

**CHAPTER 8130**  
**DEPARTMENT OF REVENUE**  
**SALES AND USE TAXES**

8130.4700 PREPARED FOOD, CANDY, AND SOFT DRINKS.  
 8130.5700 SALES TO EXEMPT ENTITIES, THEIR  
 EMPLOYEES, OR AGENTS.

8130.6200 CHARITABLE, RELIGIOUS, AND EDUCATIONAL  
 ORGANIZATIONS.

**8130.4700 PREPARED FOOD, CANDY, AND SOFT DRINKS.**

*[For text of subps 1 to 6, see M.R.]*

**Subp. 7. Prepared food, candy, or soft drinks served at hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities.**

A. Under Minnesota Statutes, section 297A.67, subdivision 4, prepared food, candy, or soft drinks served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities are exempt. This exemption applies when the prepared food, candy, or soft drinks are purchased as well as sold by these facilities. For purposes of this subpart, the definitions in subitems (1) to (5) apply:

(1) "Hospital or sanitarium" means a hospital or sanitarium as defined in Minnesota Statutes, section 144.50, subdivision 2.

(2) "Nursing home" means a nursing home as defined in Minnesota Statutes, section 144A.01, subdivision 5, and a boarding care home as defined in part 4655.0100.

(3) "Senior citizens' home" means an establishment providing housing to adult residents, at least 80 percent of which are 55 years of age or older, and offering supportive services such as health-related services and social services. A senior citizens' home may be operated either for profit or on a nonprofit basis.

(4) "Correctional and detention facilities" means any facility or program under the direct control of the commissioner of corrections in which individuals are incarcerated, or any public or private facility licensed or certified by the Department of Corrections under Minnesota Statutes, section 241.021.

(5) "Detoxification facility" means a facility providing a program operating under Minnesota Statutes, section 254A.08.

B. All prepared food, candy, or soft drinks served to patients and residents by hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities are exempt, including prepared food, candy, or soft drinks that are prepared by separate entities.

C. Food items, including prepared food, candy, or soft drinks sold through vending machines, coffee shops, and cafeterias that operate in these facilities are subject to tax and are not considered to have been served to the patients, inmates, or persons residing at the facilities enumerated in item A.

**Subp. 8. Prepared food, candy, or soft drinks served at schools.**

A. Under Minnesota Statutes, section 297A.67, subdivision 5, prepared food, candy, or soft drinks served at public and private elementary, middle, or secondary schools, as defined in Minnesota Statutes, section 120A.05, are exempt. This exemption applies to prepared food, candy, or soft drinks when purchased as well as sold by the schools.

B. All prepared food, candy, or soft drinks served at public and private elementary, middle, or secondary schools are exempt, including prepared food, candy, or soft drinks that are prepared or served by separate entities and prepared food, candy, or soft drinks that are purchased by employees or the general public.

C. Prepared food, candy, or soft drinks served to students at institutions of higher education are subject to sales tax unless provided to students under a board contract. For purposes of this subpart, "institutions of higher education" means colleges, universities, and private career schools. The exemption for board contracts applies only when a contract that includes the sale of prepared food, candy, or soft drinks exists between a student and an institution of higher education, or between a student and a residential student organization that is recognized by the institution, for an educational activity that takes place on the premises of that institution. The student is not required to be enrolled at the institution at which the activity is conducted. If the food is not provided as part of a board contract, the institution may only purchase the prepared food, candy, or soft drinks exempt for resale from a third party if the food is intended to be resold at retail. The rules in subitems (1) to (4) apply for purposes of the exemption for board contracts.

(1) Prepared food, candy, or soft drinks purchased under a prepaid contract, or where a lump sum charge is made for a set term of time, are considered furnished under a board contract.

(2) A board contract also includes a contract that provides lodging, food, and tuition, separately or in combination, for a single charge.

(3) Prepared food, candy, or soft drinks are exempt when purchased with debit cards, "flex money," or "bonus bucks" issued either by the institution or by the recognized residential student organization, or when purchased by any other method authorized by the institution of higher education under a board contract.

(4) Prepared food, candy, or soft drinks are not provided under a board contract when they are sold to faculty, other employees of the institution of higher education, and sponsors of conferences, sports camps, or other activities held on the premises of the institution. Prepared food, candy, or soft drinks sold to student clubs or other organizations are subject to tax.

D. Food items, including prepared food, candy, or soft drinks sold through vending machines at all schools, including K-12 institutions and institutions of higher education, are taxable.

E. Administrative offices located off the school premises are not considered part of the school and prepared food, candy, or soft drinks served at those offices are taxable.

**Subp. 9. Incidental prepared food, candy, or soft drinks at educational programs.**

A. Prepared food, candy, or soft drinks that are provided as part of an educational service, such as a children's camp or a professional seminar, are generally not taxable. When providing prepared food, candy, or soft drinks is incidental to the total program fee, and charges for the prepared food, candy, or soft drinks are included in the fee to attend the program, the prepared food, candy, or soft drinks are not taxable to the program participants.

B. If the educational program purchases prepared food, candy, or soft drinks to serve to participants in the program, the program must pay sales or use tax on the prepared food, candy, or soft drinks purchased if participants are not billed separately for the prepared food, candy, or soft drinks. If the charges to participants for the prepared food, candy, or soft drinks are separately stated, they may be purchased by the educational program exempt for resale, and tax must be charged on the separately stated fees for the prepared food, candy, or soft drinks charged to participants.

**Subp. 10. Prepared food, candy, or soft drinks provided to employees.**

A. When an employer purchases prepared food, candy, or soft drinks, to provide to employees for no consideration, the prepared food, candy, or soft drinks provided to employees is exempt. The purchase of these items by the employer is taxable. When an employer in the business of selling prepared food, candy, or soft drinks provides these items free to employees, the employer owes use tax on its cost of the prepared food, candy, or soft

**8130.4700 SALES AND USE TAXES**

506

drinks and all other taxable items, including disposable plates, soft drinks, napkins, cups, and flatware.

B. Notwithstanding this subpart, prepared food, candy, or soft drinks served to employees at K-12 schools, as provided in Minnesota Statutes, section 297A.67, subdivision 5, are exempt even if the employees are required to pay for the items.

**Subp. 11. Purchases of equipment and products by retailers of prepared food, candy, or soft drinks.** Retailers of prepared food, candy, or soft drinks, including but not limited to restaurants and fast food establishments, must pay the tax on all purchases of equipment and products used or consumed in the business, including fixtures and reusable items such as linens, flatware, glassware, and towels. Restaurants are specifically excluded from the class of manufacturers considered to be engaged in industrial production, as defined in Minnesota Statutes, section 297A.68, subdivision 2, paragraph (c). In addition, machinery and equipment used by restaurants in the furnishing, preparing, or serving of prepared food, candy, or soft drinks is not included in the exemption for capital equipment as defined in Minnesota Statutes, section 297A.68, subdivision 5, paragraph (c), clause (7). Consequently, sales of equipment, electricity, gas, and steam and all other items to retailers of prepared food, candy, or soft drinks are taxable, except for the sale of exempt food and food ingredients and nonreusable items to such retailers. Nonreusable items such as souffle cups; straws; ice; swizzle sticks; paper products such as placemats, tablecloths, napkins, and doilies; paper, plastic, or wooden plates; cups; forks; toothpicks; or other items which are used or consumed by the customer as an integral part of the prepared food, candy, soft drinks, or alcoholic drinks are considered sold with the prepared food, candy, or soft drinks. Sales of these nonreusable items to persons engaged in the business of selling prepared food, candy, or soft drinks are, accordingly, sales for resale.

**Statutory Authority:** *MS s 14.388*

**History:** *34 SR 723*

**8130.5700 SALES TO EXEMPT ENTITIES, THEIR EMPLOYEES, OR AGENTS.**

Subpart 1. [Repealed, 34 SR 723]

**Subp. 2. Prepared food, candy, or soft drinks, or the furnishing of lodging.** The sale or purchase for a consideration of prepared food, candy, or soft drinks, or the furnishing of lodging as provided in Minnesota Statutes, section 297A.61, subdivision 3, is subject to sales tax.

No exemption from the sales and use tax is therefore allowed for prepared food, candy, or soft drinks purchased by, or lodging furnished to, governmental entities exempted under Minnesota Statutes, section 297A.70, subdivision 2; hospitals and surgical centers exempted under Minnesota Statutes, section 297A.70, subdivision 7; or nonprofit organizations exempted under Minnesota Statutes, section 297A.70, subdivision 4, their employees, or agents, even if the governmental entity, hospital, surgical center, or nonprofit 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 prepared food, candy, soft drinks, or lodging directly.

*[For text of subp 3, see M.R.]*

**Statutory Authority:** *MS s 14.388*

**History:** *34 SR 723*

**8130.6200 CHARITABLE, RELIGIOUS, AND EDUCATIONAL ORGANIZATIONS.**

*[For text of subps 1 to 10, see M.R.]*

**Subp. 11. Related information.**

*[For text of items A to D, see M.R.]*

E. While purchases of admissions provided for in Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (1), are exempt when purchased by exempt organizations, sales of admissions by exempt organizations are generally taxable. The following sales of admissions in subitems (1) and (2) are exempt.

*[For text of subitem (1), see M.R.]*

(2) Tickets or admission to regular season school games, events, and activities are exempt. Tickets or admissions to games, events, and activities sponsored by the Minnesota State High School League are exempt after June 30, 2006, and before July 1, 2011. See Minnesota Statutes, section 297A.70, subdivision 11.

*[For text of items F and G, see M.R.]*

**Statutory Authority:** *MS s 14.388*

**History:** *34 SR 723*