



September 28, 2021

***SENT VIA EMAIL***

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St. Paul, Minnesota 55155

***Re: In the Matter of the Proposed Rule Governing Sales and Use Tax Consolidated Returns and Recordkeeping; Repealing Minnesota Rules, part 8130.7500, Subparts 3, 6, and 8 and Replacing with Minnesota Rules, part 8130.7501. Revisor ID: # R-04537.***

Dear Librarian:

The Minnesota Department of Revenue intends to adopt updated rules governing sales-and-use tax consolidated return and recordkeeping. Yesterday, in the September 27, 2021 edition of the State Register, we published a dual notice of intent to adopt rules with or without a public hearing. A hearing will take place if we receive the required number of hearing requests.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the library an electronic copy of the rulemaking's Statement of Need and Reasonableness.

If you have questions, please contact me via email ([jim.jordan@state.mn.us](mailto:jim.jordan@state.mn.us)) or phone (651-556-4080).

Sincerely,

Jim Jordan  
Attorney

Enclosure: Statement of Need and Reasonableness

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**State of Minnesota  
Department of Revenue**

**STATEMENT OF NEED AND REASONABLENESS**

**Proposed Rule Governing Sales and Use Tax Consolidated Returns and Recordkeeping; Repealing Minnesota Rules, part 8130.7500, Subparts 3, 6, and 8 and Replacing with Minnesota Rules, part 8130.7501. Revisor ID: # R-04537.**

**I. Introduction**

*Minnesota Statutes*, section 297A.77, subdivision 5, provides that “every person liable for [sales and use tax (“SUT”)], or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules, as the commissioner [of revenue] may from time to time prescribe.” Other provisions within *Minnesota Statutes* chapters administered by the Commissioner of Revenue also refer to or concern recordkeeping requirements. This proposal repeals the current rule governing SUT consolidated returns and recordkeeping, *Minnesota Rules*, part 8130.7500 (“Current Rule”), and replaces it with *Minnesota Rules*, part 8130.7501 (“Updated Rule”).

The Updated Rule continues to allow taxpayers to satisfy SUT recordkeeping requirements using hardcopy or electronic records, or both.

The process used to draft the rules was internal consultation within the Department of Revenue (“Department”). Advisory committees were not used, and there were no public hearings.

This Statement of Need and Reasonableness (“SONAR”) establishes the statutory authority for, need for, and reasonableness of the Updated Rule. It is submitted pursuant to *Minnesota Statutes*, section 14.23, and *Minnesota Rules*, part 1400.2070.

The Department has eight main reasons for updating the Current Rule. The first two reasons relate to the Current Rule’s recordkeeping requirements. First, because the fundamental substance of the Current Rule has not changed since 1983, the amendment is necessary to update recordkeeping terminology. Second, because of recordkeeping compliance issues caused by things like the proliferation of electronic sales and accounting systems (*e.g.*, electronic cash registers and point-of-sale systems that attach to a smart phone or electronic tablet) and the increased availability of technology designed to evade payment of SUT (*e.g.*, “zappers” and other sales suppression software), the amendment is needed to make taxpayers more aware of the potential consequences of failing to maintain accurate and complete records.

Third, the Updated Rule provides clearer guidance regarding hardcopy record requirements for retailers with a mix of electronic and hard copy records and retailers that do not ordinarily produce hard copy records. Fourth, the proposal details requirements when a taxpayer contracts with a third party for SUT recordkeeping services. Fifth, the rule identifies for taxpayers the minimum time that they must retain their SUT records.

The sixth reason is to address comments made about the Current Rule in two recent Minnesota Tax Court cases. In the Minnesota Tax Court case *Conga Corporation v. Comm’r of Revenue*, No. 8264-R, 2017 WL 663152 (Minn. Tax Regular Div.), the Court held that the Current Rule

“no longer has any force and effect” because some of the statutory authority for promulgation of the rule, *Minnesota Statutes*, section 297A.27, subdivision 3, was repealed, albeit inadvertently during a 1990 recodification. A subsequent Minnesota Tax Court case, *Paris Handbag LLC v. Comm’r of Revenue*, No. 8934-R, 2018 WL 2106427 (Minn. Tax Regular Div.) (“*Paris Handbag*”), found that the Current Rule remains in effect, which is consistent with the Department’s position. Given these recent Minnesota Tax Court decisions and the 2019 enactment of *Minnesota Statutes*, section 297A.77, subdivision 5, to restore the language of *Minnesota Statute*, section 297A.27, subdivision 3, which was inadvertently repealed during the 1990 recodification, the Department believes it is appropriate to update the Current Rule.

The seventh reason is to remove an obsolete internal cross-reference in the Current Rule. Item C of the Current Rule’s subpart 3 references subpart 5 of the Current Rule, which was repealed by 2003 legislation. Therefore, the reference to subpart 5 in subpart 3 should be deleted.

The eighth reason is that by updating the rules, the Department will be better able to ensure that taxpayers pay only their fair share of tax – no more, no less.

## **II. Alternative Format**

Upon request, this SONAR will be made available in an alternative format, such as large print, Braille, or an audio recording. To make a request, contact Jim Jordan, Appeals and Legal Services Division, Minnesota Department of Revenue, 600 N. Robert Street, St. Paul, MN 55146-2220, by telephone at (651) 556-4080, by fax at (651) 296-5304, or by email at jim.jordan@state.mn.us.

## **III. Statutory Authority**

Under the recently enacted *Minnesota Statutes*, section 297A.77, subdivision 5, the Department has specific statutory authority to promulgate rules regarding how SUT taxpayers must “keep [their] records” and make their tax returns. The Department also relies on general statutory authority to adopt rules, found in *Minnesota Statutes*, section 270C.06, which provides that the Commissioner of Revenue has authority to “make publish, and distribute rules for the administration and enforcement of state revenue laws.” Under these statutes, the Department has sufficient authority to adopt the proposed rule.

## **IV. Request for Comments**

On February 1, 2021, a Request for Comments was published in the *State Register* and on the Department’s website. Seven comments were received during the subsequent 60-day comment period. The Department carefully considered these comments.

## **V. Regulatory Analysis**

As required by *Minnesota Statutes*, section 14.131, the Department considered the following eight factors:

***“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”***

The proposed rule affects retailers that collect and remit Minnesota SUT.

The Department has not identified any specific additional costs that will be imposed on retailers

due to the Updated Rule. This is true for two main reasons. First, these rules do not require retailers to adopt a particular recordkeeping technology, *e.g.*, retailers can continue using cash registers with paper receipts and manual accounting systems or they can use an electronic point-of-sale system with digital receipts and a cloud-based accounting system. Instead, the Updated Rule focuses on clarifying the records that need to be maintained or produced when a retailer primarily relies on paper records, electronic records, or both. Second, while it is possible that retailers that do not already make good-faith compliance efforts concerning recordkeeping may need to expend resources to come into compliance, this cost to come into compliance exists regardless of the proposed rule.

As stated in the introduction, all retailers will benefit from updated rules that better address recordkeeping technology and terminology, recordkeeping requirements and expectations, and potential consequences for not maintaining accurate and complete records.

***“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”***

The Department does not anticipate any state agency will incur costs due to the Updated Rule. We also do not expect an effect on state revenues.

***“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”***

The Department is not aware of any less costly or less intrusive methods by which the purpose of the Updated Rule could be achieved.

***“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”***

The Department considered enforcing the Current Rule, instead of repealing and replacing it, but that would not achieve the purpose of the Updated Rule because much of the Current Rule would continue to be outdated and in need of clarification. Additionally, the Department would continue to run the risk that the Minnesota Tax Court, in future litigation, would again find that the Current Rule was without sufficient statutory authority. Some of the language from the Updated Rule could be published in a fact sheet or in a revenue notice, but unlike a rule it would not have the force and effect of law. Also, the legislature indicated it wanted rulemaking rather than more legislation when in 2019 it enacted *Minnesota Statutes*, section 297A.77, subdivision 5. Subdivision 5 specifically states, “[e]very person liable for any tax imposed by this chapter, or for the collection thereof, shall keep such records, render such statements, make such returns, *and comply with such rules, as the commissioner may from time to time prescribe*” (emphasis added).

***“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”***

As stated in response to factors (1) and (3), the Updated Rule will not impose additional costs on affected parties (i.e., retailers).

***“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”***

The Department has not identified any specific probable costs of not adopting the Updated Rule. The probable consequence of not adopting the proposed rule is that the purposes of the rule, which are generally described in the Introduction, will not be achieved.

***“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”***

No federal regulations apply to the subject of the Updated Rule.

***“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule... ‘Cumulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”***

There are no significant and related state or federal rules regarding sales tax recording keeping or regarding the conditions under which a consolidated sales tax return is permitted. Therefore, the Updated Rule will not result in a cumulative effect.

## **VI. Performance-Based Standards**

*Minnesota Statutes*, sections 14.002 and 14.131, require the SONAR to describe how the agency’s rulemaking process considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and agency.

This Updated Rule supports the Department’s strategic plan. By providing additional clarity regarding SUT recordkeeping requirements, the proposed rule will promote the principle that everyone should pay the right amount of tax – no more and no less. It will also help make the tax laws at issue easier to understand and administer.

## **VII. Additional Notice**

*Minnesota Statutes*, section 14.23, requires the Department to describe the additional notice it provided under *Minnesota Statutes*, section 14.22. Approved by the Office of Administrative Hearings in a December 22, 2020 letter from Administrative Law Judge James E. LaFave, the Additional Notice Plan consists of:

1. E-mailing copies of the Request for Comments, Notice of Intent to Adopt Rules, and proposed rule, to the: 1) Minnesota Association of Public Accountants; 2) Minnesota

- Society of Certified Public Accountants; 3) Minnesota State Bar Association – Tax Section; 4) Minnesota Chamber of Commerce – Tax and Fiscal Policy Division; 5) Department’s GovDelivery “Sales and Use Tax Professional Associations” topic list, which includes 7,700 people or entities that either elected to receive email updates, or who were added to the list by the Department; and 6) Department’s GovDelivery “Sales and Use Annual, Monthly, and Quarterly Filers” topic lists, which includes approximately 27,500 people or entities that elected to receive email updates.
2. Mailing (via U.S. mail) copies of the Request for Comments, Notice of Intent to Adopt Rules, and proposed rule to the Department’s regular rulemaking mailing list and to key legislators; and
  3. Posting the Request for Comments, rule drafts, Notice of Intent to Adopt Rules, and SONAR to the Department website (<https://www.revenue.state.mn.us/minnesota-administrative-rules>).

The Additional Notice Plan also includes giving notice required by statute. Consistent with *Minnesota Statutes*, section 14.14, subdivision 1a, we will mail the rules and Notice of Intent to Adopt to those on the Department’s rulemaking mailing list. We will also give notice to the Legislature as required by *Minnesota Statutes*, section 14.116.

Our Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations under *Minnesota Statutes*, section 14.111.

### **VIII. Minnesota Management and Budget and Local Government Impact**

Consistent with *Minnesota Statutes*, section 14.131, the Department consulted with Minnesota Management and Budget to “evaluate the fiscal impact and fiscal benefits of the proposed rule changes on units of local government.” In its August 10, 2021 letter to the Department, Minnesota Management and Budget writes:

“Local government units have two primary responsibilities with respect to sales and use tax consolidated returns and recordkeeping. First, to the extent that a local government unit imposes a local sales and use tax, the local government unit must have a means of administering the tax. For the vast majority of local sales and use taxes, the Department of Revenue, not the local government unit, is responsible for administering the tax. Therefore, there should be little to no impact on local units of government with respect to tax administration. The second major responsibility with respect to sales and use tax consolidated returns and recordkeeping is ensuring that the local government unit, when it makes retail sales that are subject to sales or use tax, is collecting and remitting the tax to the Department of Revenue like any other retailer. As the changes in the proposed rule primarily provide technical clarifications for recordkeeping and do not require retailers to adopt a particular recordkeeping technology, there should be little to no cost to local governments under the new rule. As noted in the [Statement of Need and Reasonableness], should any taxpayer (*e.g.*, a local government unit or any other retailer) need to expend resources to come into compliance with the recordkeeping requirements, these costs would exist regardless of the proposed rule.”

## **IX. Determination About Rules Requiring Local Implementation**

*Minnesota Statutes*, section 14.128, requires the Department to determine whether a local government must adopt or amend an ordinance or other regulation to comply with rule changes. The Updated Rule would not require local government to change any ordinance or regulation.

## **X. Cost of Complying for Small Business or City**

*Minnesota Statutes*, section 14.127, requires the Department to determine if the cost of complying with the Updated Rule in its first year will exceed \$25,000 for any small business or small city. A “small business” is defined as a for-profit or non-profit business with fewer than 50 full-time employees. A “small city” is one with less than ten full-time employees. As stated in the Regulatory Analysis above, in response to factors (1), (3), and (5), the proposed rule will not impose additional costs on affected parties. This is true regardless of the size of the retailer or if a business is owned by a small city. Therefore, the cost of complying with the proposed rule in the first year after it takes effect will not exceed \$25,000 for any small business or small city.

## **XI. List of Witnesses**

If these rules go to a public hearing, the Department does not anticipate calling any nonagency witnesses. However, Department employees may be called to testify.

## **XII. Description of the “Need” for and “Reasonableness” of the Proposed Rule Changes**

*Minnesota Statutes*, Chapter 14, requires the Department to explain facts establishing the need for and reasonableness of the Updated Rule. “Need” means a problem requires administrative attention. “Reasonableness” means there is a rational basis for the proposal.

As stated in the Introduction, the Department has eight main reasons for proposing the Updated Rule, and those reasons address the general need for the rule.

As can be seen throughout this rule analysis, many of the proposed changes to the Current Rule are based on the model SUT recordkeeping and retention regulation (“Model Regulation”) developed by a working group affiliated with the Multistate Tax Commission and the Federation of Tax Administrators, two non-profits that work with the 50 states to improve state tax administration. The principal purpose of the Model Regulation is to address state tax recordkeeping requirements in an electronic environment, and to address the need for state tax recordkeeping rules “to handle circumstances where original paper documents, relied on for conducting tax audits, no longer exist.” Multistate Tax Commission, “Report of Hearing Officer Regarding the MTC Proposal to Adopt the Model Recordkeeping and Retention Regulation,” October 24, 1997, pp. 1 and 4. The Model Regulation is a well-known national standard for SUT recordkeeping, adopted in whole or in part by many states, and it is therefore reasonable for the Updated Rule to adopt some of its language.

### **Subpart 1. Definitions**

Instead of a separate subpart solely for definitions, the Current Rule includes definitions throughout. The Updated Rule adds a subpart solely for definitions to make it easier for taxpayers to find defined terms, and to streamline the rule language.

- **Item A** defines “accurate and complete records,” which is a basic SUT recordkeeping standard recently approved by the Minnesota Supreme Court in *Conga Corporation v. Comm’r of Revenue*, 868 N.W. 2d 41, at 52. The Court found that the Commissioner of Revenue had properly determined that its method of auditing the taxpayer was warranted because the taxpayer’s books and records “were not adequate and complete, and were not accurate or reliable.” Subpart 8 of this rule provides examples of when this “accurate and complete” recordkeeping standard is not met and details a number of consequences for failing to meet it. Therefore, it is necessary to define this phrase.
- **Item B** defines “electronic data processing.” The Current Rule defines a related term (*i.e.*, “electronic data processing record”), but does not define electronic data processing. The Updated Rule provides a broad definition of “electronic data processing” to: 1) better define related requirements (*e.g.*, the requirement at proposed subpart 3, item C, to provide general descriptions regarding the “electronic data processing portion of the accounting system); and 2) better position the definition to survive changes in technology.
- **Item C** replaces “electronic data processing record” with “electronic record.” The Current Rule’s definition of electronic data processing record is outdated (*e.g.*, the only examples it refers to are “punched cards,” “magnetic tapes,” “magnetic disk packs,” and “computer disks”) and overly complex (to qualify as an “electronic data processing record,” a record must be used for “recording, consolidating, and summarizing accounting transactions within...an electronic data processing system”). The definition of the replacement term, “electronic record,” 1) is much simpler and broader (it includes any “collection of related information stored in an electronic format”), which better positions the definition to survive changes in technology; 2) clarifies that it includes point-of-sale systems, which is a more modern term that encompasses a broad array of electronic retail sale processing systems; and 3) is based on the definition of “machine-sensible record” in the Model Regulation.
- **Item D** defines “hardcopy record.” The Current Rule refers to “paper records.” These two terms are synonyms, so the change has no substantive effect. The change was made to align with Model Regulation terminology.
- **Item E** defines “taxpayer,” which is the term used for persons subject to the Updated Rule. This definition improves on the Current Rule’s applicability language, which is found in the first sentence of the Current Rule’s subpart 6. The new definition is more succinct and achieves the same result.

## **Subpart 2. Consolidated returns permitted**

The Updated Rule generally maintains the current guidance regarding the conditions required for filing of consolidated returns when a person has two or more places of business, which is found in subpart 3 of the Current Rule. However, two changes were made to subpart 3, item B. First, reference to the Current Rule’s subpart 5 was removed because that subpart was repealed via legislation in 2003 (*see* 2003 c 127 art 6 s 18). Second, the requirement to provide a “list” containing the business name, address, and reporting information was removed. A list is no longer necessary because taxpayers provide the same information when completing an SUT return.

## **Subpart 3. Records; general**

Subpart 3 of the Updated Rule, as with subpart 6 of the Current Rule, is needed to explain general recordkeeping requirements, which taxpayers can meet using paper records, electronic records, or



both. The Updated Rule maintains many of the Current Rule’s descriptions of general record requirements. The Updated Rule also adds Model Regulation language to provide clearer guidance regarding: 1) records that may be necessary to determine the correct tax liability (*e.g.*, vendor name and product description); 2) when taxpayers may discard duplicate records; and 3) the requirement that taxpayers be able to describe their recordkeeping process, including data flows and related internal controls.

In addressing general recordkeeping requirements, Subpart 3 of the Updated Rule differs from Subpart 6 of the Current Rule as follows:

- Subpart 3 of the Updated Rule no longer includes language which defines the retailers (*i.e.*, taxpayers) subject to the rule. As noted in the analysis for subpart 1, item E, above, the first sentence of subpart 6 of the Current Rule regarding general recordkeeping requirements had contained such language. Instead, more concise language regarding the applicability of the rules, which achieves the same result, is found in the definition of “Taxpayer” at subpart 1, item E.
- The general description of compliant records in subpart 3 of the Updated Rule requires taxpayers to maintain “accurate and complete” (emphasis added) records, followed by a list of specific records that must be maintained to meet the standard. This approach is taken instead of using the language in subpart 6 of the Current Rule, which requires taxpayers to maintain “adequate and complete” (emphasis added) records and then lists specific records that must be maintained to meet the standard. The Department changed the description to “accurate and complete” because when placed next to a requirement that records be “complete,” the meaning of maintaining “adequate” records is too ambiguous. Replacing “adequate” with “accurate” provides clearer taxpayer guidance. See the subpart 1, item A, analysis above regarding the reasonableness of using “accurate and complete.”
- **Item A** of the Updated Rule provides taxpayers more clarity regarding the kinds of records that must be maintained to meet the general “accurate and complete” recordkeeping standard.
  - The list found in item A, subitems (1)-(5), includes the following categories from the Current Rule’s list – gross receipts (from subpart 6, item A, of the Current Rule), deductions (from subpart 6, item B, of the Current Rule), total “sales price”<sup>1</sup> (from subpart 6, item C, of the Current Rule), normal books of account ordinarily maintained by the average prudent businessperson, bills, receipts, invoices, cash register tapes, and schedules or working papers used in connection with preparation of tax returns (from the final paragraph of subpart 6 of the Current Rule).
  - The list in item A adds the following categories from Section 4.2.1 of the Model Regulation – vendor name, invoice date, product description, quantity purchased, amount of tax, indication of tax status (*e.g.*, for resale), and shipping or sourcing detail. These additions are needed to more clearly identify records taxpayers must keep, depending on the nature of the sale, to demonstrate compliance.
- **Item B** is needed to clarify when a taxpayer may discard redundant records (based on Section 4.1.1 of the Model Regulation).

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<sup>1</sup> The Updated Rule uses the term “sales price” instead of “purchase price” because “sale price” is the more current term and relates to the price at which the retailer sells a product. The two terms have the same meaning. See *Minnesota Statutes*, section 297A.61, subd. 28.

- **Item C** is needed to make it more clear to taxpayers that upon receiving a Department request for records, they must provide information that allows the Department to understand the taxpayer’s overall recordkeeping process. To further this understanding, item C gives the Department specific authority to require taxpayers to:
  - Provide a description of the business process that created the retained records (based on Section 4.4.1 of the Model Regulation).
  - Demonstrate certain internal controls and certain data flow functions regarding the taxpayer’s recordkeeping system (based on Sections 4.4.1 and 4.4.2 of the Model Regulation).

**Subpart 4. Electronic records and electronic data processing**

Like subpart 8 of the Current Rule, subpart 4 of the Updated Rule guides taxpayers using electronic records and electronic data processing. Before providing information about each item of the proposed subpart 4, note that the Current Rule uses the term “electronic data processing records.” As mentioned earlier at the analysis for Subpart 1, item C, the Updated Rule replaces this term with “electronic records,” a broader term that is better positioned to survive technological change.

- **Item A** is needed to provide taxpayers with the information that must reside in electronic records used to demonstrate recordkeeping compliance. Item A, subitem (1), provides guidance about source document and transaction-level detail, and is based on Section 4.1.1 of the Model Regulation. Item A, subitem (2), provides the requirement that electronic records used for compliance must, in combination with other transaction records, provide the ability to trace any transaction back to the original source or forward to a final total, and is identical to the first sentence of the Current Rule’s subpart 8, item C.
- **Items B and C** are needed to provide taxpayers with the requirements they must meet regarding the electronic data processing portion of a taxpayer’s accounting system. For clarity, an example of an electronic data processing portion of a taxpayer’s accounting system is the process by which a point of sale system or electronic cash register electronically records transaction data, stores that same transaction data in an electronic database, and produces sales reports from the database information.
  - Item B, which requires that the electronic data processing portion of a taxpayer’s accounting system be similar to that of an adequately designed manual accounting system, is based on Section 4.3.1 of the Model Regulation.
  - Item C, which addresses information a taxpayer must maintain about the electronic data processing portion of an accounting system, is largely taken from subpart 8, item D, of the Current Rule. Specifically, subitems (1) through (3) of the Updated Rule’s subpart 4, item C, are identical to subitems (1) through (3) of the Current Rule’s subpart 8, item D. The Updated Rule’s subpart 4, item C, subitem (4), has two sentences. The first sentence is based on the second-to-last paragraph of subpart 8 of the Current Rule. The second sentence of subitem (4), which is new, is needed to put each taxpayer on notice that even if the taxpayer has electronic records and an electronic data processing portion of its accounting system, the Department may require production of hardcopy records if the Department finds hardcopy records are necessary either to determine the correct tax liability or to provide a more efficient means of determining the correct tax liability.

### **Subpart 5. Hardcopy records**

The Current Rule uses subpart 6 to lay out general recordkeeping requirements, which taxpayers can comply with by maintaining paper records, electronic records, or both. The only two sentences in the Current Rule that explicitly address paper records are found at the very end of subpart 8 – the first sentence requires electronic data processing systems to include a method of producing visible and legible paper records and the second sentence states that production of these paper records does not eliminate the requirement to maintain electronic data processing records as required by the first paragraph of the Current Rule’s subpart 8. Subpart 5 of the Updated Rule maintains the essence of both of these sentences, while also allowing the Department to require production of hardcopy records from an electronic data processing system when such production would provide a more efficient means of determining the correct tax liability, as is also provided above in subpart 4, item C, subitem (4).

- **Item A** is needed to clarify that unless specifically provided in subpart 5 or subpart 3, item B, taxpayers must retain hardcopy records that are created or received in the ordinary course of business as required by existing law. An example of existing law requiring taxpayer retention of such records is found in subpart 3 of the Updated Rule, to the extent that a taxpayer uses hardcopy records to comply with the subpart 3’s general recordkeeping requirements. Item A is based on Section 9.1 of the Model Regulation.
- **Item B** is needed to put taxpayers on notice that if hardcopy records are not created or received in the ordinary course of business, the Department may require generation of hard copy records if such records are either necessary to determine the correct tax liability or provide a more efficient means of determining the correct tax liability. This standard for requiring generation of hard copy records – necessary or more efficient – is consistent with standard for producing hard copy records found in proposed subpart 4, item C, subitem (4).
- **Item C** is needed to clarify that hardcopy records must be retained unless all details necessary to determine the correct tax liability are subsequently received and retained by taxpayer in accordance with the Updated Rule. Item C is based on Section 9.3 of the Model Regulation.

As noted earlier, the Current Rule uses the term “paper records” and the Updated Rule replaces that term with “hardcopy records.” This change is based on Section 2.1.3 of the Model Regulation.

### **Subpart 6. Record retention**

The Current Rule does not explicitly address record retention time frames. Proposed subpart 6 is needed to provide taxpayers with explicit record retention time frame requirements so that taxpayers keep records for as long as needed under laws administered by the Commissioner of Revenue. As provided in the Updated Rule, the record retention period is tied to applicable statute of limitations statutes governing the Department’s assessment of SUT, which are found in *Minnesota Statutes*, section 289A.38. Subpart 6 is based on Section 10.1 of the Model Regulation.

### **Subpart 7. Record-related services provided by third parties**

The Current Rule does not explicitly address compliance responsibilities when a taxpayer contracts with a third party to provide recordkeeping-related services. Given that many more taxpayers are entering into such contracts in connection with various electronic recordkeeping systems (*e.g.*, point-of-sale systems), subpart 7 is needed to make clear that such contracts do not relieve the

taxpayer from its compliance responsibilities. Subpart 7 is based on Section 7.2 of the Model Regulation.

### **Subpart 8. Failure to maintain records**

The Current Rule does not address potential civil and criminal consequences for failure to comply with Minnesota's SUT recordkeeping requirements. As noted earlier, given recordkeeping compliance issues caused by things like the proliferation of electronic sales and accounting systems and the increased availability of technology designed to evade payment of SUT (e.g., "zappers" and other sales suppression software), the Department finds it necessary to help taxpayers better understand: 1) when taxpayer records are not "accurate and complete," which can trigger civil and criminal consequences; 2) the potential civil and criminal consequences provided in Minnesota law. Subpart 8 increases taxpayer awareness and understanding in the following ways:

- **Items A and B** provide taxpayers examples of when the Department will consider records, or lack thereof, to have failed to meet the Updated Rule's standard of "accurate and complete" records, which are, under the definition in subpart 1, "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."
- **Item C** helps taxpayers understand the possible civil and criminal consequences of failing to meet the Updated Rule's definition of "accurate and complete" records. While these possible consequences exist regardless of whether they are articulated in the proposed rule, for the reasons stated above it is important to make taxpayers more aware of them.

### **Repealer of *Minnesota Rules* part 8130.7500.**

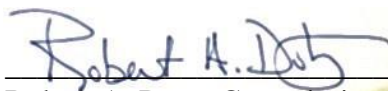
Repealing the Current Rule is necessary and reasonable because the essence of the Current Rule, along with its still relevant provisions, have been included in this Updated Rule. The Updated Rule deletes or modifies Current Rule language that is obsolete because of technological or statutory change, as explained in this Statement's introduction.

### **XIII. Conclusion**

Based on the foregoing, the proposed rule is both needed and reasonable.

September 20, 2021

Date



Robert A. Doty, Commissioner  
Minnesota Department of Revenue