

CHAPTER 8130
DEPARTMENT OF REVENUE
SALES AND USE TAXES

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GENERAL PROVISIONS

8130.0110 SCOPE AND INTERPRETATION.

Subpart 1. **Application of chapter.** 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. Unless otherwise specifically noted, this chapter is limited to interpreting

the sales and use tax laws in Minnesota Statutes, chapter 297A, and laws related to the administration of the sales and use tax laws.

Subp. 2. **Sales.** Certain transactions defined in this chapter constitute sales. All sales of tangible personal property are deemed to be retail sales unless made to purchasers who intend to resell the property to others in the normal course of business as defined in Minnesota Statutes, section 297A.61, subdivision 21. 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" are defined in part 8130.1800.

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. [Repealed, L 2005 c 151 art 7 s 23]

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

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8130.0120 [Repealed, 31 SR 449]

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8130.0200 SALE BY TRANSFER OF TITLE.

Subpart 1. **Delivery requirements.** Minnesota Statutes, section 297A.61, subdivision 3, paragraph (b), clause (1), 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 apply.

A. When 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. When 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, when 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, when 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 nontaxable 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. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 6. [Repealed, L 2005 c 151 art 7 s 23]

Statutory Authority: *MS s 14.388; 270.06; 270C.06; 297A.29*

History: *17 SR 1279; 18 SR 1891; L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

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8130.0300 [Repealed, 31 SR 449]

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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 shipped or transported outside Minnesota by the lessee, 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 if the lease is not subject to tax in the jurisdiction to which the leased property is transported for use or is used in the other jurisdiction as part of a maintenance contract.

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. 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. [Repealed, L 2006 c 259 art 6 s 32; 31 SR 449]

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.61, subdivision 3, paragraph (b), clause (2).

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.

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 nontaxable service rather than leasing the equipment, and the transaction is not considered to be a sale under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (b), clause (2).

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

C. 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.** When 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, the entire payment is subject to tax.

Subp. 7. **Leases to electing motor carrier.** Motor carriers may elect under provisions of Minnesota Statutes, section 297A.90, 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 authorization 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. [Repealed, L 2005 c 151 art 7 s 23]

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

A. A lease of tangible personal property is defined in Minnesota Statutes, section 297A.61, subdivision 14a. For leases entered into after June 30, 1997, gross receipts generated from the lease are taxable at the rate in effect at the time the obligation to make a lease payment becomes due. 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.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; art 7 s 23; L 2006 c 259 art 6 s 32; 31 SR 449*

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8130.0500 LICENSE TO USE.

Subpart 1. **General rule.** When 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, the arrangement is a "license to use" and is a sale under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (b), clause (2).

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 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.0600 CONSIDERATION.

Subpart 1. **Consideration in money.** As used in Minnesota Statutes, section 297A.61, subdivision 3, paragraph (b), "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. "M" 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.61, subdivision 3, paragraph (b), are sales or purchases where effected by exchange or barter. The terms "exchange" and "barter" are used synonymously. (See part 8130.1500 for exemption for property taken in trade.)

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 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449*

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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.61, subdivision 3, paragraph (b).

In addition, a sales tax is assessed on the production, fabrication, printing, or processing of tangible personal property for retail consumers who furnish directly or indirectly the materials used in the production, fabrication, printing, or processing. See Minnesota Statutes, section 297A.61, subdivision 3, paragraph (c).

Producing, fabricating, printing, 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, other than clothing, 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, printing, or processing of property. The repair and alteration of clothing, however, is taxable under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (6)(i). If the expenditure is made for the purpose of modifying, altering, or assembling it in some other manner, the application of labor to tangible personal property represents a sale under the provisions of Minnesota Statutes, section 297A.61, subdivision 3, paragraph (c).

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.61, subdivision 3, paragraph (c), since it results in the fabrication 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 nontaxable 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 gross receipts from the 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 14.388; 270.06; 270C.06; 297A.29*

History: *17 SR 1279; 18 SR 2483; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.0800 Subpart 1. [Repealed, 29 SR 1273]

Subp. 2. [Repealed, 29 SR 1273]

Subp. 3. [Repealed, 29 SR 1273]

Subp. 4. [Repealed, 29 SR 1273]

Subp. 5. [Repealed, L 2003 c 127 art 6 s 18; 29 SR 1273]

Subp. 6. [Repealed, 29 SR 1273]

Subp. 7. [Repealed, 29 SR 1273]

Subp. 8. [Repealed, 29 SR 1273]

Subp. 9. [Repealed, 29 SR 1273]

Subp. 10. [Repealed, 29 SR 1273]

Subp. 11. [Repealed, 29 SR 1273]

Subp. 12. [Repealed, L 2003 c 127 art 6 s 18; 29 SR 1273]

Subp. 13. [Repealed, 29 SR 1273]

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8130.0900 ENTERTAINMENT.

Subpart 1. **Admissions and use of amusement devices in general.** Under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (1), the privilege of admission to places of amusement, recreational areas, or athletic events, and the making available of amusement devices, tanning facilities, reducing salons, steam baths, turkish baths, health clubs, and spas or athletic facilities constitute sales, if the places, events, or devices are located within Minnesota.

Subp. 2. **Examples; admissions.** Example 1. "A" purchases four tickets for a professional football game to be played in Wisconsin. The sale of the tickets to A does not constitute a sale because the event is not occurring in Minnesota.

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.

Admission charges to any places of amusement or athletic events within Minnesota, therefore, constitute a sale unless the charges are exempt under Minnesota Statutes, section 297A.70, subdivision 10, 11, 13, or 14. The following partial list is illustrative:

- A. admissions to musical concerts;
- B. admissions to dances;
- C. admissions to motion picture theaters or theaters presenting stage shows and plays;
- D. admissions to golf courses and tennis courts;
- E. admissions to skating rinks and swimming pools;
- F. admissions to state, county, or other fairs;
- G. admissions to carnival rides and hay and sleigh rides; and
- H. admissions to a museum.

Subp. 3. **Use of athletic or amusement devices.** Consideration paid for the use of athletic or amusement devices or games constitutes a sale. "Amusement devices" means 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 athletic or amusement devices is a sale and taxable. If the entry fee to a competitive event requiring admissions or the use of athletic or amusement devices does not separately state that portion of the fee assignable to them, the entire fee is taxable.

Subp. 5. **Club dues.** The granting of memberships in a club, association, or other organization that makes available sports and athletic facilities for use of its members is taxable if it meets the requirements of Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (4). Membership dues to other kinds of 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. [Repealed, 31 SR 449]

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.1000 LODGING.

Subpart 1. **General rule.** Under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (2), furnishing for a consideration of lodging and related services by a hotel, rooming house, resort, campground, motel, or trailer camp and the granting of any similar license to use real property other than the renting or leasing of it for a period of 30 days or more constitute a sale.

Subp. 2. **Criteria.** The following criteria apply in determining whether a license to use real property for lodging purposes constitutes a sale under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (2):

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 if the consideration for the lease or license is paid or payable at periods of less than 30 days' duration, or if the parties are not bound by an enforceable written 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 include separately stated charges for telecommunication service and amounts received for the use of a television set or other items of tangible personal property.

Example 1. "G," guest, registers at hotel without entering into an enforceable written agreement whereby G will occupy a room for a period in excess of 30 days. G stays at the hotel for five full weeks. Thereafter, G 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 item B.

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 Landlord 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 \$50 per day for a room. "G," guest, makes three local telephone calls. Motel bills G for \$50 plus a separately stated charge of \$1.50 for telephone calls, and \$5 for use of video games. The taxable consideration paid by G is \$56.50 represented by the \$50 charge for the room, \$5 charge for the video games, and \$1.50 for telephone calls.

Example 5. If "X" company leases a room in a hotel or motel on a yearly basis for occasional use by employees or guests, the charge is exempt even if a particular room is not reserved for the exclusive use of X company.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449*

Published Electronically: *February 18, 2008*

8130.1100 UTILITIES AND RESIDENTIAL HEATING FUELS.

Subpart 1. **General law.** Under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (e), the furnishing for a consideration of electricity, gas, water, or steam for use or consumption within Minnesota are taxable sales.

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 system, 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. Fuels, 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, sections 297A.68, subdivision 2, and 297A.69, subdivision 2.

B. Fuel, electricity, gas, and steam stored, used, or consumed in the production of a taxable service intended to be sold ultimately at retail. See Minnesota Statutes, section 297A.68, subdivision 3.

C. 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 is also exempt for the six-month heating season. Each qualifying customer must receive six months of service exempt from taxation. See Minnesota Statutes, section 297A.67, subdivision 15. See subpart 7 for tax treatment of residential customers on utility budget plans.

D. 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 Minnesota Statutes, section 297A.67, subdivision 15. See subpart 7.

E. Water services for residential use are exempt regardless of how the services are billed. See Minnesota Statutes, section 297A.67, subdivision 16.

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 and taxes legally imposed directly on the consumer that are separately stated on the bill given to the purchaser, 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 must 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 must 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 equals or 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. When a building houses both residential quarters and commercial operations, a utility's acceptance of a fully completed exemption certificate claiming 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 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 14.388; 270.06; 270C.06; 297A.29*

History: *17 SR 1279; 18 SR 83; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.1200 SALES OF BUILDING MATERIAL, SUPPLIES, OR EQUIPMENT.

Subpart 1. **General rule.** Under Minnesota Statutes, section 297A.61, subdivision 4, paragraph (d), 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, as well as to corporations and other institutions exempt under Minnesota Statutes, sections 297A.67 to 297A.71, 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 unless the sale is specifically exempted under section 297A.71. However, purchases of such building materials, supplies, and equipment by exempt entities are exempt from the sales and use tax.

Example. A school district enters into a contract with a contractor for school 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 school. These transactions constitute retail sales and are subject to the sales tax. Had the school district purchased the materials directly, the purchase of the materials by the school district would have been exempt.

B. If 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 exempt, 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 retail sales 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 fully completed resale exemption certificate for the purchase of all such items.

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 must 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, 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. 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 retail sales of \$675. The sales tax due and owing from the contractor-retailer is \$43.88 (6.5 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 for the sales and use tax reported for the month of March:

Gross sales	\$ 675.00
Deductions	\$ 500.00
Net sales	\$ 175.00
Purchases subject to use tax	\$ -0-
Total taxable amount	\$ 175.00
Total tax due	\$ 11.38

Deductions are calculated as follows:

Cost of goods sold:

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

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, 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 for the sales and use tax reported for the month of March (for purposes of this example, it is assumed that in March no other sales were made at retail and no other material, etc., were used in contracting activities):

Gross sales	\$ 675.00
Deductions	\$ -0-
Net sales	\$ 675.00
Purchases subject to use tax*	\$ 690.00

Total taxable amount	\$ 1,365.00
Total tax due	\$ 88.73

*The amount subject to use tax is calculated as follows:

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

Subp. 5. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 6. [Repealed, L 2005 c 151 art 7 s 23]

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

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8130.1300 [Repealed, L 2003 c 127 art 6 s 18]

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8130.1400 [Repealed, L 2002 c 377 art 10 s 32]

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8130.1500 EXEMPTION FOR PROPERTY TAKEN IN TRADE.

Any amount allowed as a credit against the sales price for tangible personal property taken in trade for resale is exempt under Minnesota Statutes, section 297A.67, subdivision 26. 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 qualifies for the exemption if the property is taxable under the Sales and Use Tax Law or the Sales Tax on Motor Vehicles Law.

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. The credit qualifies for the exemption. Consequently, the sales price is \$2,000.

Example 2. 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
Sales price	\$ 7,000
Add: Payoff of old contract	2,000
New contract	\$ 9,000

The tax is computed on the sales price of \$7,000.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.1600 Subpart 1. [Repealed, 31 SR 349]

Subp. 2. [Repealed, 31 SR 349]

Subp. 3. [Repealed, 31 SR 349]

Subp. 4. [Repealed, 31 SR 349]

Subp. 5. [Repealed, L 2003 c 127 art 6 s 18]

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8130.1700 DEDUCTIONS ALLOWABLE IN COMPUTING SALES PRICE.

Subpart 1. [Repealed, 31 SR 349]

Subp. 2. [Repealed, 31 SR 349]

Subp. 3. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 4. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 5. [Repealed, 31 SR 349]

Subp. 6. **Refunds for property adjustments.** Where taxable property is returned, the retailer's reported 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 or the cash refunded 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.

Example 1. A hardware dealer sells a customer a lawnmower for \$100. The customer pays \$100 plus sales tax. As the lawnmower was defective, it was returned to the hardware dealer, and the total price including sales tax paid 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 in June. In August, the customer returns one tire and is given a cash refund of \$30 plus 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 plus 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 the \$100 sales price plus 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 plus sales tax. 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 sales tax and claim a reduction of \$100 in gross sales on its sales and use tax return.

Subp. 7. [Repealed, 31 SR 349]

Statutory Authority: *MS s 270C.06; 297A.29*

History: *17 SR 1279; L 2003 c 127 art 6 s 18; L 2005 c 151 art 1 s 114; 31 SR 349*

Published Electronically: *February 18, 2008*

8130.1800 GROSS RECEIPTS DEFINED; METHOD OF REPORTING.

Subpart 1. **Gross receipts.** The sales tax is imposed upon the gross receipts from retail sales. "Gross receipts" are defined in Minnesota Statutes, section 297A.61, subdivision 8, as the total amount received, in money or by barter or exchange, for all retail sales (see Minnesota Statutes, section 297A.61, subdivision 4) as measured by the sales price. (See Minnesota Statutes, section 297A.61, subdivision 7.)

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 is 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.** If sales are made at retail on a strictly cash basis, the retailer 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.61, subdivision 7, and 297A.67 to 297A.71.

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.61, subdivision 7, and 297A.67 to 297A.71, regardless of when cash from such sales is received.

Example 1. A supermarket's gross sales for May, 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
Gross receipts adjusted	\$199,000
Sales of exempt property	\$175,000
Less: refunds for exempt property returned	1,000
	\$174,000
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. 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 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.1900 RETAILER AND SELLER.

Subpart 1. **Defined.** A "retailer" and a "seller" means any person engaged in making sales, leases, or rentals of personal property or services. See Minnesota Statutes, section 297A.61, subdivision 9. Under Minnesota Statutes, section 297A.61, 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 and a "seller" in accordance with Minnesota Statutes, section 297A.61, subdivision 9, and this part.

Subp. 2. **Examples.** For illustrative purposes, a partial listing of retailers and sellers 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 sells or 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 prepares food for a customer for a consideration (see Minnesota Statutes, section 297A.61, subdivision 3, paragraph (d), clause (1), and subdivision 31. See Minnesota Statutes, section 297A.67, subdivisions 4, 5, and 6, for exemptions);
- 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, bowling 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, resort, campground, 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.61, subdivision 3, paragraph (g), clause (2));
- K. a person who furnishes, for a consideration, electricity, gas, water, steam, or telecommunications services (see Minnesota Statutes, section 297A.61, subdivision 3, paragraphs (e) and (i));
- 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.61, subdivision 4; and
- M. a person who machines castings, threads pipes, or processes lumber for customers who have furnished the material.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.2000 [Repealed, 17 SR 2369]

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8130.2100 [Repealed, L 2002 c 377 art 10 s 32]

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ADMINISTRATION OF SALES AND USE TAXES

8130.2300 IMPOSITION OF SALES TAX.

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. See Minnesota Statutes, section 297A.62.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.2350 [Repealed, L 2002 c 377 art 10 s 32]

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8130.2400 [Repealed, 15 SR 693]

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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, distribution, 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 and meets the requirements of Minnesota Statutes, section 297A.66.

Subp. 1a. **Tax identification number constitutes permit.** Under Minnesota Statutes, section 297A.84, a person that has a valid Minnesota tax identification number for taxes imposed under Minnesota Statutes, chapter 297A, is considered to have a permit.

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

If a nonprofit organization makes or plans to make fundraising sales which are not exclusively exempt under Minnesota Statutes, section 297A.70, subdivision 13, 14, or 15, 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.** If 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, 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 may be used only at the places designated. Members of a group of corporations related by stock ownership, if the members are engaged in making retail sales, 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. The same sales and use tax account number applies to each location, along with a location 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.

Subp. 5. **Vending machines.** If a person required to secure a sales and use tax permit operates vending machines in more than one location, the person is not 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.61, subdivision 3, paragraph (g), clauses (3) and (6)(i).

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;

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;

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

K. names and addresses of all the applicant's agents operating in Minnesota and location of each of the applicant's distribution and sales houses or offices or other places of business within this state.

The application must be submitted 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 notify the department of the changed name or address.

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 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.2600 [Repealed, L 2002 c 377 art 10 s 32]

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8130.2700 REINSTATEMENT OF REVOKED PERMITS.

Subpart 1. [Repealed, 22 SR 1027]

Subp. 2. [Repealed, 22 SR 1027]

Subp. 3. [Repealed, 22 SR 1027]

Subp. 4. [Repealed, 15 SR 693]

Subp. 5. **New application, or application for reinstatement of revoked permit.** he 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 liability for the period for which returns are required to be filed, or six times the average liability in the case of a taxpayer who has had another permit revoked within the preceding 24 months;

D. signs an agreement to file timely returns and remit tax when due in the future. The agreement will specify an individual to whom or location where the returns and payments must be sent. All payments must be made by certified check, cashier's check, or money order, or by electronic funds transfer in the case of a taxpayer who has had another permit revoked within the preceding 24 months; and

E. has sales and use tax returns prepared by an attorney, accountant, agent, or preparer or attends a business education class for sales tax given by the department, if the taxpayer has had another permit revoked within the preceding 24 months.

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

Each failure to file a return or pay a tax due during the two-year period extends such period for the duration of the taxable period for which the return has not been filed or the tax has not been paid.

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 270C.405. The security deposit will be refunded to the taxpayer at the end of the two-year period, plus any extensions for violations, unless the taxpayer has any unpaid tax liabilities. The commissioner may apply the security deposit to any unpaid tax liabilities. The commissioner may refund the security deposit to the taxpayer before the end of the two-year holding period (or extended holding period) if the taxpayer's business ceases to operate and the taxpayer is no longer required to file sales and use tax returns and pay sales and use tax.

Subp. 6. [Repealed, 22 SR 1027]

Subp. 7. [Repealed, 22 SR 1027]

Statutory Authority: *MS s 270.06; 270C.06; 297A.25; 297A.27; 297A.29*

History: *L 1984 c 640 s 32; 15 SR 693; 22 SR 1027; L 2005 c 151 art 1 s 114,116; 32 SR 1283*

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8130.2800 [Repealed, 15 SR 693]

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8130.2900 [Repealed, L 2005 c 151 art 7 s 23]

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8130.3000 Subpart 1. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 2. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 3. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 4. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 5. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 6. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 7. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 8. [Repealed, L 2002 c 377 art 10 s 32]

Subp. 9. [Repealed, 15 SR 693]

Subp. 10. [Repealed, 15 SR 693]

Published Electronically: *February 18, 2008*

8130.3100 CONTENT AND FORM OF EXEMPTION CERTIFICATE.

Subpart 1. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 2. **Application to use exemption certificates.**

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

(1) waste processing equipment used at a resource recovery facility under Minnesota Statutes, section 297A.68, subdivision 24;

(2) direct payment of sales or use tax under Minnesota Statutes, section 297A.89;

(3) direct payment of tax by interstate for hire motor carriers under Minnesota Statutes, section 297A.90; 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 authorization when the certificate of exemption is used for other exemptions.

C. Exemption certificates may be used for single purchases or for continuing future purchases. When used for continuing future purchases, 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 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 1997 c 199 s 14; L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

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8130.3200 NONEXEMPT USE OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE.

Subpart 1. **Nonexempt use, use tax imposed.** Under Minnesota Statutes, sections 297A.665 and 297A.72, the seller may accept an exemption certificate from the purchaser on items otherwise taxable. Under Minnesota Statutes, section 297A.73, 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.61, subdivision 7, regarding the calculation of sales price) must be reported as a purchase subject to tax.

If the purchaser is not registered for sales and use tax 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 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

Published Electronically: *February 18, 2008*

8130.3300 FUNGIBLE GOODS FOR WHICH EXEMPTION CERTIFICATE GIVEN.

Subpart 1. **Defined.** For purposes of Minnesota Statutes, section 297A.74, 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.

Subp. 2. [Repealed, 15 SR 693]

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.3400 DIRECT PAY AUTHORIZATION 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 authorization 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.61, subdivision 3, paragraph (g), clauses (3), (4), and (6), and paragraph (i).

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

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.3500 MOTOR CARRIERS IN INTERSTATE COMMERCE.

Subpart 1. **Direct payment and notice.** Under Minnesota Statutes, section 297A.90, persons described in subpart 2 engaged in interstate for-hire transportation of property or passengers 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 the equipment. Electing carriers shall give notice of the election to the commissioner of revenue and shall pay taxes due in accordance with this part. The notice must 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 or permit issued by, or registration with, the United States Department of Transportation, the transportation regulation board, or other evidence such as the file number issued by the Minnesota Department of Transportation to verify that it is a carrier engaged in transporting tangible personal property or passengers in interstate commerce.

Subp. 2. **Persons included.** Persons referred to in subpart 1 include:

A. persons possessing a certificate or permit or having completed a registration process that authorizes for-hire transportation of property or passengers from the United States Department of Transportation, the transportation regulation board, or the Minnesota Department of Transportation;

B. persons transporting commodities defined as exempt in for-hire transportation in interstate commerce;

C. persons who, pursuant to contracts with persons described in items A or B, transport tangible personal property or passengers in interstate commerce; and

D. persons who in the course of their business are transporting solely their own goods in interstate commerce.

Subp. 3. **Motor carrier direct pay authorization.** A motor carrier direct pay authorization issued to qualified electing carriers by the commissioner of revenue is effective as of the date shown on the authorization.

Subp. 4. **Governing provisions.** Carriers that elect to pay the tax under the provisions of Minnesota Statutes, section 297A.90, are governed by the following:

A. The carrier must hold or must have applied for a Minnesota sales and use tax permit. Application for such a permit must be made at the same time as the carrier's notice of election if none has 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 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 authorization.

C. Mobile transportation equipment intended for use both within and without Minnesota and parts and accessories attached or to be attached may be purchased or leased tax free by presenting a copy of motor carrier direct pay authorization 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. 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 20th day of the month following the purchase or rental of such property. The return must show 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, 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 purchased or leased during the month by a fraction, the numerator of which is the Minnesota mileage as reported in the current pro rata application provided for in Minnesota Statutes, section 168.187, and the denominator of which is the total mileage reported on the current pro rata registration application.

For purposes of the computation in subitem (2), the total cost of mobile transportation equipment and parts and accessories attached or to be attached 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. For a new carrier without a prior year's mileage, an estimated ratio may be used subject to approval by the commissioner.

E. If 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.90, becomes effective only upon notice of such intent to the commissioner of revenue. If such election is withdrawn, subsequent reelection is effective only upon approval of the commissioner of revenue.

G. If an interstate motor carrier does not elect to pay Minnesota sales and use tax under the provisions of Minnesota Statutes, section 297A.90, then mobile transportation equipment subject to the sales tax on motor vehicles under Minnesota Statutes, chapter 297B, is not subject to the Minnesota sales and use tax under Minnesota Statutes, chapter 297A, and a sales tax on motor vehicles, 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, 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 14.388; 270C.06; 297A.29*

History: *L 1995 c 233 art 4 s 4; L 1995 c 248 art 4 s 4; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.3600 [Repealed, 31 SR 449]

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8130.3800 IMPOSITION OF USE TAX.

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

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.3850 [Repealed, L 2002 c 377 art 10 s 32]

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8130.3900 LIABILITY FOR PAYMENT OF USE TAX.

Subpart 1. **General rule.** Minnesota Statutes, section 297A.63, imposes upon the purchaser of tangible personal property used, stored, distributed, or consumed in Minnesota, liability for the use tax until the tax has been paid to Minnesota.

Subp. 2. **Collection authorization.** If a seller who is not required to collect Minnesota sales tax applies for a sales and use tax permit to collect a 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 tax due from customers on storage, use, distribution, or consumption in Minnesota of taxable personal property in accordance with Minnesota Statutes, sections 297A.77 and 297A.89, subdivision 2;

B. to file a Minnesota sales and use tax return, and to remit the tax collected to Minnesota. (See Minnesota Statutes, sections 289A.18 and 289A.31); and

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

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.4000 COLLECTION OF TAX AT TIME OF SALE.

Subpart 1. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 2. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 3. **Outstate business.** An outstate business making deliveries to Minnesota customers in its own trucks must collect and remit the sales 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 retailer and is required to have a permit and collect the sales tax from the customer.

Subp. 5. [Repealed, 31 SR 449]

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; 17 SR 1279; L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

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8130.4100 [Repealed, 15 SR 693]

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8130.4200 Subpart 1. [Repealed, L 2005 c 151 art 7 s 23; 31 SR 449]

Subp. 2. [Repealed, 15 SR 693; 31 SR 449]

Subp. 3. [Repealed, 31 SR 449]

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8130.4300 PROPERTY BROUGHT INTO MINNESOTA.

Subpart 1. **General rule.** Except as provided in Minnesota Statutes, section 297A.67, subdivision 22 (which exempts personal property from the tax where brought in by a nonresident just prior to becoming a resident), Minnesota Statutes, section 297A.665, paragraph (c), 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.665, paragraph (c).

Subp. 2. [Repealed, 31 SR 449]

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.4400 CREDIT AGAINST USE TAX.

Subpart 1. **General rule.** Under Minnesota Statutes, section 297A.80, a credit is allowed against the use tax due under Minnesota Statutes, section 297A.63, from any person on any item purchased by the person if the item has previously been subjected to a sales or use tax in another state or a subdivision of the other 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 or any subdivision of the other state is equal to or higher than the rate imposed under Minnesota Statutes, section 297A.63, then no tax is due. The credit is not allowed for taxes paid to a foreign country.

Calculation of use tax due is governed by Minnesota Statutes, section 297A.80. 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.63, 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.80, 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.63, 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. [Repealed, L 2005 c 151 art 7 s 23]

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

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EXEMPTIONS

8130.4700 PREPARED FOOD, CANDY, AND SOFT DRINKS.

Subpart 1. [Repealed, 29 SR 1273]

Subp. 1a. **Applicable law.** Minnesota Statutes, section 297A.61, subdivision 3, paragraph (d), defines "sale and purchase" to include the preparation of food for a consideration. Taxable food includes prepared food as defined in Minnesota Statutes, section 297A.61, subdivision 31; soft drinks, as defined in Minnesota Statutes, section 297A.61, subdivision 32; candy, as defined in Minnesota Statutes, section 297A.61, subdivision 33; and all food sold through vending machines as defined in Minnesota Statutes, section 297A.61, subdivision 34. Dietary supplements as defined in Minnesota Statutes, section 297A.67, subdivision 2, are also taxable.

Under Minnesota Statutes, section 297A.67, subdivision 2, food and food ingredients, except for taxable food described in Minnesota Statutes, section 297A.61, subdivision 3, paragraph (d), are exempt from tax. Alcoholic beverages and tobacco are not food and food ingredients and are therefore subject to tax unless another exemption applies.

Subp. 2. **Food and food ingredients.** "Food and food ingredients" as defined in Minnesota Statutes, section 297A.67, subdivision 2, are exempt.

A. Examples of items that qualify as exempt food or food ingredients include, but are not limited to, the following: 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.

Exempt "food and food ingredients" also include the following items: baking powder and soda; beverage powders; chips (potato, corn, etc.); chip dip; cooking oils; cooking wine; flavoring; freezer pop ingredients; food coloring; gelatin; ice cream; malted milk powder; nuts; dry, frozen, or concentrated nonalcoholic cocktail mixes (that is, cocktail mixes intended for consumption in combination with an alcoholic or other beverage); raisins; artificial sweeteners; salad dressing; seasonings; condiments; herbs; relishes; sauces; gravies; sherbet; shortening; vanilla; tonic water; ice cubes; or unsweetened bottled or canned water.

B. Notwithstanding their inclusion in item A, food and food ingredients are subject to tax if they qualify as prepared food, a soft drink, candy, or food sold through vending machines.

C. Examples of items that do not qualify as food or food ingredients include nonedible cake decorations, Easter egg dye, garden seeds, pet food, and softener salt.

Subp. 3. [Repealed, 29 SR 1273]

Subp. 4. [Repealed, 29 SR 1273]

Subp. 5. **Soft drinks.**

A. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners.

B. "Soft drinks" does not include beverages that contain milk or milk products; or soy, rice, or similar milk substitutes.

C. "Soft drinks" does not include beverages that contain more than 50 percent vegetable or fruit juice. Beverages that are labeled fruit juice, fruit drink, fruit ade, or fruit nectar are subject to tax when the percentage of fruit juice content is not specified.

D. Soft drinks are taxable regardless of serving size or the type of seller. For example, they are taxable whether they are sold by a grocery store, restaurant, or vending machine.

E. Examples of sweeteners are corn syrup, dextrose, invert sugar, sucrose, fructose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, and artificial sweeteners. Sweeteners are taxable only when combined with another ingredient. They are not taxable when sold separately.

F. Examples of soft drinks are soda pop, bottled or canned water that contains sweeteners, coffee and tea drinks that contain sweeteners, root beer, nonalcoholic beer, and fruit drinks containing 50 percent or less fruit juice.

G. Examples of nontaxable items are apple cider; beverage powders or concentrates such as ground coffee, tea bags, and juice concentrate; carbonated and noncarbonated bottled or canned water that does not contain sweeteners regardless of container size; vegetable juices containing more than 50 percent vegetable juice, even if these beverages contain sugar; and coffee drinks that contain milk. These items are taxable if they are prepared by the seller, qualify as an alcoholic beverage, or are sold through a vending machine.

Subp. 6. **Candy.**

A. "Candy" means a preparation of sugar, honey, or other sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. All bars, drops, or pieces, not depending on size, are taxable.

B. "Candy" does not include food items that require refrigeration or that contain flour such as white, whole wheat, rice, corn, or brown flour, as long as the label lists "flour" as one of the ingredients.

C. Examples of sweeteners are corn syrup, dextrose, invert sugar, sucrose, fructose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, and artificial sweeteners.

D. Examples of candy are caramel-coated popcorn, honey roasted and honey coated nuts, gum, breath mints, fruit roll-ups, marshmallows, sweet or semisweet cooking bars or chips, artificially sweetened candy, almond bark, glazed apricots, and chocolate-coated potato chips.

E. Examples of food items that are not candy include:

- (1) items that are not in the form of bars, drops, or pieces, including jam, jelly, honey, preserves, or syrup;
- (2) items that contain flour, including pretzels, cookies, or cake mix;
- (3) items that require refrigeration, including ice cream bars; and

- (4) items not combined with a sweetener, including nonsweetened dried fruit.

The foods listed in this item are taxable if prepared by the seller or sold through a vending machine.

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 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; 270.06; 270C.06; 297A.29*

History: *29 SR 1273; L 2005 c 151 art 1 s 114; 34 SR 723*

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8130.4705 FOOD SOLD WITH EATING UTENSILS.

Subpart 1. **Eating utensils provided by seller.** The sale of food sold with eating utensils provided by the seller is one of the conditions that meets the definition of prepared food in Minnesota Statutes, section 297A.61, subdivision 31. Examples of "eating utensils" include plates, bowls, knives, forks, chopsticks, spoons, glasses, cups, napkins, or straws. A "plate" does not include a container or packaging used to transport food. Some foods, such as foods containing certain raw animal foods requiring cooking by the consumer, and bakery items, which otherwise are excepted from the definition of prepared food, are prepared food if they meet the condition of Minnesota Statutes, section 297A.61, subdivision 31, clause (1), "food sold with eating utensils provided by the seller." This part explains when eating utensils are considered to be provided by the seller.

Subp. 2. **Seller's practice to physically give or hand utensil to the customer.** Food is sold with eating utensils provided by the seller if the seller's practice for the item, as represented by the seller, is to physically give or hand a utensil to the customer with the food as part of the sales transaction. For purposes of this part, the seller's practice to "physically give or hand" a utensil to the customer means:

- A. it is the seller's practice to hand the utensil to the customer along with the food;
- B. it is the seller's practice to place the utensil in a package containing the customer's food, including prepackaged food when the seller places the utensil in the package;
- C. it is the seller's practice to sell food with a utensil that has been prepackaged by a person other than the seller, except when the person who originally placed the utensils in the package has a North American Industry Classification System (NAICS) classification code of a manufacturer, sector 311, the utensil is not provided by the seller; or
- D. it is the seller's practice to place the utensil on a table, counter, or similar surface for the customer to use. A utensil previously placed by the seller, for example, as part of a place setting, is considered physically given to the customer. For purposes of this item, "table, counter, or similar surface" means furniture or surfaces where a customer sits or stands to eat.

Subp. 3. **Seller makes utensils available to the customer.** Food is sold with eating utensils provided by the seller when the seller makes the utensils available to the customer under the following circumstances:

- A. if a plate, glass, cup, or bowl is necessary to receive the food from the seller; for example, milk dispensed from a milk dispenser is sold with an eating utensil provided by the seller because the customer must use a glass in order to receive the milk; or
- B. if the seller's prepared food sales percentage, as determined in subpart 5, is greater than 75 percent; except that
- C. in the case of a food item that contains four or more servings packaged as one item sold for a single price, as provided for in subpart 4, even if the sales percentage of prepared food is greater than 75 percent, a utensil is not provided by the seller merely because the seller makes the utensil available.

Subp. 4. **Four or more servings packaged as one item.** When a food item that contains four or more servings packaged as one item is sold for a single price, eating utensils are considered provided by the seller if it is the seller's practice to physically give or hand the utensils to the customer as described in subpart 2, and the following items apply.

A. The number of servings in an item is as shown on the label on the item sold. In the absence of a label, a seller shall make a reasonable determination of the number of servings in the item.

B. For purposes of this subpart, "packaged" means that the food item is placed in a package by the seller or the customer either prior to or following the selection of the food.

C. For purposes of this subpart, "single price" means one price for the entire contents of the packaged food. If the food item consists of more than one serving and the seller charges for each individual serving in the package, then the sale is not "one item sold for a single price."

Subp. 5. **Determination of prepared food sales percentage.** The seller shall determine the prepared food sales percentage as provided in this subpart.

A. Annually, the seller shall determine a single prepared food sales percentage for all of the seller's establishments in this state combined.

B. The seller shall calculate the prepared food sales percentage as follows:

(1) add together the total sales of food where plates, bowls, glasses, or cups are necessary to receive the food from the seller, but not including alcoholic beverages, and the total sales of prepared food that meets the condition provided in Minnesota Statutes, section 297A.61, subdivision 31, clause (2), for all of the seller's establishments in this state combined; and

(2) divide the result of subitem (1) by the seller's total sales of all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks, but not including alcoholic beverages, for all of the seller's establishments in this state combined.

C. The seller shall calculate the percentage either each tax year or each business fiscal year, based on the seller's data from the prior tax year or business fiscal year.

D. The seller shall calculate and apply the percentage as soon as possible after accounting records are available to the seller, but not later than 90 days after the beginning of the tax or business fiscal year, whichever is used for the annual calculation.

E. Notwithstanding item C, if the seller has a new establishment in this state, the following subitems apply.

(1) The seller shall make a good faith estimate of the seller's prepared food sales percentage for the seller's first year.

(2) If the seller has both new and established businesses in this state, the seller shall combine the good faith estimate for the new establishment and the data from the prior tax year or business fiscal year for the established businesses.

(3) After the first three months of operation of the new establishment, if actual sales of the new establishment are such that the prepared food sales percentage for all of the seller's establishments in this state combined, either decreases from greater than 75 percent to 75 percent or less, or increases from 75 percent or less to greater than 75 percent, the seller shall adjust the seller's good faith estimate and apply it prospectively.

F. "Seller's establishments" means business operations in Minnesota owned by the same person, as defined in Minnesota Statutes, section 297A.61, subdivision 2, paragraphs (a) and (b).

Subp. 6. Examples.

A. The following subitems are examples of utensils originally placed in a package by a person other than the seller.

(1) A caterer sells a boxed lunch with utensils packaged inside to a concessionaire who sells the boxed lunch. The caterer has a North American Industry Classification System (NAICS) classification code of sector 722. The concessionaire provides the eating utensils when selling the boxed lunch to a customer, and the boxed lunch is prepared food.

(2) A food manufacturer packages ready-to-eat lunches with eating utensils and sells to a grocer. Since the person that sold the packages to the grocer has a North American Industry Classification System (NAICS) classification code of a manufacturer, sector 311, the grocer is not providing the eating utensils with the food when selling the ready-to-eat lunch. Other examples of utensils provided by a manufacturer include snack package combinations of cheese and crackers that contain a spreader, ice cream cups that are packaged with wooden or plastic spoons, and juice boxes that are packaged with drinking straws. However, when the grocer physically gives or hands a utensil to the customer along with the item, the utensil given by the grocer is "provided by the seller."

B. The following subitems are examples explaining whether a food item that contains four or more servings packaged as one item is sold for a "single price."

(1) A restaurant, with a convenience food area near the cash register, sells a package of cinnamon rolls, labeled at 12 servings, for \$5.98, an apple for 75 cents, and a single-serving container of milk for 49 cents. There is a napkin dispenser and a drinking straw dispenser on a counter nearby. The restaurant is owned by a seller whose establishments in this state have a combined prepared food sales percentage of 85 percent, meaning that for most of the restaurant's sales of food, the seller only has to make utensils available to the customer. Since the package of cinnamon rolls has four or more servings and it is sold for a single price, the seller is not providing a utensil in its sale of the cinnamon rolls simply because a utensil is available for the customer, and therefore the cinnamon rolls are not prepared food. The utensils are provided by the seller for the apple and the single-serving container of milk, since the utensils are available.

(2) A bakery, owned by a seller whose establishments in this state combined have a sales percentage of 80 percent, sells fruit pies it baked at \$2 a slice. Each slice equals one serving. Five slices are packaged and sold for \$9.40. The sales receipt simply provides that the price of the apple pie is \$9.40. This package is sold for a single price. Since the item of four or more servings

is sold for a single price, the item is not considered prepared food unless the utensils are physically given or handed to the customer, even if the seller has utensils available to the customer.

(3) As described in subitem (2), the customer purchases five slices of apple pie and the slices are packaged in one container. The sales receipt, however, indicates that the slices are sold five at \$2 each, for a total price of \$10. This package is not sold for a single price, since the seller charged \$2 for each slice in the package, as shown by the sales receipt. Therefore, if the seller has utensils available to the customer, the utensils are considered to be provided by the seller, meaning that the pie slices are considered prepared food and are subject to tax. However, if the bakery neither has utensils available, nor hands or gives utensils to the customer, then the bakery items are not considered prepared food.

C. The following subitems are examples of combined sales from a seller's establishments for purposes of the prepared food sales percentage under subpart 5.

(1) A partnership owns two business operations in Minnesota, both restaurants. The partnership is a person, under Minnesota Statutes, section 297A.61, subdivision 2, and therefore the sales from both restaurants are combined by the partnership for purposes of calculating the prepared food sales percentage under subpart 5.

(2) A sole proprietor of a small grocery store is one of the partners in the example in subitem (1). The partnership does not combine the sales from the grocery store with the sales from the restaurants because the partnership does not own the grocery store. Similarly, the sole proprietor does not combine the sales from the restaurants with the sales from its grocery store, as the partnership owns the restaurants, not the sole proprietor. The sole proprietor calculates the prepared food sales percentage based on the sales from the grocery store and any other establishments owned by the sole proprietor.

(3) Corporation X owns three cafeterias and one sandwich shop. Corporation Y owns a convenience store. Corporation Z owns 100 percent of the shares of both Corporations X and Y. While Corporation Z owns the two corporations, it is not the person that owns the business operations, and therefore does not combine the sales of Corporations X and Y. Rather, Corporation X calculates the prepared food sales percentage based on the sales from its cafeterias and sandwich shop, and Corporation Y calculates the prepared food sales percentage based on the sales from its convenience store.

Subp. 7. Other prepared food. Notwithstanding the application of subparts 1 through 6, if a food is considered "prepared food" under Minnesota Statutes, section 297A.61, subdivision 31, clause (2), because it is sold in a heated state or heated by the seller, or because the seller mixed or combined two or more food ingredients as a single item, excepting the foods listed in Minnesota Statutes, section 297A.61, subdivision 31, clause (2), items (i) through (iv), the food is still taxed as prepared food.

Example: a pizzeria prepares, heats, and sells pizzas by the slice solely for pick-up, and does not have any utensils available or given to the customer. The business has a prepared food sales percentage greater than 75 percent, so that it only need have utensils available for any food sold at the establishment for the utensils to be considered "provided by the seller." However, the

fact that no utensils are provided by the seller does not mean that the pizza is not prepared food. Rather, it is prepared food because it is heated by the seller and also because the seller combines food ingredients and sells it as a single item.

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8130.4800 Subpart 1. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 2. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 3. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 4. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 5. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 6. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 7. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 8. [Repealed, L 2006 c 259 art 6 s 32]

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8130.5200 [Repealed, L 2005 c 151 art 7 s 23]

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8130.5300 PETROLEUM PRODUCTS.

Subpart 1. **Fuels subject to Minnesota Statutes, chapter 296A.** An exemption from sales and use tax is provided for petroleum products upon which a tax has been imposed under Minnesota Statutes, chapter 296A. The tax imposed by Minnesota Statutes, chapter 296A, 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 296A.** All fuels not subject to the tax imposed by Minnesota Statutes, chapter 296A, or for which a refund of the petroleum tax has been allowed because the buyer used the fuel for nonhighway use, are subject to sales and use tax unless exempted under other provisions of the Sales and Use Tax Law. Unless another exemption applies, use tax must be reported on a sales or use tax return in relation to the month in which a petroleum tax refund is issued.

Example. Trucking company is a bulk purchaser (as defined in Minnesota Statutes, section 296A.01, subdivision 9) and orders 100,000 gallons of petroleum products in October. 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, trucking company reports and pays the special fuel (as defined in Minnesota Statutes, section 296A.01, subdivision 46) excise tax on 70,000 gallons. Trucking company files a sales and use tax return and reports and pays a tax on the purchase price of the 30,000 gallons of petroleum products used for space heating. See Minnesota Statutes, section 297A.63 for application of use tax.

Statutory Authority: *MS s 270.06; 270C.06; 297A.29*

History: *L 1992 c 575 s 53; 29 SR 1450; L 2005 c 151 art 1 s 114*

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8130.5400 [Repealed, L 2006 c 259 art 6 s 32]

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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*

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8130.5550 SPECIAL TOOLING.

Subpart 1. **General information.** Special tooling is exempt. "Special tooling" is defined in Minnesota Statutes, section 297A.68, subdivision 6. 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. 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 exemption 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 exemption.

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 exemption. 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 14.388; 270.06; 270C.06*

History: *18 SR 1891; L 2005 c 151 art 1 s 114; 31 SR 449*

Published Electronically: *February 18, 2008*

8130.5600 PUBLICATIONS.

Subpart 1. [Repealed, 31 SR 449]

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 qualified newspaper as defined by Minnesota Statutes, section 331A.02, 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 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 "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 qualified newspaper.

Subp. 3. [Repealed, L 2005 c 151 art 7 s 23]

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.68, subdivision 10, are also exempt. It is further provided that such advertising is a nontaxable service. Further, that persons or their agents engaged in the publication or sale of advertising material are providing a nontaxable 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 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

Published Electronically: *February 18, 2008*

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.

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 14.388; 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; 34 SR 723*

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8130.5800 ISOLATED OR OCCASIONAL SALES AND SALES OF PERSONAL PROPERTY USED IN TRADE OR BUSINESS.

Subpart 1. In general.

A. As provided in Minnesota Statutes, section 297A.67, subdivision 23, the sales or use tax does not apply to isolated or occasional sales of tangible personal property or a service made by a person who is not engaged in selling such property or service in the normal course of business. This exemption does not apply to a sale of tangible personal property that is primarily used in a trade or business.

B. Under Minnesota Statutes, section 297A.68, subdivision 25, the sale of tangible personal property that is primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling that kind of property and the sale meets one of the listed conditions.

Subp. 1a. **Definitions.** For purposes of this part, the following definitions apply:

A. "Isolated" means standing alone or solitary.

B. "Normal course of business" is defined in Minnesota Statutes, section 297A.61, subdivision 21. The sale of inventory is considered to be made in the normal course of business and thus is subject to tax. The lease of tangible personal property is subject to tax.

Example 1. A bank repossesses secured property. This is part of the bank's business. Repossessed items are considered to be inventory in possession of the bank and the sale by the bank is considered to be made during the normal course of business and is subject to tax.

Example 2. A construction company leases excavating and hauling equipment without an operator to another business, when not otherwise in use. The leasing is considered to take place in the normal course of business and is subject to tax.

Example 3. A luxury boat business sells one or two boats a year. The sales are taxable because, while the sales are infrequent, they are made in the normal course of business.

C. "Occasional" means occurring at infrequent intervals, as incidental, or as casual; that is, as distinguished from events of a similar nature recurring with some degree of regularity.

Example. A person has a garage sale once each year. The sale is considered to be occasional.

D. "Trade or business" means any continuous and regular activity carried on for the production of income from selling goods or performing services. Organizations exempt from federal taxation under Internal Revenue Code, subchapter F, such as organizations exempt under section 501(c)(3), are only considered to be engaged in a trade or business to the extent the activity is unrelated to their exempt purposes. Government organizations, including public schools, are not considered to be engaged in a trade or business since most of their activities are conducted to further a public purpose. However, if the government entity makes sales of surplus equipment or other tangible personal property on a regular basis, it is considered to be engaged in a trade or business.

Examples of a trade or business: apartment buildings or other rental property, home day care centers, farms, law offices, manufacturers, retail stores, and restaurants.

Examples of entities that are not considered to be engaged in a trade or business: American Red Cross, churches, nonprofit hospitals, and government agencies.

Example of an exempt organization engaging in a taxable activity: a nonprofit hospital also has a gift shop that sells taxable items to the general public. The gift shop is considered to be engaged in a trade or business. Sales of items used by the hospital, such as waiting room furniture, are not subject to tax because the hospital is not a business. However, sales of items used by the gift shop, such as shelves or computers used in the store, are taxable, unless one of the exclusions under Minnesota Statutes, section 297A.68, subdivision 25, applies, since these activities are not related to the hospital's exempt purpose.

E. "Primarily used" means used in the trade or business 50 percent or more of its operating time. If it is used less than 50 percent of the time in the trade or business, it is not used primarily in the trade or business and may qualify for the isolated or occasional sale exemption. The seller's use of the equipment is the determining factor. It does not matter how the buyer uses the item.

Example. An owner of a lawn mower has a small business operation to mow the neighbors' yards. The lawn mower is used 60 percent of the time for the owner's lawn and 40 percent of the time for the neighbors' lawns. Since the mower is used less than 50 percent of the time in the owner's business, it is not considered to be used primarily in a trade or business.

F. "Substantially all of the assets of a trade or business," as provided under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (a), clause (5), or "substantially all of the property sold," as provided under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (b), clause (1), means 90 percent or more of the total fair market value of tangible personal property and does not include property that is subject to an ad valorem property tax. It also includes the assets of a separate division, branch, or other identifiable segment of a business, if before the sale, the income and expenses attributable to the separate division, branch, or segment could be separately ascertained from the records. If the separate division, branch, or segment is leased or rented, rather than sold, the assets are taxable.

Example. A company has a retail hardware business, as well as a building construction division. The records of the businesses are kept separately. The retail hardware business closes while the

construction division continues to exist. The sale of all the assets of the hardware business is exempt from tax. Sales of inventory items are taxable.

Subp. 2. **Isolated or occasional sales by person other than trade or business.** An isolated or occasional sale of tangible personal property or a service by a person who is not in the business of selling that kind of property or service is not subject to tax.

The following transactions are considered to be isolated or occasional sales because they are infrequent sales of a nonrecurring nature made by a person not engaged in the business of selling tangible personal property or a service.

Example 1. The sale of a used vacuum cleaner by one neighbor to another.

Example 2. Payment from a neighbor for mowing a neighbor's grass or taking care of a pet while the neighbor is on vacation.

Example 3. Sales by executors, administrators, trustees, and other fiduciaries in the liquidation of an estate, except inventory or stock in trade or tangible personal property primarily used in a trade or business.

Example 4. Sales or executions pursuant to a court order or by a court officer, except inventory or stock in trade or tangible personal property primarily used in a trade or business.

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 to X a bulldozer that was previously used in its business by leasing to others. Since a lease constitutes a sale, 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 infrequent sale of an inventory item by a retailer, jobber, or other vendor, even though such sales do not happen often and only comprise an insignificant part 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 that 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. 3a. Sale of property used in trade or business in transactions qualified and reported under Internal Revenue Code.

A. The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling such property; the sale occurs in a transaction subject to, or described in, section 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033 of the Internal Revenue Code, and the following conditions are met:

(1) the sale must qualify, as well as be reported, as a transaction occurring under one of the Internal Revenue Code sections listed in this item; and

(2) the transfer must be between partnerships and their partners or between corporations and their shareholders or, if the sale is under section 1563(a) of the Internal Revenue Code, between members of a controlled group.

B. Limited liability companies are generally treated as either corporations or partnerships for federal income tax purposes and transfers between limited liability companies and their members are covered by one of the Internal Revenue Code sections listed in Item A. Single member limited liability companies that elect to be treated as a corporation are also covered by one or more of the Internal Revenue Code sections listed in item A. However, when a single member limited liability company does not elect to be treated as a corporation for federal income tax purposes, the limited liability company is neither a partnership nor a corporation and transfers between the limited liability company and its one member are not exempt from sales tax under this subpart.

Subp. 3b. Sale of substantially all assets of a trade or business.

A. The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling such property and the sale is a sale of substantially all of the assets of a trade or business, as defined in Minnesota Statutes, section 297A.68, subdivision 25, paragraph (b), clause (3), and as defined in subpart 1a, item F. A buyer of property is not subject to use tax if the buyer has a written statement from the seller confirming that the sale of the property is a sale of substantially all of the assets of the business, as defined in subpart 1a. If the buyer has a written statement from the seller to that effect and the seller does not sell substantially all of the assets of the trade or business, the seller is subject to tax on the total amount received.

B. Under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (b), clause (3), the sale of substantially all of the assets has to take place within the period of 12 months. This means that the seller must sell 90 percent or more of the total fair market value of tangible personal property within the 12-month period in order to be exempt from tax.

Subp. 3c. Sale of property used in trade or business in transaction with \$1,000 gross receipts limitation. The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling such property and the total amount of gross receipts from the sale of trade or business property made during the calendar month of the sale, as well as sales of property made in the previous 11 months, does not exceed \$1,000, as provided under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (a),

clause (6). A buyer of property is not subject to use tax if the buyer has a written statement from the seller confirming that the sale of the property meets this requirement. In this case, if the seller sells property for an amount exceeding \$1,000, the seller is subject to tax on the total amount received, including the first \$1,000. The limitation of \$1,000 does not apply when the business sells substantially all of its assets.

Example. A company sells some cabinets and desks for \$12,000 during a period of 12 months but it is not a sale of substantially all the assets of the business. The sale of these fixtures does not qualify for the exemption since the amount received exceeds \$1,000.

Subp. 3d. **Farm auctions.** The sale of tangible personal property sold at a farm auction is exempt if substantially all the property sold is used in the trade or business of farming, or is other nonbusiness property. However, inventory sold by another trade or business is subject to tax.

Example. The following farming equipment is sold at a farm auction: tools, lawn mowers, and other supplies. A neighboring home improvement business sells patio furniture at the farm auction and the auction also includes personal items owned by various individuals. The farming equipment and the personal items consist of 95 percent of the fair market value of the items sold; the home improvement inventory consists of five percent of the items sold. The farming equipment and the personal items are exempt. The items sold by the home improvement business are subject to tax.

Subp. 4. **Garage sale or personal sale.** A "garage sale or personal sale" is a sale by a person or persons selling their personal belongings. A garage sale or personal sale does not include flea markets, craft shows, antique shows, coin shows, stamp shows, comic book shows, convention exhibit areas, or similar selling events, as provided under Minnesota Statutes, section 297A.87. A garage sale includes moving sales, estate sales, and other similar sales. If a person does not regularly hold garage sales or personal sales and 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.

If any trade or business assets are sold at the garage sale, sales tax is due on those items.

Example 1. A person sells personal belongings at an annual neighborhood garage sale that was advertised through word-of-mouth, notices on a bulletin board, or an advertisement in the classified section of a newspaper. No sales tax applies.

Example 2. A person sells new or used items that were purchased for the purpose of resale, as well as personal items, at a garage sale. The personal items include some children's toys and a lamp. The person is considered to be carrying on a trade or business and sales tax must be charged on all sales of taxable items that were purchased for resale. The sale of the lamp and the toys is not subject to tax.

Subp. 5. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 6. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 7. [Repealed, 33 SR 771]

Subp. 8. Auctions.

A. For purposes of this part, an auction is a method of selling tangible personal property in a public forum through open and competitive bidding conducted by an auctioneer licensed under Minnesota Statutes, chapter 330. An auction does not include a consignment auction or consignment sale, as defined in subpart 10.

B. The sale of items held in inventory, taxable services, and property primarily used in a trade or business is generally subject to tax, as provided in Minnesota Statutes, section 297A.68, subdivision 25.

C. When tangible personal property is sold in an auction, the sale qualifies as an isolated or occasional sale under Minnesota Statutes, section 297A.67, subdivision 23, if it would qualify as an isolated or occasional sale when sold by the owner of the property, and if the following conditions are met:

- (1) the title is exchanged directly between the owner and the buyer;
- (2) the auctioneer does not carry insurance on the property; and
- (3) the auctioneer and the owner of the property to be sold have entered a written agreement as provided under Minnesota Statutes, section 330.10.

D. When the sale is taxable, the person receiving the payment is responsible for collecting and remitting the sales tax on the total sales price of the property.

Example 1. An auctioneer conducts an estate sale and sells personal belongings of the deceased person. No tax is due if the conditions provided under this subpart are met.

Example 2. An auctioneer purchases 50 tires from an individual. The tires are auctioned to the general public. The sale is subject to tax since the auctioneer took title of the tires and, therefore, is considered to be selling the tires in the normal course of business.

Example 3. An insurance company contracts with an auctioneer to sell its used office furniture at an annual auction. The items sold are subject to tax, unless the sales meet the exceptions provided in subparts 3a to 3d. The insurance company is a business and thus Minnesota Statutes, section 297A.67, subdivision 23, does not apply.

Subp. 9. Brokered sales.

A. For purposes of this part, a broker is a person who sells tangible personal property owned by others and who receives a fee or a commission for selling the owner's property. A broker is not an auctioneer.

B. The sale of items held in inventory, taxable services, and property primarily used in a trade or business is generally subject to tax, as provided in Minnesota Statutes, section 297A.68, subdivision 25.

C. When tangible personal property is sold by a broker, the sale qualifies as an isolated or occasional sale under Minnesota Statutes, section 297A.67, subdivision 23, if it would qualify as

an isolated or occasional sale when sold by the owner of the property, and the following conditions are met:

- (1) the title to the property passes directly from the owner to the buyer;
- (2) the payment does not pass through any accounts of the broker;
- (3) the broker does not carry insurance on the property; and
- (4) the rights to accept or reject any offer are retained by the owner.

D. When the sale is taxable, the person receiving the payment is responsible for collecting and remitting the sales tax on the total sales price of the property.

Example 1. The owner of a boat marina sells a boat on behalf of a boat owner who is not in the trade or business of selling boats. The marina owner advertises the boat for sale and obtains offers to purchase the boat. The marina owner informs the buyer of the offers. The boat owner retains the power to accept or reject the offers. Title to the boat passes directly from the owner to the buyer. Payment is made directly to the owner. Upon sale of the boat, the marina owner receives a commission from the seller. This sale is exempt from tax.

Example 2. A boat marina negotiates the sale of a boat for the owner of a boat. The owner has no involvement in the negotiation of the sale. Payment for the boat is deposited in the marina's account. The sale is subject to tax.

Subp. 10. Consignment sales and consignment auctions.

A. For purposes of this part, consignment sales are sales in which a retailer maintains a place of business where tangible personal property owned by others is sold by the retailer in the normal course of business. The retailer may also sell property owned by the retailer. A consignment sale is not an auction, as defined in subpart 8.

B. Consignment auctions are events that are regularly scheduled, are open to members of the public to sell their items, and are held at the same location. Consignment auctions are not selling events, as provided under Minnesota Statutes, section 297A.87. Consignment auctions are not auctions, as defined in subpart 8.

C. The sale of items held in inventory, taxable services, and property primarily used in a trade or business is generally subject to tax, as provided in Minnesota Statutes, section 297A.68, subdivision 25.

D. Consignment sales and consignment auctions are exempt from tax if:

- (1) the title to the property passes directly from the owner to the buyer;
- (2) the payment does not pass through any accounts of the retailer or auctioneer;
- (3) the retailer or auctioneer does not carry insurance on the property; and
- (4) the rights to accept or reject any offer are retained by the owner.

E. When the sale is taxable, the person receiving the payment is responsible for collecting and remitting the sales tax on the total sales price of the property.

Example 1. A person sells used books on consignment at a retail store. Under the contract, the store determines the selling price of the books. The sale is taxable.

Example 2. A person sells a lawn mower at a consignment auction. Title passes from the owner directly to the buyer. Payment is deposited in the auction company's books. The company deducts its fee and then pays the owner a share of the payment. The sale is subject to tax.

Example 3. A person rents space from the operator of a craft show to sell craft items. The seller participates in the event for four days. The sales at the show are taxable since the selling event lasts more than three days, as provided under Minnesota Statutes, section 297A.87, subdivision 3.

Statutory Authority: *MS s 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; art 7 s 23; L 2006 c 259 art 6 s 32; 33 SR 771*

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8130.5900 [Repealed, 31 SR 449]

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8130.6000 AIRFLIGHT EQUIPMENT.

Subpart 1. **General rule.** Sales of airflight 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 airflight property tax), are exempt. This part identifies the airflight equipment that is exempted from tax imposed by Minnesota Statutes, section 297A.62.

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. "Airflight equipment" means airplanes, aircraft communications and navigational equipment, flight crew equipment, flight simulators, hydraulics equipment, and all parts that are affixed and become component parts including hydraulic fluid, parts necessary for the repair and maintenance of the listed equipment, and any other property subject to assessment under Minnesota airflight property tax. Airflight equipment does not include airplanes with a gross weight of less than 30,000 pounds that are used on intermittent or irregularly timed flights, 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 airflight 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 a person who furnishes casual transportation for hire by aircraft commonly owned and used for private airflight 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 airflight equipment if it is subject to Minnesota airflight property tax on those purchases. The purchase of flight simulators is specifically exempted in Minnesota Statutes, section 297A.82, subdivision 4, paragraph (d). If an airline company is exempt from airflight property tax, its purchases of airflight property are subject to sales and use tax.

Statutory Authority: *MS s 14.388; 270.06; 270C.06; 297A.29*

History: *18 SR 2044; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.6100 [Repealed, L 1992 c 511 art 7 s 26]

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8130.6200 CHARITABLE, RELIGIOUS, AND EDUCATIONAL ORGANIZATIONS.

Subpart 1. **Applicable law.** Minnesota Statutes, section 297A.70, subdivision 4, 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 telecommunications services under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (i); electricity, gas, water, or steam pursuant to Minnesota Statutes, section 297A.61, subdivision 3, paragraph (e); 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.61, subdivision 3, paragraph (g), clause (1), 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 11, unless the lease or purchase meets the requirements for exemption under Minnesota Statutes, section 297A.70, subdivision 4, paragraph (c), or 297B.03, clause (11).

For purposes of this part, charitable, religious, or educational purposes are referred to as "exempt purposes," and a nonprofit organization, society, association, foundation, or institution organized and operated exclusively for exempt purposes are 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.70, subdivision 4. 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.

C. Unless the sale is specifically exempt under Minnesota Statutes, section 297A.71, the exemption from tax under Minnesota Statutes, section 297A.70, subdivision 4, 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.** An organization is not 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 as defined in Minnesota Statutes, section 297A.61, subdivision 22. 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.70, subdivision 4, 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 it 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 as defined in Minnesota Statutes, section 297A.61, subdivision 22.

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 must complete and furnish a certificate of exemption when making exempt purchases of tangible personal property. Charitable and youth athletic organizations must apply for and receive an exempt status number and furnish that number when making exempt purchases of tangible personal property. Religious and educational organizations may also apply for and receive an exempt status number.

(1) Organizations that may furnish a certificate without an exempt status number include churches, schools, and educational organizations such as scouts, 4-H Clubs, YMCAs, YWCAs, and PTAs.

(2) Organizations that must furnish a certificate that includes an exempt status number 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. An application for certificate of exempt status 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 motor vehicles or when renting motor vehicles. See subpart 1. 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 that meet the requirements of Minnesota Statutes, section 297A.70, subdivision 13 or 14, or the sales are otherwise exempt under Minnesota Statutes, chapters 297A and 297E.

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) prepared food;

(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) occasional sales (See Minnesota Statutes, section 297A.67, subdivision 23.).

Subp. 10. **Volunteer fire departments.** Volunteer fire departments may qualify for exempt status 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 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 Minnesota Statutes, section 297A.70, subdivision 4, paragraph (a), clause (2).

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. See Minnesota Statutes, section 297A.70, subdivision 5.

C. Sales of sacramental wine for sacramental purposes in religious ceremonies are exempt if the wine is purchased from a nonprofit religious organization or a person authorized to import sacramental wine without a license. See Minnesota Statutes, section 297A.70, subdivision 9.

D. Fees to camps or other recreation facilities are exempt if they are owned and operated by an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in Minnesota Statutes, section 297A.61, subdivision 22, and are used for (i) services primarily for children, adults accompanying children, or persons with disabilities, or (ii) educational or religious activities. See Minnesota Statutes, section 297A.70, subdivision 16. The sale of memberships to an association incorporated under Minnesota Statutes, section 315.44 (YMCAs and YWCAs), or an organization defined in section 315.51 (JCCs), are exempt. This includes onetime 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.70, subdivision 12.

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.

(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 if the events are held at facilities owned by the schools and the performance and the organization meet the requirements of Minnesota Statutes, section 297A.70, subdivision 10. See also Minnesota Statutes, section 297A.96.

(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.

F. Receipts from bingo, raffles, and other gambling activities are subject to the tax imposed on lawful gambling. See Minnesota Statutes, section 297E.02.

G. 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 Minnesota Statutes, section 297A.68, subdivision 25.

Statutory Authority: *MS s 14.388; 270.06; 270C.06; 297A.29*

History: *17 SR 1279; 18 SR 391; L 1993 c 375 art 8 s 14; L 2005 c 151 art 1 s 114; 31 SR 449; 34 SR 723*

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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 exempt under Minnesota Statutes, section 297A.67, subdivision 10, 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 for 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 included in the sales price and are taxable.

C. If a cemetery constructs the foundation upon which a memorial is to be placed, and collects the charges 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. If 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.68, subdivision 2).

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449*

Published Electronically: *February 18, 2008*

8130.6400 VETERANS WITH A DISABILITY; PURCHASES OF AUTOMOBILES AND OTHER CONVEYANCES.

Subpart 1. **General rule.** Minnesota Statutes, section 297A.67, subdivision 11, provides exemption for the gross receipts from the sale of an automobile or other conveyance to a veteran with a disability if the purchaser is assisted by a grant from the United States in accordance with United States Code, title 38, section 3902, as amended.

This exemption is effective for the purchase of vehicles and the purchase of any qualifying adaptive equipment purchased with federal assistance. 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. **Sales tax on motor vehicles.** To be exempt from the sales tax on motor vehicles under Minnesota Statutes, chapter 297B, a veteran with a disability purchasing a motor vehicle with adaptive equipment with funds provided by the Veterans Administration under United States Code, title 38, section 3902, 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 sales tax on motor vehicles and for adaptive equipment remains the same as in subpart 2.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; 31 SR 449; 46 SR 1363*

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8130.6500 [Repealed, 31 SR 449]

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8130.6600 VETERANS WITH A DISABILITY; PURCHASE OF BUILDING MATERIALS.

Subpart 1. [Repealed, 31 SR 449]

Subp. 2. **Procedure.** The exemption under Minnesota Statutes, section 297A.71, subdivision 11, 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 2101 to 2105, upon the filing of a claim for refund, accompanied by the following documents to substantiate the validity of such claim:

A. claimant's letter of approval of a PH or AH grant under United States Code, title 38, chapter 21, from the claimant's regional VA office;

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.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; 31 SR 449; 46 SR 1363*

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8130.6700 TEXTBOOKS.

Subpart 1. **In general.** Minnesota Statutes, section 297A.67, subdivision 13, exempts the sale of textbooks which are prescribed for use in a course of study in a school, college, university, and private career school to regularly enrolled students.

Subp. 2. **Definitions.** For the purposes of this part, the following words, terms, and phrases have the meanings given them in this subpart:

A. "Textbooks which are prescribed for use in a course of study" are defined as any book or other 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. "School" means:

(1) an elementary, middle, secondary, or vocational center school with building, equipment, courses of study, class schedules, enrollment, and staff meeting the standards of the commissioner of children, families, and learning; or

(2) a nonpublic school, church, or religious organization or home school in which a child is provided instruction in compliance with Minnesota Statutes, sections 120A.22 and 120A.24.

C. "Private career school" is defined as a school licensed under Minnesota Statutes, section 136A.822.

D. "College" is defined to include all professional schools, paramedical, and other paraprofessional schools and nursing schools.

E. "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. [Repealed, 31 SR 449]

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

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8130.7300 Subpart 1. [Repealed, 31 SR 449]

Subp. 2. [Repealed, 31 SR 449]

Subp. 3. [Repealed, 31 SR 449]

Subp. 4. [Repealed, 31 SR 449]

Subp. 5. [Repealed, L 2005 c 151 art 7 s 23; 31 SR 449]

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PAYMENTS, RETURNS, ASSESSMENTS, AND COLLECTIONS

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. In addition, a certified service provider may claim a bad debt allowance on behalf of the provider's client. 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, sections 289A.50, subdivision 2b, and 297A.81.

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. **Reposessions.** In the case of reposessions, 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 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.7500 Subpart 1. [Repealed, 31 SR 449]

Subp. 2. [Repealed, 31 SR 449]

Subp. 3. [Repealed, 46 SR 1308]

Subp. 4. [Repealed, 31 SR 449]

Subp. 5. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 6. [Repealed, 46 SR 1308]

Subp. 7. [Repealed, L 2014 c 308 art 9 s 94]

Subp. 8. [Repealed, 46 SR 1308]

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8130.7501 RETURNS AND RECORDS.

Subpart 1. **Definitions.** For purposes of this part, the following definitions apply.

A. "Accurate and complete records" means all records necessary to determine the correct tax liability under Minnesota Statutes, chapter 297A, and all records necessary for proper completion of the sales and use tax return.

B. "Electronic data processing" means any processing of data that uses an electronic format.

C. "Electronic record" means a collection of related information stored in any electronic format, and includes information stored in a point of sale system. For purposes of this item, "point of sale system" means a system that electronically records transaction data for the purpose of computing, compiling, or processing transaction data, and includes an electronic cash register as defined in Minnesota Statutes, section 289A.14, paragraph (c).

D. "Hardcopy record" means any document, record, report, or other data maintained in a tangible format.

E. "Taxpayer" means any person liable for any tax imposed by Minnesota Statutes, chapter 297A, or for the collection thereof.

Subp. 2. **Consolidated returns permitted.** Under Minnesota States, 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 the business name and address and reporting information 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. 3. **Records; general.**

A. A taxpayer shall maintain accurate and complete records. A taxpayer shall make such records available to the department or its authorized representative upon request. Such records include but are not limited to:

(1) a general ledger, with source references, to coincide with financial reports for sales tax reporting periods. If subsidiary ledgers are used to support general ledger accounts, then subsidiary ledgers also must be maintained;

(2) normal books of account ordinarily maintained by the average prudent business person engaged in the activity in question;

(3) bills, receipts, vouchers, invoices, cash register tapes, or other records that support entries in the books of account or that support summary accounting data;

(4) schedules or working papers used in connection with preparation of tax returns; and

(5) records that show and substantiate:

(a) gross receipts, irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable;

(b) all deductions allowed by law and claimed in filed returns;

(c) total sales price, as defined in Minnesota Statutes, section 297A.61, subdivision 7; and

(d) any other information necessary to determine the correct tax liability, including but not limited to:

i. vendor name;

ii. invoice date;

iii. production description;

iv. quantity purchased;

v. amount of tax;

vi. indication of tax status (e.g., for resale); and

vii. shipping or sourcing detail.

B. A taxpayer may discard redundant information, including but not limited to duplicate records, provided the integrity of the audit trail is preserved and responsibilities under this part are met.

C. Upon department request, a taxpayer shall provide a description of the business process that created the retained records. Such description must include the relationship between the records and tax documents prepared by the taxpayer and measures employed to ensure integrity of the records. Upon department request, a taxpayer shall also demonstrate:

(1) the functions being performed as data flows through the record-keeping system;

(2) internal controls used to ensure accurate and reliable processing; and

(3) internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

Subp. 4. Electronic records and electronic data processing.

A. Electronic records used to establish a taxpayer's compliance with this part must:

(1) contain sufficient source document and transaction-level information so that the details underlying the electronic records can be identified and made available to the department upon request; and

(2) in combination with other records related to the transaction, provide the ability to trace any transaction back to the original source or forward to a final total.

B. Requirements for the electronic data processing portion of a taxpayer's accounting system must be similar to that of a manual accounting system, in that an adequately designed accounting system must incorporate methods and records that satisfy the requirements of this part.

C. A taxpayer shall maintain records providing a general description of or documentation regarding the electronic data processing portion of the accounting system, including but not limited to the following:

(1) standard programming conventions and procedures, including but not limited to 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 but not limited to 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 but not limited to 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.

D. A taxpayer's electronic data processing system must include a method of producing visible and legible records which provide information necessary to determine the correct tax liability. The department may require a taxpayer to produce such visible and legible records in the form of hardcopy records if such records are necessary to determine the correct tax liability or provide a more efficient means of determining the correct tax liability.

Subp. 5. Hardcopy records.

A. Except as specifically provided in this subpart and in subpart 3, item B, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law.

B. If hardcopy records are not created or received in the ordinary course of business, the department may require the taxpayer to generate hardcopy records if such records either:

- (1) are necessary to determine a taxpayer's correct tax liability; or
- (2) provide a more efficient means of determining the correct tax liability.

C. Hardcopy records generated at the time of a transaction must be retained unless all details necessary to determine the correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this part.

D. A taxpayer required to produce a hardcopy record under this part satisfies the requirement if the taxpayer produces a digital version of the hardcopy record, such as a portable document format or PDF, that is verifiably identical to the hardcopy record.

Subp. 6. Record retention.

A. Consistent with the generally applicable statute of limitations for department assessments of sales tax found in Minnesota Statutes, section 289A.38, subdivision 1, all records required to be retained under this part must be preserved for a period of not less than 3-1/2 years.

B. If a taxpayer acts in a manner that triggers an extension of the generally applicable statute of limitations for department assessments of sales tax under Minnesota Statutes, section 289A.38 (e.g., submitting a false or fraudulent return or omitting from a return an amount of taxes in excess of 25 percent of taxes reported in the return), records required to be retained under this part must be preserved for a period of not less than the applicable extension of the statute of limitations.

C. The required record retention time frames provided in this subpart apply unless the department:

- (1) provides written authorization allowing destruction of the records in question within a shorter period of time; or
- (2) requires, in a written communication, that the records in question be retained for a longer period.

Subp. 7. Record-related services provided by third parties. A taxpayer may contract with a third party to provide services related to sales tax record-keeping requirements. Such a contract does not relieve a taxpayer of its compliance responsibilities under Minnesota law.

Subp. 8. Failure to maintain records. The department may consider a taxpayer's failure to maintain accurate and complete records as evidence of the taxpayer's negligence or intent to evade tax.

A. Records are not accurate and complete records if they do not comply with this part, which includes failure of a taxpayer's records to:

- (1) verify sales receipts;
- (2) verify whether sales receipts are subject to sales tax;
- (3) provide details of each individual transaction sufficient to determine the correct tax liability;

- (4) verify the taxable status of purchases; or
- (5) show that taxpayer purchases correlate to taxpayer sales.

B. Records are also not accurate and complete records if the:

(1) records provided by the taxpayer do not allow the department to determine the correct tax liability;

(2) taxpayer does not make available to the department records required to be made available under this part; or

(3) department's evaluation of the taxpayer's accounting system reveals the system does not provide adequate internal controls to reasonably ensure completeness and accuracy of transactions recorded in the taxpayer's books and records.

C. If a taxpayer fails to maintain accurate and complete records, the taxpayer may be subject to various consequences and penalties, including but not limited to the following:

(1) an estimated audit methodology to determine any additional tax due;

(2) an assessment of interest under Minnesota Statutes, section 289A.55, and assessment of civil penalties under Minnesota Statutes, section 289A.60, if the department finds that additional tax is due; or

(3) an imposition of criminal penalties under Minnesota Statutes, section 289A.63, if the taxpayer willfully failed to maintain proper records.

Statutory Authority: *MS s 270C.06; 297A.77*

History: *46 SR 1308*

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8130.7600 Subpart 1. [Repealed, 31 SR 449]

Subp. 2. [Repealed, 15 SR 693; 31 SR 449]

Subp. 3. [Repealed, 15 SR 693; 31 SR 449]

Subp. 4. [Repealed, 15 SR 693; 31 SR 449]

Subp. 5. [Repealed, 31 SR 449]

Subp. 6. [Repealed, 31 SR 449]

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8130.7700 Subpart 1. [Repealed, 31 SR 449]

Subp. 2. [Repealed, 15 SR 693; 31 SR 449]

Subp. 3. [Repealed, 31 SR 449]

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8130.7800 [Repealed, L 1990 c 480 art 1 s 45]

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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 under Minnesota Statutes, section 297A.83, subdivision 1, paragraph (b), and has been granted one;

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.73);

F. a person upon whom liability for use tax is imposed by Minnesota Statutes, section 297A.63; and

G. any person holding a direct pay authorization.

Subp. 2. [Repealed, 31 SR 449]

Subp. 3. [Repealed, 31 SR 449]

Statutory Authority: *MS s 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: *15 SR 693; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.8000 Subpart 1. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 2. [Repealed, 15 SR 693; L 2003 c 127 art 6 s 18]

Subp. 3. [Repealed, 15 SR 693; L 2003 c 127 art 6 s 18]

Subp. 4. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 5. [Repealed, 15 SR 693; L 2003 c 127 art 6 s 18]

Subp. 6. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 7. [Repealed, L 2003 c 127 art 6 s 18]

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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 veteran with a disability 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 veteran's claim for refund form is available upon request from the Department of Revenue for use by veterans with a disability 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 purchases 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 270C.40, 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 270C.405 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 14.388; 270C.06; 297A.25; 297A.27; 297A.29*

History: 15 SR 693; L 2005 c 151 art 1 s 114,116; 46 SR 1363

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Subp. 2. [Repealed, L 2003 c 127 art 6 s 18]

Subp. 3. [Repealed, 15 SR 693; L 2003 c 127 art 6 s 18]

Subp. 4. [Repealed, 15 SR 693; L 2003 c 127 art 6 s 18]

Subp. 5. [Repealed, 15 SR 693; L 2003 c 127 art 6 s 18]

Subp. 6. [Repealed, L 2003 c 127 art 6 s 18]

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8130.8400 [Repealed, 31 SR 449]

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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 animals, through care, medication, and treatment of such animals. The veterinarian is the user and consumer of all tangible personal property such 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. Except for the agricultural production exemptions provided in Minnesota Statutes, section 297A.69, and except as provided otherwise in this part, the veterinarian must pay sales or use tax on items used to provide services and must collect and report sales tax on retail sales of taxable goods and services.

Subp. 2. **Retail sale.** Retail sales by the veterinarian of tangible personal property and taxable services that are not used or consumed in agricultural production or are not used to provide a taxable service are taxable. For example, worm pills sold for treatment of the family pet dog would be taxable. The veterinarian may accept exemption certificates from persons engaged in agricultural production, or in the boarding, breeding, raising, owning, or keeping of horses, or in providing taxable services such as pet grooming or the furnishing of lodging, board, and care services for animals, for retail sales of items that are used or consumed in those endeavors.

Subp. 3. **Bundled transaction.** If the veterinarian administers a drug, medicine, or supply to an animal other than an agricultural production animal or horse and 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. If the veterinarian both sells a drug, medicine, or supply and administers it to an animal other than an agricultural production animal or horse, and also separately states the charges for such items and the charge for the veterinary service, then the sale of such drugs and materials by the veterinarian is a taxable retail sale. The veterinarian may purchase these items exempt for resale and must charge tax on the sales price to the customer. "Administers" means the item is injected, fed, or applied to the animal.

Subp. 4. **Use tax reporting period.** If the sales tax was not paid on items at the time of purchase from suppliers because they are purchased for resale or for an exempt use, and the veterinarian afterward puts the items to taxable use, then the veterinarian must report the use tax due thereon in the sales and use tax return covering the period in which taxable use was made of the item by the veterinarian.

Subp. 5. **Agricultural animal practice and horses.** Materials purchased by a veterinarian to be used or consumed in the care, medication, and treatment of horses and agricultural production animals may be purchased exempt from tax by providing the retailer with an exemption certificate. Materials are used or consumed when the materials, following their use by the veterinarian in the care, medication, and treatment of a horse or an agricultural production animal, are substantially without value and of no further practical use.

A. Examples of materials that may be purchased exempt by veterinarians if used or consumed in the care, medication, and treatment of horses and agricultural production animals include, but are not limited to, antiseptics; bandages; disposable blades, needles, and syringes; drugs; magnets; mastitis treatments and tubes; nitrogen; tattoo ink; vaccines; diagnostic and testing supplies; and lab chemicals and reagents.

B. Examples of items that are taxable when purchased by veterinarians, either because they are not used in the care, medication, and treatment of a horse or an agricultural production animal or because after such use they are not substantially without value and are of further practical use, include, but are not limited to, administrative and office supplies, informational pamphlets and videos, as well as machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, fixtures, laboratory and surgical equipment, truck boxes, head gates, semen tanks, medical instruments, and other durable items. See part 8130.5500, subpart 13, for more detail regarding the agricultural production exemption.

Subp. 6. **Items given away.** Taxable items given to customers as part of a service, for good will purposes, or donated to a charitable or civic organization, are taxable to the veterinarian. Veterinarians do not owe sales or use tax if the items given away have been received from a vendor as a free sample or promotional item.

Subp. 7. **Boarding and pet grooming services.** Boarding and pet grooming services are taxable. Materials and supplies used or consumed in providing taxable boarding and pet grooming services are exempt. Materials and supplies are used or consumed when the materials, following their use by the veterinarian in boarding and pet grooming services, are substantially without value and of no further practical use.

A. Durable supplies and equipment used to provide these services are taxable, since following the boarding or pet grooming service they are not substantially without value and are of further practical use. Examples of durable supplies and equipment include collars, leashes, cages, grooming tables, clippers, combs, and scissors.

B. Pet grooming services include, but are not limited to, shampooing, clipping, trimming, and nail cutting. If these services are performed by a veterinarian for surgical preparation or for treating or preventing illness or disease, they are not taxable. Pet grooming services do not include grooming services for horses and horseshoeing and hoof trimming services.

C. Boarding services for horses are not taxable. For other animals, boarding services provided by a veterinarian are not taxable if the boarding service is for medical reasons - that is, hospitalization, observation, or other veterinary purposes. "Other veterinary purposes" does not include administering medication to a pet when the pet owner normally could administer the medication. If administering such medication is the sole service provided by the veterinarian aside from boarding, then the boarding service is taxable. However, if the veterinarian not only administers medication which the pet owner normally could administer, but also boards the pet for hospitalization, observation, or other veterinary purposes, then the boarding service is not taxable.

Statutory Authority: *MS s 270.06; 270C.06; 297A.29*

History: *17 SR 1279; 29 SR 217; L 2005 c 151 art 1 s 114*

Published Electronically: *February 18, 2008*

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 reproductions. 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. [Repealed, L 2005 c 151 art 7 s 23]

Statutory Authority: *MS s 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; art 7 s 23*

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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 reforestation 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. [Repealed, L 2014 c 308 art 11 s 8]

Subp. 4. [Repealed, 16 SR 2055]

Statutory Authority: *MS s 270.06; 270C.06; 297A.29*

History: *16 SR 2055; L 2005 c 151 art 1 s 114; L 2014 c 308 art 11 s 8*

Published Electronically: *July 16, 2014*

8130.9000 SOFT WATER EQUIPMENT AND SERVICE DEALERS.

Subpart 1. **Sales.** Sales of water softening equipment and tanks which are attached by a dealer to real property leased or owned by the purchaser are exempt from Minnesota sales tax as sales of improvements to real property. 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. 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 the rental of water softening 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 purchase such equipment and tanks constitutes a sale at retail of tangible personal property. The tax applies to charges for the delivery and installation of rented equipment and tanks, including charges to replace or exchange such equipment or tanks, regardless of whether those charges are separately stated on the initial invoice or billing, or whether the installation is performed by the lessor of the equipment and tanks. Sales to dealers of equipment and tanks intended to be used only for leasing to customers are considered sales for resale.

Subp. 3. [Repealed, 31 SR 1801]

Statutory Authority: *MS s 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; 31 SR 1801*

Published Electronically: *February 18, 2008*

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 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114*

Published Electronically: *February 18, 2008*

8130.9200 [Repealed, 17 SR 2106]

Published Electronically: *February 18, 2008*

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.68, 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 creation 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 nontaxable 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. Minnesota Statutes, section 297A.68, subdivision 11, exempts 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 retailer, 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 retailer, 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 14.388; 270.06; 270C.06*

History: *17 SR 2106; L 2005 c 151 art 1 s 114; 31 SR 449*

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8130.9300 SALES BY GOVERNMENTAL UNITS; TAXABLE.

Subpart 1. General rule. Tangible personal property purchased from the United States, the state of Minnesota, and other governmental units is taxable.

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 14.388; 270.06; 270C.06*

History: *L 2005 c 151 art 1 s 114; 31 SR 449*

Published Electronically: *February 18, 2008*

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 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114*

Published Electronically: *February 18, 2008*

8130.9500 Subpart 1. [Repealed, L 2014 c 308 art 11 s 8]

Subp. 1a. [Repealed, L 2014 c 308 art 11 s 8]

Subp. 2. [Repealed, L 2014 c 308 art 11 s 8]

Subp. 3. [Repealed, L 2014 c 308 art 11 s 8]

Subp. 4. [Repealed, L 2014 c 308 art 11 s 8]

Subp. 5. [Repealed, L 2014 c 308 art 11 s 8]

Subp. 6. [Repealed, 18 SR 1891]

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8130.9600 IRON MINING INDUSTRY EXEMPTIONS.

Subpart 1. **Scope.** The industrial production exemption provided in Minnesota Statutes, section 297A.68, subdivision 2, 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.68, subdivision 4, 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.68, subdivision 2. 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 cobbles;
- 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.68, subdivision 4, 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.68, subdivision 2 or 4, 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 14.388; 270C.06; 297A.29*

History: *L 2005 c 151 art 1 s 114; 31 SR 449*

Published Electronically: *February 18, 2008*

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. "Keypunching" 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. Keypunching 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. "Online" 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 plugboard, 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 key punching and keystroke verification, or key punching, 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 (online) 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; 270C.06; 297A.29*

History: *17 SR 1279; 18 SR 784; L 2005 c 151 art 1 s 114*

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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; 270C.06*

History: *18 SR 784; 18 SR 851; 18 SR 887; L 2005 c 151 art 1 s 114*

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