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1 Department of Revenue

2 Adopted Permanent Rules Governing the Sales and Use Tax on Food,

3 Drinks, and Meals

4 8130.4700 FOOD, DRINKS, AND MEALS.

5 Subpart 1. [See repealer.]

6 Subp. 1a. Applicable law. Minnesota Statutes, section
7 297A.61, subdivision 3, paragraph (d), defines "sale and
8 purchase" to include the preparation of food for a
9 consideration. Taxable food includes prepared food as defined
10 in Minnesota Statutes, section 297A.61, subdivision 31; soft
11 drinks, as defined in Minnesota Statutes, section 297A.61,
12 subdivision 32; candy, as defined in Minnesota Statutes, section
13 297A.61, subdivision 33; and all food sold through vending
14 machines as defined in Minnesota Statutes, section 297A.61,
15 subdivision 34. Dietary supplements as defined in Minnesota
16 Statutes, section 297A.67, subdivision 2, are also taxable.

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

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

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

1 following: cereal and cereal products, butter, cheese, milk and
2 milk products, oleomargarine, meat and meat products, fish and
3 fish products, eggs and egg products, vegetables and vegetable
4 products, fruit and fruit products, spices and salt, sugar and
5 sugar products, coffee and coffee substitutes, tea, cocoa and
6 cocoa products.

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

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

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

25 Subp. 3. [See repealer.]

26 Subp. 4. [See repealer.]

27 Subp. 5. Soft drinks.

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

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

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

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

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

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

24 G. Examples of nontaxable items are apple cider;
25 beverage powders or concentrates such as ground coffee, tea
26 bags, and juice concentrate; carbonated and noncarbonated
27 bottled or canned water that does not contain sweeteners

1 regardless of container size; vegetable juices containing more
2 than 50 percent vegetable juice, even if these beverages contain
3 sugar; and coffee drinks that contain milk. These items are
4 taxable if they are prepared by the seller, qualify as an
5 alcoholic beverage, or are sold through a vending machine.

6 Subp. 6. Candy.

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

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

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

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

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

26 (1) items that are not in the form of bars,
27 drops, or pieces, including jam, jelly, honey, preserves, or

1 syrup;

2 (2) items that contain flour, including pretzels,
3 cookies, or cake mix;

4 (3) items that require refrigeration, including
5 ice cream bars; and

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

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

10 Subp. 7. Meals served at hospitals, sanitariums, nursing
11 homes, senior citizens' homes, and correctional, detention, and
12 detoxification facilities.

13 A. Under Minnesota Statutes, section 297A.67,
14 subdivision 4, meals or drinks served to patients, inmates, or
15 persons residing at hospitals, sanitariums, nursing homes,
16 senior citizens' homes, and correctional, detention, and
17 detoxification facilities are exempt. This exemption applies
18 when the meals or drinks are purchased, as well as sold, by
19 these facilities. For purposes of this subpart, the definitions
20 in subitems (1) to (6) apply:

21 (1) "Meals or drinks" means prepared food, soft
22 drinks, and candy. As provided in item C, "meals or drinks"
23 does not mean food sold through vending machines.

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

27 (3) "Nursing home" means a nursing home as

1 defined in Minnesota Statutes, section 144A.01, subdivision 5,
2 and a boarding care home as defined in part 4655.0100.

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

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

15 (6) "Detoxification facility" means a facility
16 providing a program operating under Minnesota Statutes, section
17 254A.08.

18 B. All food served to patients and residents by
19 hospitals, sanitariums, nursing homes, senior citizens' homes,
20 and correctional, detention, and detoxification facilities is
21 exempt, including optional meals and meals that are prepared by
22 separate entities.

23 C. Food sold through vending machines, coffee shops,
24 and cafeterias that operate in these facilities is subject to
25 tax.

26 Subp. 8. Meals served at schools.

27 A. Under Minnesota Statutes, section 297A.67,

1 subdivision 5, meals and lunches served at public and private
2 elementary, middle, or secondary schools, as defined in
3 Minnesota Statutes, section 120A.05, are exempt. "Meals and
4 lunches" means prepared food, soft drinks, and candy. As
5 provided in item D, "meals and lunches" does not mean food sold
6 through vending machines. This exemption applies to meals and
7 lunches when purchased as well as sold by the schools.

8 B. All meals and lunches served at elementary,
9 middle, or secondary schools are exempt, including food that is
10 prepared or served by separate entities and food that is
11 purchased by employees or the general public.

12 C. Meals and lunches served to students at
13 institutions of higher education are subject to sales tax unless
14 provided to students under a board contract. For purposes of
15 this subpart, "institutions of higher education" means colleges,
16 universities, and private career schools. The exemption for
17 board contracts applies only when a contract that includes the
18 sale of meals and lunches exists between a student and an
19 institution of higher education, or between a student and a
20 residential student organization that is recognized by the
21 institution, for an educational activity that takes place on the
22 premises of that institution. The student is not required to be
23 enrolled at the institution at which the activity is conducted.
24 If the food is not provided as part of a board contract, the
25 institution may only purchase the meals and lunches exempt for
26 resale from a third party if the food is intended to be resold
27 at retail. The rules in subitems (1) to (4) apply for purposes

1 of the exemption for board contracts.

2 (1) Meals and lunches purchased under a prepaid
3 contract, or where a lump sum charge is made for a set term of
4 time, are considered meals and lunches furnished under a board
5 contract.

6 (2) A board contract also includes a contract
7 that provides lodging, meals and lunches, and tuition,
8 separately or in combination, for a single charge.

9 (3) Meals and lunches are exempt when purchased
10 with debit cards, "flex money," or "bonus bucks" issued either
11 by the institution or by the recognized residential student
12 organization, or when purchased by any other method authorized
13 by the institution of higher education under a board contract.

14 (4) Meals and lunches that are not provided under
15 a board contract include meals and lunches sold to faculty,
16 other employees of the institution of higher education, and
17 sponsors of conferences, sports camps, or other activities held
18 on the premises of the institution. Meals and lunches sold to
19 student clubs or other organizations are subject to tax.

20 D. Food items sold through vending machines at all
21 schools, including K-12 institutions and institutions of higher
22 education, are taxable.

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

26 Subp. 9. Incidental meals at educational programs.

27 A. Meals and lunches that are provided as part of an

1 educational service, such as a children's camp or a professional
2 seminar, are generally not taxable. For purposes of this
3 subpart, "meals and lunches" means prepared food, soft drinks,
4 and candy. When meals and lunches are incidental to the total
5 program fee, and charges for the meals and lunches are included
6 in the fee to attend the program, the meals and lunches are not
7 taxable to the program participants.

8 B. If the educational program purchases meals and
9 lunches to serve to participants in the program, the program
10 must pay sales or use tax on the meals and lunches purchased if
11 participants are not billed separately for the meals and
12 lunches. If the charges to participants for the meals and
13 lunches are separately stated, they may be purchased by the
14 educational program exempt for resale, and tax must be charged
15 on the separately stated fees for the meals and lunches charged
16 to participants.

17 Subp. 10. **Meals provided to employees.**

18 A. When an employer purchases prepared food, candy,
19 or soft drinks, to provide to employees for no consideration,
20 the prepared food, candy, or soft drinks provided to employees
21 is exempt. The purchase of these items by the employer is
22 taxable. When an employer in the business of selling prepared
23 food, candy, or soft drinks provides these items free to
24 employees, the employer owes use tax on its cost of the prepared
25 food, candy, or soft drinks and all other taxable items,
26 including disposable plates, soft drinks, napkins, cups, and
27 flatware.

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

6 Subp. 11. Purchases of equipment and products by vendors
7 of meals or drinks. A vendor of meals or drinks must pay the
8 tax on all purchases of equipment and products used or consumed
9 in the business, including fixtures and reusable items such as
10 linens, flatware, glassware, and towels. Vendors of meals are
11 specifically excluded from the class of vendors considered to be
12 engaged in production, as defined in Minnesota Statutes, section
13 297A.68, subdivision 2, paragraph (c). Consequently, sales of
14 electricity, gas, and steam and all other items to vendors of
15 meals are taxable, except for the sale of food products and
16 nonreusable items. Nonreusable items such as souffle cups;
17 straws; ice; swizzle sticks; paper products such as placemats,
18 tablecloths, napkins, and doilies; paper, plastic, or wooden
19 plates; cups; forks; toothpicks; or other items which are used
20 or consumed by the customer as an integral part of the meal or
21 drinks are considered sold with the meal. Sales of these
22 nonreusable items to persons engaged in the business of selling
23 meals or drinks are, accordingly, sales for resale.

24 **EFFECTIVE DATES.** The sale of nonalcoholic beer, as provided in
25 part 8130.4700, subpart 5, item F, is taxable for sales
26 beginning six months after this rule otherwise becomes
27 effective, as provided in Minnesota Statutes, section 14.18,

1 subdivision 1.

2 For board contracts entered into before the effective date
3 of this rule, the provision in part 8130.4700, subpart 8, item
4 C, which exempts from sales tax the sale and purchase of meals
5 and lunches under board contracts only when such a contract
6 exists between a student and an institution of higher education
7 for an activity that takes place on the premises of that
8 institution, is effective one year after this rule otherwise
9 becomes effective.

10 For contracts entered into between an educational program
11 and program participants before the effective date of this rule,
12 the provisions of part 8130.4700, subpart 9, item B, requiring
13 that the program must pay sales or use tax on the meals and
14 lunches purchased if participants are not billed separately for
15 them, is effective one year after this rule otherwise becomes
16 effective.

17 **REPEALER.** Minnesota Rules, parts 8130.0800; and 8130.4700,
18 subparts 1, 3, and 4, are repealed.