

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, skids, pallets, 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.68, subdivision 2. 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.68, subdivision 2.

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 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. 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. 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.61 to 297A.995. 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, skids, pallets, milk carts, and milk crates.

L. The taxability of skids and pallets depends on whether they are returnable. 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.68, subdivision 2. 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 similarly 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 nonqualifying 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 continued 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; 270C.06; 297A.29*

History: *17 SR 1279; 17 SR 2369; L 2005 c 151 art 1 s 114; 35 SR 890*

Published Electronically: *December 16, 2010*