealers of such water softening equipment and tanks are considered retail sales and are subject to the tax at the time of sale to the dealer, who is considered the user thereof. Sales of equipment, tanks, replacement parts, salts and other chemicals directly to customers are taxable at the retail price if not installed by the dealer.

Subp. 2. **Rentals.** Receipts from rentals of automatic and semiautomatic water softener equipment and tanks, regardless of how attached to the premises of the lessee, are subject to the sales and use tax. The rental, lease, or lease coupled with an option to purchases of such equipment and tanks constitutes a sale at retail of tangible personal property, and all persons regularly engaged in such business are retailers. The tax does not apply to the installation charges if separately stated on the initial invoice or billing. Sales to dealers of automatic and semiautomatic equipment and tanks intended to be used only for leasing to customers are considered sales for resale.

Subp. 3. **Service.** The installation of exchange water softening equipment in the premises of customers, and the subsequent, regular replacements of chemically treated tanks by

water softener dealers constitute a personal service. The installation and regular replacement charges therefor are not subject to the tax. The sales of minerals, salts, and other chemicals, and equipment, tanks, parts, and materials to water softener dealers to be used in conjunction with such service are subject to the sales and use tax.

Statutory Authority: *MS s 297A.29*

8130.9100 SALES AND RENTALS OF MOBILE HOMES AND HOUSE TRAILERS.

Subpart 1. Sales or rentals of property not permanently affixed to realty. The sale, rental, or use of a mobile home or house trailer which is not permanently affixed to realty, including all equipment placed thereon by the dealer or manufacturer and included in the selling price, is a sale, rental, or use of tangible personal property. Dealers selling such property should collect sales or use taxes. If such property is subsequently registered as a recreational vehicle by the purchaser, credit against the motor vehicle excise tax imposed by Minnesota Statutes, chapter 297B, will be allowed for sales taxes paid to the dealer.

Lessors of such property should collect sales or use taxes on the rental payments.

Subp. 2. Property permanently affixed to realty. In some cases, mobile homes or house trailers may lose their identity as personal property because of alterations made to them. Such property will be considered to be real property if all of the following criteria are met:

A. The unit must be affixed to the land by a permanent foundation or in a manner similar to other real property in the district.

B. The unit must be connected to public utilities, especially water and sewer or have its own well and septic tank system or be commensurate with other real property in the district insofar as these facilities are concerned.

C. The wheels must be removed.

Sales of property meeting these criteria are exempt sales of real property.

Subp. 3. Exempt lodging. Where mobile homes and house trailers are permanently affixed to realty in accordance with subpart 2, amounts received by the lessor for the rental or use solely for the purpose of lodgings by the lessee for a continuous period of 30 days or more are exempt.

Statutory Authority: *MS s 297A.29*

8130.9200 [Repealed, 17 SR 2106]

8130.9250 ADVERTISING.

Subpart 1. Definitions.

A. "Advertising" is the expression of an idea created and produced for reproduction and distribution through means such as television, radio, newspapers, newsletters, periodicals, trade journals, publications, books, magazines, standardized outdoor billboards, direct mail, point-of-sale displays, leaflets, brochures, fliers, and package design, and which is designed to promote sales of a particular product or service or to enhance the general image of the advertiser. Advertising includes public service messages that are designed to affect the behavior of the public, and messages that are political in nature.

B. "Advertising agency" is any person that is directly responsible to an advertiser for, and whose functions as a business include the creation of advertising. Creation of advertising means developing concepts or ideas to express the advertising message.

C. "Advertiser" is a person who contracts to purchase, or have delivered to a third party on its behalf, advertising.

Subp. 2. In general. The sale, use, or other consumption (hereinafter referred to as a sale) of advertising ordinarily constitutes a sale of a nontaxable service, and hence is not subject to Minnesota sales or use tax. However, if the means of expressing the advertising is through tangible personal property that has a primary functional use independent of its advertising message, the sale of the advertising will be treated as a taxable sale of tangible personal property. It shall be presumed that the advertising has a primary functional use independent of its advertising message, and the burden is on the taxpayer to prove that the advertising does not have a primary functional use independent of its advertising message.

If a person creates advertising for its own use, all of its purchases of tangible personal property are subject to sales tax. This part, with the exception of subparts 11 and 13, does not apply to such a person. For purposes of subparts 11 and 13, such person shall be treated as an advertiser.

Subp. 3. Nontaxable items. The following are examples of items the sale of which are usually considered to be nontaxable within the meaning of this part because: (1) the items meet the definition of advertising, and (2) the means of expressing the advertising message is not through tangible personal property that has a primary functional use independent of its advertising message:

- A. certain printed materials including:
 - (1) fliers, handouts, brochures, and sales promotion materials;
 - (2) direct mail materials; and
 - (3) displays, banners, posters, and table tents, including point-of-sale materials;
- B. radio commercials including cassettes and tapes of them;
- C. television commercials including cassettes, tapes, films, and slides of them;
- D. other audio or visual commercials including cassettes, tapes, films, and slides of them;
- E. print media advertising, including:
 - (1) magazine ads;
 - (2) newspaper ads;
 - (3) periodical ads;
 - (4) trade journal ads;
 - (5) book ads;
 - (6) other printed materials ads;
 - (7) newspaper inserts; and
 - (8) yellow pages ads;
- F. billboard ads, transit advertising (bus, rail, taxi, airport), and shopping mall and sports arena advertising and displays; and
- G. direct marketing materials not distributed by mail.

Subp. 4. Taxable items. The following are examples of items the sale of which is usually considered to be taxable within the meaning of this part because either: (1) the items fail to meet the definition of advertising, or (2) the means of expressing the advertising message is through tangible personal property that has a primary functional use independent of its advertising message:

- A. specialty advertising, examples of which include key chains, glassware, frisbees, rulers, pens, calendars, buttons, matchbooks, paper napkins, clocks, and notebooks;
- B. business cards and stationery;
- C. books;
- D. annual reports, except as provided in Minnesota Statutes, section 297A.25, subdivision 10;
- E. training and educational materials;
- F. business identification signs;
- G. employee benefit materials and plan descriptions;
- H. business directories, including yellow pages;
- I. warranty books and product instructions; and
- J. advertising, including items described in subpart 3, if mass produced or reproduced in quantities in excess of that reasonably anticipated to be necessary for an advertising campaign, but only to the extent of such excess.

Subp. 5. Charges by an advertising agency to an advertiser for services related to the creation and production of taxable and nontaxable advertising. In the case of nontaxable advertising no portion of the gross receipts allocable to services related to the cre-

ation or the production of the advertising is taxable, since the item constitutes exempt advertising services.

In the case of taxable advertising, all of the gross receipts allocable to all services related to the creation or production of the taxable advertising are taxable. Gross receipts allocable to the creation or production of advertising include all costs incurred in the conception, creation, developing, planning, and design of the advertising, as well as the placing of the advertising.

Subp. 6. Preliminary art. The Minnesota sales or use tax does not apply to gross receipts allocable to services which relate to preliminary art, film, or tape. Preliminary art, film, or tape, means art, film, or tape prepared for the purpose of conveying or demonstrating an idea or concept for acceptance by a buyer before the final approval is given by a buyer for finished art or finished film or tape. Examples of preliminary art, film, or tape include roughs, visualizations, comprehensives, layouts, sketches, drawings, paintings, designs, story boards, rough cuts of film and tape, initial audio and visual tracks, and work prints. In the case of print advertising, finished art is the final art used for actual reproduction by photochemical or other process. In the case of broadcast advertising, finished film and tape means the master tape or film and duplicate prints. Gross receipts are treated as allocable to preliminary art only to the extent that they are separately billed or stated.

Subp. 7. Nonapportioned contracts. Where a contract or commission or fee agreement or other agreement requires both the creation of nontaxable advertising and taxable advertising by an advertising agency, and when no separate cost is attributed to the taxable advertising, sales tax on the fair market value of the taxable advertising must be collected and remitted to the commissioner at the time of transfer of title or possession of the taxable advertising to the advertiser or its designee. Fair market value of the taxable advertising will include a fair and appropriate allocation of the agency's fee or commission.

Subp. 8. Purchases for use in producing both nontaxable advertising and taxable advertising. This subpart applies to purchases by an advertising agency of tangible personal property which may be used repeatedly, and to tangible personal property which is consumed in part for producing nontaxable advertising and in part for producing taxable advertising.

A. If an advertising agency purchases tangible personal property which is used, but not consumed, with respect to both nontaxable advertising and taxable advertising, the determination of whether the purchase is exempt from sales or use tax is based on the initial contract for which the property is purchased. An example of such tangible personal property is a photograph that may be used in connection with both nontaxable advertising services such as a newspaper ad, and taxable advertising such as a mug.

If the initial contract with the advertiser is for nontaxable advertising, the purchase by the advertising agency is subject to sales or use tax, notwithstanding that the purchased property may later be used with respect to taxable advertising. The subsequent sale of taxable advertising using such tangible personal property is not exempt from sales and use tax because of the previous tax payment.

If the initial contract with the advertiser is for taxable advertising, the item purchased by the advertising agency may be purchased exempt for resale, notwithstanding that the purchased tangible personal property may later be used with respect to nontaxable advertising.

If a contract (or contemporaneously negotiated contracts) with an advertiser is for both taxable advertising and nontaxable advertising, the burden is on the advertising agency to demonstrate the portion of the use that is attributable to each of such categories. If this burden is not met, the contract with the advertiser is deemed to be for nontaxable advertising. An example of this rule may be artwork purchased and used initially in making both a magazine ad and in making a calendar. Where the burden of proof is not met by the advertising agency, the purchase is taxable and the subsequent sale of taxable advertising is not exempt because of the previous tax payment.

B. If an advertising agency expects to consume materials in producing both nontaxable advertising and taxable advertising, all such materials can be purchased exempt for resale. An example of such material is a ream of paper that may be used in connection with the production of nontaxable advertising such as a brochure, and taxable advertising such as a calendar. To the extent that the materials are subsequently consumed in producing nontax-

able advertising, the materials are taxable and must be reported as purchases subject to use tax on the agency's sales and use tax return. The percentage of materials consumed in producing nontaxable advertising is multiplied by the total purchase price of the materials to determine the amount of materials subject to tax. The burden is on the taxpayer to demonstrate the portion of usage that is attributable to taxable advertising. If the burden is not met, all the materials consumed are deemed to be for nontaxable advertising.

Subp. 9. Purchases for agency use. Office supplies, capital equipment, and other materials including those used to prepare preliminary art, which are consumed or used by an advertising agency and do not become an ingredient or component part of taxable advertising to be sold at retail, constitute a retail sale from the vendor to the advertising agency. An advertising agency is the consumer of such tangible personal property. Either the vendor must collect sales tax or the advertising agency must remit use tax on those purchases.

Tangible personal property that becomes an ingredient or component part of taxable advertising to be sold at retail may be purchased exempt for resale.

Subp. 10. Advertisers that are tax-exempt entities. Advertisers that are tax-exempt entities may appoint advertising agencies as purchasing agents. If a valid purchasing agency appointment is made, the advertiser shall pay no sales or use tax other than what it would have paid had it made the purchase directly. To make a valid appointment of an advertising agency as a purchasing agent, an advertiser must:

A. grant to the agent the ability to bind the principal to pay for purchases made by the agent;

B. require that the agent not purchase materials in its own name;

C. require that all contracts, purchase orders, and other similar writings of the agent shall specifically state that the principal is obligated to pay for materials purchased and that a clear disclosure of the agency relationship is made to the vendor of the materials; and

D. require that the advertising agency make no use of the property for itself or for any client other than the principal.

When dealing with advertising agencies acting as purchasing agents for tax-exempt entities, vendors must presume that the agency is the purchaser in the absence of an express statement on a purchase order from an advertising agency that the advertising agency is acting as an agent and that the purchase is within the scope of authority expressed in the agreement. The agency may issue exemption certificates as authorized in part 8130.3000 in the name of the principal and signed by the advertising agency as purchasing agent.

Subp. 11. Advertising materials shipped out of state. There is an exemption in Minnesota Statutes, section 297A.25, subdivision 22, for materials designed to advertise and promote the sale of merchandise or services, which material is shipped out of Minnesota for use solely outside the state. This exemption may apply to the purchase of items in final form or to the purchase of an item that is incorporated into a product that ultimately leaves the state. Similarly, the exemption may apply to the purchase of taxable advertising or to the purchase of tangible personal property that is used in creating or producing nontaxable advertising.

This exemption is limited to materials used to advertise and promote the sale of merchandise or services. This exemption does not include any advertising which is done for other purposes such as public service messages not related to advertising or promoting sales of merchandise or services.

When an advertising agency or an advertiser purchases taxable advertising and the advertising agency, the vendor, or the advertiser ships the taxable advertising out of state for use solely outside the state, the advertising agency or advertiser is not subject to sales or use tax with respect to such purchases because it is the purchaser of materials that are designed to advertise and promote the sale of merchandise or services, and the materials are being shipped outside the state for use solely out of state.

When an advertising agency or an advertiser purchases tangible personal property that is used in creating or producing nontaxable advertising, and the advertising agency, the vendor, or the advertiser ships the advertising out of state for use solely outside the state, the advertising agency or advertiser is not subject to sales or use tax with respect to such purchases because it is the purchaser of materials that are designed to advertise and promote the sale of

merchandise or services, and the materials are being shipped outside the state for use solely outside the state. An example of this is when an advertising agency or advertiser purchases advertising brochures that will be shipped out of state. The agency or advertiser can purchase the brochures from the printer exempt from tax. The printer can purchase the paper and ink used to print the brochures exempt because they are being purchased for resale, whether or not the advertising agency or advertiser has an exemption for shipments out of state. The advertising agency or the advertiser is eligible for the exemption described in this subpart whether the item it purchases is in final form, such as a finished brochure or whether the item is incorporated into the product that ultimately leaves the state, such as cardboard that is purchased and becomes part of an advertising sign that is shipped out of state.

The rules described in this subpart also apply with respect to an advertising agency if the advertising agency, instead of itself shipping the advertising directly out of state, delivers the advertising to an advertiser within Minnesota for the purpose of subsequently shipping the materials out of state for use solely outside the state. Similarly, the purchase by the advertiser is not subject to sales or use tax with respect to its purchase of the advertising.

This exemption does not apply to purchases that are used to create or produce nontaxable advertising to the extent that these purchases do not get sent outside the state. An example of this is when an advertising agency purchases a photograph that it uses in preparing advertising brochures. The sale of the photograph to the advertising agency is taxable. The sale of the brochures to the advertising agency is exempt to the extent that those brochures will be sent out of state as described in this subpart. Another example is when an advertising agency purchases a master tape that it uses to make copies that will be shipped out of state. The copies or the materials used to make them may be purchased exempt but the purchase price of the master tape is taxable unless that tape is also shipped out of state as described in this subpart.

Subp. 12. Miscellaneous provisions. When an advertising agency contracts with a recording studio to produce a tape to be used for nontaxable advertising, the recording studio must charge sales tax on all charges to the agency. If the agency hires actors, or directly purchases other exempt services to be used in making the tape, the agency does not pay tax on those purchases. The recording studio only collects tax on the charges it makes to the agency.

If a recording studio or printer has contracted directly with the advertiser to produce a tape or printed material, the studio or printer must charge tax on the amount charged to the advertiser, unless the studio or printer is also doing creative work and is acting as an advertising agency. If the studio or printer is acting as an advertising agency, it must pay tax on all its inputs for nontaxable advertising, and does not collect tax on its charges to the advertiser.

Subp. 13. Effective date. To the extent that this part is different from previous department applications of the sales and use tax as it applies to the advertising industry, this part is prospective only and is effective March 8, 1993.

Statutory Authority: *MS s 270.06*

History: *17 SR 2106*

8130.9300 SALES BY GOVERNMENTAL UNITS; TAXABLE.

Subpart 1. General rule. Although sales of tangible personal property to the United States and its agencies and instrumentalities or to a state and its agencies, instrumentalities, and political subdivisions are exempt from tax, this exemption does not extend to tangible personal property purchased from the United States, the state of Minnesota, and other governmental units.

Example. The Minnesota state prison makes retail sales of office furniture and other items manufactured there. Such sales are taxable unless exempt under other provisions of the Sales and Use Tax Law.

Subp. 2. Furnishing copies of documents. If law or ordinance requires a governmental agency to furnish copies of documents held in its files, the furnishing of such copies is a governmental act or service and shall not constitute a taxable retail sale.

Subp. 3. Concessionaires on government property. Concessionaires operating on government property are retailers making sales in the ordinary course of business. Such concessionaires are required to collect the tax and remit the appropriate amount of tax to the commissioner.

Subp. 4. **Disposal of certain government property.** Various levels of government may, in the usual course of business, dispose of used, obsolete, or surplus equipment by means of periodic sales to the public or to its employees. Such sales are not isolated or occasional sales of tangible personal property if regularly made, and are taxable sales unless exempt under other sections of the Sales and Use Tax Law.

Statutory Authority: *MS s 270.06*

8130.9400 ADVERTISING SIGNS AND BILLBOARDS.

Subpart 1. **Sign painters.** The sales and use tax applies to retail sales of metal, wood, cardboard, paper, or other type signs, showcards, posters, etc. which are not attached or affixed to real estate by the sellers thereof. Purchases by sign manufacturers or painters of paint and other materials entering into or becoming component parts of such signs, showcards, and posters are exempt. Charges by sign painters for painting signs on buildings, outdoor boards, windows, or other real property, trucks, and similar properties owned by others are exempt as charges for personal services. The sign painter is considered the user or consumer of all paint, etc. used for this purpose and must pay sales or use tax, whichever is applicable, upon all purchases thereof.

Subp. 2. **Sales of realty.** Contracts under which the sellers provide signs and attach them to buildings or to structures bolted to buildings or to structures anchored in the ground by means of wood or steel poles or other similar means, so that the signs become nontemporary accessions to such buildings or structures, are deemed to be contracts for the alteration of real property and are thus not transactions subject to the sales tax. Persons who provide and install such signs are the consumers of, and must therefore pay tax on, all purchases of, all component parts, materials, and supplies used in the construction, repair, and maintenance thereof.

Subp. 3. **Sign rentals.** The lease charges for rental of real property are not subject to tax. Charges for the lease of signs attached to real property are not taxable. The signs, when attached to buildings, are fixtures becoming real property upon being affixed.

Charges by tenants or owners of buildings, structures, or land for affixation thereon of signs are exempt as charges for the lease or license to use real property.

Subp. 4. **Outdoor advertising services.** Persons engaged in the business of selling advertising space (exposure time) on signs, billboards, and other outdoor advertising structures are deemed to be the consumers of all component parts, materials, and supplies used in the construction, repair, and maintenance of such signs and billboards. Sales to such persons of component parts, materials, and supplies are subject to tax. Charges by such persons for advertising space on such signs, billboards, and outdoor advertising structures are exempt as charges for personal services.

Statutory Authority: *MS s 297A.29*

8130.9500 AIRCRAFT REGISTRATION.

Subpart 1. **In general.** Minnesota Statutes, section 297A.255, requires persons who wish to license or register an aircraft in Minnesota to furnish proof to the Minnesota Department of Transportation, Office of Aeronautics, that the Minnesota sales or use tax has been paid, or that the purchase or acquisition of the aircraft was not subject to the Minnesota sales or use tax. The seller of the aircraft may furnish proof that the Minnesota sales or use tax has been paid as the agent of the purchaser of the aircraft. This law imposes a use tax on an occasional or isolated sale of an aircraft or an interest in an aircraft by persons not in the business of selling aircraft.

The necessary forms (form UT-1 and form ST-24) for reporting and paying the use tax or for claiming exemption are available upon request from the Minnesota Department of Revenue or the Minnesota Department of Transportation, Office of Aeronautics.

This statute does not affect the exemption provided by Minnesota Statutes, section 297A.25, subdivision 14, for purchases of aircraft equipment by airline companies taxed under Minnesota Statutes, sections 270.071 to 270.079.

When the sales tax has not been paid to the dealer as set forth in subpart 2, item A, the Department of Revenue will forward a completed certificate of tax payment or exemption, form ST-24, to the Department of Transportation, Office of Aeronautics.

Subp. 1a. Commercial use, defined. "Commercial use" means any operation of an aircraft for consideration or hire, any services performed incidental to the operation of any aircraft for which a fee is charged or consideration received, the servicing, maintaining, and repairing of aircraft, or the charter of aircraft, the operation of flight or ground schools, the operation of aircraft for the application or distribution of chemicals or other substances, aerial photography and surveys, air shows or expositions, and the operation of aircraft for fishing. Commercial use is any use by a dealer other than the sale or lease of an aircraft or personal use of an aircraft.

Subp. 2. Registration of aircraft by purchasers. When the sales tax is paid or not paid:

A. Minnesota sales tax paid to dealer. When a purchaser pays the Minnesota sales tax for the purchase of an aircraft or an interest in an aircraft to a Minnesota aircraft dealer who holds a Minnesota sales and use tax permit, the dealer shall furnish the purchaser with a statement showing that the sales tax has been paid. The aircraft dealer must report and pay the sales tax to the Minnesota Department of Revenue. If a dealer licensed by the Office of Aeronautics states to the Office of Aeronautics that sales tax was collected, it is not necessary for the purchaser of the aircraft to obtain a certificate of tax payment or exemption, form ST-24, from the Minnesota Department of Revenue. The purchaser or the purchaser's agent, for example the licensed dealer, should present the statement, which the purchaser or purchaser's agent received from the aircraft dealer, directly to the Department of Transportation, Office of Aeronautics, in order to license or register the aircraft.

B. No Minnesota sales tax paid to seller. When the purchaser does not pay a Minnesota sales tax to the seller on the purchase of an aircraft or an interest in an aircraft, the purchaser must obtain a certificate of tax payment or exemption, form ST-24, from the Minnesota Department of Revenue. If a use tax is due, the purchaser must complete a consumer's use tax return, form UT-1, and file it along with the purchaser's tax payment when applying for the certificate form ST-24. If the purchaser claims exemption from the tax, the purchaser must furnish proof showing that the purchaser is entitled to the exemption when applying for the certificate. Illustrative exemptions include purchases by organizations that are organized and operated exclusively for charitable, religious, or educational purposes; purchases of aircraft outside Minnesota by a nonresident and later brought into Minnesota for use; and aircraft purchased for resale or lease.

Subp. 3. Registration of aircraft by dealers who are licensed in accordance with Minnesota Statutes, section 360.63. When a licensed dealer purchases an aircraft for resale, no certificate of tax payment or exemption is required. When a licensed dealer puts an aircraft to commercial use, the dealer is required to pay a use tax on the dealer's purchase price of the aircraft unless the dealer makes application to the commissioner of revenue for an aircraft commercial use permit, on form ST-22, and pays a \$20 fee (see Minnesota Statutes, section 360.654). By obtaining an aircraft commercial use permit from the commissioner, a licensed dealer may purchase an aircraft for resale and put it to commercial use for up to one year without paying a sales or use tax on the dealer's purchase. While the aircraft commercial use permit is in effect, use tax is imposed on the fair market value of the commercial use. When the dealer sells the aircraft, the dealer is required to collect a sales tax. If the dealer keeps the aircraft for more than one year after purchase or makes personal use of the aircraft, a use tax is also due on the purchase price. If the sole use by the dealer of the aircraft that is exempt from use tax is leasing the aircraft while holding it for sale, sales tax is due on the taxable rent and lease payments.

Subp. 4. Registration by dealers who are not licensed in accordance with Minnesota Statutes, section 360.63. A dealer who is not licensed in accordance with Minnesota Statutes, section 360.63, is required to file form ST-24, which indicates the aircraft was purchased for resale or lease by the holder of a Minnesota sales and use tax permit. The dealer is further required to provide evidence that the dealer conducts business regularly selling or leasing aircraft. However, if the dealer purchases an aircraft or puts the aircraft to personal or commercial use, the dealer is required to file form ST-24 and form UT-1 and to pay the use tax on the purchase price.

Subp. 5. Registration of aircraft by lessor or lessee. When a lessor registers an aircraft in the lessor's name, the lessor must furnish his or her sales and use tax account number when applying for the certificate of tax payment or exemption, form ST-24, and claim exemption

for resale. Leases are defined as resales. The lessor must collect and remit sales tax on lease payments the lessor receives. The lessor must report all lease payments received as gross sales and collect and remit tax on all sales, net of exempt sales. An example of an exempt sale is the lease of an aircraft to a fixed base operator who rents the aircraft to others at retail.

When a lessee registers an aircraft in the lessee's name, and the lessor does not hold a Minnesota sales and use tax permit, the lessor is required to obtain a permit. If the lessee is leasing the same aircraft to others, the lessee must also obtain a permit, file returns, and pay the sales and use tax in the same manner as all other Minnesota permit holders.

Subp. 6. [Repealed, 18 SR 1891]

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 1279; 18 SR 1891*

8130.9600 IRON MINING INDUSTRY EXEMPTIONS.

Subpart 1. **Scope.** The industrial production exemption provided in Minnesota Statutes, section 297A.25, subdivision 9, as amended effective January 1, 1974, is applicable to taconite mining and production operations and to the mining and producing of other ores as well. The exemption applies generally to electricity and all materials other than tools, machinery, and equipment which are used in the production process, and to separate detachable units meeting the criteria specified in part 8130.5500.

Subp. 2. **Production process.** In the case of mining, the production process shall be deemed to begin with the removal of overburden from the site of the ore deposit and to end when the last process prior to stockpiling is performed. If the product is not stockpiled prior to shipment, the production process shall be deemed to have ended when the last process prior to loading for shipment has been completed. Subpart 3 sets forth examples of items which are illustrative of the exemption allowable for separate detachable units.

In addition to the general industrial production exemption, Minnesota Statutes, section 297A.25, subdivision 15, provides a specific exemption for items used in the production of taconite. See subpart 4.

To further clarify and illustrate the scope of the exemption, examples of items not considered to be exempt under subparts 1 and 2 are set forth in subpart 5.

Subp. 3. **Separate detachable units.** The exemption for separate detachable units used in producing a direct effect upon the product provided in Minnesota Statutes, section 297A.25, subdivision 9, became effective January 1, 1974. It is applicable to taconite mining and production operations and to the mining and producing of other ores as well. The following items are considered as having a direct effect upon the product and qualify for exemption where they are separate detachable units and their ordinary useful life is less than 12 months:

- A. bucket lip on front-end loader used in other than stockpile loading;
- B. chunk breaker used to break up pellets fused into chunks;
- C. crushed bowls, concaves, mantles;
- D. dipper teeth but not dipper teeth adapters;
- E. dozer blade cutting edges and end or corner bits plus blade bolts and nuts;
- F. drill bits and reamers used in drilling ore body for blasting;
- G. drop ball for breaking huge rock chunks;
- H. filter cloth or bags;
- I. grader blade cutting edges and end bits plus blade bolts and nuts;
- J. internal parts of an Erie-type cyclone;
- K. magnetic separator covers on rough cobbbers;
- L. ripper teeth for ground breaking;
- M. screen cloth or mesh or panels;
- N. splitter castings and grizzly castings used in crushers, loading, and/or storage bins;
- O. stationary and movable jaws on jaw crusher; and
- P. wear shoes on spiral classifiers.

Subp. 4. **Taconite mining and production.** The exemption provided in Minnesota Statutes, section 297A.25, subdivision 15, is applicable only to companies involved in the mining and production of taconite. It exempts grinding rods, grinding balls, and mill liners used in the reduction and processing of the taconite ore.

For purposes of this exemption, the term "mill" includes all of the facilities used to reduce and process the ore. It does not include shovels or mobile equipment.

Any item which is an integral part of the plant equipment as opposed to being a liner serving to protect the equipment is not included within this exemption. Examples of items exempt as liners are:

- A. autogenous mill liners, feed and discharge liners;
- B. chute liners (this may be a bar or a plate);
- C. classifier wear plates and classifier shoes;
- D. convey or skirt board rubber liners;
- E. crusher bowl liners (concaves), mantle liners, feed and discharge liners;
- F. crusher spider caps, rims, liners, shell liners, lower hub liners, pinion shaft liners, feed opening liners, wear rings, torch rings, and other crusher-related liners;
- G. cyclone classifier wear plates;
- H. cyclone collector wear plates;
- I. dump pocket wall liners, wear bars;
- J. linatex materials used in pipes, pumps, chutes, hoppers, etc.;
- K. mill liner bolts;
- L. nordbak kits (other than that used instead of zinc for bowls and mantles);
- M. refractory brick in rotary kiln only;
- N. rod and ball mill liners, feed and discharge liners;
- O. rubber or like materials used as liners in pumps;
- P. steel wear plate or alloys used to line hoppers, bins, chutes, pockets, or launders;
- Q. urethane materials used to line filter sectors, separator covers, fan blades, vertical classifier internal surfaces, cyclone classifier and collector internal surfaces, pipe fittings, pipe liners, chutes, bins, launders, and sumps; and
- R. welding rods used to repair liners or wear plate.

Subp. 5. **Nonexempt examples.** Examples of items of tangible personal property which do not come within the exemption provided under Minnesota Statutes, section 297A.25, subdivision 9 or 15, are:

- A. all motors and engines (electrical or otherwise);
- B. burner tips;
- C. chute liners (other than in taconite operation);
- D. conveyor belts;
- E. conveyor belt wiper and idlers;
- F. drum separator lifter bar;
- G. filter arm;
- H. grate bars not used for sizing;
- I. grate side plates;
- J. kelly extension;
- K. materials and equipment including detachable tools used to maintain or repair plant or mining equipment;
- L. pan feeder plates;
- M. pump casing;
- N. pump impellers;
- O. pump side plate;
- P. replacement parts used to repair mine or plant equipment;
- Q. truck filters;

R. V belts and sheaves;

S. items found on mobile equipment such as:

- (1) adapters;
- (2) cables;
- (3) drill bars;
- (4) drill cables;
- (5) idlers and sprockets;
- (6) rollers;
- (7) shovel bucket liners;
- (8) tires;
- (9) track pads; and
- (10) truck box liners;

T. items found on traveling grate such as:

- (1) chain;
- (2) grate casting;
- (3) head casting;
- (4) sprockets; and
- (5) tail casting; and

U. all refractories other than refractory brick in rotary kiln, including those used in horizontal and vertical furnaces, preheaters, and annular coolers:

- (1) coupling liners;
- (2) garbage can liners;
- (3) mobile equipment liners; and
- (4) pillow block liners.

Statutory Authority: *MS s 297A.29*

8130.9700 AUTOMATIC DATA PROCESSING.

Subpart 1. In general. A sales or use tax is imposed upon the gross receipts from selling, leasing, or granting a license to use tangible personal property. When separately stated, the labor charges for repair, service, and maintenance of tangible personal property is not subject to tax. The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who directly or indirectly furnish the materials used in the producing, fabricating, processing, printing, or imprinting is also subject to tax. The transfer of property produced, fabricated, or printed to the special order of the customer is also subject to tax.

This part sets forth guidelines for the application of the general statutory provisions to transfers of property and service rendered in the automatic data processing industry.

“Automatic data processing services” are those rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel, and automatic data processing equipment. Automatic data processing services may be provided by manufacturers of data processing equipment, data processing centers, systems designers, consultants, software companies, etc. In addition, there are banks and other businesses which own or lease automatic data processing equipment and use it primarily for their own purposes but occasionally provide services to others. Businesses rendering automatic data processing services will be referred to as “service bureaus.”

Subp. 2. Description of terms. Data processing terms are described as follows:

A. The specific job performance by an automatic data processing installation is called an “application.” For example, data processing for a payroll may be called a payroll application.

B. The term “automatic data processing equipment” includes computers and their peripheral equipment as well as punched card tabulating machines.

C. “Coding” means the list, in computer code, of the successive computer instructions representing successive computer operations for solving a specific problem.

D. "Input" means the information or data transferred, or to be transferred, from external storage media (e.g., punched cards, punched paper tape, and magnetic tape) into the internal storage of the computer.

E. "Key punching" means recording information in cards, paper tapes, or magnetic tapes, discs, or drums by punching holes in the cards, paper tapes or inserting magnetic bits on magnetic tape, discs, or drums, to represent letters, digits, and special characters. Key-punching includes the necessary preliminary encoding or marking of the source documents.

F. "Keystroke verifying" means the use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in a punch card or transcribed on magnetic tape during the keypunching operation has been punched properly. The machine signals when the punched hole on the card and the depressed key disagree, or when the data on magnetic tape differs from depressed keys.

G. "Off-line" is descriptive of a system and the devices in a system in which the operation of equipment is not under the control of a computer.

H. "On-line" is descriptive of a system and the devices in a system in which the operation of such system or devices is under control of a computer.

I. "Output" means the information transferred from the internal storage of the computer to an external storage media (e.g., punched cards, magnetic tape, and tabulated listing).

J. "Program" is the complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a problem. It includes both systems and application programs and subdivisions such as assemblers, compilers, routines, generators, and utility programs.

K. A "proof listing" is a tabulated listing of input.

L. A "source document" is from which basic data are extracted (e.g., sales invoice).

Subp. 3. Taxable transactions, unless otherwise exempt under Minnesota Statutes, chapter 297A. Certain transactions are treated as follows:

A. Retail sales of new or used data processing equipment are taxable.

B. Leases of equipment are subject to tax. A lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be on the lessee's premises if the lessee or the lessee's employees operate the equipment, or if the equipment is operated under the direction and control of the lessee or the lessee's employees. Subleasing receipts are taxable without any deduction or credit for tax paid by the original lessee to the lessor, if the original lessee uses the property in addition to subleasing it. Use of equipment on a time-sharing basis, where access to the equipment is only by means of remote access facilities, is not a taxable leasing of such equipment.

C. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, when separately stated, are not subject to the tax. Training materials, such as books, videos, and cassettes, furnished to the trainees for a specific charge are taxable.

D. Generally tax applies to the conversion of customer-furnished data from one physical form of recordation to another.

For example, if all or some data in punched cards is duplicated into another set of cards, charges for this service are taxable.

E. When additional copies of records, reports, or tabulations are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. Charges for copies produced by means of photocopying, multilithing, or by other means are also subject to tax.

F. Sales of mailing lists in the form of cheshire tapes, gummed labels, and heat transfers produced as a result of a computer run are taxable. However, computer-generated

mailing lists alone involving no transferable product are not taxable. Where the service bureau, through the use of its automatic data processing equipment, addresses material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the labels, when the service bureau itself affixes the labels to the material to be mailed.

G. For taxation of retail sales of computer software, see part 8130.9910.

Subp. 4. **Nontaxable services.** Certain services are treated as follows:

A. "Processing a client's data" means the developing of original information from raw data furnished by the customer. Examples of automatic data processing operations which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such operations also include the updating of a continuous file of information maintained by the customer with the service bureau.

Generally, if a person enters into a contract to process a client's data by the use of a computer program, or through an electrical accounting machine programmed by a wired plug-board, the contracts are nontaxable (except if the contract is in the nature of a lease as outlined in subpart 3, item B). Such contracts usually provide that the person will receive the client's source documents, record data in machine-readable form (such as in punch cards or on magnetic tape), make necessary corrections, rearrange or create new information as the result of the processing, and then provide tabulated listings or record output on other media. This service is considered nontaxable even if the total charge is broken down into specific charges for each step. The furnishing of computer programs and data by the client for processing under direction and control of the person providing the service is nontaxable even though charges may be based on computer time. The true object of these contracts is considered to be a service, even though some tangible personal property is incidentally transferred to the client.

"Processing a client's data" does not include:

(1) work performed under an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other preprocessing;

(2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters; or

(3) the mere converting of data from one medium to another.

B. Designing of systems, converting of systems, consulting, training, and miscellaneous services are services which consist of the developing of ideas, concepts, and designs. Common examples of such services are:

(1) designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized);

(2) designing storage and data retrieval systems (e.g., determining what data communications and high speed input-output terminals are required);

(3) converting manual systems to automatic data processing systems and converting present automatic data processing systems to new systems (e.g., changing a second generation system to a third generation system);

(4) consulting services (e.g., a study of all or part of a data processing system);

(5) feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated); and

(6) evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).

C. Persons engaged in providing nontaxable computer services are the consumers of all tangible personal property used in such activities and the tax must be paid on their acquisition of such property.

D. Key punching and keystroke verifying is an item which covers situations where a service bureau's agreement provides only for key punching, keystroke verifying, and proof

listing of data or any combination of these operations. It does not include contracts under which these services are performed as steps in processing a client's data as described in item A.

Agreements providing for keypunching and keystroke verification, or keypunching, providing a proof list, and/or verification of data are not regarded as contracts for the fabrication of punch cards and sales of proof lists. Charges therefore are not taxable, whether the cards are furnished by the customer or by the service bureau. Data from source documents may also be recorded directly on magnetic tape (off-line). This operation may include keystroke verifying and/or proof listing of data and is comparable to the punch card operation. Charges for this operation are not taxable whether the magnetic tapes are furnished by the customer or by the service bureau. No tax applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax treatment is the same even though paper tape or other medium were used in the operation.

Subp. 5. Microfilming and/or photorecording services. Microfilming and photorecording services are treated as follows:

A. Some electronic data processing systems accept signals directly from the computer (on-line) at high speeds and then records them on microfilm or on photorecording paper. The computer output medium is merely changed from the more common output media of magnetic tape and tabulated listings to microfilm or photorecording paper. When this end product is the result of a complete computer program as outlined in subpart 4, item B, the tax will not apply.

B. In all situations where data is converted by means other than by the use of a complete computer program as outlined in subpart 4, item B, the receipts for microfilming or photorecording are subject to sales tax.

An example of this is where data on magnetic tape is converted into combinations of alphanumeric printing, curve plotting, and/or line drawings and put on microfilm or photorecording paper.

Subp. 6. [Repealed, 18 SR 784]

Statutory Authority: *MS s 270.06; 297A.29*

History: *17 SR 1279; 18 SR 784*

8130.9910 COMPUTER SOFTWARE.

Subpart 1. Definitions. For purposes of this part, the following words and phrases have the meanings given them in items A to I.

A. A "sale" and a "purchase" has the meaning given it in Minnesota Statutes, section 297A.01, subdivision 3, clause (k).

B. "Computer program" has the meaning given it in Minnesota Statutes, section 297A.01, subdivision 18, clause (3).

C. "Custom computer program" has the meaning given it in Minnesota Statutes, section 297A.01, subdivision 18.

D. "Canned or prewritten computer program" is defined in Minnesota Statutes, section 297A.01, subdivision 18, to mean a "program that is held or existing for general or repeated sale or lease, even if the prewritten or 'canned' program was initially developed on a custom basis or for in-house use."

A computer program is considered to be canned or prewritten if it meets the following guidelines:

(1) the object code of the program is not modified by the seller. Modification of the program by inserting file names or formatting data is not changing the object code;

(2) the program, copies of which are mass-produced by the manufacturer, is inventoried by a vendor, or otherwise held for repeated sale, license, or lease; and

(3) the program is sold, licensed under a written contract agreement, or leased by means of a shrink-wrapped, box-top, or tear-open license agreement or bill of sale.

E. "Computer" means an electronic device, including word processing equipment and testing equipment, or combination of components that is programmable and that includes a processor (central processing unit or microprocessor), internal memory, and input

and output connections. An electronic device otherwise qualifying as a computer remains a computer even though it may be used for information processing, data acquisition, process control, or for the control of manufacturing machinery or equipment. As provided in Minnesota Statutes, section 297A.01, subdivision 18, clause (2), "'computer' does not include tape-controlled automatic drilling, milling, or other manufacturing machinery or equipment."

F. "Maintenance agreement support services" means error corrections received by any means, consultation services, or technical support for computer programs.

G. "Upgrades or enhancements" means information and directions which provide new or significantly improved functionality to a computer program. It includes information and directions that dictate the function performed by data processing equipment. Computer software, in any form which is provided under a maintenance agreement, and which does not provide new or significantly improved functionality is deemed to be a maintenance agreement support service.

H. "Computer program" means computer software.

I. "Storage media" has the meaning given it in Minnesota Statutes, section 297A.01, subdivision 18, clause (1).

Subp. 2. Tax applications.

A. Sales tax is due on the sale, lease, or license of a canned or prewritten program that is held or existing for general or repeated sale, lease, or license. The sale of canned or prewritten programs is the sale of tangible personal property. Minnesota Statutes, section 297A.01, subdivision 11, defines "tangible personal property" in part to include "computer software, whether contained on tape, discs, cards, or other devices."

B. Sales tax is not due on the sale, lease, or license of a custom computer program. The sale of a custom computer program is a service transaction. The purpose of the transaction is to obtain personalized service and the expert knowledge of the program creator. The transfer of any tangible personal property is incidental to the service being performed.

C. Charges for computer program maintenance furnished for a canned computer program are taxable if the customer is entitled to receive or receives canned computer software upgrades or enhancements. However, charges for computer program maintenance furnished for custom software are not taxable.

Maintenance contracts sold in connection with the sale or lease of canned software may provide that the purchaser will be entitled to receive upgrades or enhancements. The maintenance contract may also provide that the purchaser will be entitled to receive maintenance agreement support services.

(1) If the maintenance contract is required by the vendor as a condition of the sale or rental of canned software, it will be considered as part of the sale, or rental of the canned software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for the software.

(2) If the maintenance contract is optional to the purchaser of canned software:

(a) then only the portion of the contract fee representing upgrades or enhancements delivered on storage media or by any other means is subject to sales tax if the fee for any maintenance agreement support services is separately stated;

(b) if the fee for any maintenance agreement support services is not separately stated from the fee for upgrades or enhancements delivered on storage media or by any other means, then 20 percent of the entire charge for the maintenance contract is subject to sales tax;

(c) if the maintenance contract only provides canned computer software upgrades or enhancements, and no maintenance agreement support services, then the entire contract is taxable;

(d) if the maintenance contract only provides maintenance agreement support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the entire contract is exempt.

D. Separately stated charges for written training materials on the use of a canned computer program are taxable. Charges for written training materials on the use of a custom

computer program are not taxable, whether or not separately stated. Charges for training services and similarly related services are nontaxable.

E. When a computer and canned computer programs are purchased together, the sales tax is due on the total charge.

F. When a computer and custom computer programs are purchased together, sales tax is due on the total charge if the charge for the custom computer program is not separately stated.

G. Master computer programs which are purchased and used to make copies for sale or lease are property purchased for resale and not subject to sales tax. See Minnesota Statutes, section 297A.01, subdivision 4.

H. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

No tax results when the modifications to existing prewritten software are required to meet the customers' specific needs. These modifications are considered to be custom programming.

When the charges for modification are not separately stated, the records of the transaction may be used to demonstrate to what extent the program has been modified.

The department will use the following records to determine the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

If the charges for modification are not separately stated and the records of the transaction do not adequately document the extent of the modifications, the entire charge for the program is taxable.

I. Canned or prewritten computer programs may be transferred to the customer in the form of punched cards, data on magnetic tape, or by listing the program instructions on coding sheets. In some cases they are usable as written. However, in most cases it is necessary that the program be modified, adapted, and tested to meet the customer's particular needs. The sale of all property, including coding sheets, cards, or magnetic tape, on which or into which such programs have been coded, punched, or otherwise recorded is subject to tax.

J. The temporary transfer of possession of a canned or prewritten computer program, for a consideration, for the purpose of direct use or to be recorded by the customer, is a lease or the granting of a license to use or consume tangible personal property and the tax does apply. Where the consideration consists of license fees or royalty payments for canned or prewritten computer programs, all license fees or royalty payments, present or future, whether for a minimum use or for extended periods, are includable in the measure of tax.

K. Programming changes to a canned or prewritten computer program to adapt it to a customer's equipment, including translating a program to a language compatible with a customer's equipment, are in the nature of fabrication labor and are taxable.

L. Charges for assembler, compiler, utility, and other canned or prewritten computer programs provided to those who lease or purchase automatic processing equipment are subject to tax.

Statutory Authority: *MS s 270.06*

History: *18 SR 784; 18 SR 851; 18 SR 887*

8130.9912 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9913 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9916 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9920 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9930 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9956 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9958 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9968 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9972 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9980 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9992 [Repealed, L 1995 c 233 art 3 s 8; L 1995 c 248 art 3 s 8]

8130.9996 [Repealed, 18 SR 1891]