

CHAPTER 8130
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION
SALES AND USE TAXATION

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GENERAL PROVISIONS

8130.0110 SCOPE AND INTERPRETATION.

Subpart 1. **Interpretation of terms.** Minnesota Statutes, chapter 297A, hereinafter referred to as the Sales and Use Tax Law, imposes a tax on gross receipts from sales at retail made after July 31, 1967, by any person. 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.

Subp. 2. **Sales.** Certain transactions defined in the Sales and Use Tax Law and this chapter constitute sales. All sales of tangible personal property are deemed to be retail sales or sales at retail unless made to purchasers who intend to resell the property to others in the regular course of business. 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" means the total amount received for all sales at retail as measured by the sales price as defined in this chapter.

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. **Arrangement.** This chapter is arranged by subject matter in the order that provisions relating to the entitled subject occur in the Sales and Use Tax Law. Where section numbers are cited, the reference is to Minnesota Statutes.

Statutory Authority: *MS s 297A.29*

8130.0120 PERSON DEFINED.

The term "person," as defined in Minnesota Statutes, section 297A.01, subdivision 2, includes the plural as well as the singular. The phrase "any other group or combination acting as a unit" includes groups engaged in a single project as well as those engaged in continuous or recurring activities. An example of such a group might be the faculty of a public school producing a play for the purpose of raising funds to be used for scholarships. Such a group of teachers is considered to be a person within the meaning of this part.

The term includes not only natural persons or individuals but all forms of

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organizations, associations, partnerships, trusts, cooperatives, and municipal corporations. In addition, officers, directors, and agents of a corporation or association are included in the definition, as well as agents of individuals.

The term "person" also includes manufacturer's representatives, consignees, and brokers.

The term "trustee," as used in Minnesota Statutes, section 297A.01, subdivision 2, includes a trustee or receiver appointed by a federal court exercising jurisdiction over the estate of a bankrupt.

Statutory Authority: *MS s 297A.29*

8130.0200 SALE BY TRANSFER OF TITLE.

Subpart 1. Delivery requirements. Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), 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 his 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 are applicable.

A. Where the contract requires or authorizes the seller to send the goods to the buyer, but does not require him to deliver them at destination, title passes to the buyer at time and place of shipment.

B. Where 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, where 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, where 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. Accounting methods. Although the title passes in accordance with the rules stated above, unless, in the opinion of the commissioner of revenue, there is an intent to postpone, evade, or avoid payment of the tax, a sale taxable under the law may be recorded and reported in accordance with the accounting methods consistently applied by the vendor.

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, reverts 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 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 repairman 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 him 25 cents to repair a watch. He 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 he did not pay a sales tax at the time of purchase. However, if the jeweler bills separately for the spring, he must collect a sales tax from the customer.

Subp. 5. **Special tooling.** When a manufacturer acquires special tooling which is not exempt under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), to produce a product for his customer, he may or may not acquire the special tooling for sale to his customer. If he sells the special tooling to his customer, by billing the customer for the special tooling or giving the customer the right to take possession of it, the sale is subject to the sales tax whether or not the customer is outside Minnesota, because the first beneficial use of it was made in Minnesota. If he does not acquire the special tooling for sale to his customer, the manufacturer's purchase of it is subject to the sales tax.

In the case of either prime or subcontracts with the United States government, the Minnesota manufacturer will be deemed the consumer of special tooling in the absence of explicit agreement as to title passage prior to use by the Minnesota manufacturer. If it is claimed that title passes immediately on purchase or manufacture of the tooling, mold, or die, the Minnesota manufacturer must provide one of the following as evidence:

A. if the contract is not classified, a copy of the contract between the contractor and the United States government which provides for immediate title transfer from the contractor to the United States government before use;

B. if the contract in question is classified, a signed statement from the contracting officer or the Department of Defense auditor to the effect that the contract in question does include the provisions for immediate title transfer;

C. if the Minnesota manufacturer holds a subcontract with a prime contractor which provides for immediate title transfer to the prime contractor but not simultaneously from the prime contractor to the United States government, the Minnesota subcontractor must collect the sales tax from the prime contractor.

Subp. 6. **Other situations.** All other situations will be determined on the basis of the relevant facts.

Statutory Authority: *MS s 297A.29*

8130.0300 SALE BY TRANSFER OF POSSESSION.

In the ordinary course of business, in accordance with Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), a sale is usually evidenced by transfer of possession, either actual or constructive, from the seller to the buyer at the time the seller completes his performance under the contract. The most obvious example of a sale by passing of both title and possession is a sale for cash at the time of delivery of the goods.

Statutory Authority: *MS s 297A.29*

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 which will be used in a trade or business outside

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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.

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 on June 15, 1968. 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 his 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. Rentals of equipment. Contractors on occasion rent equipment temporarily idle to other contractors for short periods of time. Such rentals should be deemed to be occasional sales unless there are other factors which indicate clearly that the contractor leasing the equipment to others is engaged in the business of renting or leasing equipment.

Indications that a contractor is in the business of renting equipment include, but are not limited to, the following.

A. The equipment is advertised as available for rent.

B. The contractor otherwise actively solicits rental business.

C. The equipment owned or otherwise controlled by the contractor is materially in excess of the amount normally required by him in the performance of his construction contracts over an extended period of time.

D. The contractor regularly leases or rents equipment to others for extended periods of time.

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.01, subdivision 3, paragraph (a).

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.

C. When a driver or operator is furnished along with the equipment, the lessor, by his employee or agent, retains control of the equipment. Accordingly, the lessor is considered to be furnishing a service rather than leasing the equipment, and the transaction is not considered to be a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a).

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

D. On occasion, an employee may use his own pickup truck to transport tools on behalf of his employer from one site to another. If the employee is not engaged in the business of leasing his truck, the transportation of the tools is, in effect, a service performed by him at the request of his employer. Any reimbursement to him 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. Where 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, a portion of such sum may be deemed a charge for maintenance labor and deducted in determining the amount of the payment subject to tax. The deduction shall be at the lessor's cost for such labor based on actual experience.

Subp. 7. Leases to electing motor carrier. Effective July 1, 1971, motor carriers may elect under provisions of Minnesota Statutes, section 297A.211, 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 certificate 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. Lease distinguished from conditional sales contract; intent, surrounding circumstances, and other factors. For distinguishing a lease from a conditional sales contract:

A. Whatever interest is obtained by a lessee or purchaser is acquired under the terms of the agreement itself. Whether an agreement, which in form is a lease, is in substance a conditional sales contract depends upon the intent of the parties as evidenced by the provisions of the agreement read in the light of the facts and circumstances existing at the time the agreement was executed. In ascertaining such intent no single test, or any special combination of tests is absolutely determinative. No general rule, applicable to all cases, can be laid down. Each case must be decided in the light of its particular facts. In the absence of compelling persuasive factors of contrary implication, an intent warranting treatment of a transaction for tax purposes as a purchase and sale rather than as a lease or rental agreement may in general be said to exist if one or more of the following conditions are present:

(1) Portions of the periodic payments are made specifically applicable to an equity to be acquired by the lessee.

(2) The lessee will acquire title upon the payment of a stated amount of rentals which under the contract he is required to make.

(3) The total amount which the lessee is required to pay for a relatively short period of use constitutes an inordinately large proportion of the total sum required to be paid to secure the transfer of the title.

(4) The agreed rental payments materially exceed the current fair rental value. This may be indicative that the payments include an element other than compensation for the use of property.

(5) The property may be acquired under a purchase option at a price which is nominal in relation to the value of the property at the time when the option may be exercised, as determined at the time of entering into the original agreement, or which is a relatively small amount when compared with the total payments which are required to be made.

(6) Some portion of the periodic payments is specifically designated as interest or is otherwise readily recognizable as the equivalent of interest.

B. These agreements are generally cast in the form of chattel leases and vary greatly. An appropriate pattern is discernible, however, and many of the agreements may be loosely defined and grouped as follows:

(1) Short-term agreements which usually concern mobile equipment or relatively small articles of equipment. The compensation for use provisions in these agreements are usually expressed in terms of an hourly, daily, or weekly rental, and the rental rates are relatively high in relation to the value of the article. There may be an option to purchase the equipment at a price fixed in advance which will approximate the fair market value of the equipment at the time of the election to exercise the option. In this type of agreement, all costs of repairs, maintenance, taxes, insurance, etc., are obligations of the lessor.

(2) Agreements entered into by taxpayers engaged in the business of leasing personal property to others either as their principal business activity or incidental thereto. Under the terms of these agreements the amounts payable, called rental rates, are ordinarily based on normal operations or use, plus a surcharge for operations in excess of the normal stated usage. In some instances the rental is based on units produced or mileage operated. Termination of the agreement at stated periods is provided upon due notice by either party. If the agreement includes an option to purchase, the option price has no relation to the amounts paid as rentals.

(3) Agreements providing for a rental over a comparatively short period of time in relation to the life of the equipment. The agreed rental payments fully cover the normal purchase price plus interest. Title usually passes to the lessee upon the payment of a stated amount of rental or on termination of the agreement upon the payment of an amount which when added to the rental paid approximates the normal purchase price of the equipment plus interest.

(4) Agreements which provide for the payment of rental for a short original term in relation to the expected life of the equipment, with provision for continued use over substantially all of the remaining useful life of the equipment. During the initial term of the agreement, the rental approximates the normal purchase price of the equipment, plus interest, while the rentals during the remaining term or renewal period or periods are insignificant when compared to the initial rental. These agreements may or may not provide for an option to acquire legal title to the equipment upon the termination of the initial period or at any stated time thereafter.

(5) Agreements similar to the arrangement in subitem (4), but with the added factor that the manufacturer of the equipment purports to sell it to a credit or finance company, which either takes an assignment of such an existing agreement with the user or itself later enters into such agreement with the user. In some instances, the lessor may be a trustee acting for or on behalf of the original vendor.

C. The fact that the agreement makes no provision for the transfer of title or specifically precludes the transfer of title does not, of itself, prevent the contract from being held to be a sale of an equitable interest in the property.

D. Conditional sales of personal property are, in general, recordable under the various state recording acts if the vendor wishes to protect its lien against claims of creditors. However, the recording or failure to record such a sales contract is usually discretionary with the vendor and is not controlling insofar as the essential nature of the contract is concerned for tax purposes.

E. Agreements are usually indicative of an intent to rent the equipment if the rental payments are at an hourly, daily, or weekly rate or are based on production, use, mileage, or a similar measure and are not directly related to the normal purchase price, provided, if there is an option to purchase, that the price

at which the equipment may be acquired reasonably approximates the anticipated fair market value on the option date. Thus, agreements of this type described in item B, subitems (1) and (2), will usually be considered leases, in the absence of other facts or circumstances which denote a passing of title or an equity of interest to the lessee.

F. In the absence of compelling factors indicating a different intent, it will be presumed that a conditional sales contract was intended if the total of the rental payments and any option price payable in addition thereto approximates the price at which the equipment could have been acquired by purchase at the time of entering into the agreement, plus interest and/or carrying charges. Agreements of the type described in item B, subitem (3), will generally be held to be sales of equipment.

G. If the sum of the specified rentals over a relatively short part of the expected useful life of the equipment approximates the price at which the equipment could have been acquired by purchase at the time of entering into the agreement, plus interest and/or carrying charges on such amount, and the lessee may continue to use the equipment for an additional period or periods approximating its remaining estimated useful life for relatively nominal or token payments, it may be assumed that the parties have entered into a sale contract, even though a passage of title is not expressly provided in the agreement. Agreements of the type described in item B, subitems (4) and (5), in general will be held to be sales contracts.

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

A. A lease of tangible personal property is a series of transactions in time units defined by the agreement of the parties. Gross receipts generated therefrom are taxable at the rate in effect at the time the obligation to pay becomes fixed under the agreement, and not at the time the payment must be or is in fact made. 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.

C. Some obligations to pay arise by the execution of an agreement while other obligations arise by reason of the voluntary activities of the parties during the term of the agreement. For example, the lease of an automobile for a fixed period of months may give rise to an unconditional obligation to pay a minimum monthly amount and an additional obligation to pay for all miles driven in excess of a specified amount. In such cases the incidence of taxation on the minimum monthly amount would be determined at the time of transfer of possession while the incidence of taxation on the amount for excess mileage would be determined when the excess mileage was driven.

Statutory Authority: *MS s 297A.29*

8130.0500 LICENSE TO USE.

Subpart 1. General rule. Where 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 avail himself of the use of the property, without the owner divesting himself of physical possession thereof, such arrangement is included in the

definition of the term "license to use" and thus represents a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a).

Example. A lumber dealer sells lumber of only standard dimensions because the majority of his 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 himself and make an additional charge, or allow the contractor to use the sawing equipment on his premises for \$15 per hour. The charges made by the dealer, for the use of his 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 297A.29*

8130.0600 CONSIDERATION.

Subpart 1. **Consideration in money.** As used in Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), "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. He 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 he 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 his bank for \$19,500. The consideration paid by "M" is \$25,000.

Transactions described in Minnesota Statutes, section 297A.01, subdivision 3, paragraph (a), are sales or purchases where effected by exchange or barter. The terms "exchange" and "barter" are used synonymously. (See part 8130.1500 for allowable exclusions from sales price.)

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 his 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 his 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 297A.29*

8130.0700 PRODUCING, FABRICATING, PRINTING, OR PROCESSING OF PROPERTY FURNISHED BY CONSUMER.

Subpart 1. Property furnished by consumer. Where a consumer, either directly or indirectly, furnishes material or other components of a product, the sale of which is taxable under the Sales and Use Tax Law, the production, fabrication, or processing of such property for such consumer is a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (b). Producing, fabricating, 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.

Subp. 2. Repairs. Application of labor to tangible personal property 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, or processing of property. Where the expenditure is made for the purpose of modifying, altering, or assembling it in some other manner, the application of labor thereto represents a sale under the provisions of Minnesota Statutes, section 297A.01, subdivision 3, paragraph (b).

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 his own material, no sale would have resulted.

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.01, subdivision 3, paragraph (b), since it results in the modification of tangible personal property. If the customer had purchased material from the upholsterer, the entire cost to the customer would be a sale.

Example 3. Custom sawing of logs by a saw mill where logs are furnished by the customer constitutes a sale.

Example 4. Developing prints of home movies or stills for customers who furnish the exposed film constitutes a sale.

Example 5. Printing on paper stock furnished by customers constitutes a sale.

Example 6. Reproducing copies of typewritten or printed matter on a stock furnished by customers constitutes a sale.

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.)

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.

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.

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.

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.

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 his purchases of the parts and materials used to perform such service. However, retail sales of keys and parts which are billed separately are taxable.

Statutory Authority: *MS s 297A.29*

8130.0800 MEALS AND DRINKS.

Subpart 1. **In general.** Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), the furnishing, preparing, or serving for a consideration, of food, meals, or drinks is a taxable sale. However, such taxable sales do not include:

A. furnishing, preparing, or serving of food, meals, or drinks by hospitals, sanitariums, nursing homes, or senior citizens' homes;

B. serving of meals and lunches at public and private schools, universities, or colleges;

C. the furnishing, preparing, or serving of an occasional meal by a charitable or church organization; or

D. meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to the handicapped and their spouses by governmental agencies, nonprofit organizations, agencies, or churches or pursuant to any program funded in whole or part through United States Code, title 42, sections 3001 to 3045, wherever delivered, prepared, or served.

Subp. 2. **Criteria for determining taxability.** Whether a particular transaction constitutes the furnishing, preparing, or serving of food, meals, or drinks under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), and thus is taxable, or whether it constitutes the sale of food products under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (a), and thus is exempt, will depend upon a number of factors set forth below. For purposes of brevity and convenience, the furnishing, preparing, or serving of food, meals, or drinks taxed under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), will be referred to as sales of "taxable food," and sales of food products exempted under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (a), will be referred to as sales of "exempt food." Food prepared for immediate consumption, that is, food which will ordinarily be consumed without delay and without further preparation or storage, is generally described as a "meal." "Drinks" are generally thought of as alcoholic or other prepared liquids.

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A. As a general rule, a sale of taxable food occurs when any of the following conditions exist:

- (1) the vendor is in the business of selling "meals" or "drinks";
- (2) the food sold is ready for immediate consumption;
- (3) the food sold is usually consumed on the vendor's premises; or
- (4) the vendor furnishes tables, counters, chairs, trays, glasses, cups, dishes, or other eating utensils.

B. As a general rule, a sale of exempt food occurs only if all of the following conditions exist:

- (1) the food is sold in an unheated state;
- (2) the food is of a type commonly sold in food stores such as supermarkets and grocery stores, which are not engaged in the prepared food business;
- (3) the food is sold in the same form, condition, quantities, and packaging as commonly sold in food stores; and
- (4) the food is of a type not otherwise taxable when sold by food stores.

C. Generally, food will be "taxable food" when furnished, prepared, or served by restaurants, cafeterias, delicatessens, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, drug stores, diners, bars, vending machines, drive-ins, mobile sales units, clubs, caterers, and similar businesses, including all those required to be licensed as eating places under Minnesota Statutes, section 157.03, regardless of whether or not meals or drinks are served regularly to the public by such vendors.

D. Food items which are ordinarily sold for immediate consumption will be taxable food where sold on a "take out" or "to go" order, packaged or wrapped, and taken from the premises for consumption elsewhere. However, soft drinks in large unopened containers (e.g. quart, gallon, carton, etc.) and prepackaged ice cream (e.g. pint, quart, gallon, or larger), whether packaged by the vendor or his supplier, are sales of exempt food, since, because of the volume and packaging, they are not ready for immediate consumption and are not customarily consumed on or near the vendor's premises.

E. Heated food or drink, regardless of form, condition, quantities, and packaging is taxable food. Chicken, barbecued spareribs, fish, spaghetti, pizza, chow mein, french fries, coffee, tea, etc., are taxable food whether sold by restaurants, caterers, food stores, or vending machines.

F. Cold sliced roast beef, corned beef, ham cold cuts, etc., although already cooked and ready to be eaten, are exempt food, provided they are sold in the same form, condition, quantities, and packaging commonly used by food stores, i.e., by the pound weight. Cold salads, beans, cole slaw, etc., are exempt food, provided they are sold by the pound, quart, or pint, as in food stores.

G. Sales of both taxable heated food and exempt unheated food in combination are taxable in full if sold as plates or packaged as dinners. For example, if an individual purchases a quantity of cooked, heated chicken, two quarts of potato salad, and a pint of cold beans, and a separate amount is charged for each item, only the cooked, heated chicken will be taxable food; however, if the same items are sold in combination for a single unit price, the entire combination is "taxable food." Frozen or other packaged combinations of food commonly sold by food stores are exempt food.

H. Pretzels, potato chips, pies, frozen ice cream sundaes, and popsicles are exempt food when they are of the same type, and are sold in the same form, condition, quantities, and packaging as they are commonly sold in food stores. For example, all beverages dispensed in cups and milk sold in half-pint or one-third-quart containers are taxable food because food stores do not commonly

sell beverages in cups or milk in small quantities. Pretzels and potato chips are sold by grocery stores in cartons containing six individual, lunch, or snack servings and these are exempt food; however, a tavern, cafeteria, or vending machine sells these individual servings separately and as they are not in the same quantity and packaging as sold in grocery stores, are taxable food.

I. Hand-prepared or dispensed ice cream cones and sundaes, from either soft or regular ice cream, are taxable food.

J. A vendor of exempt food may maintain facilities for the serving of "taxable food." The sales in each category must be recorded separately, either by means of separate sales areas and separate cash registers, or by other appropriate arrangements. For example, a department store sells food products and baked goods at retail, and operates a counter nearby where "meals" are served. The retail food section and the lunch counter record sales on separate cash registers located in their respective areas. Consequently, the food in the retail food section is "exempt food," and the food at the lunch counter is "taxable food."

K. A food store is engaged primarily in the sale of "exempt food" such as meat, fresh vegetables and fruits, canned goods, dairy products etc., which the purchasers carry away. However, a food store might also prepare "taxable food" on the premises, although there are no facilities for consuming it. For example, a supermarket sells chicken roasted on a rotisserie on the premises. Because the chicken is prepared by the vendor and sold in a heated state, the roasted chicken is "taxable food." However, bakery products, such as doughnuts, bread, and pastries prepared and sold by food stores and bakeries for home consumption are "exempt food."

L. A vendor engaged principally in the sale of "taxable food" may also sell "exempt food" when it is sold by the vendor in the original or unopened carton. For example, a customer orders and eats "taxable food" on the premises of a pancake house and then purchases a container of their specially prepared syrup to take home. The sale of the syrup is a sale of "exempt food."

M. Sales of candy and candy products are sales of "exempt food" wherever and by whomever made.

N. The gross receipts from charges for opening and serving of customer furnished beverages, i.e. "corkage," constitutes a taxable sale.

Subp. 3. Meals at hospitals, sanitariums, nursing homes, or senior citizens' homes. For meals at hospitals, sanitariums, nursing homes, or senior citizens' homes:

A. Meals furnished, prepared, or served on the premises are not taxable, only if they are furnished, prepared, or served by such institution.

For example, the ladies' auxiliary of a hospital operates a coffee shop on the premises. Although the ladies' auxiliary is a nonprofit organization the food and drinks at the coffee shop are taxable since they are not furnished, prepared, or served by the hospital itself.

B. "Hospital, sanitarium, or nursing home" means any institution, place, building, or agency in which accommodation is maintained, furnished, or offered for the hospitalization of the sick or injured, for maternity care, or for the care of three or more aged or infirm persons requiring or receiving chronic or convalescent care. The terms do not include hotels or other similar places that furnish only board or room or both to their guests.

C. A "senior citizens' home" is one that furnishes room, board, recreational facilities, and nursing attention to persons who have reached the age of 65, or who, for other reasons, enter such a home at an earlier age. A senior citizens' home may be operated either for profit or on a nonprofit basis.

Subp. 4. Meals at schools. Meals furnished, prepared, or served at public and private schools, universities, or colleges are nontaxable. Administrative offices located off the school premises are not considered part of the school and therefore

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meals served at those offices are taxable. A "public school" is one that furnishes courses of study, enrollment, and staff that meet the standards of the State Board of Education. A "private school" is one that provides an education substantially equivalent to that furnished at a public school, under the rules and standards of the State Board of Education.

Subp. 5. Occasional meals by a charitable or church organization. For occasional meals by a charitable or church organization:

A. The occasional furnishing, preparing, and serving, for a consideration, of a meal by a charitable or church organization is not taxable unless the activity is such that the organization is considered to be in the business of furnishing, preparing, or serving meals. This provision applies only to occasional meals by charitable or church organizations as defined in part 8130.6200, subparts 2 and 3. No provision is made for nontaxable occasional meals by educational organizations or other nonprofit groups such as Boy Scouts, American Legion, Jaycees, etc.

B. Any occasional meal conducted by a charitable or church organization either on its property or adjacent thereto is not taxable.

C. When a meal is conducted at a location other than its own or adjacent property, and is in operation for two or more days consecutively the charitable or church organization is in the business of furnishing, preparing, or serving meals at that location, and the meals there are taxable.

D. The furnishing, preparing, or serving, for a consideration, of meals by a charitable or church organization described in item C will not affect the nontaxable status of meals furnished, prepared, and served by the organization on its property or adjacent thereto. For example, First Church prepares and serves Sunday night suppers once a month for a consideration on its own premises. During the state fair, First Church operates a concession on the fair grounds at which it prepares and serves meals for a consideration for several consecutive days. The meals served at the fair grounds are not occasional meals and thus are taxable, but the monthly Sunday night suppers are not taxable.

E. Meals prepared or served by a hotel, catering firm, or other commercial enterprise for a charitable or church organization are not occasional meals. Thus, the consideration paid to the hotel or caterer for such meals by the organization, its members, or the general public is taxable.

F. When a meal by a charitable or church organization is taxable under item C or D or a meal by any other nonprofit organization is taxable as explained in item A, and the price is in excess of the normal selling price of such a meal, and a contribution to the organization is intended and is shown separately on the tickets or advertising, only the normal selling price of the meal is taxable. For example, a political party arranges a \$100 per plate dinner at a hotel to raise funds. The normal price of the dinner served is \$6. The taxable sales price is \$6 per dinner served; the remaining \$94 is a contribution to the political party.

Subp. 6. Education programs and children's camps. Tuition or fees paid for participation in educational programs provided by educational institutions or for attendance at children's camps licensed under Minnesota Statutes, sections 144.71 to 144.76, are not sales at retail within the provisions of the Sales and Use Tax Law. Such tuition or fees are consideration for recreational or educational services rendered and are not taxable.

Educational institutions and children's camps sponsoring or fostering such educational or recreational programs are not retailers of meals or lodging within the provisions of the Sales and Use Tax Law since the meals and lodging provided are incidental to the recreational and educational purposes of the programs. Consequently, the meals and lodging provided, if furnished on the premises of the educational institution or children's camp, are not taxable.

Subp. 7. Meals furnished to employees. If an employer furnishes meals to his

employees for a consideration, the transactions are taxable sales. However, if an employer furnishes meals to his employees for no consideration, there is no taxable sale. Where exempt meals are served to others, for example, meals served at a public school, the meals served there to employees will also be exempt although such employees may be required to pay for the meals.

Subp. 8. Caterers. The term "caterer," as used herein, means a person, including those licensed under Minnesota Statutes, chapter 157, engaged in the business of preparing food, meals, or drinks and serving them on the premises designated by his customers. The term "caterer" does not include employees hired by the day or hour. When an agreement provides that a caterer will prepare and serve food, as meals or buffet style, for a stated price per meal, for a lump sum or for a price per plate used, the transaction will be a taxable sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c).

A. Catered meals served at schools do not constitute taxable transactions.

B. Any charges made by a caterer for such items as tableware, tablecloths, tables, or chairs are taxable. If the customer has the option of having these items supplied by the caterer or otherwise arranging for them and the caterer's charge is adjustable accordingly, the furnishing of such items shall be considered to be the rental of tangible personal property and the caterer may rent or purchase such items exempt for resale. If the customer does not have the option of arranging for the furnishing of such items himself for a reduction in the caterer's charge, the entire charge shall be considered to be for the furnishing, preparing, or serving of meals for consideration. The caterer shall be regarded as using the items in rendering his services rather than as leasing them. The resale exemption would not be applicable to the caterer's purchase thereof when the caterer's operations are conducted in this manner.

C. In the event that a caterer prepares or serves meals for an organization which resells the meals to its members or the general public, the transaction between the caterer and the organization is a taxable sale unless the organization:

- (1) holds a Minnesota sales and use tax permit;
- (2) is, itself, regularly engaged in the business of furnishing, preparing, or serving for a consideration food, meals, or drinks; and
- (3) furnishes to the caterer a properly completed resale exemption certificate, form ST-5.

Subp. 9. Fraternities and sororities. "Fraternities and sororities" are student social organizations operated at or near public or private schools, colleges, or universities. Fraternities, sororities, and other such groups of individuals who reside at common locations and jointly share household expenses of meals, room, and other items are not considered to be making taxable sales when meals are furnished to members and occasional guests.

However, when such groups hire a caterer to serve meals on the premises in accordance with subpart 8, the consideration paid for such meals represents a taxable sale.

Subp. 10. Meals served by transportation companies. The furnishing, preparing, or serving of food, meals, or drinks by railroad, pullman car, airline, or other transportation companies which are operated in or through the state of Minnesota are taxable sales when ordered within the boundaries of Minnesota, regardless of whether or not the meals so ordered are subsequently consumed in Minnesota. Where food or meals are served by a transportation company as part of its transportation service, and no separate charges are made therefore, no sale of a meal within the meaning of the Sales and Use Tax Law is deemed to have occurred. Thus, the transportation company may not purchase such prepared meals for resale and the sales of such meals in Minnesota to the transportation company are taxable retail sales.

Subp. 11. **Cover or minimum charges.** Cover or minimum charges, whether listed separately on the bill or collected as an admission fee or fixed charge, which entitle the patron to receive food, meals, drinks, entertainment, dancing, etc., are taxable. If food, meals, or drinks are furnished, prepared, or served at locations other than the place of business of the vendor or in a room other than a regular dining room, and an extra charge is made for such service, the entire amount is taxable.

Subp. 12. **Tips.** A tip given voluntarily by a customer to an employee of the retailer is not includible in the gross receipts of the retailer.

A. An amount paid as a service charge in lieu of a tip which is added to the customer's bill whether added by the customer or the retailer, is not subject to the sales tax if:

(1) it is separately stated on the bill;

(2) no part of the service charge goes directly to the vendor-employer as operating revenue; and

(3) all of the amount is directly distributed to "tip employees." "Tip employees" are those employees who by social custom of the area normally receive tip income as a supplement to their regular fixed wages.

B. In the event any of the foregoing conditions of this subpart are not met, the amount of the charge for which such conditions are not met will not be deductible from gross receipts of the retailer.

Subp. 13. **Purchases by vendors of meals and drinks.** The vendor of meals or drinks must pay the tax on all purchases of equipment and products used or consumed in his business, including fixtures, linens, silverware, glassware, steak markers, and paper products such as table cloths, place mats, towels, toilet tissue, and doilies. Vendors of meals are specifically excluded from the class of vendors considered to be engaged in production as defined in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h); consequently, sales of electricity, gas, steam, and all other items (except food products and disposable containers as herein defined) to vendors of meals are taxable. Nonreusable items such as souffle cups, straws, ice, swizzle sticks, paper napkins, and paper, plastic, or wooden plates, cups, forks, toothpicks, etc., which are used or consumed by the customer as an integral part of the meal or drinks are considered sold therewith. Sales of such items for this purpose to persons engaged in the business of selling meals or drinks are, accordingly, sales for resale.

Statutory Authority: *MS s 297A.29*

8130.0900 ENTERTAINMENT.

Subpart 1. **Admissions and use of amusement devices in general.** Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d), the granting of admission to places of amusement or athletic events, and the privilege of use of amusement devices constitute sales, where such places of amusement, athletic events, or amusement devices are located within Minnesota.

Subp. 2. **Examples; admissions.** Example 1. A purchases four tickets at the University of Minnesota athletic ticket office for a football game to be played at Madison, Wisconsin, between the University of Minnesota and the University of Wisconsin. The sale of the tickets to A does not constitute a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d).

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 under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d).

Admission charges to any places of amusement or athletic events within Minnesota, therefore, constitute a sale. The following partial list is illustrative:

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- A. admissions to all athletic events, including those staged by educational institutions;
- B. admissions to musical concerts;
- C. admissions to dances;
- D. admissions to motion picture theaters or theaters presenting stage shows and plays;
- E. admissions to golf courses and tennis courts;
- F. admissions to skating rinks and swimming pools;
- G. admissions to state, county, or other fairs;
- H. admissions to carnival rides and hay and sleigh rides;
- I. admission to bingo games and privilege of use of bingo cards; and
- J. admissions to a museum.

Subp. 3. **Use of athletic equipment.** Consideration paid for the use of athletic or amusement devices or games constitutes a sale. Amusement devices are defined as "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 amusement devices is a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d) and taxable. If the entry fee to a competitive event requiring admissions or the use of amusement devices does not separately state that portion of the fee assignable to them, the entire fee is taxable.

Subp. 5. **Club dues.** Membership dues to clubs such as country clubs, tennis clubs, and curling 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. **Recreational areas.** A recreational area where no facilities are provided other than parking lots, fire pits, docks, tables, and facilities required for the preservation of the area itself is not considered a place of amusement; therefore, entry fees to such areas are not taxable. However, if the entry fees include the privilege of using tennis courts, golf courses, ski lifts, boats, snowmobiles, etc., all of which are furnished by the owner, the charges are taxable.

Statutory Authority: *MS s 297A.29*

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8130.1000 LODGING.

Subpart 1. General rule. Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (e), furnishing for a consideration of lodging and related services by a hotel, rooming house, tourist court, motel, or trailer camp and the granting of any similar license to use real property other than the renting or leasing thereof for a period of 30 days or more constitute a sale. See part 8130.0800, subpart 6, for rules exempting lodging furnished in connection with educational programs and children's camps.

Subp. 2. Criteria. The following criteria will be applicable in determining whether a license to use real property for lodging purposes constitutes a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (e):

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 where the consideration therefor is paid or payable at periods of less than 30 days' duration, or where the parties are not bound by an enforceable 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 exclude therefrom separately stated charges for telephone service, but shall include as taxable consideration, amounts received for the use of a television set or other items of tangible personal property.

Example 1. Guest registers at hotel without entering into an enforceable agreement whereby he will occupy a room for a period in excess of 30 days. He occupies the room assigned to him for five full weeks. Thereafter, he settles his 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 the above.

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 L 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 \$12 per day for a room. Guest makes three local telephone calls. Motel bills Guest for \$12 plus a separately stated charge of 45 cents for telephone calls, and \$1 for use of a television set. The taxable consideration paid by Guest is \$13 represented by the \$12 charge for the room and \$1 charge for the television set.

Example 5. If X company leases a specific room in a hotel or motel on a yearly basis for occasional use by employees or guests, the charge is exempt. If under the lease, a particular room is not reserved for the exclusive use of X company, the charge made therefor is taxable.

Statutory Authority: *MS s 297A.29*

8130.1100 UTILITIES.

Subpart 1. General rule. Under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (f), the furnishing for a consideration of electricity, gas, water,

or steam for use or consumption within Minnesota, and local exchange telephone service and intrastate toll service (irrespective of whether such telephone service is obtained through regularly organized telephone companies or through municipal corporations operating in a propriety capacity), constitute sales.

Subp. 2. **Exception for coin-operated telephone service.** Coin-operated telephone service is excluded from the definition of "sale." See Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), and other clauses under this section for exceptions.

Subp. 3. **Local exchange telephone service.** Local exchange telephone service means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange operated to furnish subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge. Consequently, for purposes of Minnesota Statutes, section 297A.01, subdivision 3, paragraph (f), charges made by the vendor (the organization furnishing telephone service) for telephone service within the area stipulated on exchange boundary maps on file with the Minnesota Public Utilities Commission, constitutes sales.

Subp. 4. **Intrastate telephone toll service.** Intrastate toll service is also subject to tax. Intrastate toll service is that which is furnished outside of the local exchange but within the state of Minnesota for an additional specified charge over and above the amount charged for the local exchange service. The following example is illustrative:

S, subscriber, pays \$6 per month for local exchange service. In addition, during a certain month, he pays \$20 for telephone service to other parts of Minnesota outside his local service area, and \$30 for long distance calls made to other states. The \$6 per month charge for local exchange service, and the \$20 paid for outside calls within Minnesota are both subject to tax. The charge of \$30 for long distance calls made to other states does not constitute a sale.

Subp. 5. **Transitional sales.** Corporations or organizations including municipal corporations furnishing electricity, gas, water, or steam to customers shall use the following criteria to determine the rate of tax applicable to the sale:

A. If the billing includes service for any date before November 1, 1971, the three percent rate is applicable. For example: A billing for service from October 30 through November 30 would carry the three percent rate.

B. If the billing includes only service on or after November 1, 1971, the four percent rate applies. For example: A billing for service from November 1 through November 30 would carry the four percent rate.

Statutory Authority: *MS s 297A.29*

8130.1200 SALES OF BUILDING MATERIAL, SUPPLIES, OR EQUIPMENT.

Subpart 1. **General rule.** Under Minnesota Statutes, section 297A.01, subdivision 4, 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, he 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 or to the state of Minnesota, and to other public agencies, as well as to corporations and other institutions exempt under the several clauses of Minnesota Statutes, section 297A.25, subdivision 1, 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. However, purchases of such building materials, supplies, and equipment by exempt entities are exempt from the sales and use tax.

Example. A village enters into a contract with a contractor for storm sewer 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 storm sewer. These transactions constitute sales at retail and are subject to the sales tax. The contractual relationship between the contractor and the village does not affect the validity of the sales tax imposed upon the contractor. Had the village undertaken such construction with its own employees, the purchase of the materials by the village would not have been subject to tax.

B. Where 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 he 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

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district is not taxable, 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 his construction contracts, and in addition, is engaged in making sales at retail 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 his 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 his cost of materials.

C. A contractor-retailer sells property under both of the following two circumstances.

(1) When he sells certain property 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 his cost of materials. For the purposes of such a transaction, retailer is deemed to be contractor and his purchase of the supplies and equipment used in installing the property constitutes a retail sale to him.

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 he knows the use to which such items are to be put, he 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 where he does not know the precise utilization of such items, and if his business activities during the prior calendar year reflect that 50 percent or less of such purchases were sold at retail, then he shall pay the sales tax to his supplier on all such purchases. If he later sells any of such items at retail, he may take a proper deduction on his sales and use tax return.

(3) If his business activities during the prior calendar year reflect that more than 50 percent of such purchases were sold at retail, he may use a resale exemption certificate for the purchase of all such items. The resale exemption certificate shall contain the purchaser's name, address, sales and use tax account number, and description of material to be purchased. In addition, the certificate must be signed and contain the following:

"I HEREBY CERTIFY: That I am a contractor-retailer engaged in the making of retail sales and also the construction, alteration, repair or improvement of real property and that I am reporting and paying my sales and use tax liability directly to the Commissioner of Revenue."

A vendor receiving a resale exemption certificate with the above notation thereon is relieved from the responsibility of collecting the tax, and the burden will be upon the purchaser to demonstrate that he comes within the provisions of this part.

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 should 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 1972, a contractor-retailer purchased ten bathtubs at \$150 each and 20 bathroom sinks at \$40 each. As he was primarily a contractor, he paid the sales tax due thereon. During this same month, he sold at retail two bathtubs at \$200 each and five bathroom sinks at \$55 each. He reports gross receipts from sales at retail of \$675. The sales tax due and owing from him is \$27

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(four percent of \$675). Since he is entitled to offset the tax paid by him on the property sold at retail, he makes the following calculation on form ST-1 (sales and use tax return) filed by him for the month of March 1972:

Line 1 Gross sales	\$675.00
Line 2 Deductions (see line 19)*	\$500.00
<hr style="width: 100%;"/>	
Line 3 Net sales	\$175.00
Line 4 Purchases subject to use tax	\$ -0-
Line 5 Total taxable amount	\$175.00
Line 6 Total tax due	\$ 7.00

*Line 2 is calculated as follows:

Cost of goods sold:	
2 bathtubs at \$150.00 each	\$300.00
5 bathroom sinks at \$40.00 each	\$200.00
<hr style="width: 100%;"/>	
Total cost of goods sold	\$500.00

A supplementary schedule reflecting the above calculations should be submitted with the return.

Example 2. A contractor-retailer purchased ten bathtubs at \$150 each and 20 bathroom sinks at \$40 each. As he was primarily a retailer, he paid no tax at time of purchase, but gave his supplier an exemption certificate. Thereafter, in March 1972, he sold at retail two bathtubs at \$200 each and five bathroom sinks at \$55 each. In addition, he utilized three bathtubs and six bathroom sinks in his contracting activities. The contractor-retailer makes the following calculation on form ST-1 (sales and use tax return) filed by him for the month of March 1972 (for purposes of this example, it is assumed that in March 1972 no other sales were made at retail and no other material, etc., were used in contracting activities):

Line 1 Gross sales	\$ 675.00
Line 2 Deductions	\$ -0-
<hr style="width: 100%;"/>	
Line 3 Net sales	\$ 675.00
Line 4 Purchases subject to use tax*	\$ 690.00
<hr style="width: 100%;"/>	
Line 5 Total taxable amount	\$1,365.00
Line 6 Total tax due	\$ 54.60

*Line 4 is calculated as follows:

3 bathtubs purchased at \$150 each	\$ 450.00
6 bathroom sinks purchased at \$40 each	\$ 240.00
<hr style="width: 100%;"/>	
Total	\$ 690.00

A supplementary schedule reflecting the above calculations should be submitted with the return.

Subp. 5. Status of construction contracts on effective date of law. For the status of a construction contract on the effective date of a law:

A. If a contractor has entered into a fixed price or lump sum construction contract prior to June 2, 1967 (the first day after enactment of the Sales and Use Tax Law), which does not provide for payment of future taxes, the sale of building materials, supplies, etc., to such contractor will not result in a retail sale or sale at retail subject to the provisions of the Sales and Use Tax Law provided:

- (1) the building material, supplies, etc., were delivered to the contractor; or
- (2) the building material, supplies, etc., were identified by serial number or some other appropriate symbol, and segregated or set aside as the property sold by virtue of such contract; and

(3) if either event stated in item A or B occurred prior to June 2, 1968.

Example. A contractor signs a lump sum contract with a realty company on April 15, 1967, whereby the contractor agrees to erect an office building for the realty company. The contract did not contain a provision for reimbursement of future taxes. The contractor places the following orders: concrete for the foundation; steel for the framework; aluminum sheets for the outer covering; and stainless steel doors for the main entrance.

Delivery of the concrete and steel for the framework was effected before May 15, 1968. The aluminum sheets were produced by the manufacturer, and after being properly identified on May 25, 1968, for the realty company building, were stored until July 15, 1968, and then delivered to the construction site. As a result of a backlog of orders, the manufacturer could not produce the stainless steel doors until September 1, 1968, although the order had been placed many months earlier.

The sale to the contractor of the concrete and steel framework constitutes a nontaxable transaction as the contract was entered into prior to June 2, 1967, and all subsequent events with respect to these sales occurred prior to June 2, 1968.

The sale to the contractor of the aluminum sheets constitutes a nontaxable transaction, as the conditions specified in items B and C, were satisfied.

The sale to the contractor of the stainless steel doors constitutes a retail sale or sale at retail subject to sales tax, as the conditions specified above were not satisfied.

B. In order to avail himself of the exemption from sales tax when a lump sum or fixed fee construction contract entered into prior to June 2, 1967 (pretax contract), is involved, a contractor is required to file a copy of the contract, together with form ST-7, at the offices of the Sales and Use Tax Division. Thereafter, the application will be reviewed and, if approved, an exemption will be granted to the contractor.

C. The exemption will be in the form of a certificate bearing an identifying number, and issued to the contractor. Such a certificate exempts only those building materials, supplies, and equipment purchased for incorporation into the structure for which the exemption was granted.

D. Where a contractor has entered into more than one such pretax contract, he must submit a copy of the contract, and a copy of form ST-7 for each contract for which an exemption certificate is requested.

E. Where a general contractor retains subcontractors to perform part of the work incident to a pretax contract, and the general contractor has received an exemption certificate, the exemption from tax extends to building material, supplies, and equipment purchased by such subcontractor. The subcontractor may submit a photostatic copy of the general contractor's exemption certificate to the vendor.

Subp. 6. Sales of tangible personal property. The three percent rate of tax shall be applicable to sales of tangible personal property purchased for use in performing any written fixed price or lump sum construction contract which was enforceable prior to November 1, 1971, which makes no provision for allocation of future taxes and which unconditionally vests the rights and obligations of the parties thereto, provided the delivery of such tangible personal property is made prior to November 2, 1972.

A construction contract shall be considered enforceable prior to November 1, 1971, even though signed after October 31, 1971, if it is executed pursuant to a bid which could not be withdrawn as of October 31, 1971, without payment of penalty.

Tangible personal property used in performing a construction contract as described herein shall include all materials and equipment which become incor-

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porated as part of the improvement to realty and any other tangible personal property purchased for and used and fully consumed in performing such contract. It shall also include any equipment rented solely for use in performance of such a contract.

Statutory Authority: *MS s 297A.29*

8130.1300 USE.

Minnesota Statutes, section 297A.01, subdivision 6, defines "use" as the exercise of any right or power over tangible personal property purchased from a retailer incident to the ownership of any interest in that property, but it does not include the sale of such property in the regular course of business. "Use" does not include storing personal property to be used in the ordinary course of an owner's trade or business where such personal property is subsequently shipped or delivered to an ultimate destination outside Minnesota without being put to intermediate use in this state and thereafter not returned to Minnesota except in the course of interstate commerce. (As used herein, the term "intermediate use" does not include processing, fabricating, or manufacturing into or incorporating into other tangible personal property or testing or modifying tangible personal property but includes consuming or enjoying the beneficial use of the property.)

Example 1. "X" company purchases 100 typewriters from an outstate vendor for delivery to its main office in Minnesota. Thereafter, 60 typewriters are put to use in offices in its several Minnesota locations, while the remaining 40 are placed in its Minnesota storage center. Subsequently, 30 of the remaining typewriters are shipped to "X" company's several offices outside Minnesota and the ten typewriters remaining are assigned to Minnesota offices. Consequently, "use" does not include the 30 typewriters shipped to ultimate destinations outside Minnesota.

Example 2. Same facts as in example 1 except that five of the typewriters assigned to Minnesota are subsequently shipped outside Minnesota after being used in this state for a period of time. Employing these five typewriters in Minnesota constitutes intermediate use. (See Minnesota Statutes, section 297A.14, regarding the imposition of the use tax with respect to property used in Minnesota.)

Statutory Authority: *MS s 297A.29*

8130.1400 TEMPORARY STORAGE AND USE IN MINNESOTA.

Where tangible personal property or tickets of admission to places of amusement or athletic events are shipped or brought into Minnesota for the purpose of subsequently being transported outside Minnesota, and such items are not intended to be returned to Minnesota except in the course of interstate commerce, definitions of "storage and use" (see Minnesota Statutes, section 297A.01, subdivisions 5 and 6, respectively) are not applicable thereto.

Similarly, where tangible personal property is shipped or brought into Minnesota for the purpose of being processed, fabricated, or manufactured into other tangible personal property, or is incorporated or attached to other tangible personal property, and thereafter transported outside Minnesota, and such property is not intended to be returned to Minnesota except in the course of interstate commerce, the definitions of storage and use are not applicable thereto.

Example 1. A purchases four tickets from the University of Minnesota's athletic ticket office for a football game to be played at Madison, Wisconsin between the University of Minnesota and the University of Wisconsin. As such tickets were shipped into Minnesota for the purpose of subsequently being used outside Minnesota and in fact must so be used or wasted, A's exercise of right or power over these tickets does not constitute either storage or use as defined in Minnesota Statutes, section 297A.01, subdivision 5 or 6, respectively.

Example 2. Z corporation purchased equipment in Wisconsin and requested

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that the vendor deliver the property to Z in Minnesota for inspection and testing. Upon completion of the tests on the equipment, which proved to be satisfactory, the equipment was shipped to Z factory in California. The testing and inspecting of the equipment in Minnesota does not constitute either storage or use as defined in Minnesota Statutes, section 297A.01, subdivision 5 or 6, respectively.

Statutory Authority: *MS s 297A.29*

8130.1500 REDUCTION IN SALES PRICE FOR PROPERTY TAKEN IN TRADE.

Excluded from the sales price is any amount allowed as a credit for tangible personal property taken in trade for resale. 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 will qualify for the exclusion from the sales price provided both the following conditions are met:

A. such property is taxable under the Sales and Use Tax Law or the Motor Vehicle Excise Tax Law; and

B. such property is of a type normally sold in the regular course of such retailer's business.

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 therefor. As the conditions above are met, the credit qualifies for the exclusion. Consequently, the sales price is \$2,000.

Example 2. A farm implement dealer sells a combine to a farmer with a list price of \$4,000 and accepts in trade a used cornpicker for which a credit of \$300 is given. As the conditions above are met, the credit qualifies for the exclusion. Consequently, the sales price is \$3,700.

Example 3. An implement and livestock dealer sells a new tractor with a list price of \$2,000 and accepts in trade three steers for which a credit of \$750 is given. Although the second condition above is met, the first condition is not as steers sold by a livestock dealer are not taxable property. Consequently, the sales price of the tractor is \$2,000.

Example 4. A jeweler sells a diamond ring to a customer for \$2,000 and accepts in trade a new lady's fur coat for which a credit of \$2,000 is given. Although the first condition is met, the second condition is not met as the jeweler does not engage in the sale of fur coats in the regular course of his business. Consequently, the sales price of the diamond ring is \$2,000.

Example 5. A mobile home dealer sells a customer a new mobile home with a list price of \$12,000. The customer trades in his 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
	<hr/>
Sales price	\$ 7,000
Add: Payoff of old contract	2,000
	<hr/>
New contract	\$ 9,000

Statutory Authority: *MS s 297A.29*

8130.1600 DEDUCTIONS NOT ALLOWABLE IN COMPUTING SALES PRICE.

Subpart 1. **In general.** No exclusion or deduction is allowable in computing the sales price for the expenses described in subparts 2 to 5.

Subp. 2. Cost of property sold and cost of transportation incurred prior to sale. As a general rule, the cost of the property sold includes all costs incurred in acquiring the property, and any related expenses necessary to transport it to the location where it normally will be sold.

Example 1. An interior decorator recommends furniture for a customer's living room. The customer agrees to pay \$3,000 to the interior decorator for the articles recommended. The interior decorator thereafter orders furnishings from a manufacturer at a cost of \$1,800. No exclusion or deduction for cost of the property is allowed; consequently, the sales price is \$3,000.

Example 2. An implement dealer sells a new farm tractor to customer for \$8,000. Included in the price is a charge of \$150 representing transportation costs from the factory to the dealer. As no exclusion or deduction for cost of transportation incurred prior to sale is allowed, the sales price is \$8,000. See part 8130.1700, subpart 4, regarding transportation expense incurred after sale is consummated.

Example 3. A lumber dealer sells a carload of lumber to a building contractor at an agreed upon price of \$8,000 including the cost of transportation. The lumber is to be ordered and drop-shipped directly to the purchaser. No exclusion or deduction for cost of transportation is allowed even if the purchaser pays the transportation charges directly to the common carrier and deducts the same from the amount due the seller. The delivered price is the sales price.

Subp. 3. Cost of material used; labor or service cost. Certain tangible personal property purchased at retail may require either additional material or additional labor or service, in order to be suitable for the purpose for which purchased, or because of a special request made by a customer. The charges for such labor or material may be included in the sale price or may be in addition thereto, depending upon the policy of the retailer or upon the nature of the property purchased and of the modifications required.

Example 1. A customer orders a fur coat from Furs, Inc. for \$800 which includes extensive alterations to be made in accordance with the customer's instructions. The cost of such alterations to Furs, Inc. is \$100. As no exclusion or deduction for the labor or material involved in the alterations is allowed, the sales price is \$800.

Example 2. A TV dealer sells a customer a color television receiver for \$700 installed. The installation and adjustments are performed by a service company which charges the TV dealer \$15. No exclusion or deduction for installation or adjustment labor involved is allowed since such charge is not separately stated. Consequently, the sales price is \$700.

Example 3. A customer orders a watch from a jeweler for \$250 and requests that initials be inscribed in diamond chips. The jeweler agrees to do so without charge for labor but charges the customer \$50 for the diamond chips used. As no exclusion or deduction is allowed for cost of materials used, the sales price is \$300.

Subp. 4. Interest. Interest paid by vendors or lessors to their creditors for borrowed funds used in the conduct of the business may not be deducted in determining the sales price subject to tax.

Example. A lessor and lessee enter into an agreement whereby the lessor will lease ten new 1968 trucks to the lessee at \$2,000 per year per truck. The effective date of the lease contract is January 1, 1968. The lessor finances the purchase of the trucks through a bank. The interest paid to the bank in 1968 by the lessor is \$4,000. No part of this interest paid is allowable as an exclusion or deduction from the lease payments required to be paid by the lessee. Consequently, the sales price of the retail sale represented by the lease for the year 1968 is \$20,000 (10 X \$2,000).

Subp. 5. Discounts. In computing sales price, the total consideration for the sale shall not be reduced by the discount allowed where the amount of the

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discount is determined by events that occur subsequent to consummation of the sale.

Example. A dealer sells a TV set to a customer for \$500 on credit on January 15, 1969. On May 1, 1969, the customer complains about the high price. The dealer grants a reduction of \$50 in sales price as a discount. This discount will not be allowed as a deduction. The sales tax is computed on \$500.

Statutory Authority: *MS s 297A.29*

8130.1700 DEDUCTIONS ALLOWABLE IN COMPUTING SALES PRICE.

Subpart 1. In general. The following charges or expenses in connection with a sale are allowable as deductions provided the amounts attributable to such charges are reasonable under the circumstances and are stated separately on the invoices submitted to the purchaser or consumer.

Subp. 2. Interest on unpaid balance; carrying or finance charge. A material proportion of sales made at retail are made on a credit basis, particularly where the property sold is classified as durable consumers goods. Purchases of such items as automobiles, refrigerators, furniture, or jewelry are financed by means of periodic payments, usually on a monthly basis. Consequently, each payment may contain three elements: interest on the unpaid balance; carrying or finance charges; and payments to be applied against the unpaid balance.

Example 1. A boat dealer sells a new boat to a customer for \$3,000. The customer agrees to pay \$100 per month for 36 months, representing \$450 interest at five percent for three years and \$150 for collision, fire, and theft insurance. Each payment made to the boat dealer represents the following: \$83.33 on unpaid balance; \$12.50 for interest; and \$4.17 for the insurance coverage. (Adjustments may be made for the fractional cents.) Consequently, the amount required to be reported by the boat dealer when payment of \$100 is made is \$83.33 if he is on the cash basis. If he is on the accrual basis, \$3,000 is reportable at the time of sale.

Example 2. Same facts as in example 1 except that the boat dealer, who is on the cash basis, discounted the customer's note at his bank before any payments were made by the customer and received \$2,970. The boat dealer thereafter is required to report the sales price of \$3,000 for the month in which the note was discounted at his bank.

Example 3. A department store sells various household furnishings and appliances to a consumer for \$1,000. The consumer agrees to pay six percent interest plus two percent finance and service charges on the unpaid balance and further agrees to pay \$100 per month. The first payment was made one month after the sale was consummated. The \$100 is allocated as follows:

	Payment	Principal	Interest & Finance & Carrying Charges	Balance
First month	\$100.00	\$93.33	\$6.67	\$906.67
Second month	100.00	93.96	6.04	812.71
Third month	100.00	94.58	5.42	718.13

If the department store is on the cash basis, it will report \$93.33, \$93.96, and \$94.58 for the first three months, respectively. If the department store is on the accrual basis, it will report \$1,000 in the month the sale is made.

Subp. 3. Installation charges for labor and services. Tangible personal property may be sold either uninstalled or installed. The labor or service charge for the installation is allowable as a deduction arriving at sales price, provided such charge is stated separately on the invoice and such installation charge is not a device for reducing the selling price materially below the normal price at which the property involved in the transaction is usually sold.

Example 1. A retailer advertises a free-standing kitchen range for \$250 without installation, and \$266 installed. A customer orders the range installed.

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The retailer's bill reflects a sale of a kitchen range for \$250 and installation charges of \$16. Consequently, the sales price is \$250.

Example 2. A tire shop sells a customer a new tire for \$40 and replaces the old tire with a new one. The bill reads, "1 New Super Deluxe Tire — \$40." As labor or service charges for mounting the new tire are not stated separately, the sales price is \$40.

Subp. 4. **Transportation charges incurred after sale.** The right to exclude transportation charges from the sales price refers to transportation occurring after the retail sale has been consummated, provided that such charges are stated separately on the invoice, and also provided that where the price at the place of sale is the same as the price delivered, no reduction from the total consideration paid shall be allowed in arriving at the sales price.

For purposes of the Sales and Use Tax Law, the particular terms of delivery of property sold at retail are immaterial in determining the amount of sales price subject to tax. All separately stated charges for transportation from the premises of retailers to their customers billed to the customers by retailers are deemed to occur after such retail sales have been consummated.

Example 1. A department store sells a suite of living room furniture to a customer for \$1,000. The policy of the department store, as expressed in advertisements, is to deliver all merchandise purchased by customers free within a radius of 25 miles, provided the sales price of the merchandise delivered is in excess of \$100. Although the cost of delivering the suite of living room furniture is \$25, no reduction in sales price will be allowed as the implication was the customer, who was within the 25-mile limits, would not be obligated to bear the cost of transportation.

Example 2. A building supplier sells insulation at \$3 per bag, cash and carry. A customer requires 50 bags but asks that the merchandise be delivered and agrees to pay the delivery charges. The building supplier delivers the merchandise with his own truck and then bills the customer as follows:

50 bags insulation at \$3 per bag	\$150
Shipping charges	20
Total	\$170

Example 3. Same as example 2, but the invoice reads as follows:

50 bags insulation at \$2.50 per bag	\$125
Shipping charges	45
Total	\$170

The sales price will be deemed to be \$150 in both the above examples as the \$3 price is the cash and carry price offered to customers at vendor's place of business.

Subp. 5. **Discounts.** Discounts on sales are of three kinds: trade, quantity, and cash.

A. A trade discount is a deduction from the list or gross price for the purpose of arriving at the selling price, and generally is not recorded in the accounting records.

B. Quantity discounts are basically trade discounts. They are increased with the size of the purchase as an inducement to the customer to buy in large quantities. For example, list price — \$150 less 30 percent if purchased in quantities of five or more units. Selling price is \$105.

C. Cash discounts are those granted to credit customers as an inducement to pay the account early. Such cash discounts or sales discounts, as they are commonly called, are stated in such terms as 2/10, n/30. The credit terms 2/10, n/30 mean that a two percent discount may be subtracted from the amount owed if paid within ten days from the sales invoice date; otherwise, the full amount is due within 30 days from date of sales invoice.

Example. A customer purchases a typewriter for \$200. The terms are 2/10,

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n/30. The customer pays on the ninth day following receipt of the invoice, and deducts the cash discount of \$4. The sales price is \$196.

D. Vendors usually account for sales under the gross sales method, that is, by reflecting in sales the full amount of the sales price without any deduction for the discount to be given the purchaser for early payment. Under this method, sales discounts earned are treated as a reduction in the amount of gross receipts to be reported for the period in which such discounts are taken. Certain vendors use the net sales method in accounting for sales. Under this method, the vendor assumes that all his customers will avail themselves of the discount allowed for early payment. Subsequently, if a customer fails to pay within the prescribed period and remits the full sales price (without deduction for the sales discount), the additional amount is credited to a descriptive account, for example, sales discounts forfeited. The total amount of discounts so forfeited shall be credited to gross receipts for the reporting period in which received.

Example. A retailer uses the net sales method of accounting for sales discounts. Sales for September (all subject to two percent, ten-day discount) are \$20,000. The retailer's books reflect the following summary:

Accounts Receivable	\$19,600	
Sales		\$19,600

Included in this total are sales of \$4,900 derived from gross sales of \$5,000 on which the ten-day discount period does not end prior to October. The gross receipts reportable are \$19,600.

In the following month of October, the retailer receives \$3,920 (representing \$4,000 in gross sales for which payment was made timely) and \$1,000 (representing \$1,000 in gross sales where discount was forfeited).

The books reflect the following summary in respect of these transactions:

Cash	\$ 4,920	
Accounts Receivable		\$ 4,900
Sales Discounts Forfeited		20

The \$20 of sales discounts forfeited are required to be included in the gross receipts reportable for October.

Subp. 6. Refunds for property adjustments. Where taxable property is returned, the retailer's 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 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.

For property returned prior to March 22, 1973, a reduction in gross receipts is allowable only if the property was returned within three months of the date of purchase.

Example 1. A hardware dealer sells a customer a lawnmower for \$100 on May 1, 1972. The customer pays \$100 plus \$4 sales tax. As the lawnmower was defective, it was returned to the hardware dealer on May 10, 1972, and \$104 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 on June 1, 1972. August 15, 1972, the customer returns one tire and is given a cash refund of \$30 plus \$1.20 tax. Retail Tires may reduce gross sales by the \$30 refunded on his August sales and use tax return.

Example 3. A purchases taxable personal property from a retailer at a price of \$100. A pays the retailer \$104 or (\$100 sales price, plus \$4 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 \$104 (\$100 sales price, plus \$4 sales tax). The retailer may reduce gross sales by \$100 on his 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. A \$4 sales tax is charged and collected. 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 \$4 sales tax and claim a reduction of \$100 gross sales on its sales and use tax return.

Subp. 7. Taxes imposed by United States. The sales price shall be reduced by any tax imposed by the United States upon or with respect to retail sales, whether imposed upon retailers or consumers. This deduction does not apply to manufacturers' or importers' excise taxes.

Custom duties paid by a purchaser to the United States are not part of the consideration paid for retail sales and are thus, not includible in the sales price.

Example 1. A local telephone exchange service charge is \$5.70 plus U.S. excise tax of 57 cents. Only the \$5.70 is subject to Minnesota sales tax, since the federal excise tax is imposed upon the consumer. The total charge will thus be \$5.70 plus four percent of \$5.70 (i.e. 23 cents) plus the federal tax, 57 cents, or a total of \$6.50.

Example 2. A retailer sells brand X tires for \$28 plus applicable taxes. The federal manufacturers' excise tax is \$2.32. The Minnesota sales tax is four percent of \$30.32 (\$28 plus \$2.32) or \$1.21. Gross receipts reportable by the retailer in respect of this transaction are \$30.32.

Example 3. A retailer purchases a camera for \$500 in Europe and is required to pay a customs duty of \$37.50 thereon at the time of entry in the United States. The use tax due is four percent of the \$500 sales price of the retail sale, or \$20.

Statutory Authority: *MS s 297A.29*

8130.1800 GROSS RECEIPTS DEFINED; METHOD OF REPORTING.

Subpart 1. Gross receipts. The sales tax is imposed upon the gross receipts from sales at retail. "Gross receipts" are herein defined as the total amount received in money or otherwise for all sales at retail (see Minnesota Statutes, section 297A.01, subdivision 4) as measured by the sales price. (See Minnesota Statutes, section 297A.01, subdivision 8.)

The person filing the return may report his 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 will be 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 his income for tax purposes, unless he 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 by him for other purposes) will not prevent or make difficult an orderly and systematic audit of his records by the commissioner. An application shall be made to the commissioner for permission to change the method of reporting.

Subp. 2. Cash basis. Where sales are made at retail on a strictly cash basis,

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the vendor shall report his 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.01, subdivision 8, and 297A.25.

Subp. 3. Accrual basis. Where a person reports income on the accrual basis, he is required to report his gross receipts as the sales are made, minus the exclusions and deductions from the total consideration allowed under Minnesota Statutes, sections 297A.01, subdivision 8, and 297A.25, regardless of when cash from such sales is received.

Example 1. A supermarket's gross sales for May 1968, 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
	<hr/>
Gross receipts adjusted	\$199,000
Sales of exempt property	\$175,000
Less: refunds for exempt property returned	1,000
	<hr/>
	\$174,000
	<hr/>
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 1968. 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 297A.29*

8130.1900 RETAILER.

Subpart 1. Defined. A "retailer" is any person engaged in making sales at retail. A "sale at retail" or a "retail sale" as defined in Minnesota Statutes, section 297A.01, subdivision 4, means a sale for any purpose other than resale in the regular course of business. Under Minnesota Statutes, section 297A.01, 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 in accordance with Minnesota Statutes, section 297A.01, subdivision 10, and this part.

Subp. 2. Examples. For illustrative purposes, a partial listing of retailers 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 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 furnishes, prepares, or serves food, meals, or drinks to a customer for a consideration (see Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), for exceptions);
- 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, tourist court, 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.01, subdivision 3, paragraph (e));

K. a person who furnishes, for a consideration, electricity, gas, water, steam, or local exchange telephone service, or intrastate toll telephone service;

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.01; and

M. a person who machines castings, threads pipes, or processes lumber for customers who have furnished the material.

Statutory Authority: *MS s 297A.29*

8130.2000 AGRICULTURAL PRODUCTION.

Subpart 1. Scope and general rule. Under the provisions of Minnesota Statutes, section 297A.01, subdivision 13, the term "agricultural production" (as used in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h) includes the terms "horticulture," "floriculture," "raising of pets, fur-bearing animals, research animals, and horses."

"Agriculture" is the art or science of cultivating the ground, 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.

"Horticulture" is the cultivation of a garden or an orchard; the science of growing fruits and vegetables and flowers or ornamental plants.

"Floriculture" is the cultivation of ornamental flowering plants.

The above activities, for the purpose of the Sales and Use Tax Law 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 such 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.

Subp. 2. Examples. The following examples are illustrative.

A. A homeowner grows a few vegetables and flowers in his back yard for his own use. This activity does not constitute agricultural production. Consequently, no exemption is allowed for seeds, fertilizers, etc., purchased by the homeowner.

B. A keeps two pedigreed cocker spaniels as show dogs. Each litter of pups born to the female is sold by A. As A is not regularly engaged on a commercial scale in the breeding and raising of such dogs, no exemption for feeds or other items used is allowed.

C. Z raises white mice, hamsters, and other animals which he sells to various laboratories, research institutions, and hospitals. The animals so sold are used for experimental purposes. Although Z devotes only part of his time to this activity, nevertheless breeding and raising of these animals is for commercial purposes and is deemed to be agricultural production.

D. A kennel boards dogs and also raises pedigreed dogs for sale to the public. Materials, chemicals, fuels, feeds, electricity, etc., used in raising the animals held for sale are exempt. The materials and other items used for the purpose of caring for dogs boarded at the kennel are taxable.

Statutory Authority: *MS § 297A.29*

ADMINISTRATION OF THE SALES TAX

8130.2300 IMPOSITION OF SALES TAX.

The measure of the tax imposed upon the seller is four percent of the gross receipts of such person from sales made at retail after October 31, 1971, except that in the case of sales made at retail through coin-operated vending machines, the tax imposed upon the seller shall be three percent of the gross receipts from sales of taxable items. Vending machines are any coin-operated devices dispensing food, drinks, or tangible personal property or providing amusement.

With respect to sales made after October 31, 1971, the actual-tax-collected method may not be used by the seller to reduce his liability to an amount less than that computed on the basis of gross receipts, as set forth in this part.

Statutory Authority: *MS s 297A.29*

8130.2400 CLAIM THAT ADVERTISING TAX WILL BE ABSORBED; MIS-DEMEANOR.

Subpart 1. General authority. Under Minnesota Statutes, section 297A.03, subdivision 2, it shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, either directly or indirectly, that the tax imposed by the Sales and Use Tax Law will be absorbed or assumed by such retailer, or that the tax will not be added to the sales price, or that, if added, such amount or any part thereof will be refunded to the purchaser.

Example. Advertised or marked price of a taxable item is \$99.99. When the sale is made, the seller will collect \$99.99 plus four percent sales tax (\$4), or a total of \$103.99. The seller, if he so chooses, can advertise the item as "\$99.99 plus tax" or as "\$99.99 plus \$4 tax" or as "\$103.99 including Minnesota sales tax."

Subp. 2. Computation. In the computation of the amount of tax to be collected on any transaction, amounts of less than one-half cent may be disregarded and the amounts of one-half cent or more shall be considered as an additional cent. Thus, on a sale of 12 cents or less, the purchaser pays no tax; on a sale between 13 cents to and including 37 cents, he is required to pay one cent tax; on a sale between 38 cents to and including 62 cents, he is required to pay two cents tax; on a sale between 63 cents to and including 87 cents, he is required to pay three cents tax; on a sale of 88 cents to and including \$1.12, he is required to pay four cents tax; on a sale in excess of \$1, he is required to pay four percent on each full dollar plus the appropriate amount from the brackets above.

Statutory Authority: *MS s 297A.29*

8130.2500 APPLICATION FOR PERMIT TO MAKE RETAIL SALES.

Subpart 1. In general. Generally, the tax imposed by the Sales and Use Tax Law is required to be collected by the seller and subsequently remitted to the commissioner in accordance with the provisions of the Sales and Use Tax Law. Minnesota Statutes, section 297A.04, requires that any person, as defined in Minnesota Statutes, section 297A.01, subdivision 2, who is engaged in making retail sales or is engaged in other activities taxable under the Sales and Use Tax Law, shall obtain a sales and use tax permit from the commissioner. Such a person includes not only a seller located in Minnesota, but also a seller located outside Minnesota who is authorized to do business within Minnesota, or who is authorized under Minnesota Statutes, section 297A.15, to collect the tax upon all transactions taxable under the Sales and Use Tax Law.

Subp. 2. Nontaxable retail activities. Where a person engages in retail activities exclusively nontaxable, he is not required to apply for or secure a permit.

Example 1. F engages in the sale of poultry and eggs at his farmhouse. He engages in no other retail activities. As such food products are exempt under Minnesota Statutes, section 297A.25, subdivision 1, F is not required to secure a sales and use tax permit.

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Example 2. A bakery engages in the sale of bakery goods for consumption off its premises. Since such food products are exempt, the bakery is not required to secure a sales and use tax permit.

Subp. 3. Multiple locations. Where a person who is required to secure a permit has more than one place of business wherein he engages in activities subject to tax under the Sales and Use Tax Law, and he elects to file a separate return for each place of business, he is required to file a separate application for each such business location. He will thereafter receive a permit which may be used only at the address indicated therein. A separate permit will be assigned to each such place of business. Members of a group of corporations related by stock ownership, where such members are engaged in making sales at retail, are required to make individual applications.

Subp. 4. Consolidated return. In the event a person elects to file a consolidated return, he is required to submit to the commissioner a list containing the business name and address of each separate place of business. In such event, the applicant need submit but one application to the commissioner. (However, see subpart 7 regarding the payment of permit fees where the election to file a consolidated return is made.) Thereafter, he will receive a permit for each location with the appropriate information contained therein. Each of such permits will bear the same sales and use tax account number. If, thereafter, he elects to file a separate return for one or more of his places of business, a new account number should be secured for the business location for which such separate return is filed. See part 8130.2600 regarding application for new permits.

Subp. 5. Vending machines. Where the person required to secure a sales and use tax permit operates vending machines in more than one location, he shall not be required to secure a separate permit for each such location. Vending machines include, but are not limited to, coin-operated machines that dispense soft drinks, coffee, tea, milk, candy bars, sandwiches, soups, and items of tangible personal property such as combs, hair dressings, etc. Included in this definition are coin-operated devices providing amusement and diversion. These devices are commonly referred to as juke boxes, pinball machines, shuffleboards, etc.

Example. V operates 50 coffee and soft drink vending machines at various locations. He is required to secure only a single permit.

Subp. 6. Information required. Application for a permit shall contain the following information:

A. the legal form of organization; that is, individual, partnership, Minnesota corporation, foreign corporation, association, etc.;

B. date when taxable sales were first made or date when taxable sales are expected to begin;

C. name and mailing address to which sales tax forms are to be sent;

D. Minnesota tax department identification number, unless no such number was previously 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; e.g., retail trade, wholesale trade, manufacturing, motion picture theater, hotel, bowling alley, dance hall, etc.; and

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

Such applications shall be signed by the owner, if a natural person, by a partner if the applicant is a partnership, or by a person authorized to sign if the applicant is a corporation or an association.

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Subp. 7. **Fee.** At the time of making an application, the applicant shall pay the commissioner a fee of \$1 for each permit applied for. Where the applicant elects to file a consolidated return as provided in subpart 4, he is required to pay a \$1 permit fee for each location.

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 and payment of the \$1 fee, although the business may be continued under the same name.

B. Admission of a new partner or resignation, expulsion, or death of a partner requires a new application and payment of the \$1 fee, although the business may be continued under the same name.

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, requires the issuance of a permit reflecting the changed name or address. As no application is required by law, the permit holder will be issued the corrected permit upon request. As a matter of policy, the old permit should accompany the request. Payment of the \$1 fee is not required.

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 297A.29*

8130.2600 PERMIT WHEN VALID AND HOW DISPLAYED.

Subpart 1. **Permit issued by commissioner.** Generally, after the applicant has complied with the provisions of Minnesota Statutes, sections 297A.04 and 297A.05, the commissioner will issue a separate permit for each place of business for which application was made unless the commissioner, in order to assure compliance with the Sales and Use Tax Law, deems it necessary for the applicant to deposit security. (See Minnesota Statutes, section 297A.28.) In that event, the commissioner will issue the permits requested at the time the applicant has complied with the additional provisions regarding the security requested.

Subp. 2. **Permit revocation.** The permit issued shall be valid until revoked in accordance with Minnesota Statutes, section 297A.07, and shall not be assignable. Such permit shall be valid only for use by the person in whose name it is issued and for the transaction of business at the place designated therein. Thus, where there has been a change of ownership, so that the liability for payment of the sales and use tax is shifted either wholly or in part, or where there has been a change in name or in location of the business enterprise, the permit is no longer valid. In such cases, the permit holder must apply for a new permit. The procedures for securing a permit described in Minnesota Statutes, sections 297A.04, 297A.05, and 297A.06, are applicable where there has been a change in ownership. Where there has been a change in name or in the business location without a change in ownership, a new permit containing the changed name or address will be issued without charge upon return of the permit previously issued.

Example 1. P, a sole proprietor, applies for and is issued a permit under the business name of Modern Tobacco Shop. Subsequently, P sells the business to Q who continues the business activities under the same trade name. The permit

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previously issued to P is no longer valid as there has been a shift in the liability for payment of the sales and use tax from P to Q. An application for a new permit plus the \$1 fee is required to be submitted.

Example 2. A and B, as partners, apply for and are issued a permit under the business name of Downtown Jewelry Store. Subsequently, C is admitted as a partner. The business name and the location remain the same. The permit previously issued to A and B, as partners, is no longer valid as the admission of C as a partner resulted in a shift of the liability for the sales and use tax. An application for a new permit, plus the \$1 fee is required to be submitted.

Example 3. X, Y, and Z, between themselves, own 100 percent of the stock of Building Materials, Inc. A permit is applied for and issued in the corporate name. Subsequently, X sells all of his stock to Z. The permit holder, Building Materials, Inc., continues to transact business at the same location and under the same name. The permit previously issued is still valid as the liability for payment of the sales and use tax, which was previously imposed upon the corporate entity at the time the permit was issued, remains.

Example 4. A permit was applied for and issued in the name of General Trading Company, Inc. Subsequently, the name is changed to General Discount Corporation. The permit issued to the General Trading Company is no longer valid as a permit shall be valid only for the person in whose name it is issued. A new permit will be issued without charge upon return of the permit issued to General Trading Company, Inc.

Example 5. A permit was applied for and issued in the name of John Jones, 100 Main Street, Anytown, Minnesota. Subsequently, John Jones moves his quarters across the street to 115 Main Street. As a permit shall be valid only for the transaction of business at the place designated therein, a new permit containing the new address will be issued without charge upon return of the old permit.

Subp. 3. Shifting or temporary locations. Where a permit holder is primarily engaged in taxable activities which require him to shift his location from place to place, such change in location shall not be deemed to be a change of address. However, such permit holder, upon filing his sales and use tax return at the time required to do so under Minnesota Statutes, section 297A.27, shall include a list of the locations at which he transacted business during the period in question and the dates applicable to each such location. In the event such permit holder engages in taxable activities in two or more dispersed locations within the same general area, he may display his permit at one location and photocopies of such permit at his other locations.

Example 1. A concessionaire at the state fair grounds during state fair week who operates several concessions may display his original permit at one location and photocopies thereof at his other locations.

Example 2. A permit was applied for and issued to the Deluxe Carnival Company, whose permanent office is 250 Main Street, Anytown, Florida. The carnival moves from town to town in Minnesota and sets up its tents and equipment in lots temporarily rented. The permit granted to the Deluxe Carnival Company is valid, and must be displayed at each temporary location.

Subp. 4. Display and surrender. A permit issued by the commissioner shall at all times be conspicuously displayed. A permit revoked by the commissioner shall be surrendered to the commissioner immediately upon notice of revocation. (See Minnesota Statutes, section 297A.08, regarding penalties for engaging in retail sales without the required permit or permits.)

Statutory Authority: *MS s 297A.29*

NOTE: Minnesota Statutes, section 297A.05, was repealed by Laws of Minnesota 1983, chapters 301, section 235; and 327, section 6.

8130.2700 REVOCATION OF PERMITS.

Subpart 1. In general. The permit or permits issued to any person, hereinaf-

ter referred to as the permit holder, under Minnesota Statutes, sections 297A.04, 297A.05, and 297A.06, may be revoked or suspended by the commissioner if the permit holder fails to comply with any of the provisions of the Sales and Use Tax Law.

Subp. 2. Hearing requirement. The commissioner shall not revoke or suspend the permit holder's permit or permits prior to granting him a hearing. Such hearing shall not be held unless the commissioner has served notice in writing at least 30 days prior to the date for such hearing. The commissioner may serve personal notice upon the permit holder or he may make such service by mail. (Special Session Laws 1967, chapter 48, section 96, permits the commissioner of revenue to serve notice by regular mail in all cases if he deems the use of regular mail advisable.) Such hearing shall be conducted by an administrative law judge appointed by the chief administrative law judge pursuant to the Administrative Procedure Act, Laws of Minnesota 1975, chapter 380. The hearing shall be held at the time and place specified in the notice of hearing.

Subp. 3. Transcript. An official record of the testimony and exhibits presented at the hearing shall be prepared by the administrative law judge. If the permit holder wishes to secure a transcript of the procedures, such transcript will be available from the Office of Administrative Hearings upon payment of the fee prescribed by the administrative law judge.

Subp. 4. Findings and conclusions. The administrative law judge will submit to the commissioner his findings and conclusions. The final decision of the commissioner will not be made until the report of the administrative law judge has been made available to parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present arguments to the commissioner.

Subp. 5. New application. If the commissioner with reasonable cause after the hearing either revokes or suspends the permit or permits of the permit holder, the latter may submit a new application in accordance with Minnesota Statutes, sections 297A.04, 297A.05, and 297A.06. Such application shall be accompanied by reasonable evidence that the permit holder intends to comply with the provisions of the sections of the law or the regulations which he had previously violated. Under Minnesota Statutes, section 297A.07, the commissioner may request that the permit holder deposit any security in addition to that authorized by Minnesota Statutes, section 297A.28 that the commissioner deems reasonably necessary in order to insure compliance by the permit holder.

Subp. 6. Appeal. An alternative procedure is available to the permit holder. He may appeal the commissioner's order revoking or suspending his permit or permits to the Minnesota tax court in accordance with Minnesota Statutes, chapter 271.

Statutory Authority: *MS s 297A.29*

History: *L 1984 c 640 s 32*

NOTE: Minnesota Statutes, section 297A.05, was repealed by Laws of Minnesota 1983, chapters 301, section 235; and 327, section 6.

8130.2800 RETAIL SALES WITHOUT PERMIT; VIOLATION.

Any person required under the provisions of Minnesota Statutes, section 297A.04, to apply for a permit and who fails to do so, or whose application for a permit has been denied, or whose permit has been either revoked or suspended by the commissioner without subsequent reinstatement shall be guilty of a misdemeanor if he engages in the business of making sales at retail. Under Minnesota Statutes, section 297A.01, subdivision 4, a retail sale is defined as "a sale for any purpose other than resale in the regular course of business." Where the vendor engages in the business of making retail sales in Minnesota without the required permit as a corporation, each officer of such corporation shall be guilty of a misdemeanor.

Such misdemeanor charge shall be brought before the municipal court having jurisdiction to hear, try, and determine violations subject to misdemeanor charges in the city, village, or borough where the retail sale without permit was made.

Where a vendor is engaged in making sales at retail at more than one location without the necessary permit or permits, separate misdemeanor charges may be brought before each municipal court having jurisdiction.

Statutory Authority: *MS s 297A.29* .

8130.2900 PRESUMPTION THAT TAX MUST BE PAID.

Subpart 1. General rule. Under Minnesota Statutes, section 297A.02, the gross receipts of a retailer are subject to the sales tax of four percent. Minnesota Statutes, section 297A.09, provides that all gross receipts are presumed to be subject to tax unless the contrary is established. Under this section, the burden of proving that a sale was not a sale at retail is upon the seller.

Subp. 2. Overcoming the presumption. For overcoming the presumption of subpart 1:

A. The presumption that a sale is a sale at retail may be overcome if the seller accepts and retains for his records an exemption certificate given to him, by the purchaser, stating that the property so purchased is for resale.

B. Under Minnesota Statutes, section 297A.10, the exemption certificate will conclusively relieve the retailer from collecting and remitting the tax only if taken in good faith from a person who holds a permit.

C. The presumption that all gross receipts are subject to tax may be overcome if the seller accepts from the purchaser an exemption certificate to the effect that the property purchased is exempt under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h) or (i), as materials used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail, or as tangible personal property used or consumed in, or which becomes a part of, any publication regularly issued at intervals not exceeding three months. An exemption certificate so accepted will relieve the retailer from collecting and remitting the tax only if taken in good faith.

D. The presumption that all gross receipts are subject to tax may be overcome if the seller accepts from the purchaser an exemption certificate to the effect that such purchaser is exempt from paying the tax under the Sales and Use Tax Law.

E. The presumption that all gross receipts are subject to tax may be overcome if the seller accepts from the purchaser an exemption certificate stating that the purchaser has been granted a direct pay permit.

Statutory Authority: *MS s 297A.29*

8130.3000 GOOD FAITH ACCEPTANCE OF EXEMPTION CERTIFICATES.

Subpart 1. In general. Minnesota Statutes, section 297A.09, creates a presumption that all gross receipts are subject to tax, but permits the seller to accept exemption certificates to the effect that the property was purchased for resale, or that the sale is otherwise exempt under the Sales and Use Tax Law.

Subp. 2. Reasonable care. Where a sale is made to a person claiming to purchase the property for resale, the presumption that the sale is subject to tax, will be conclusively overcome only if the retailer accepts a resale exemption certificate in good faith from the purchaser. Although the seller is under no duty to ascertain beyond all reasonable doubt that the purchaser is acquiring the property for resale, the provision that he act in good faith requires the seller to exercise reasonable care and judgment before accepting the resale exemption certificate. The good faith provision requires that the seller accept only certificates meeting the requirements of Minnesota Statutes, section 297A.11.

Example 1. A supplier sells to retail customers at list, and to automotive repairmen at 60 percent of list. He receives an order for a new generator from an automobile garage operator with whom he has had no prior transactions. The generator, which has a list price of \$25, is sold, after routine investigation, to the automobile garage operator for \$15 (60 percent of list). The sale to the automobile garage operator at the discount price indicates that the resale exemption certificate offered by the purchaser was taken in good faith. Consequently, the supplier will be conclusively relieved of the duties of collecting and remitting the tax otherwise due on the sale. Had the supplier sold the generator at the list price of \$25, he would not be conclusively relieved of the duty of collecting and remitting the tax due thereon even though he had accepted a resale exemption certificate.

Example 2. A jeweler orders a living room set from a distributor of furniture and offers a resale exemption certificate which states that the jeweler is engaged in the business of selling jewelry at retail. Since the resale exemption certificate does not indicate that the jeweler is in the business of selling furniture at retail, the distributor is not conclusively relieved of the duty of collecting and remitting the tax due on the sale of such living room furniture.

Example 3. A lumber dealer receives an order for a quantity of lumber accompanied by a resale exemption certificate. A customer specifies delivery to a construction site. Under such circumstances, the lumber dealer could not properly claim good faith acceptance of the resale exemption certificate. Without further investigation establishing that the lumber is intended to be resold, he would not be relieved of the burden of collecting and remitting the sales tax.

Subp. 3. Awareness of business activity and specific nonexempt property. Where a sale is made to a person claiming that the property purchased will be used or consumed in agricultural or industrial production, or used or consumed in the production of any publication regularly issued at average intervals not exceeding three months, the presumption that the sale is subject to tax will be conclusively overcome where the retailer takes a certificate of exemption in good faith from the purchaser. The seller will be deemed to have exercised good faith provided he is aware of the type of business activity conducted by the purchaser, and provided the property claimed to be exempt is of a character normally used or consumed in the production process carried on by the purchaser. The seller is under no duty to ascertain whether the property so purchased is, in fact, actually used for the exempt purpose.

Minnesota Statutes, section 297A.25, subdivision 1, paragraphs (h) and (i), specifically state that machinery, equipment, implements, tools, accessories, appliances, contrivances, and furniture and fixtures used in such production or publication, and fuel, electricity, gas, or steam used for space heating or lighting are not included in the exemption. Consequently, the retailer or supplier could not, in good faith, accept a certificate of exemption for sales of those items since they are subject to tax.

Example. M, manufacturer, orders ten gross of screws used in producing kitchen cabinets which are ultimately to be sold at retail. In addition, he orders a drill press from the same vendor. M had previously given V, vendor, a blanket certificate of exemption relating to materials used or consumed in industrial production. The blanket exemption certificate will be applicable to the sale of screws. As machinery and equipment used in production are not exempt, V is required to collect a sales tax on the drill press.

Subp. 4. Acceptable exemption certificates. Vendors may accept the following in good faith:

A. certificates of exemption claiming exemption of purchases of railroad rolling stock and parts necessary for the maintenance and repair of such rolling stock, where such certificates are taken from railroad companies, freight line companies, sleeping car companies, and express companies which state thereon that they are subject to tax on a gross earnings basis in lieu of ad valorem taxation;

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B. certificates of exemption claiming exemption on purchases of airflight equipment, and flight simulators and parts necessary for the repair and maintenance of such equipment, where such certificates are taken from persons who state thereon that they are taxed under the provisions of Minnesota Statutes, sections 270.071 to 270.079, inclusive;

C. certificates of exemption claiming exemption on purchases of telephone central office telephone equipment which state thereon that such property will be used in furnishing intrastate and interstate telephone service to the public;

D. certificates of exemption claiming exemption on purchases of mill liners, grinding rods, and grinding balls where such certificates are taken from persons who state thereon that they are taxed under the in lieu provisions of Minnesota Statutes, chapter 298, and where such certificates state that such property will be substantially consumed in the production of taconite, while becoming a part of the material produced;

E. certificates of exemption claiming exemption on purchases of property which will be shipped or transported outside Minnesota by the purchaser without any intermediate use, which will be used in a trade or business outside Minnesota, and which state thereon that the property will not be returned to Minnesota except in the course of interstate commerce;

F. certificates of exemption claiming exemption on purchases of packing materials used to pack and ship household goods to destinations outside Minnesota and which will not be returned to Minnesota except in the course of interstate commerce;

G. certificates of exemption which state thereon that the materials purchased are on purchases of materials designed to advertise and promote the sale of merchandise or services, which material is purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside the state of Minnesota.

Subp. 5. Religious and educational organizations. Where a sale of tangible personal property is made to an organization that is organized and operated exclusively for religious or educational purposes, the seller will be relieved from the duty of collecting and remitting the tax otherwise due on the sale if he receives a certificate of exemption from the organization stating to that effect, and provided that he is reasonably certain that the purchaser is a religious or educational organization entitled to the exemption. Thus, although the seller is not obligated to investigate to determine whether the purchaser is entitled to the exemption, the seller, either from past experience or from his own general personal knowledge of the community and its affairs, should, in most cases, be able to determine whether the purchaser is the type of organization it claims to be. For example, the various schools and churches in any community are well known and, consequently, a seller would be reasonably certain that such a school or church making purchases of tangible personal property is entitled to exemption.

Subp. 6. Charitable organizations. Organizations claiming exemption as charitable organizations must establish their right to such exemption by making application to the Commissioner of revenue for a certificate of exempt status on form ST-16. Such an application may also be made by religious and educational organizations wishing to obtain a certificate of exempt status as a convenience to themselves and their suppliers. A certificate of exempt status, form ST-17, will be issued after the application and supporting documents are examined and approved. The certificate of exempt status will bear an ES number and the signature of an authorized official of the Department of Revenue. An organization holding a certificate of exempt status may reproduce the certificate as necessary to be furnished to its suppliers. A seller of tangible personal property may accept a copy of a certificate of exempt status in good faith from the organization to which it was issued.

Subp. 7. References and limitations. As to references and limitations:

A. Refer to part 8130.6200 regarding criteria for determining whether or not organizations qualify for exemption as charitable, religious, or educational.

B. As described above, the certificate of exemption or certificate of exempt status is valid for purchases made on behalf of the exempt organization, but not for purchases made for the personal use of persons affiliated with or employed by the exempt organization. The seller may be reasonably certain that such is the case if he either bills the organization for the sales price, delivers the property to the location of the organization, or accepts payment by means of a check drawn by the organization, either at the time of purchase or subsequently.

C. Refer to subpart 9 regarding meals, admissions, and lodging.

Subp. 8. Sales to United States. Where a sale of tangible personal property is made to the United States, its agencies, its instrumentalities, a state, its agencies, its instrumentalities, or its political subdivisions, the sale is exempt. The seller will be relieved of the duty of collecting and remitting the tax otherwise due on such property by accepting an authorized purchase order, payment voucher, or other document clearly showing that the purchaser is a governmental unit.

Refer to subpart 9 regarding meals, admissions, and lodging.

Subp. 9. Meals, admissions, and lodging. Although the furnishing of meals, admissions, or lodging is defined as a taxable sale by Minnesota Statutes, section 297A.01, subdivision 3, paragraph (c), it is not a sale of tangible personal property and, thus, is not within the exemptions described in subparts 5 to 8 for sales of tangible personal property to governmental, charitable, religious, and educational organizations in Minnesota Statutes, section 297A.25, subdivision 1, paragraphs (j) and (p). Accordingly, a certificate of exemption, certificate of exempt status, or governmental purchase order may not be accepted in good faith for such a sale, except in the case of sales directly to the United States government. Refer to part 8130.5700 for details.

Subp. 10. Evidence of shipment out of state. A seller is not required to collect and remit the tax on sales of tangible personal property which he delivers to a common carrier for delivery to an outstate destination, or places the property in the United States mail or parcel post directed to a purchaser outstate, or delivers the property to a purchaser outstate by means of the seller's own delivery vehicles. No exemption certificate is required under these circumstances. However, adequate evidence of shipment or delivery to the out-of-state destination must be maintained by the seller.

Statutory Authority: *MS s 297A.29*

8130.3100 CONTENT AND FORM OF EXEMPTION CERTIFICATE.

Subpart 1. In general. Minnesota Statutes, section 297A.09, provides for the furnishing of exemption certificates with respect to exempt sales. Vendors accepting exemption certificates which do not include the following five elements of a valid certificate shall not be deemed to have accepted an exemption certificate in good faith. Exemption certificates must contain the following information:

- A. name and address of the purchaser;
- B. the account number of the permit issued to the purchaser, or, if no number, state reason;
- C. the general character of the property sold by the purchaser in the regular course of business;
- D. description of the property purchased; and
- E. signature of the purchaser.

Subp. 2. Approved certificates. The commissioner has approved use of the following certificates to assist purchasers in claiming exemption.

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A. ST-3 is to be used for claiming exemption for any of the reasons listed on the certificate. (See part 8130.9912.)

B. ST-4 is to be used for claiming a percentage exemption for fuels and energy utilized in industrial or agricultural production. (See part 8130.9916.)

C. ST-5 is to be used for claiming exemption on property purchased for resale in substantially unchanged form or acquired for leasing or subleasing. (See part 8130.9920.)

D. ST-17 is to be used by the exempt organization to which it is issued for claiming exemption on purchases of tangible personal property. (See part 8130.9968.)

E. Uniform sales tax exemption certificate designed by the Multistate Tax Commission.

These certificates may be used for single purchases or for continuing future purchases. When used in this latter manner, 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 in the form except for the uniform sales tax exemption certificate which does not contain such a blank but may be used as either a single purchase or a blanket certificate.

The commissioner does not furnish exemption certificates in bulk. In order to assist purchasers in preparing their own copies, the forms approved by the commissioner are reproduced at parts 8130.9912 to 8130.9996.

Subp. 3. Charitable exemption after July 1, 1969. Effective July 1, 1969, no exemption for purchases by an organization purporting to be engaged in exclusively charitable activities shall be allowed unless the organization claiming exempt status has applied for a special exemption certificate issued by the commissioner. See part 8130.9968, pertinent to exemptions for charitable organizations for facsimile of form ST-17, certificate of exempt status to be used subsequent to June 30, 1969.

Subp. 4. Special exemption certificates. Special exemption certificates for claiming specific exemptions are also issued by the commissioner to persons who qualify upon application. Special exemption certificates in current use are form ST-14, direct pay permit, and form ST-14mc, motor carrier direct pay certificate. See parts 8130.9956 and 8130.9958 for facsimiles of these special exemption certificates.

Statutory Authority: *MS s 297A.29*

8130.3200 NONEXEMPT USE OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE.

Under Minnesota Statutes, sections 297A.09 and 297A.10, the seller may accept an exemption certificate from the purchaser on items otherwise taxable under the Sales and Use Tax Law. Under Minnesota Statutes, section 297A.12, if such purchaser should thereafter make any use of the property for which he had given an exemption certificate other than for a purpose exempt under the Sales and Use Tax Law the use thereof shall be deemed a retail sale by the purchaser as of the time first used by him, and the sales price (see Minnesota Statutes, section 297A.01, subdivision 8 regarding the calculation of sales price) shall be reported as purchases subject to use tax on the sales and use tax return.

Example 1. A retailer, engaged in making sales of TV sets, purchases ten TV sets at \$500 each and gives a resale exemption certificate to his supplier. Subsequently, he removes one TV set from stock for personal use in his home. This constitutes making use of the TV set for a purpose other than resale in the regular course of the retailer's business. Consequently, the retailer is required to include \$500 as a purchase subject to use tax.

Example 2. A manufacturer of office equipment gives an exemption certificate for material used or consumed in the process of producing such equipment.

Thereafter the manufacturer removes 20 desks from finished goods stock for use in his own offices. His accounting records disclose that the total cost of the material used in the production of the 20 desks was \$1,000. As the manufacturer made use of the material other than for a purpose exempt under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), the manufacturer is required to include in his purchases subject to use tax the retail price of the material used or consumed in manufacturing the desks, that is, \$1,000. If the manufacturer is not engaged in the business of making sales at retail and consequently, has not made application for, or been issued a permit (see Minnesota Statutes, sections 297A.04 to 297A.06), he should report the purchases subject to use tax by filing a consumer's use tax return, form UT-1, in such cases. These returns are available upon request to the Commissioner of Revenue, Department of Revenue, Centennial Office Building, Saint Paul, Minnesota 55145.

Statutory Authority: *MS s 297A.29*

8130.3300 FUNGIBLE GOODS FOR WHICH EXEMPTION CERTIFICATE GIVEN.

Subpart 1. Defined. 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. Commingled goods. If a purchaser gives an exemption certificate in respect of fungible goods as provided for by Minnesota Statutes, sections 297A.09 and 297A.10, and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the goods purchased under the exemption certificate cannot be distinguished from the other goods, sales from the mass of commingled goods shall be deemed to be sales of the goods purchased under the exemption certificate until all the nontaxable purchases have been accounted for.

Statutory Authority: *MS s 297A.29*

8130.3400 DIRECT PAY PERMIT 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 shall 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 such 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 of revenue that:

A. the nature of the business is such that the direct pay method will materially reduce the administrative work of collecting the tax;

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B. the firm's accounting system will clearly reflect the proper amount of tax due; and

C. the firm makes taxable purchases in sufficient volume to justify the expense of regular audits by the Department of Revenue.

Each request for a direct pay permit will be carefully reviewed, and each person whose application is accepted will receive a direct pay permit which will be numbered, dated, and signed by the commissioner of revenue or his delegated representative. The commissioner of revenue shall issue a direct pay permit only in those cases in which, in his judgment, it is in the best interests of the state of Minnesota to do so.

Subp. 5. Holder's duties to vendors. The holder of a direct pay permit shall furnish a copy of his direct pay permit or a statement that he holds direct pay permit number ___ dated ___ to each vendor from whom he purchases tangible personal property on which an exemption is claimed. This shall relieve the vendor from the responsibility of collecting the sales tax on purchases made by such 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, shall 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 permit 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.

Subp. 7. Permit not transferable and revocable. Direct pay permit is not transferable. The commissioner may revoke a direct pay permit at any time for failure to comply with the conditions under which such authority was granted or for any other reason constituting misuse of such authority. The direct pay permit may also be revoked where the continued use thereof is determined by the commissioner to be contrary to the best interests of the state of Minnesota.

A facsimile of the authorized direct pay permit is reproduced at part 8130.9956.

Statutory Authority: *MS s 297A.29*

8130.3500 MOTOR CARRIERS IN INTERSTATE COMMERCE.

Subpart 1. Direct payment and notice. Under Minnesota Statutes, section 297A.211, persons described in subpart 2 engaged in interstate for-hire transportation of property 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 such equipment. Electing carriers shall give notice of such election to the commissioner of revenue and shall pay taxes due in accordance with provisions of this part. Required notice shall 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 of public convenience and necessity issued by the Interstate Commerce Commission or other evidence such as the file number issued by the Minnesota Department of Public Service to verify that it is a carrier engaged in transporting tangible personal property in interstate commerce.

Subp. 2. **Persons included.** For periods prior to April 7, 1977, persons referred to in subpart 1 includes only common carriers of tangible personal property and does not include carriers which possess permits as contract carriers issued by the Interstate Commerce Commission. Subsequent to April 6, 1977, persons referred to in subpart 1 include:

A. persons possessing a certificate or permit authorizing for-hire transportation of property from the Interstate Commerce Commission or the Minnesota Department of Public Service;

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

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

Persons engaged solely in the transportation of passengers and their baggage do not come within the provisions of Minnesota Statutes, section 297A.211.

Subp. 3. **Motor carrier direct pay certificate.** A motor carrier direct pay certificate will be issued to qualified electing carriers by the commissioner of revenue and will be effective as of the date shown on the certificate. A facsimile of the authorized motor carrier direct pay certificate is reproduced at part 8130.9958.

Subp. 4. **Governing provisions.** Carriers which elect to pay the Minnesota sales and use tax under the provisions of Minnesota Statutes, section 297A.211, shall be governed by the following:

A. They shall hold or must have applied for a Minnesota sales and use tax permit. Application for such a permit, form MB-A, should accompany the carrier's notice of election if none had 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 thereto 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 certificate.

C. Mobile transportation equipment intended for use both within and without Minnesota and parts and accessories attached or to be attached thereto may be purchased or leased tax free by presenting a copy of motor carrier direct pay certificate 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, fork-lift trucks, snow-plows, local pickup and delivery vehicles, other warehouse and plant equipment, office supplies and equipment, etc.

D. Sales and 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 25th day of the month following the purchase or rental of such property. Such return shall be made on form ST-1, sales and use tax return. On line 4 of such return there shall be shown 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

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thereto, 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 thereto purchased or leased during the month by a fraction, the numerator of which is the road mileage operated during the past calendar year within Minnesota and the denominator of which is the total road mileage operated during the past calendar year. Mileage figures shall be based on records required to be maintained by the Interstate Commerce Commission. Persons qualifying for motor carrier direct pay certificate who are not subject to ICC regulations must, as a condition of qualification, maintain on a current basis the same type of mileage records that are required to be kept by persons subject to regulation by the ICC.

For purposes of the computation in subitem (2), the total cost of mobile transportation equipment and parts and accessories attached or to be attached thereto 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. Total road mileage operated during the past calendar year shall mean mileage operated by all such property including property which did not operate 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. Where 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.211, shall become effective only upon notice of such intent and return of the motor carrier direct pay certificate to the commissioner of revenue. If such election is withdrawn, subsequent reelection shall be effective only upon approval of the commissioner of revenue. Common motor carriers which do not elect to pay Minnesota sales and use tax under the provisions of Minnesota Statutes, section 297A.211, shall be governed by the following.

(1) Prior to January 1, 1972, carriers shall pay the sales and use tax directly to registered retailers on all purchases of mobile transportation equipment, parts, accessories, equipment, and supplies not exempt under the provisions of the Sales and Use Tax Law. If the retailer is not registered, the carrier shall pay the use tax directly to the commissioner of revenue.

(2) Subsequent to December 31, 1971, mobile transportation equipment subject to the motor vehicle excise tax under the provisions of Minnesota Statutes, chapter 297B, is not subject to the Minnesota sales and use tax. A motor vehicle excise tax, 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 under provisions of the Sales and Use Tax Law, 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 297A.29*

ADMINISTRATION OF THE USE TAX

8130.3800 IMPOSITION OF USE TAX.

The "use tax" is a compensating or complementary tax, reaching the use, storage, or consumption of certain items purchased for use in Minnesota. The use tax is imposed at the rate of four percent of the sales price at retail unless the sales tax previously has been paid thereon.

The use tax shall be imposed in accordance with the applicable provisions of the Sales and Use Tax Law that are controlling with respect to the imposition of the sales tax.

Statutory Authority: *MS s 297A.29*

8130.3900 LIABILITY FOR PAYMENT OF USE TAX.

Subpart 1. General rule. Minnesota Statutes, section 297A.15, imposes upon the purchaser of tangible personal property used, stored, or consumed in Minnesota, liability for the use tax until the tax has been paid to Minnesota. However, where the purchaser can satisfy the commissioner that the tax has been collected from the purchaser by a retailer who maintains a place of business in Minnesota, or by a retailer authorized by the commissioner to collect the tax, the purchaser's liability for payment of the tax due is extinguished.

Subp. 2. Collection authorization. Under the due process clause of the United States Constitution, a seller neither authorized to do business in Minnesota nor maintaining a place of business in Minnesota, may not have imposed upon him an obligation to collect a use tax for the purpose of remitting such tax to Minnesota. Where such a seller indicates that he is willing to collect a use tax on tangible personal property sold to persons located in Minnesota, authorization to do so may be granted to him provided he agrees:

A. to collect the use tax due from his customers on storage, use, or consumption in Minnesota of taxable personal property in accordance with Minnesota Statutes, section 297A.16;

B. to file a Minnesota sales and use tax return for each month on or before the 25th day of the succeeding month (see Minnesota Statutes, section 297A.26), and to remit to Minnesota the use tax so collected (see Minnesota Statutes, section 297A.17); and

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

Statutory Authority: *MS s 297A.29*

8130.4000 COLLECTION OF TAX AT TIME OF SALE.

Subpart 1. Duty to collect tax. Any corporation authorized to do business in Minnesota (see Minnesota Statutes, chapter 303 for provisions regarding foreign corporations authorized to do business in Minnesota), any retailer maintaining a place of business in Minnesota, or any seller authorized to collect use tax under Minnesota Statutes, section 297A.15, upon making sales of taxable personal property for storage, use, or consumption in Minnesota, where such items are not exempt in respect of the purchaser under the Sales and Use Tax Law, shall collect the use tax from the purchaser and give to such purchaser a receipt or other written or printed memorandum evidencing payment of the tax.

Subp. 2. Retailer maintaining a place of business in Minnesota. "Retailer maintaining a place of business in Minnesota" is defined for purposes of this part as any retailer having or maintaining within Minnesota an office, distribution house, sales house, warehouse, a manufacturer's representative, salesman, or any agent operating within this state under the authority of the retailer, whether such place of business or agent is located in Minnesota permanently or temporarily. Thus when a manufacturer's representative, salesman, or agent takes an order for merchandise and forwards the order to the out-of-state vendor who fills the order, ships the merchandise to the Minnesota purchaser, and bills the customer for the merchandise, the out-of-state vendor is required to have a permit, collect the Minnesota use tax from the customer, and remit the tax to the state of Minnesota.

Subp. 3. Outstate business. Outstate business making deliveries to Minnesota customers in its own trucks is responsible for the collection and remittance of the use 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 himself, he is then considered a vendor for purposes of administering the Minnesota Sales and Use Tax Law, and is required to have a permit and collect the sales tax from the customer.

Subp. 5. Penalty. Where such an out-of-state vendor does not have a Minnesota sales and use tax permit, any manufacturer's representative, salesman, agent, or employee of such vendor, who sells, solicits orders for, or delivers tangible personal property in this state for such vendors, is guilty of a misdemeanor which is punishable by a fine of not more than \$100 for each offense, or by imprisonment for not more than 30 days or by both such fine and imprisonment.

Statutory Authority: *MS s 297A.29*

8130.4100 UNLAWFUL TO ADVERTISE THAT USE TAX WILL BE ABSORBED.

Subpart 1. General rule. Minnesota Statutes, section 297A.18 prohibits any retailer to advertise or hold out or state to the public or to any customer, either directly or indirectly, that the use tax imposed under Minnesota Statutes, section 297A.14, will be absorbed or assumed by such retailer, or that such tax will not be added to the sales price, or that, if added, such amount, or any part thereof, will be refunded to the purchaser.

Example. The advertised or marked price of a taxable item is \$99.99. When the sale is made, the seller will collect \$99.99 plus four percent use tax (\$4), a total of \$103.99. The seller, if he so chooses, can advertise the item as "\$99.99 plus tax" or as "\$99.99 plus \$4 tax," or as "\$103.99 including Minnesota use tax."

Subp. 2. Computation. In the computation of the amount of use tax to be collected on any transaction, amounts of less than one-half cent may be disregarded and the amounts of one-half cent or more shall be considered as an additional cent. Thus, on a sale of 12 cents or less, the purchaser pays no tax; on a sale between 13 cents to and including 37 cents, he is required to pay one cent tax; on a sale between 38 cents to and including 62 cents, he is required to pay two cents tax; on a sale between 63 cents to and including 87 cents, he is required to pay three cents tax; on a sale of 88 cents to and including \$1.12, he is required to pay four cents tax; on a sale in excess of \$1, he is required to pay four percent on each full dollar plus the appropriate amount from the brackets above.

Statutory Authority: *MS s 297A.29*

8130.4200 REGISTRATION.

Subpart 1. Statutory authority. Every corporation authorized to do business in Minnesota (see Minnesota Statutes, chapter 303, for provisions regarding foreign corporations authorized to do business in Minnesota) and every retailer maintaining a place of business in Minnesota (see Minnesota Statutes, section 297A.16) making sales of items subject to the imposition of the use tax under Minnesota Statutes, section 297A.14, shall secure a sales and use tax permit from the commissioner of revenue. The provisions of Minnesota Statutes, sections 297A.04 and 297A.05 shall be applicable to any corporation or retailer subject to this part.

Subp. 2. Scope. Any corporation or retailer authorized to collect the use tax pursuant to Minnesota Statutes, section 297A.15, shall file an application for a permit under Minnesota Statutes, sections 297A.04 and 297A.05.

Subp. 3. Required information. Each such applicant shall furnish the commissioner with the names and addresses of all his agents operating in Minnesota and the location of each of his distribution and sales houses or offices or other places of business within this state.

Statutory Authority: *MS s 297A.29*

NOTE: Minnesota Statutes, section 297A.05, was repealed by Laws of Minnesota 1983, chapters 301, section 235; and 327, section 6.

8130.4300 PROPERTY BROUGHT INTO MINNESOTA.

Subpart 1. **General rule.** Except as provided in Minnesota Statutes, section 297A.25, subdivision 3 (which exempts personal property from the tax where brought in by a nonresident just prior to becoming a resident), Minnesota Statutes, section 297A.23, casts upon any purchaser of tangible personal property the burden of proving that items subject to the imposition of a use tax under Minnesota Statutes, section 297A.14, which were shipped or brought into Minnesota by such purchaser subsequent to July 31, 1967, were not purchased from a retailer for storage, use, or consumption in Minnesota. 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 which 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.23.

Example 1. A contractor with his principal place of business in Wisconsin is engaged to construct a portion of an interstate highway in Minnesota. In order to perform the work, he brings into Minnesota various pieces of heavy equipment previously purchased and used in his road building activities in other states. The contractor's records substantiate the previous purchase and use of this equipment outside Minnesota. Accordingly, no use tax is due.

Example 2. Same facts as in example 1 except that the contractor purchases three additional pieces of equipment necessary for the Minnesota job and has such equipment delivered into this state. Consequently, the presumption that the three additional pieces of equipment were purchased for initial use in Minnesota cannot be overcome by contractor.

Subp. 2. **Credit for tax paid to other state.** Whether a use tax is due and payable to Minnesota depends upon whether a tax has been paid to some other state. Such credit is limited to sales or use tax paid to any other state of the United States. In this connection see Minnesota Statutes, section 297A.24.

Statutory Authority: *MS s 297A.29*

8130.4400 CREDIT AGAINST USE TAX.

Subpart 1. **General rule.** Under Minnesota Statutes, section 297A.24, a credit is allowed against the use tax due under Minnesota Statutes, section 297A.14, from any person on any item purchased by such person where such item has previously been subjected to a sales or use tax in another state. The credit shall be allowed to the extent of the rate imposed on such item in the other state. If the rate imposed by such other state is equal to or higher than the rate imposed under Minnesota Statutes, section 297A.14, then no tax shall be due thereon.

Example 1. A corporation located in Minnesota purchases a special machine for delivery in state Y for \$30,000 plus six percent sales tax imposed by state Y. The corporation then transports the machine back to Minnesota in its own truck. As state Y sales tax rate is in excess of the rate imposed under Minnesota Statutes, section 297A.14, no use tax is required to be paid to Minnesota on the machine. Subsequently, B corporation purchases for delivery in Minnesota, accessory equipment for the machine from the same vendor in state Y at a cost of \$5,000. As a result thereof, no sales tax is paid to state Y on the accessory equipment. Consequently, a use tax of \$200 is due to Minnesota in respect of the accessory equipment. The unused credit of the original purchase, that is, the difference between the \$1,800 sales tax paid in state Y, and the \$1,200 use tax imposed under Minnesota Statutes, section 297A.14, may not be applied against the purchase of the accessory equipment or any other subsequent purchase made by the B corporation.

Example 2. A Minnesota resident purchases tangible personal property from a vendor in state X for \$3,000. He accepts delivery of the property in state X and

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pays a sales tax at the five percent rate imposed on sales in that state. When such property is brought into Minnesota for use in this state, a use tax return must be filed. However, as the rate upon which the sales tax was imposed in state X is in excess of the four percent rate imposed by Minnesota, no use tax is due in Minnesota thereon.

Example 3. Same facts as in example 2, except that the sales tax was imposed in state X at the rate of three percent. The amount of the use tax due to Minnesota is calculated as follows: Tax on \$3,000 at four percent (Minnesota rate) = \$120. Credit for tax paid to state X (\$3,000 at three percent) = \$90. Amount required to be paid to Minnesota, \$30.

Example 4. A Minnesota resident trades in an old machine in state V. The list price of the new machine is \$2,600, and the Minnesota resident is allowed \$1,000 trade-in allowance on the old machine. State V does not allow a deduction for value of the trade-in when determining tax liability. The Minnesota resident pays a tax of two percent of \$2,600 (\$52) to state V. The new machine is brought to Minnesota for use. The use tax imposed by Minnesota Statutes, section 297A.14, is computed as follows: tax in Minnesota, represented by the sales price of \$2,600, less \$1,000 trade-in allowance (see Minnesota Statutes, section 297A.01, subdivision 8), at the rate of four percent equals \$64. Tax on \$1,600 in state V at two percent equals \$32. Tax due to Minnesota, \$32. This calculation is based on the provisions of Minnesota Statutes, section 297A.24, which states that the provisions of Minnesota Statutes, section 297A.14, shall apply only at the rate measured by the difference between the rate fixed by Minnesota Statutes, section 297A.14, and the rate by which the previous tax was calculated.

Subp. 2. **Erroneous tax payment.** A Minnesota resident who erroneously pays a sales tax to another state may not take a credit against the tax due Minnesota on his Minnesota return. Credit is allowed against the tax due Minnesota if the Minnesota resident 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.

Example. A Minnesota retailer purchasing appliances in Iowa for resale and paying the Iowa sales tax cannot deduct from his Minnesota sales tax return the tax paid to the state of Iowa.

Subp. 3. **Tax credit limitation.** Credit for taxes paid to other states is limited to the sales and use tax paid to another state in the United States. This credit is not allowed for taxes paid to governmental subdivisions or foreign countries.

Statutory Authority: *MS s 297A.29*

EXEMPTIONS

8130.4700 FOOD PRODUCTS.

Subpart 1. **Exemption.** The Sales and Use Tax Law exempts the sale of food products for human consumption. However, a tax is imposed on the furnishing, preparing, or serving, for a consideration, of food, meals, or drinks. See part 8130.0800, subpart 2, for criteria determining taxability.

Subp. 2. **Food products.** "Food products" include, but are not limited to, 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.

"Food products" also include the following items: baking powder and soda, breath mints, beverage powders, candy, edible cake decorations, cough drops, crackerjacks, chips (potato, corn, etc.), chip dip, cooking oils, cooking wine, flavoring, fizzies, freezer pop ingredients, food coloring, gelatin, ice cream, fruit juices, lozenges, malted milk powder, nuts, nonalcoholic cocktail mixes, raisins, saccharin and other sweeteners, salad dressing, seasonings, condiments, herbs, relishes, sauces, gravies, sherbet, shortening, soft drinks, vanilla, vitamins, tonic water, and charged water.

Subp. 3. **Not food products.** Beer, alcoholic beverages, nonedible cake decorations, Easter egg dye, gum, garden seeds, ice cubes, pet food, softener salt, distilled water, and spring water are not food products.

Subp. 4. **Mixed products.** When a package contains both food and nonfood products (a holiday basket of food or candy, trays of assorted meats, cups or glasses filled with food items, etc.) the application of the tax depends upon the relative value of the components. When the retail value of the nonfood portion of the package is ten percent or more of the total retail value, tax applies to the retail value of the nonfood portion if its price is stated separately; if the price of the package is a lump sum, tax applies to the entire price. When the retail value of the nonfood portion of the package is less than ten percent of the total retail value, the entire package is exempt.

Statutory Authority: *MS s 297A.29*

8130.4800 DRUGS, THERAPEUTIC AND PROSTHETIC DEVICES.

Subpart 1. **In general.** Minnesota Statutes, section 297A.25, subdivision 1, paragraph (b), provides for exemption from sales and use tax for therapeutic and prosthetic devices, prescription glasses, and similar products consumed by humans for the preservation of health. Also exempt are diagnostic materials for individual use and prescribed drugs and medicines (prescribed or nonprescribed) used in the cure, mitigation, treatment, or prevention of illness or disease in humans.

Devices which are not exempt because they are not inherently therapeutic include dental and surgical tools and apparatus, anesthesia equipment, diagnostic and monitoring equipment and materials, protective equipment, and items in general use, such as furniture, air conditioners, air filters, humidifiers not exclusively for use with inhalation therapy equipment, and exercise equipment.

Subp. 2. **Exempt drugs.** Items shall be deemed to be exempt drugs where they are used in the cure, mitigation, treatment, or prevention of illness or disease, or the treatment of an injury in humans, or to be consumed for the preservation of health in accordance with words, statements, or pictures on the labels of the containers of packages in which such items are sold.

Subp. 3. **Therapeutic and prosthetic devices are exempt.** To qualify for exempt status, a therapeutic device must not only be useful in the preservation of health, it must also serve to cure or heal. Exempt therapeutic devices are attached or applied to the bodies of human patients to alleviate injuries, illness, or disease, either directly or by administering a curative agent. Examples of exempt items are hypodermic syringes, oxygen tents, vaporizers, resuscitators, hospital beds, and equipment and supplies necessary for dialysis treatment.

Prosthetic devices are those which replace injured, diseased, or missing parts of the human body, either temporarily or permanently.

Subp. 4. **Cosmetics and toiletries.** Cosmetics, which are defined as articles intended to be rubbed, poured, sprinkled, or sprayed on, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering appearances are not exempt from the tax.

Toiletries are generally items used for shaving, hair dressing, and grooming purposes, and are somewhat analogous to cosmetics. Toiletries are not exempt from the tax.

Subp. 5. **Purchases by doctors of medicine and dentistry.** The purchase of materials, supplies, and equipment is subject to the sales and use tax unless the particular item purchased is itself an exempt item when purchased by an individual for his own use.

A. For example, the purchase by such professional men for use in their own office of drugs and medicines would not be subject to tax, nor would the purchase of prosthetic devices such as artificial limbs or eyes be subject to tax.

B. The purchase by doctors of medicine and dentistry of materials such

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as pumice, tongue depressors, and stethoscopes, which are not in and of themselves exempt from the tax, would be subject to tax when purchased by such professional men.

C. Sales of tangible personal property to dentists, which are to be affixed to the person of his patient as an ingredient or component part of a dental prosthetic device, are exempt from the sales tax. These include artificial teeth and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling material, teeth braces, and retainers.

D. The exemption does not apply to diagnostic equipment such as an X-ray machine, as this equipment is subject to tax.

Subp. 6. Sales and purchases by ophthalmologists, optometrists, and opticians. Sales of prescription glasses and items incidental thereto or which become parts thereof, such as carrying cases and contact lens solution, are exempt. Prescription glasses are any lenses ordered by a doctor of medicine or optometry for the correction of a patient's refractive error, for the improvement of a patient's vision, or for protective purposes. Only lenses which have been prescribed by an ophthalmologist or optometrist pursuant to an examination of the particular client are exempt, whether dispensed by the examining practitioner or by another practitioner or optician filling such prescription.

A. Over-the-counter sales of lenses and other tangible personal property without prescription therefor in accordance with the above are taxable. These include safety glasses, sunglasses, telescopes, binoculars, field glasses, opera glasses, lorgnettes, magnifying glasses, and jewelry, including spec chains.

B. Ophthalmologists and optometrists are primarily engaged in rendering professional services. The entire charge by them, comprised of fees for examining eyes and fitting glasses, and of the glasses sold pursuant thereto, are exempt whether separately stated or not. Practitioners who are engaged in sales solely of services and such prescribed glasses need not procure sales and use tax permits or file sales tax returns. Practitioners who engage in sales of taxable items in addition to services and prescribed glasses must obtain sales and use tax permits and must thereafter collect and remit taxes due thereon.

C. Opticians are primarily engaged in the business of selling tangible personal property at retail. The personal services they render are incidental thereto. They are, therefore, required to procure sales and use tax permits, and to collect and remit the tax on all sales at retail except sales of prescription glasses. Charges made by opticians for eye glasses and kindred products in filling prescriptions of ophthalmologists or optometrists are exempt.

D. Purchases by ophthalmologists, optometrists, and opticians of lenses and other items for resale to clients and customers are exempt. All purchases by them of machinery, equipment, instruments, tools, accessories, appliances, contrivances, furniture, and fixtures, and fuel, electricity, gas, or steam used for space heating or lighting, used or consumed in connection with their services or business are taxable.

Subp. 7. Guide list of exempt items. Exempt items are:

A. Drugs not requiring a prescription:

(1) analgesics (internal and external, for relief of pain or discomfort) such as Absorbine Jr., rubbing alcohol, Alka-Seltzer, aspirin, Ben-Gay, Bromo-Seltzer, Bufferin, Infra-rub, liniments, musterole, surin, and 666 Salve;

(2) antacids (for relief of acidity, stomach discomfort, indigestion) such as Alka-Seltzer, Alkoid, Bellans, Bisodol, Chooz, Co-gel, Creamalin, Gelusil, Milk of Magnesia, Rolaid, soda mint, and Tums;

(3) antiseptics (the primary ingredient of such is used for treatment of infection) such as acne preparations, alcohol swabs, Bactine, boric acid, Campho-Phenique, Desenex, Fostex, Isodine, peroxide (three percent, not for bleaching hair or other toilet purposes), PhisoHex, rubbing alcohol, Sea Breeze,

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sodium perborate, tincture of green soap, tincture of iodine, tincture of mercurochrome, and tincture of merthiolate;

(4) astringents such as Burrow's Solution and styptic products;

(5) baby needs such as antiseptic powders, lotions and talcum powders, and oils and ointments;

(6) burn remedies (for treatment of burns or to relieve pain from burns, including sunburn) such as americaine, nupercainal ointment, Surfacaine, Unguentine, Vaseline, and vitamin A-D ointment;

(7) cough and cold items such as aerosol inhalants, antihistamines such as Coricidin, Aspergum, cough or cold syrups, drops, tablets, and preparations, decongestants such as Contac, inhalants, lozenges, and rubs such as Vicks;

(8) dental and oral hygiene products such as analgesic toothache preparations and dental repair kits;

(9) diet aids (considered as foods) such as Metrecal, Nutrament, salt substitutes, and Sustagen;

(10) emollients (antiseptics, protective, antibiotic, and anti-inflammatory) such as antibiotic ointments, boric acid, Caladryl, calamine lotion, camphor ice, Kerodex Barrier Cream, lip ice, Lobana Loto Creme, and zinc oxide ointment;

(11) eye preparations (for healing, treatment, or other therapeutic use) such as contact lens solutions, drops, ointments, and washes;

(12) feminine and contraceptive needs such as creams, foams, jellies, pessaries, powders, prophylactic devices, and suppositories;

(13) first-aid products (for treatment of infection or to relieve pain) such as back plaster, band-aid, foam and moleskin products (adhesive), mustard plaster, surgical cotton, surgical dressings, surgical gauze, and surgical tape;

(14) foot products (for treatment or prevention of infections or for removal of corns or callouses) such as athlete's foot preparations or treatments and corn pads and callous plasters;

(15) laxatives, cathartics such as Alophen pills, Ex-Lax, Feenamint, Milk of Magnesia, and mineral oil;

(16) miscellaneous dosage forms such as enema preparations, insulin, rectal preparations, and suppositories;

(17) vitamin-mineral products such as brewers yeast, cod liver oil, dietary supplements, Geritol, and therapeutic vitamins.

B. Therapeutic and prosthetic devices:

(1) first-aid such as first-aid kits and infrared lamps and bulbs;

(2) hypodermic syringes and needles;

(3) medical-surgical rubber goods such as catheters, heating pads, hot water bottles, ice bags, rubber gloves and finger cots, and surgical rubber goods (colostomy devices, etc.);

(4) miscellaneous medical-surgical, such as abdominal belts and supports, batteries (hearing aid), bed-wetting prevention devices, breast pumps, cotton tip applicators (Q-tips), elastic bandage, elastic stockings, elastic supports (wrist, ankle, knee), infant syringes, medical atomizers, nebulizers, and vaporizers, suspensories, and trusses;

(5) orthopedic devices such as braces, canes, crutches, splints, and wheelchairs;

(6) surgical dressings and bandages such as elastic bandages.

C. Diagnostic agents (for individual use): Clinitest tablets; fever thermometers; Tes-Tape.

D. Miscellaneous: pesticides, such as Cuprex.

Subp. 8. **Guidelist of taxable toiletries, cosmetics, and equipment.** Taxable toiletries, cosmetics, and equipment:

A. General.

(1) Antiseptics, such as B.K. Powder, for general household cleaning agents such as Clorox bleach, Hilex, and Lysol; peroxide (20 percent) for bleaching hair and other toilet purposes.

(2) Astringents such as astringent aftershave products and astringent deodorants.

(3) Dental and hygiene products such as dental floss, liners, mouthwashes, stain removers, toothbrushes, and toothpastes and powders.

(4) Eye preparations such as cosmetics.

(5) Feminine and contraceptive needs such as belts, douche kits, sanitary napkins, and tampons.

(6) Foot products (for comfort, appearance, or cosmetic use) such as deodorizers and foot lotions (for cosmetic use).

(7) Miscellaneous items such as ultraviolet (sun) lamps and bulbs, air conditioners and purifiers, athletic supporters, atomizers for cosmetic and grooming use, baby and bathroom scales, bedpans, filter masks, humidifiers, massage appliances and furniture, medic alert bracelets, oxygen tanks, sheeting (plastic and rubber), tongue depressors, urinals, and whirlpool baths.

(8) Shaving products such as aftershave talcum powders and lotions, blades, razors, shaving cream, and soaps.

(9) Facial preparations such as face creams and makeup preparations and accessories.

(10) Fragrance preparations such as colognes, perfumes, and toilet waters.

(11) Hair care items such as combs, curlers, dandruff shampoo, dyes, hats, lotions, rinses, shampoos (all kinds except on Rx), tints, and wave sets.

(12) Hand products such as beautifiers, and creams and lotions.

(13) Suntan preparations (for tanning) such as Bronze Tan, Copper-tone, Sea and Ski tan, and Skol.

(14) Pesticides such as Black Flag spray or liquid, bug bombs, insect repellents such as 6-12, mothballs, rat poison, and D-Con.

B. Detailed listing: aftershave creams, lotions, or powders; almond meal and paste; antiperspirants; aromatic cachours (Sen Sen); astringents (aftershave, antiperspirants, cosmetic, etc.); atomizers (containing perfume and other taxable liquids); bandoline; bath crystals, bath milks, bath oils, bath powders, bath salts, bath tablets; bay rum; beauty creams, mask preparations, etc.; bleach creams and lotions (including freckle remover); bouquet liquids; breath sweeteners; brillian-tines; bubble bath preparation; cleansing creams and lotions (including those for removing stains from the skin); cocoa butter (if advertised or labeled for toilet purposes); cold cream; colognes; compacts (containing rouge or powder), compact refill cosmetics; cosmetic stocking preparations and body paints; cuticle softeners and removers; depilatories; deodorants (even though having medicinal or curative value, if advertised or labeled for use as body deodorant); deodorants (for use in closets, bureau drawers, etc., and for imparting fragrance to clothing); dusting powders; essences (and extracts, perfume); eyebrow pencil, eyelash mascara (and eyelash and brow dyes), eye shadows; face creams, face lotions (and facial oils), face packs, face powders (loose and cake form); fingerwave lotions; floral essences; foundation makeup film; freckle removers; fuller earth (if recommended for toilet purposes); glycerine and rose water; hair bleaches, hair dressings, hair dyes, hair lotions, hair oils, hair pomades, hair removers, hair restoratives, hair sprays, hair straighteners, hair tints and rinses, hair tonics; hand creams, hand lotions; henna; hypoallergenic preparations (including cleaning prepara-

tions and soaps); Kleenex; lavender water; leg makeup; lip pomade, lipsticks, and lipstick refills; liquid face powder; liquid lip color; liquid stockings; manicure preparations; mascara; mittens (containing toilet powder); mustache wax; nail bleaches, nail polishes (paste, powder, and liquid); nail whitener; Noxema; olive oil (colored or perfumed, or recommended for toilet purposes); orange flower water; orris root; perfumes, perfume ingredient kits, perfume novelties (containing perfume); permanent waving creams, lotions, neutralizer, permanent waving kits; peroxide (regardless of strength, if for use in bleaching hair or for other toilet purposes); plucking creams (for use in connection with plucking hair); pore cleansers; powder bases (liquid and cream); protective creams (having toilet claims or used as skin creams or antiperspirants); rock salt bath crystals; rose water; rouges; sachets (containing powder or aroma-producing materials); scalp lotions and ointments (for use as treatment for dry, oily, or falling hair); shampoos (except Rx); skin balms, bleaches, creams, fresheners, lotions, oils, tonics, whiteners, stain removers; shaving preparations; sunburn preventatives (if recommended for use before exposure); talcum powder; texture creams; tissue creams; toilet ammonia; toilet creams; toilet lanolin; toilet waters; tucks; vanishing creams; Washettes; water softeners (perfumed or having toilet claims); wave set (paste, powder, and lotion); witch hazel; and wrinkle removing or concealing preparations.

Statutory Authority: *MS s 297A.29*

8130.4900 CONSTITUTIONAL EXEMPTIONS.

Subpart 1. In general. Minnesota Statutes, section 297A.25, subdivision 1, paragraph (c) exempts from the provisions of the Sales and Use Tax Law, the gross receipts from the sale of, and the storage, use, or other consumption in Minnesota of tangible personal property which the United States Constitution or the state constitution exempts from taxation.

Subp. 2. Intergovernmental immunity. Thus, by reason of the doctrine of intergovernmental immunity developed by the federal courts in their construction of the federal constitution, the state of Minnesota is precluded from imposing a tax upon the federal government, its agencies, and instrumentalities.

Subp. 3. Commerce clause. The commerce clause of the federal constitution precludes the imposition of a sales or use tax when such sale or use is an integral part of interstate commerce.

Subp. 4. Due process clause. The due process clause of the 14th amendment of the federal constitution prohibits any state from attempting to tax the sale or use of tangible personal property when such sale or use occurs outside its territorial jurisdiction.

Statutory Authority: *MS s 297A.29*

8130.5000 PROPERTY SHIPPED OUT OF STATE.

Subpart 1. In general. From August 1, 1967, through May 21, 1973, sales of tangible personal property were exempt when the ultimate destination of such property was outside Minnesota and the property was not returned to Minnesota except in the course of interstate commerce. Ultimate destination as used in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (d), was defined by court decision to mean not the point of delivery to the buyer, but the point at which the beneficial use of the product would take place.

After May 21, 1973, Minnesota Statutes, section 297A.25, subdivision 1, paragraph (d), as amended, grants an exemption in either of the following two situations:

A. For property for business or personal use which the seller delivers to a common carrier for delivery outside Minnesota, places in the United States mail or parcel post directed to the purchaser outside Minnesota, or delivers to the purchaser outside Minnesota by means of the seller's own vehicles, and which is not returned to Minnesota except in the course of interstate commerce.

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B. For property which is shipped or transported outside of Minnesota by the purchaser without any intermediate use (except storage, processing, fabricating, or manufacturing into other property), is used in a trade or business outside Minnesota, and is not returned to Minnesota except in the course of interstate commerce.

Subp. 2. **Adequate records requirement.** In order to claim this exemption the seller must have adequate records to show that he caused the property to be delivered to the purchaser at his location outside Minnesota or the seller must obtain an exemption certificate from the purchaser stating that the first beneficial use of the property will occur outside Minnesota and that the property will not be returned to Minnesota thereafter unless in the course of interstate commerce.

Subp. 3. **Intermediate use.** As used herein the term "intermediate use" does not include storing, processing, fabricating, or manufacturing into, attaching to, or incorporating into other tangible personal property, but means a beneficial use consisting of consuming, enjoying, or using the property sold in a manner in which it was designed and manufactured to accomplish. For example, in the case of mobile transportation equipment, the first use would not include the using of such property to transport it immediately to a point outside of Minnesota. However, the purchase of replacement tires in Minnesota would be subject to tax.

Subp. 4. **Exemption for advertising materials.** Effective January 1, 1974, Minnesota Statutes, section 297A.25, subdivision 1, paragraph (w) provides an exemption for advertising materials which are designed to advertise and promote the sale of merchandise or services if the material is purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside the state of Minnesota.

Statutory Authority: *MS s 297A.29*

8130.5100 GIFTS; TRANSFERS WITHOUT MONETARY CONSIDERATION.

Subpart 1. **General rule.** Generally a person purchasing property to give away in any manner is the user or consumer thereof and is liable for the sales tax thereon.

Examples: all property given as personal gifts: calendars, catalogs, etc.

Except as provided in subparts 2 and 3, sales to any person in Minnesota of tangible personal property located in this state which such person gives to any other person as a gift are subject to the sales or use tax even though the vendor delivers the property directly to the donee at a point outside Minnesota and without regard to whether such delivery is made by mail, common carrier, or otherwise. It is deemed that such property is constructively delivered to the purchaser in Minnesota and that the transportation and delivery to the outstate destination is pursuant to a transfer by gift from the donor to the donee.

Subp. 2. **Advertising exceptions.** Sales to any person of tangible personal property which is designed to advertise and promote the sale of merchandise or services and which is transferred by the purchaser thereof without consideration to others located outside of Minnesota are not taxable. See part 8130.5000.

Subp. 3. **Prize exception.** Sales to any person of tangible personal property which the purchaser thereof will use as prizes or gifts for salesmen or other persons employed in such person's business outside of Minnesota are not taxable.

Statutory Authority: *MS s 297A.29*

8130.5200 CARTONS AND CONTAINERS USED BY MOVING AND TRANSFER COMPANIES.

Subpart 1. **From May 22, 1973.** From May 22, 1973, packing materials used to pack and ship household goods to a destination outside of Minnesota and not returned to Minnesota except in the course of interstate commerce are exempt.

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An exemption certificate must be furnished to the seller when such packing materials are purchased.

Subp. 2. **Before May 22, 1973.** Prior to May 22, 1973, packing materials used to pack and ship household goods are taxable. In these situations the furnishing of cartons and containers for packing and safe transport of property by trucking concerns engaged in the business of transporting property for hire is a sale within the meaning of Minnesota Statutes, section 297A.01, subdivision 3, if an applicable tariff specifies that such cartons or containers become the property of the customer or if the customer is charged a specific amount therefor on the contract or billing. Also, if the property was transported from Minnesota to a point without this state, title to the cartons or containers is deemed to have passed to the customer in Minnesota prior to use of the cartons by the carrier for packing unless it could be demonstrated that title did not pass until delivery to the destination.

In the case of use of cartons or containers for packing within Minnesota, prior to May 22, 1973, where it could be demonstrated that title did not pass until delivery at an outstate destination, or where neither the ICC tariff, contract, nor billing indicated a sale of the cartons or containers, the carrier is subject to the use tax imposed by Minnesota Statutes, section 297A.14.

Statutory Authority: *MS s 297A.29*

8130.5300 PETROLEUM PRODUCTS.

Subpart 1. **Fuels subject to Minnesota Statutes, chapter 296.** An exemption from sales and use tax is provided for petroleum products upon which a tax has been imposed under Minnesota Statutes, chapter 296, regardless of whether any part of the tax is subsequently refunded. The tax imposed by Minnesota Statutes, chapter 296, 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 296.** All fuels not subject to the tax imposed by Minnesota Statutes, chapter 296, are subject to sales and use tax unless exempted under other provisions of the Sales and Use Tax Law.

Example. Trucking company is a bulk purchaser (as defined in Minnesota Statutes, section 296.01, subdivision 19) and orders 100,000 gallons of petroleum products in October 1968. 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 1968, trucking company reports and pays the special fuel (as defined in Minnesota Statutes, section 296.01, subdivision 6) excise tax on 70,000 gallons. Trucking company files a sales and use tax return (if it has a Minnesota sales tax account number) or a consumer's use tax return (if it has no such account number) and reports as taxable the 30,000 gallons of petroleum products used by it for space heating, and pays a tax based upon the price per gallon multiplied by the 30,000 gallons not subjected to the highway use tax. See Minnesota Statutes, section 297A.14 for application of use tax.

Statutory Authority: *MS s 297A.29*

8130.5400 CLOTHING AND WEARING APPAREL.

Subpart 1. **In general.** Sales of clothing and wearing apparel are exempt from tax.

A. "Clothing and wearing apparel" means inner and outer wear, footwear, headwear, gloves and mittens, neckwear, hosiery, and similar items customarily worn on the human body for general use, and includes fabrics, thread, buttons, zippers, and other similar items which are to be directly incorporated into wearing apparel.

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"Clothing and wearing apparel" does not include patterns, thimbles, needles, pins, and other sewing equipment, jewelry, handbags, cosmetics, articles normally used or worn only in conjunction with the particular sporting or athletic activity for which they were designed, or equipment designed for use or wear only in connection with a particular work activity of the user.

B. Minnesota Statutes, section 297A.25, subdivision 1, paragraph (g), provides that an article made of fur or pelt is not considered to be clothing or wearing apparel and is, therefore, taxable. Articles made of fur or pelt and other materials are exempt only if the retail value of the fur or pelt is less than three times that of the next most valuable material. Clothing made of synthetic fur is exempt from tax.

Example 1. Retailer sells a woman's wool coat which has a mink fur trimming. The retail value of the fur is \$40; the retail value of the wool material is \$90. The sale of the coat is exempt from tax.

C. Examples of exempt items: aprons (household and shop), baby blankets (used as babies' clothing), baby buntings, bathing suits and caps, belts, bibs, blankets (baby and receiving, used as babies' clothing), boots (not more than knee high), bridal wear, buntings, caps, corsets and corset laces, costumes (except masks), diapers, diaper inserts, disposable diapers, footlets, formal wear, garters and garter belts, girdles, gloves (not designed for a specific sport), hair bows and nets, handkerchiefs, hats, head scarves, hosiery, leotards, mittens, neck scarves, neckties, overshoes, receiving blankets (used as babies' clothing), roller bonnets, rubber gloves, rubber pants (baby), scarves (head and neck), sewing materials (buttons, fabric, lace, thread, yarn, zipper), shoes and shoe laces, shower caps and clogs, slippers, sneakers, suspenders, swimsuits and caps, tennis shoes, tights, uniforms (scout, Camp Fire Girls, policemen, firemen, etc.).

D. Examples of taxable items: bags (overnight, beach, etc.), barrettes, billfolds, cosmetics (hair dyes, etc.), crib (blankets, sheets, mattress pads, rubber sheets, etc.), furs on the hide or pelts, hair clips, handbags, iron-on transfers or emblems, jewelry (bracelets, broaches, cufflinks, earrings, necklaces, pins, rings, tie clasps, and tacks), lapel pins, money belts, money clips, perfume, pocket-books, purses, sewing equipment (knitting needles, patterns, pins, scissors, sewing machine, sewing needles, tape measure, thimbles), umbrellas, wallets, watchbands, watches, wigs.

Subp. 2. **Athletic, sporting, and recreational articles.** Certain articles which may be designed primarily for use while engaging in particular sports may also be worn for general use. For example, a motorcycle or snowmobile helmet may be worn by a user traveling to and from work, or by a farmer while being transported by snowmobile from one work area to another on the farm. Articles such as these are deemed to be clothing and wearing apparel. Sales thereof are exempt. Certain articles are normally used or worn only in conjunction with the particular sporting or athletic activity for which they are designed. For example, football helmets, pads, uniforms, and shoes are designed and commonly used for a specific athletic activity and are not commonly used for other purposes. Other items, such as athletic supporters, are commonly worn only in connection with sports activities. These items are not included within the category of clothing and wearing apparel. Sales thereof are taxable.

A. Examples of exempt items: ski, snowmobile, and motorcycle suits (pants, socks, jackets, gloves, helmets and liners, sweaters, etc.), shoe pacs, insulated boots, snowmobile boots, insulated underwear and coveralls, etc., caps and hats (ski, hunting, fishing, golf, and baseball), safety shields and visors (for snowmobile and motorcycle helmets when attached and sold as an inseparable part of the helmet, and the price is not stated separately), name patches or emblems (on suits and jackets when sold attached, and the price is not stated separately), bowling shirts, sweat shirts, sweat suits, bathing suits and caps, beach capes and coats, tennis (shorts, shirts, sweaters, dresses, and shoes), hunting

(jackets and trousers, canvas or leather front, insulated or uninsulated, lined or unlined), camouflage parkas and trousers, rain wear (ponchos, jackets, parkas, shirts, and trousers), ballet and tap shoes, dancing costumes, gym suits and shorts, leotards and tights.

B. Examples of taxable items: ski boots (designed for skiing only), safety shields and visors detachable for snowmobiling or motorcycling if sold separately (that is, if helmet may be purchased with or without safety shield), goggles (nonprescription), name patches or emblems for suits and jackets if sold separately (that is, if snowmobile suit may be purchased with or without the name patches or emblems), uniforms (baseball, football, basketball, hockey, track, etc.), gloves (baseball, hockey, boxing, bowling, golf, etc.), shoes (bowling, baseball, football, track, golf, etc.), helmets (football, hockey, baseball, etc., baseball masks, chest protectors, or shin guards), shoulder pads and padding, athletic supporters, fishing boots (hip boots and waders), skin-diving suits (goggles, fins, equipment, etc.), shell belts and vest, fishermen's wading vests and jackets, hunting or game pouches and carriers, life preservers (vests, belts).

Subp. 3. **Safety and protective articles.** Articles designed primarily to provide safety or protection against injury, while the user is engaged in industrial or general job activities, are not included within the exemption provided for clothing and wearing apparel in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (g). These items are generally referred to as safety equipment and can be included within two or more of the following categories:

A. the article is principally purchased and used for the purpose of performing an industrial or general job activity;

B. the article cannot normally be purchased from retailers in the business of selling clothing and wearing apparel to the general public for everyday use; and

C. the articles contain materials that would not be needed if they were only subject to general everyday use. (i.e., Asbestos is not needed in gloves used for dress or to protect hands from general environmental conditions such as cold, moisture, dirt, etc. However, it is needed to protect hands from heat exposure not normally encountered in general everyday life such as that existing in foundry and steel making operations.)

Articles worn for general use as well as in industrial or general job activities and not includable in two of the above three categories, are considered to be within the exemption provided for clothing and wearing apparel and are exempt sales.

D. Examples of exempt items: coveralls, uniforms, work clothes, over-shoes, work shoes, cloth gloves, safety glasses and goggles (prescription), hard hats and liners.

E. Examples of taxable items: breathing masks, ear and hearing protectors, face shields, reflective or asbestos items (vests, aprons, gloves, suits, etc.), welding helmets, safety glasses and goggles (nonprescription), safety belts, finger guards.

Statutory Authority: *MS s 297A.29*

8130.5500 PROPERTY USED IN AGRICULTURAL AND INDUSTRIAL PRODUCTION.

Subpart 1. **Agricultural and industrial production.** Agricultural and industrial production includes, but is not limited to, the following: manufacturing; farming; processing of agricultural products either vegetable or animal (other than by restaurants or consumers); commercial fishing; refining; smelting or reducing minerals, ores, petroleum products, etc.; brewing and distilling of alcoholic beverages and products; printing; mining; quarrying; lumbering; generating electricity; horticulture; floriculture; raising of pets or fur-bearing animals or research

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animals or horses on a commercial basis. In addition, agricultural and industrial production includes any step or steps in the production process and the production, fabrication, printing, or processing of tangible personal property for consumers, defined as a sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (b).

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 development of the intended product. The production process ends when the completed state is achieved, except that materials used in packaging finished goods shall be regarded as used or consumed in the 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.

Quality control, testing, and research and development activities are regarded as part of the production process. The production process does not include the storage and preservation of raw materials; the handling, storage, and preservation of completed goods; or the painting, cleaning, repairing, and maintenance of equipment and facilities.

Effective January 1, 1974, the exemptions for industrial and agricultural production, provided for under the provisions of Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), have been amended to include accessory tools, equipment and other short lived items, which are separate detachable units used in producing a direct effect upon the product, where such items have an ordinary useful life of less than 12 months. Therefore, any reference, direct or indirect, to accessory tools, equipment, and other short-lived items in subparts 1 to 3, should be construed to apply to the period of August 1, 1967 through December 31, 1973. Information concerning the additional exemptions allowable as of January 1, 1974, may be found in subpart 4.

Subp. 2. Exempt materials. Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), 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. Items included in the exemption are chemicals, fuels, petroleum products, lubricants, packaging materials, feeds, seeds, fertilizers, electricity, gas, and steam. Also exempt are 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. 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 they will not be used again. Examples of such exempt materials that could qualify for this exemption are keylines, typeset, paper pan, and cake liners.

Also exempt are all forms of animal life of a kind the products of which ordinarily constitute food for human consumption.

Subp. 3. Taxable equipment. The exemption provided by Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), does not include machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, or fixtures, 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 and any repair parts for it, but also 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. Refer to subpart 2 for certain printing plates that qualify for exemption.

Also taxable are materials purchased by a person engaged in agricultural or industrial production to manufacture or fabricate equipment, tools, etc., for his own use in the production process and not intended for resale. Examples of such materials are lead used in making printing plates, metal or wood used in making patterns or jigs, and sand used in making molds.

Subp. 4. **Exemptions effective January 1, 1974.** Exemptions for industrial and agricultural production, provided for under the provisions of Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), have been amended to include "accessory tools, equipment, and other short lived items, which are separate detachable units used in producing a direct effect upon the product, where such items have an ordinary useful life of less than 12 months." To clarify the administration of this amendment the words, "separate detachable units, used in producing a direct effect, and ordinary useful life," are determined to have the following meanings.

A. **Separate detachable unit:** This refers to 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, bearings, etc. 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 are not separately stated, they will be considered as part of the basic machine and taxable. Subsequent replacement of these items will be considered exempt. In addition to the basic machine and its repair parts, hand tools such as hammers, pliers, and clamps, wrenches, screwdrivers, crowbars, etc., are not considered to be separate detachable units and are thus taxable.

B. **Used in producing a direct effect:** Accessory tools, equipment, and other short-lived items are included within this definition if they are used or consumed in industrial or agricultural production in a manner which 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, rollers, etc., that only serve to move the product from place to place.

The phrase "used in producing a direct effect upon the product" shall not be deemed to imply a requirement for a direct physical contact with the product. Items which do not come into contact with material being processed and are not the agents which by direct contact with the product produce physical or chemical changes shall nevertheless be 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 item (or any part thereof) being produced. Such items shall be considered as used in producing a direct effect since the desired change in the material being acted upon is accomplished only by the combined effect of such items acting in conjunction with the items which actually have the direct physical contact with the product.

Items which are used in creating and/or maintaining a condition which must prevail before a desired physical or chemical change can be effected on a product are not considered as being used to produce the direct effect, i.e., the physical or chemical change sought in the material being processed.

To illustrate the application of this principle the following examples of qualifying and nonqualifying items are set forth:

(1) **Circuit board drill tapes** - these tapes coordinate where holes are to be drilled on the circuit board and electronically guides the drilling apparatus

to the proper position. Without this tape being used in conjunction with the drilling apparatus the circuit board would not be able to be manufactured.

(2) Master tapes from which copies are made are the media which determine the arrangement of the magnetic materials on the copy and are therefore considered to be used in producing the direct effect resulting in the reproduction.

(3) Photographic transparencies are used in conjunction with light to produce a desired effect which the light alone would not produce.

(4) Examples of items not meeting the criteria are: drill extension bars, drill chucks, burner tips. While these items might be considered to be separate detachable units they neither cause the physical or chemical change which might be associated with their use, nor is their use for the purpose of determining the shape, contour, etc., of the item.

C. Ordinary useful life: An item will be considered exempt if the ordinary useful life to the taxpayer is less than 12 months, and the item qualifies as an expense rather than a capital item for federal income tax purposes. This can be done by providing evidence that prior purchases of similar items had useful lives of less than 12 months. If the taxpayer can prove that his ordinary practice demonstrates a useful life of less than 12 months, then he need not provide that all such items are similarly treated. The taxpayer's normal practice and experience will be determinative. Junking, scrapping, wearing out, or disposition of the item is conclusive evidence of the end of its ordinary useful life. Retention subsequent to usage is not evidence of continued useful life unless the item is again held for use or put into use in the taxpayer's ordinary production process.

Subp. 5. Packaging materials. For packaging materials:

A. 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. The term "packaging material" includes nonreturnable containers, but does not include returnable containers except as otherwise specified herein.

Price tags, shipping tags and address labels, invoices, and advertising matter to be used in connection with the sale of property or to be enclosed with property sold are not included within the meaning of packaging materials.

B. Returnable containers constitute equipment and in general do not come within the scope of the exemption provided under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h). However, purchases subsequent to December 31, 1973, of returnable containers for use in packaging food and beverage products are within the exemption by specific statutory authorization.

Returnable containers include steel drums, barrels, bottles, boxes, cases, tanks, gas cylinders, sacks, cans, etc., which are designed and ordinarily used for more than one-time use as containers. They are customarily expected or required to be returned by customers to the vendor of the contents 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 to the vendor. Regardless of the condition or appearance of the container, it will be deemed to be a returnable container if the vendor required a deposit or payment from the customer, and if there is an implied agreement that the deposit will be refunded upon return of the container. Containers which customers fail to return will not affect the taxable status of such containers. Deposits charged customers as security for the return of containers are not subject to tax if such amounts are separately stated on the invoice or billing.

Amounts for materials consumed in the repair or reconditioning of taxable returnable containers are taxable unless the provisions of part 8130.0200, subpart 4 apply.

C. Internal components are materials used inside of packages and containers in order to shape, form, preserve, stabilize, or protect the contents. Examples include: excelsior, straw, cardboard fillers; separators; shredded paper; ice; dry ice; cotton batting; laths; sawdust; and other items of a similar nature. Returnable internal components other than those purchased subsequent to December 31, 1973, for use in packaging food and beverage products are equipment and are not within the packaging materials exemption. Nonreturnable internal components are packaging materials.

D. Sales of bracing, blocking, skidding, shoring, and other materials commonly known as dunnage are exempt to persons engaged in industrial or agricultural production of tangible personal property when used in connection with the shipment of their products to customers. However, sales of these same items to vendors of transportation services are taxable unless otherwise exempted by Minnesota Statutes, sections 297A.01 to 297A.44.

E. Sales of packaging materials such as bags, wrapping paper, boxes, clothes hangers, etc., to vendors of personal services do not come within the exemption provided in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), and are taxable. For example, a dry cleaning establishment is a vendor of cleaning and laundering services and uses bags, wrapping paper, and clothes hangers when returning customers' property. Sales of such items to the dry cleaning establishment are taxable.

Meat locker operators are vendors of personal 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, etc., 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.

Statutory Authority: *MS s 297A.29*

8130.5600 PUBLICATIONS.

Subpart 1. **In general.** The exemption of certain gross receipts from the sales and use tax provided for by Minnesota Statutes, section 297A.25, subdivision 1, paragraph (i), is related to publications regularly issued at average intervals not exceeding three months.

Generally the exemption applies to gross receipts from sales of:

A. such publications;

B. any advertising contained in or with such publications;

C. tangible personal property (other than paper products or ink products), fuel, electricity, gas, or steam used or consumed in the production of any such publication. (See subpart 3 for rules regarding paper and ink.)

Machinery, equipment, etc.; furniture and fixtures; fuel, electricity, gas, or steam used for space heating or lighting are not exempt under this provision.

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 legal newspaper as defined by Minnesota Statutes, chapter 331, 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 printed and 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 so-called "shop-pers guides" distributed by a publisher, where space in such publication generally

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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 legal newspaper.

Subp. 3. Paper and ink. Taxability of paper and ink products used in producing publications exempt under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (i), should be determined as follows.

A. Purchases in period August 1, 1967 through October 31, 1971, are exempt.

B. Purchases in period November 1, 1971 through December 31, 1973, are taxable except paper and ink used as specified in items D and E.

C. Purchases subsequent to December 31, 1973, in excess of \$100,000 in any calendar year for use on any publication are taxable except when used as specified in items D and E.

D. Paper and ink used in printing an exempt publication of an exempt entity shall not be subject to tax whether such products are purchased by the exempt entity or by a printer who has contracted to print such publication.

E. The tax shall not apply to paper and ink used in printing any exempt publication as herein defined, which pursuant to a sale as defined in the Sales and Use Tax Law:

(1) is mailed or shipped to an out-of-state location of an out-of-state purchaser; or

(2) is mailed or shipped to an out-of-state subscriber whether the publisher is located in or outside of Minnesota.

Paper and ink purchased for use in producing any publication by a printer who is not also the publisher may be purchased by such printer exempt from sales and use tax provided he gives to the vendor an exemption certificate prescribed by the commissioner. The publisher of such a publication will be subject to a use tax based upon the cost of such paper and ink products, unless he is exempt under items D and E.

The person deemed to be producing a publication is the owner and operator who controls the format and who charges advertisers for the privilege of inserting advertisements in his publication, whether or not he prints such publication or pays another to do the printing.

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.25, subdivision 1, paragraph (i), shall also be exempt. It is further provided that such advertising shall be deemed

to be the rendition of a service and not tangible personal property. Further, that persons or their agents engaged in the publication or sale of advertising material shall be deemed to be engaged in the rendition of a 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 297A.29*

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

Subpart 1. In general. The exemptions provided in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (j), to the United States, its agencies and instrumentalities, or to any state and its agencies, instrumentalities, and political subdivisions, and the exemptions provided in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (p), to organizations operated exclusively for charitable, religious, or educational purposes, apply only to the sale or use of tangible personal property.

Subp. 2. Meals, admissions, or lodging. The furnishing for a consideration of meals, admissions, or lodging as provided in Minnesota Statutes, section 297A.01, subdivision 3, paragraphs (c), (d), and (e) is not considered the sale or use of tangible personal property.

No exemption from the sales and use tax is therefore allowed for meals, admissions, or lodging furnished to governmental entities or organizations exempted under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (p), their employees, or agents, even if the 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 meals and 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 297A.29*

8130.5800 ISOLATED OR OCCASIONAL SALES.

Subpart 1. In general. As provided in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (k), the sales or use tax does not apply to isolated or occasional sales of tangible personal property made by a person who is not engaged in selling such property in the normal course of business. The term "isolated" is defined as standing alone or solitary. The term "occasional" is defined as occurring at infrequent intervals or as incidental or as casual; that is, as distinguished from events of a similar nature recurring with some degree of regularity.

Subp. 2. Isolated or occasional sales. The following transactions are considered to be isolated or occasional sales:

A. Infrequent sales of a nonrecurring nature made by a person not engaged in the business of selling tangible personal property.

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

Example 2. Sales by executors, administrators, trustees, and other fiduciaries in the liquidation of an estate, except inventory or stock in trade.

Example 3. Sales or executions pursuant to a court order or by a court officer.

B. Infrequent sales of a nonrecurring nature of tangible personal proper-

ty acquired for use or consumption by the seller, and not sold in the regular course of business of such person.

Example 1. The sale of a typewriter by an insurance company which does not regularly dispose of such equipment.

Example 2. The sale of used machinery, fixtures, equipment, and similar items by a person engaged in a business or occupation such as manufacturing or operating a retail store, where such person does not sell such items in the regular course of business. Owner may retain services of auctioneer if sale is conducted on owner's premises and owner's identity is disclosed.

Example 3. The sales of an entire business by the owner thereof except that the transfer of inventory or stock in trade constituting a part of such sale is not exempt as an isolated sale.

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 a bulldozer to X which was previously used in its business by leasing to others. Inasmuch as leases constitute sales, 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 sale of stock in trade or other property of a kind which would properly be included by a manufacturer, wholesaler, retailer, jobber, or other vendor in inventory, even though such sales are infrequent and only comprise an insignificant fraction 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 which 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. 4. **Garage sales and flea markets.** A "garage sale" is a sale by a person or persons selling their excess personal belongings in a garage, porch, backyard, basement, etc. If the items sold have not been collected or purchased for the purpose of resale, the sales are isolated or occasional. If a person collects or purchases items for resale, he is deemed to be in business, and must obtain a sales and use tax permit and collect and remit tax on his sales of taxable items.

A gathering of vendors selling their merchandise at one location is commonly referred to as a "flea market." A flea market differs from a garage sale in that the vendors collected or purchased or manufactured the merchandise with the intention of reselling it. Each vendor at a flea market must obtain a sales and use tax permit and collect and remit tax on his sales of taxable merchandise.

A fee paid for leasing an area in a flea market is not a lease of personal property and is not taxable.

Admissions to flea markets are not taxable.

Subp. 5. **Sales by nonprofit organizations.** Sales of tangible personal property by nonprofit organizations at bazaars, fairs, picnics, rummage sales, or similar events will be deemed to be isolated or occasional if two nonconsecutive days of such sales or less are held in any calendar year. If more than two sales are held in any calendar year or if a sale is held for two or more consecutive days, all sales are subject to tax. If tangible personal property is sold at such an event by a person holding a sales and use tax permit, other than the nonprofit organization, the sales by such person would be taxable.

A sale made by a nonprofit organization at which only items exempt from tax under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (a), (b), or (g) are sold shall not be included as an event for purposes of this subpart.

Example 1. Nonprofit organization X conducts sales on two nonconsecutive days during the calendar year, the first on January 15, 1971, and the second on February 18, 1971. As no more than two such events of one day's duration each occurred during the calendar year, the sales made at such events are exempt as isolated or occasional sales.

Example 2. Nonprofit organization Y conducts a sale on April 15 and 16, 1971. Y does not conduct any other sales during 1971. As this event was longer than one day's duration, the sales made constitute sales in the regular course of business, and Y is required to secure a sales and use tax permit, collect the tax due, and remit same to the commissioner, unless such sales are otherwise exempt under the Sales and Use Tax Law.

Example 3. Nonprofit organization Z conducts a sale on March 15, 1971, and another sale on May 10, 1971. Z reports no gross receipts, pursuant to the provisions of this subpart exempting such sales. On December 5, 1971, Z conducts a sale of property taxable under the Sales and Use Tax Law. Consequently, sales made at this event, as well as the previous sales made on March 15, 1971, and May 10, 1971, are nonisolated sales, and Z is required to secure a sales and use tax permit and to report the gross receipts from all three events that occurred during the calendar year.

Example 4. Same facts as in example 3, except that the sale by nonprofit organization Z held on December 5, 1971, is a bake sale at which only exempt food products for home consumption are sold. The bake sale held on December 5, 1971, does not constitute a sales event; consequently, nonprofit organization Z has not exceeded the limitation of two events of a single day's duration, and the previous sales will be deemed to be isolated or occasional sales.

Subp. 6. **Occasional meals.** While the furnishing, preparing, or serving of meals or drinks for a consideration generally constitutes sales within the meaning of the Sales and Use Tax Law, such sales are not sales of tangible personal property and thus do not come under the exemption for "the isolated or occasional sale of tangible personal property" provided in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (k). However, occasional meals served by charitable or church organizations are specified in the statute as not being included in the meaning of sale and accordingly are exempt from tax. See part 8130.0800, subpart 5, regarding the status of meals by charitable or church organizations.

Subp. 7. **Admissions.** The granting of the privilege of admission to places of amusement or athletic events and the privilege of use of amusement devices is a taxable sale under Minnesota Statutes, section 297A.01, subdivision 3, paragraph (d). However, such sales are not sales of tangible personal property and thus do not come under the exemption for the isolated or occasional sale of tangible personal property provided in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (k).

Statutory Authority: *MS s 297A.29*

8130.5900 ROLLING STOCK.

Subpart 1. **General rule.** The sales and use tax does not apply to sales of rolling stock to, and the storage, use, or other consumption of such property by railroads, freight line companies, sleeping car companies, and express companies which are subject to gross earnings taxes in lieu of ad valorem taxes.

Subp. 2. **Defined.** For purposes of this exemption, "rolling stock" includes all portable or movable equipment, apparatus, or machinery which moves on railroad tracks and all parts necessary for repair and maintenance of such property.

Fuels, lubricants, cooking utensils, glassware, flatware, linens, and all other items used or intended for use with rolling stock, that are not an integral part of such equipment, are not included within the meaning of rolling stock.

Motor vehicles and other portable or movable equipment which are not intended for use on railroad tracks shall not be included within the meaning of rolling stock.

Statutory Authority: *MS s 297A.29*

8130.6000 AIRFLIGHT EQUIPMENT.

Subpart 1. General rule. The sales and use tax does not apply to sales of airflight equipment to and the storage, use, or other consumption of such property by airline companies which are subject to tax under the provisions of Minnesota Statutes, sections 270.071 to 270.079.

Subp. 2. Defined. For purposes of this exemption, "airflight equipment" includes airplanes, aircraft communications and navigational equipment, flight crew equipment, flight simulators, hydraulics and all parts that are affixed thereto and become component parts thereof including hydraulic fluids, parts necessary for the repair and maintenance of such equipment, and all property subject to assessment under Minnesota Statutes, sections 270.071 to 270.079.

"Airflight equipment" shall not be deemed to include lubricants, repair equipment and tools, ramp equipment, or other equipment such as broilers, dishes, food boxes, thermos jugs, blankets, etc.

Statutory Authority: *MS s 297A.29*

8130.6100 TELEPHONE CENTRAL OFFICE TELEPHONE EQUIPMENT.

Subpart 1. General rule. The sales and use tax does not apply to sales and use of telephone central office telephone equipment used in furnishing intrastate and interstate telephone service to the public.

Subp. 2. Defined. "Telephone central office telephone equipment" shall include electrical instruments, apparatus, and equipment with central office functions, regardless of location, which is used in switching or in transmitting traffic and operating signals. It shall also include equipment and apparatus used for testing and training.

"Telephone central office telephone equipment" as defined above shall include all items of equipment or apparatus included in either account 221 or 234 and PBX boards of 100 lines or less included in account 231 of Telecommunications, title 47, chapter 1, part 31, Uniform System of Accounts, Class A and Class B telephone companies, of the Federal Communications Commission's rules and regulations, United States Code, title 47, as revised through March, 1971, except as provided below. "Telephone central office telephone equipment," however, shall include no item of equipment or apparatus not included within either account 221 or 234, except PBX boards specified above.

"Telephone central office telephone equipment" shall not include desks and tables not equipped with central office equipment, kitchen and dining room equipment, chairs, cabinets, ladders, small tools, typewriters, portable electric fans, and the like which do not form an integral part of the central office equipment and apparatus, whether or not such items may be included within account 221 or 234.

Subp. 3. Exemption certificate. Since the exemption is conditioned upon the use of such equipment in the furnishing of telephone service to the public, persons claiming such exemption shall apprise vendors through use of an appropriate exemption certificate of the fact that the equipment is intended for such use.

Subp. 4. Repair parts. The sales and use tax does not apply to repair parts purchased for use in the repair or modification of telephone central office telephone equipment as specified above.

Statutory Authority: *MS s 297A.29*

8130.6200 CHARITABLE, RELIGIOUS, AND EDUCATIONAL ORGANIZATIONS.

Subpart 1. **In general.** Minnesota Statutes, section 297A.25, subdivision 1, paragraph (p), 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 ... is to be used in the performance of charitable, religious, or educational functions" The property purchased must be used in the performance of the charitable, religious, or educational function of the tax exempt organization.

For example, 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. However, purchases of bingo equipment such as bingo cards and accessory bingo equipment by churches for fund raising are taxable as being property purchased for use in nonreligious functions.

Although the furnishing of meals, admissions, and lodgings are defined in Minnesota Statutes, section 297A.01, subdivision 3, paragraphs (c), (d), and (e) as sales, they are not sales of tangible personal property and cannot be exempted under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (p), when purchased by a charitable, religious, or educational organization.

For purposes of brevity and convenience, charitable, religious, or educational purposes will be referred to as "exempt purposes," and an organization, society, association, foundation, or institution organized and operated exclusively for exempt purposes will be referred to as an "exempt organization."

Subp. 2. Charitable defined. "Charitable" is used in its generally accepted legal sense and includes relief of the poor, underprivileged, distressed, and defective, the care of the sick, the infirm, or the aged; erection or maintenance 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; and combating of community deterioration and juvenile delinquency.

Subp. 3. Religious defined. "Religious" refers to an institution that conducts worship services at regular intervals in a structure owned, leased, or borrowed for that purpose, and organizations affiliated with or related thereto, which exist exclusively for the furtherance of the religious purposes of the institution.

Subp. 4. Educational defined. "Educational" relates to 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 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, and youth athletic and recreational programs such as Little League. Other educational institutions include museums, zoos, planetariums, symphony orchestras, 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. In order to be an exempt organization, an organization must be organized and operated exclusively for exempt

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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 benevolent 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.

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.

The fact that an organization is nonprofit does not necessarily make it an exempt organization. The following are examples of nonprofit organizations which do 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, or other similar purposes; and volunteer employee benefit associations. Thus, such organizations as Masons, Knights of Columbus, B'nai B'rith, League of Women Voters, Chambers of Commerce, retail and credit trade associations, and American Legion 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.25, subdivision 1, paragraph (p), 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 is either organized or operated to make substantial attempts to influence legislation or intervene or participate in a political campaign (including the publishing or distributing of statements).

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 creator or his 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.

F. Effective July 1, 1977, an exempt organization will lose its status as an exempt organization under Minnesota Statutes, section 297A.25, subdivision

1, paragraph (p), if the employer, who employs ten or more individuals who are residents of the state, fails to provide qualified health insurance for its employees pursuant to Laws of Minnesota 1976, chapter 296.

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. A religious or educational organization may furnish properly completed certificates of exemption, forms ST-3, in making exempt purchases of tangible personal property. A charitable organization must apply for and receive a certificate of exempt status, form ST-17, and furnish copies of that certificate in making exempt purchases of tangible personal property. As a matter of convenience for themselves and their suppliers, religious and educational organizations may also apply for and receive certificates of exempt status.

The application for certificate of exempt status, form ST-16, is available upon request from the Sales and Use Tax Division. The application should be fully executed and submitted with the necessary supporting documents. No charitable organization making purchases after July 1, 1969, shall be entitled to make such purchases exempt from the sales and use tax unless a certificate of exempt status has been issued by the commissioner of revenue.

If 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.

Statutory Authority: *MS s 297A.29*

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 not subject to tax, 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 therefrom of 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 not taxable if such charges are stated separately. If the transportation or installation labor charges are not separately stated, the tax is applicable to the entire sales price.

C. Where a cemetery constructs the foundation upon which a memorial is to be placed, and collects the charges therefor from the memorial dealer, who then either collects that amount as a separate charge from his 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

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therefor. The cemetery, under such circumstances, is merely acting for the memorial dealer.

D. In the event that 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.25, subdivision 1, paragraph (h)).

Statutory Authority: *MS s 297A.29*

8130.6400 DISABLED VETERANS; PURCHASES OF AUTOMOBILES AND OTHER CONVEYANCES.

Subpart 1. General rule. Minnesota Statutes, section 297A.25, subdivision 1, paragraph (s), provides exemption for the gross receipts from the sale of an automobile or other conveyance to a disabled veteran if the purchaser is assisted by a grant from the United States in accordance with United States Code, title 38, section 1901, as amended.

This exemption is effective for the purchase of vehicles and the purchase of any qualifying adaptive equipment purchased with federal assistance after June 30, 1971. 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 his records, to verify that the sale was properly exempt.

Subp. 3. Motor vehicle excise tax. Effective January 1, 1972, sales of automobiles or other conveyances (which are subject to Minnesota registration) are no longer subject to sales and use tax but are subject to the motor vehicle excise tax under the provisions of Minnesota Statutes, chapter 297B. A disabled veteran purchasing such items with adaptive equipment after December 31, 1971, with funds provided by the Veterans Administration under the provisions of United States Code, title 38, section 1901, as amended, 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 motor vehicle excise tax and for adaptive equipment remains the same as in subpart 2.

Statutory Authority: *MS s 297A.29*

8130.6500 AIRCRAFT COMMERCIAL USE PERMIT.

Subpart 1. **In general.** An aircraft dealer who is licensed in accordance with Minnesota Statutes, section 360.63, may make application, under the provisions of Minnesota Statutes, section 360.654, for an aircraft commercial use permit. Application for the aircraft commercial use permit, form ST-22, is available upon request from the Department of Revenue. To obtain an aircraft commercial use permit, the dealer must complete an application, form ST-22, for each aircraft for which he needs a permit. There is a \$20 fee for each permit applied for, and the permit will be issued only for an aircraft purchased after June 4, 1971.

Subp. 2. **Scope.** The permit entitles the dealer to use the aircraft, purchased exempt for the purpose of resale, for commercial purposes without payment of the use tax which otherwise would be due. It is not necessary for a dealer who purchases an aircraft for the purpose of resale to obtain an aircraft commercial use permit if the sole use is rental without an operator or demonstration in efforts to sell.

Commercial use includes any use of an aircraft in the normal course of business, such as charter service, freight transportation, and flight instructions.

Commercial use does not include personal use of the aircraft. If an aircraft is put to any personal use, the dealer becomes liable for payment of the use tax.

Subp. 3. **Limitation.** The aircraft commercial use permit may be obtained only for aircraft purchased for resale but used temporarily in revenue producing activities such as charter, instruction, crop spraying, or similar activities. This does not include the aircraft that are capitalized and listed on depreciation schedules for income tax purposes. The capitalization of assets and depreciation thereof denotes the intention to use property other than for sales inventory purposes.

Subp. 4. **Permit expiration.** The aircraft commercial use permit expires one year from the date the aircraft is purchased, regardless of the date the permit is issued. The dealer becomes liable for the use tax for the month in which the permit expires, and the purchase price must be reported on line 4 of the dealer's sales and use tax return, form ST-1. The aircraft commercial use permit must be returned with form ST-1. No credit or refund is given for the \$20 fee originally paid.

Subp. 5. **Sale of aircraft.** When the dealer sells the aircraft, the selling price must be included in his gross sales. The fact that the aircraft commercial use permit has not expired or that the dealer has reported and paid use tax on the aircraft has no effect on the taxability of the sale. The dealer must return the aircraft commercial use permit (unless previously returned) when he files his sales and use tax return for the month in which the sale was made. No credit or refund is given for the \$20 fee originally paid.

A facsimile of the authorized aircraft commercial use permit is reproduced at part 8130.9992.

Statutory Authority: *MS s 297A.29*

8130.6600 DISABLED VETERANS; PURCHASE OF BUILDING MATERIALS.

Subpart 1. **General rule.** Minnesota Statutes, section 297A.25, subdivision 1, paragraph (u), of the Minnesota Sales and Use Tax Law provides exemption for the gross receipts from the sales and purchase of building materials after June 30, 1971, to be used in the construction or remodeling of a residence for a disabled veteran 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.

Subp. 2. **Procedure.** The exemption is not allowed when the building materials are sold to the contractor, subcontractor, builder, or owner, but will be

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allowed to the recipient of the benefits provided in United States Code, title 38, sections 801 and 805, as amended, upon the filing of a claim for refund, accompanied by the following documents to substantiate the validity of such claim:

A. copies of the Analysis and Review of Application for PH Grant (VA form 26-4559), which is available from the regional VA office, and claimant's letter of approval, VA form FL 26-38 (3072);

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.

The claim for refund shall be filed on form ST-11dv, which form is available upon request from the Department of Revenue.

A claim must be filed within three years from the date the building materials were purchased. A claim will not be entertained for materials purchased prior to July 1, 1971. Interest shall be payable from the date of filing such claim.

Statutory Authority: *MS s 297A.29*

8130.6700 TEXTBOOKS.

Subpart 1. **In general.** Minnesota Statutes, section 297A.25, subdivision 1, paragraph (v), exempts the sale of textbooks which are prescribed for use in a course of study in a public or private school, college, university, business or trade school to regularly enrolled students.

Subp. 2. **Definitions.** For the purposes of this part, the following words, terms, and phrases shall have the meanings ascribed to them below:

A. "Textbooks which are prescribed for use in a course of study" are defined as any book or other printed 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. "Public school" is defined as one that furnishes courses of study, enrollment, and staff that meet standards of the State Board of Education.

C. "Private school" is defined as one which under the standards of the State Board of Education provides an education substantially equivalent to that furnished at a public school.

D. "Business and trade schools" are defined as those schools licensed pursuant to Minnesota Statutes, section 141.25.

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

F. "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. **Criteria for determining taxability; exemption certification.** As a general rule, the sale of all textbooks shall be regarded as taxable. However, if a purchaser certifies that the book to be purchased is specifically required for a course of study at a qualifying educational institution and that he is a regularly enrolled student at such institution, the book may be purchased exempt. Such certification must contain the student's signature, the date, the purchase price of the exempt book, and the following statement:

"I HEREBY CERTIFY: That I am a regularly enrolled student in a course of study at a public or private school, college, university, business or trade school, and that the textbooks purchased exempt on this date are specifically required for a course of study at such educational institution."

A vendor receiving such certification from a purchaser is relieved from the responsibility of collecting the tax, provided he accepts the certification in good faith and retains the certification in his records.

Compliance with this part may consist of a listing of student's signatures, purchase dates, and purchase amounts entered beneath the certification statement.

Statutory Authority: *MS s 297A.29*

8130.6800 TACONITE PLANT CONSTRUCTION AND EXPANSION EXEMPTIONS.

Subpart 1. General rule and requirements. Minnesota Statutes, section 297A.251, exempts from the sales and use tax materials, supplies, and equipment used or consumed in constructing or incorporated into a new taconite plant or the expansion of an existing taconite plant, if such expansion results in an increase in production capacity of at least ten percent. Included in this exemption is the lease of equipment used in construction. In order for the exemption to be applicable, the following criteria must be met:

A. The construction must have been started prior to February 1, 1975.

B. The materials, supplies, or equipment must have been purchased after October 30, 1971.

C. The materials, supplies, or equipment must have been used or consumed in connection with such construction or incorporated into the new plant or plant expansion before July 1, 1978.

D. In the case of leased equipment, the lease payments must have been made for periods beginning after October 30, 1971, and ending prior to July 1, 1978.

E. The purchaser must be the owner, a construction contractor, or construction subcontractor.

Subp. 2. Property exempt. Property exempt is:

A. All tangible personal property physically incorporated into the construction such as bricks, cement, steel beams, electrical supplies, glass, woodwork, paint and paint supplies, pipes and valves, aluminum sheathing, wood and composition sheathing, lumber, plastics, roofing and wallboards, lighting fixtures, plumbing and bathroom fixtures, furnaces, boilers and heating units for space heating, prefabricated cabinets, and central air conditioning units.

B. Materials and supplies not incorporated in construction but consumed with construction. Included in this category are items such as lubricants, oxygen and acetylene, items used by field offices and shops including electricity, fuel, office supplies, toilet and washroom supplies.

C. Equipment purchased for and used in construction of the plant. In the case of equipment used in the construction of a taconite plant, which equipment meets all of the criteria specified in subpart 1 and which has a useful life beyond the date of completion of the construction, or July 1, 1978, whichever occurs earlier, and which is thereafter not incorporated into the plant, a use tax shall be due on a portion of the purchase price in the ratio that the estimated remaining useful life bears to the estimated useful life at the time of acquisition. The period of the estimated remaining life shall commence with the date the use of the equipment on the plant is discontinued or July 1, 1978, whichever is earlier.

D. Equipment which is part of the operational facility but not incorporated into the construction. Examples of items included in this category are: drilling machinery, bulldozers, draglines, haul trucks, portable pit offices, dump shacks, office equipment, desks, portable lockers, warehouse shelving, fork lifts, vacuum cleaners, lunch room tables and chairs, etc. In the case of a plant expansion such items shall be exempt only to the extent related to the expanded

facility. Equipment purchased for replacement of equipment in or for the previously existing plant does not come within the exemption.

Subp. 3. Motor vehicles. Motor vehicles for which registration is required under the provisions of Minnesota Statutes, chapter 168, are not included within the exemption. Motor vehicles not subject to such registration may be exempt if qualified under subparts 1 and 2.

Subp. 4. Application for taconite plant material exemption. To qualify for the exemption from sales or use tax on purchases of tangible personal property or lease of equipment, made pursuant to contracts for construction of a new plant or the expansion of an existing plant, a contractor or subcontractor must file with the Sales and Use Tax Division a copy of the construction contract and an Application for Taconite Plant Material Exemption, form ST-7TP. Where an owner purchases or leases tangible personal property which he will incorporate into the construction of a new plant or expansion of an existing plant, a letter of application must be submitted to the Sales and Use Tax Division, unless the owner is the holder of a direct pay permit. In the case of an approved application, an exemption certificate and number will be issued to the applicant.

Statutory Authority: *MS s 297A.29*

NOTE: Minnesota Statutes, section 297A.251, was repealed by Laws of Minnesota 1983, chapter 327, section 16.

8130.6900 SENIOR CITIZEN ORGANIZATIONS.

A 1974 amendment to Minnesota Statutes, section 297A.25, subdivision 1, paragraph (p), effective August 1, 1974, allows an exemption to any senior citizen group organized and operated exclusively for pleasure, recreation, and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholder. Senior citizen groups are eligible for exempt status if they meet two requirements. One, they must be formally organized for pleasure, recreation, or other nonprofit purpose. Two, they must limit their membership to senior citizens who have attained the age of 65 years or over. To receive exempt status certificate (ST-17) a senior citizen group must make application on form ST-16.

Statutory Authority: *MS s 297A.29*

8130.7000 RESIDENTIAL HEATING FUELS.

Subpart 1. Scope. In general, Minnesota Statutes, section 297A.25, subdivision 1, paragraph (w), exempts from sales and use tax, "the gross receipts from the sale of residential heating fuels in the following manner":

A. "all fuel oil, coal, wood, steam, propane gas, and LP gas sold to residential customers for residential use";

B. "natural gas sold for residential use to customers who are metered and billed as residential users and who use natural gas for their primary source of residential heat, for the billing months of November, December, January, February, March, and April";

C. "electricity sold for residential use to customers who are metered and billed as residential users and who use electricity for their primary source of residential heat, for the billing months of November, December, January, February, March, and April."

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, are exempt from the sales and use tax for the billing months of November, December, January, February, March, and April after March 31, 1978. When gas or electricity is exempt as a heating fuel, all other gas or electricity used through the same meter shall also be exempt for the six-month period.

All sales of fuel oil, coal, steam, propane gas, and LP gas sold to residential

customers for residential heating after March 31, 1978, are exempt from the sales and use tax. This exemption applies on a year-round basis. These fuels must be delivered to the residence in order to be exempt. All fuel oil, coal, steam, propane gas, and LP gas delivered to a residence is assumed to be used for residential heating and exempt. All fuel oil, coal, propane gas, and LP gas that is not delivered to a residence is taxable. Sales of firewood are exempt as residential heating fuel whether delivered or picked up by the customer. Sales of artificial fireplace logs are not exempt from the sales and use tax.

Exemption certificates may be required by the vendor to establish eligibility for the residential heating fuel exemption.

Subp. 2. Description of terms. For purposes of this exemption, the following definitions shall be applicable:

A. "Residential use" means use for general household purposes including cooking and water heating. It does not include use in travel trailers, motor homes, or other recreational vehicles. The use of fuel to heat fish houses is taxable since these are not regarded as residences.

Where a building, which houses both residential quarters and a commercial operation, contains one central heating plant for the entire building, heating fuels supplied to or for such heating plant shall be regarded as used for residential use if less than 50 percent of the square footage of the building is used for commercial operations.

B. "Residential customers" and "residential users" shall include persons billed for sales of residential heating fuel for single family homes, duplexes, townhouse units, condominium units or buildings, apartment units, apartment buildings, mobile homes, fraternity or sorority houses, and rooming houses.

C. The "billing month" for natural gas or electricity is the month the bill is dated regardless of when the service was rendered. Bills dated April 1978, will qualify for the exemption. "Billing month" is 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. In any event, each qualifying customer shall receive six months of service exempt from taxation.

D. The "primary source of residential heat" shall be that source which heats the largest square footage of floor space. Where 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 shall be that source which supplies more than any other source for the largest period of time during the heating season.

The effective date of this rule is April 1, 1978. Any tax on heating fuel previously collected on the basis of earlier rulings, inconsistent with this rule shall be refunded or credited by the vendors to their customers.

Subp. 3. Examples. The following are examples where a residence has more than one source of heat or where the residence is also used as commercial property.

Example 1. A owns a building with a restaurant on the first floor, which he operates. A 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.

Example 2. B heats his home with natural gas. B adds an addition to his home, which is heated with electricity. The largest square footage of the floor space is heated with gas. Since only that 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 exempt because the primary source of heat for the entire residence is natural gas.

Example 3. C owns and operates a resort. He 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 a resort owner 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 square feet is for commercial use; and as 1,600 square feet is for residential use, the heating fuel is exempt.

Example 4. D is a dentist, who has his dental office in his 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.

Example 5. A person uses fuel oil to heat his home, but uses electricity to provide additional heat in the basement. What is exempt? All fuel oil delivered to the residence is exempt starting April 1, 1978, but as the electricity is not the primary source of heating the residence, it is taxable.

Example 6. LP gas dealer delivers gas to individual homes at a mobile home park. How can he determine if the LP gas is used for heating? LP gas delivered to a residential customer is deemed to be for heating purposes and exempt.

Example 7. A customer heats his residence with natural gas and is on a budget plan with a local utility. Will his budget payments be less for the months of November through April? No, the utility does not pay the sales tax on the monthly payments, but they pay in on actual consumption. The customer's monthly payments would remain the same, but the customer would not be paying a sales tax on gas during the six-month period.

Example 8. A resort uses LP gas to heat the owner's residence and five rental units from the same tank. At the end of the season, the rental units are closed down and only the owner's residence consumes LP gas. Should the rental units which are not operational during the winter be included in determining if the customer is a residential user? Yes, but the seasonal use of the rental units is considered in determining if the commercial use exceeds 50 percent (see example 3).

Statutory Authority: *MS s 297A.29*

PAYMENTS, RETURNS, ASSESSMENTS, AND COLLECTIONS

8130.7300 WHEN TAX IS DUE.

Subpart 1. General rule. Generally, sales and use taxes imposed under law are due and payable at the office of the commissioner monthly on or before the 25th day of the month immediately following the month in which the taxable event or events occurred.

Subp. 2. Other reporting periods. In addition, under authorization granted to him by law (see Minnesota Statutes, section 297A.26, subdivision 1), the commissioner may authorize other reporting periods. Such authorizations may be granted provided:

A. The person desiring to file on other than a monthly basis must file form ST-12, application to file quarterly or annual Minnesota sales and use tax returns, with the Sales and Use Tax Division.

B. The application for quarterly or annual returns must be filed not later than 30 days immediately preceding the first day of a quarter period beginning on either January 1, April 1, July 1, or October 1.

C. The person applying for authorization to file on a quarterly basis must have had average sales and use tax liability of less than \$100 per month for the six-month period preceding the period for which the change in filing is requested.

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The person applying for authorization to file an annual return must have had an average sales and use tax liability of less than \$10 per month for the preceding one-year period.

If authorization to file on other than a monthly basis has been granted by the commissioner, the tax due thereunder shall be paid at the office of the commissioner on or before the 25th day of the month immediately following the close of the authorized period.

Subp. 3. Revocation of filing period. Authorizations granted by the commissioner to file sales and use tax returns, either on a quarterly or annual basis, may be revoked if:

A. the person granted such authorization is either delinquent in filing his return or in paying the tax due;

B. such person's tax liability exceeds \$300 for any subsequent quarter where the filing of quarterly returns has been authorized, or where such person's tax liability exceeds \$120 for any subsequent calendar year where an annual return has been authorized; or

C. the commissioner determines that the procedures authorized under this part unduly jeopardize the orderly and efficient administration of the Sales and Use Tax Law.

In the event that authorization to file returns and pay the tax due thereon, either on a quarterly or annual basis, is revoked by the commissioner, the person whose authorization has been so revoked shall thereafter be required to file his return and pay the tax due thereon on a monthly basis in accordance with this part.

In the event that a person authorized to file on a quarterly or annual basis ceases to engage in a kind of business which requires that he file returns under the Sales and Use Tax Law, such person shall file a final return by the 25th day of the month following the discontinuance of such business.

Statutory Authority: *MS s 297A.29*

8130.7400 UNCOLLECTIBLE DEBT DEDUCTION.

Subpart 1. General rule. Ordinarily, a deduction for bad 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, he is entitled to an uncollectible debt deduction. Uncollectible debts (commonly referred to as bad debts) shall be recognized as a deduction for sales tax purposes only when given recognition by a direct charge-off on the accounting records of the retailer. Consequently, no anticipatory or statistical method of estimating future bad debts will be allowed by the commissioner.

Example. A retailer uses the reserve method of accounting for bad debts; that is, periodically he estimates the value of accounts receivable that will become uncollectible. For the month of September, the account books reflect bad debt expenses of \$1,000 and a corresponding increase in the reserve for bad debts account. Accounts receivable actually charged off during this month were \$800 with a corresponding decrease in the reserve for bad debts account. The bad debt deduction for sales tax purposes is \$800.

Subp. 2. Deduction determination. If a debt becomes uncollectible, either in whole or in part, in a reporting period subsequent to that in which the transaction that gives rise to the bad debt occurs, the retailer may deduct such bad debt against the gross receipts for the reporting period in which the bad debt is determined to be uncollectible in accordance with the following rules.

A. If the uncollectible bad 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 shall be allowed as a deduction.

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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 shall be an 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 prior to the date the debt became uncollectible shall be applied, first to the earliest sale upon which there is an unpaid balance, and to following sales in successive order.

Example 1. S, a vendor of office furniture, sells five desks to C at \$200 per desk on January 15, 1968. S is on the accrual basis and includes in his gross receipts for January 1968, the sales made to C. Subsequently, C makes payments of \$400. In June 1968, C is unable to make further payments. C thereafter, by a common law composition, makes a pro rata settlement with his creditors. S receives a final payment of \$400 in November 1968. The remaining balance of \$200 is deemed uncollectible at that time. S, in reporting his gross receipts for the month of November, will be allowed to deduct as a bad debt the \$200 balance remaining uncollected.

Example 2. An electric power company furnishes power to an industrial production company. Of the electric power so furnished, approximately 60 percent is used in the productive process and 40 percent is used for space heating, lighting, and air conditioning the production and office premises. The industrial production company files a voluntary petition in bankruptcy on March 15, 1968. At that time, it owed the electric power company \$3,000 for power furnished. The electric power company had included in its gross receipts \$3,000, which were reported on an accrual basis, and had deducted \$1,800 as exempt sales, leaving a net of \$1,200 of taxable electric power services. At the termination of the bankruptcy proceedings in February 1969, the electric power company received a distribution of \$1,600. The uncollectible debt electric power company is entitled to deduct on the return for the month of February 1969 is computed as follows: From the total due of \$3,000, there is subtracted \$1,600, representing the amount paid to the electric power company in February 1969. This leaves a balance of \$1,400 uncollectible. This amount is multiplied by a fraction, the numerator of which is the amount taxable, \$1,200, and the denominator of which is the total amount charged for power; that is, \$3,000.

$$\text{Thus, } \$1,400 \times \frac{\$1,200}{\$3,000} = \$560.00, \text{ the amount allowable as a deduction.}$$

Example 3. A supplier, who is on the accrual basis, sells a contractor-retailer building supplies on March 15, 1968 for \$20,000. At that time, there was no debt due the supplier from the contractor-retailer. As these supplies were to be used by the contractor-retailer in the alteration of real property, the sale is taxable. On April 5, 1968, the contractor-retailer purchases tangible personal property for resale in the amount of \$8,000 from the supplier and gives to the latter an exemption certificate. On April 10, 1968, the contractor-retailer purchases an additional \$3,000 of building supplies to be used in his contracting activities. This last transaction represents a taxable sale. The contractor-retailer makes payments to the supplier during March, April, and May 1968 totaling \$8,000. Thereafter, the contractor-retailer is unable to meet his obligations. An out-of-court settlement with his creditors is reached, and on September 1, 1968, the supplier is paid \$10,000 representing final settlement of his claims. The supplier will be entitled to deduct from the amount of gross receipts he reports for the month of September 1968 uncollectible accounts computed as follows:

March 15, 1968 taxable sales	\$20,000
Payments received subsequently (total)	18,000
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Balance due	2,000
April 10, 1968 taxable sales	3,000
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Total uncollectible debt allowed as deduction on supplier's September 1968 return	\$ 5,000

The \$8,000 debt due to the supplier in respect to the April 5, 1968, transaction is nontaxable and may not be deducted subsequently.

Subp. 3. Excess carryover. In the event that the seller is entitled to a bad debt deduction in excess of the amount he is required to report for the month in which the debt is determined to be uncollectible, the balance of the deduction may be utilized in a subsequent month.

Example. Assume in subpart 2, item C, example 3 that, for the month of September 1968, the supplier was required to report \$4,000 in gross receipts before taking a deduction for the uncollectible debt of \$5,000. He would be entitled to deduct the remaining \$1,000 in a subsequent month.

Subp. 4. Repossessions. In the case of repossessions, a bad debt deduction is allowable only to the extent that the pro rata portion of all payments and credits, including the wholesale value of the repossessed article, 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.

One of the prerequisites in computing the loss on repossessed merchandise is determining the wholesale value thereof. In establishing the wholesale value on repossessed merchandise such as jewelry, furniture, appliances, etc., each case will have to be considered on its own merits. Generally, the taxpayer will be able to use the amount at which the merchandise is brought back into resale inventory.

Statutory Authority: *MS s 297A.29*

8130.7500 RETURNS AND RECORDS.

Subpart 1. Sales and use tax return. Any person to whom the commissioner has issued a permit under Minnesota Statutes, sections 297A.04, 297A.05, and 297A.06, shall file the form ST-1, sales and use tax return, prescribed by the commissioner. Form ST-1, and instructions issued as a guide thereto, contain all the information required in order to complete the return. In accordance with Minnesota Statutes, section 297A.27, subdivision 1, the form contains a statement to the effect that it is made under the penalties of criminal liability for wilfully making a false return. The return must be signed either by the person required to file it or by any person authorized by him to do so.

Subp. 2. Consumer's use tax return. Any person required to file a use tax return under Minnesota Statutes, section 297A.27, subdivision 2, and who has not been issued a sales and use tax permit, shall file a return on form UT-1, consumer's use tax return, on or before the 25th day of the month immediately following the month in which the property subject to use tax was first brought into Minnesota.

Subp. 3. Consolidated returns permitted. If the person required to file a return has two or more places of business at which he engages in transactions subject to tax, he may elect to file a consolidated return, form ST-1 (CON), consolidated sales and use tax return, for all such places of business under the following conditions:

A. he has been granted a sales and use tax account number by the commissioner;

B. he furnishes to the commissioner a list containing the business name and address and reporting information specified in subpart 5 for each separate place of business; and

C. he makes available at the address used by him on form ST-1 (CON), the information pertinent to each separate place of business in order that the

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commissioner may be able to perform a proper audit with respect to the return so filed.

Subp. 4. Time and place of filing. All tax returns shall be filed at the office of the commissioner on or before the 25th day of the month immediately following the month for which such taxes are due, unless authorization has been granted to the person required to file either on a quarterly or annual basis. Where a quarterly or annual filing is authorized, the return is required to be filed at the office of the commissioner on or before the 25th day of the month immediately following the close of the period authorized. If any return required under the provisions of the Sales and Use Tax Law becomes due upon a Saturday, Sunday, or legal holiday, such return shall be considered timely filed if it is filed or received upon the next succeeding regular business day.

Subp. 5. Reporting requirements. Reporting requirements are:

A. All sales and use tax returns filed shall show total gross sales in any manner related to Minnesota business (not including the sales tax collected) on line one of the return without any exclusions except for the following:

- (1) charges for personal services rendered;
- (2) labor or service charges for installing or applying goods sold if separately stated;
- (3) charges for interest, financing, and transportation incurred after the sale if separately stated;
- (4) trade-in allowances;
- (5) cash discounts and cash or credit refunds on taxable property returned by customers; and
- (6) installment payments on conditional or credit sales previously reported.

All of the above exclusions from gross sales shall be omitted from the amount entered on line one of the return. However, all such exclusions from line one shall be supported by the taxpayer's accounting records.

B. All gross sales included in line one of the return but not subject to tax under the provisions of the Sales and Use Tax Law shall be itemized on the reverse side of the return. The total of itemized deductions shall be shown on line two of the return. The itemized deductions shall be supported by the taxpayer's accounting records and shall not be computed by subtracting line three from line one of the return.

C. All sales revenues taxable under the provisions of the Sales and Use Tax Law shall be shown on line three of the return, and such amount shall be computed by subtracting line two (total gross sales not subject to tax) from line one (total gross sales).

D. All purchases not previously taxed by the vendor, and subject to the tax under the provisions of the Sales and Use Tax Law shall be shown on line four of the return without regard to the location of the vendor.

E. The sum of taxable sales plus taxable purchases from line four shall be shown on line five of the return.

F. The amount of tax due on the return shall be shown on line six and shall be computed by multiplying the amount on line five of the return by the prevailing tax rate.

G. If an error was made by reporting more or less than the correct amount of tax in a previous period, an adjustment may be entered on line eight. A detailed explanation of such adjustment must be submitted with the return. The explanation must include the following:

- (1) name;
- (2) sales and use tax account number;

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- (3) the period(s) in which the error was made;
- (4) computation to arrive at amount of adjustment; and
- (5) the reason(s) for the adjustment (attach pertinent supporting documents).

Overpayments in excess of \$500 may not be entered on line eight. Refunds of such overpayments should be requested by filing a claim for refund, form ST-11.

Subp. 6. Records; general. Every seller, retailer, and person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state shall keep adequate and complete records showing:

A. gross receipts from sales or rental payments from leases of tangible personal property (including any services that are a part of the sale or lease) made within Minnesota irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable;

B. all deductions allowed by law and claimed in filing returns; and

C. total purchase price of all tangible personal property purchased for sale or consumption or lease in Minnesota.

These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns.

Subp. 7. Records; microfilm. Microfilm reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, etc., are not acceptable in lieu of original records. However, microfilm reproductions of supporting records of details, such as sales invoices, purchase invoices, credit memoranda, etc., may be maintained providing the following conditions are met:

A. appropriate facilities are provided for preservation of the films for periods required;

B. microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed;

C. the taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for purposes of verification of tax liability; and

D. proper facilities are provided for the ready inspection and location of the particular records including modern projectors for viewing and copying the records.

A posting reference must be on each invoice. Credit memoranda must carry a reference to the documents evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transactions for which exemption is sought.

Subp. 8. Records; EDP. "Records" are defined to include punched cards, magnetic tapes, magnetic disk packs, and other machine-sensible data media used for recording, consolidating, and summarizing accounting transactions and records within a taxpayer's electronic data processing system, and all such records are required to be retained so long as their contents may be material in the administration of any provision of the Sales and Use Tax Law. Any machine-sensible records which are clearly not material to the administration of this law need not be retained. The commissioner shall decide the materiality of any such records, and if the materiality of any record is questionable, then such record

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shall be retained. It shall not be required that taxpayers retain the same data on two or more machine-sensible media, i.e., if the same data is first punched into cards and then transferred to magnetic tape, then it is not necessary to retain the punched cards since the tape must be retained. If there is a duplication of data between punched cards and magnetic tapes, then the tapes shall always be retained rather than the cards.

Although EDP accounting systems will vary from one taxpayer to another, all systems must include a method of producing visible and legible records from the machine-sensible records which will provide the necessary information for the verification of the taxpayer's tax liability. Any records required under this subpart refer to printed "hard copy" records, and do not eliminate the necessity of maintaining the corresponding machine-sensible records as also required by the first paragraph of this subpart. These requirements apply to any taxpayer who maintains any records on EDP. The records to be maintained are as follows.

A. A general ledger, with source references, to coincide with financial reports for sales tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should be written out periodically.

B. The audit trail will be designed so that the details underlying the summary accounting data, such as invoices and vouchers, may be identified and made available to the department upon request.

C. The records must provide the opportunity to trace any transaction back to the original source or forward to a final total. If printouts are not made at the time of processing, then the system must have the ability to reconstruct these transactions.

D. Adequate record-retention facilities must be available for storing all machine-sensible records as well as supporting documents.

E. A general description of the EDP portion of the accounting system includes but is not limited to:

(1) standard programming conventions and procedures including 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 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 the reconciliation of EDP controls to non-EDP controls, error listings and error logs, and any other controls, either EDP or manual, used to ensure accurate and reliable processing.

Any taxpayer retaining disbursement or revenue records on machine-sensible records for any individual original transactions, or any summary of such transactions subject to the tax under the provisions of the Sales and Use Tax Law shall separately show the amount of sales tax paid or the amount of sales tax collected. It shall be permissible, however, to group all taxable sales or all taxable purchases into various accounts, all of which are taxable, providing that if a nontaxable transaction is combined with a taxable transaction in the same account, then, with respect to each individual transaction, the tax shall be separately shown in the machine-sensible record.

Statutory Authority: *MS s 297A.29*

NOTE: Minnesota Statutes, section 297A.05, was repealed by Laws of Minnesota 1983, chapter 327, section 6.

8130.7600 COMMISSIONER MAY REQUIRE SECURITY.

Subpart 1. **In general.** In order to assure payment of the tax due, the commissioner may require that sufficient security be deposited with him by a retailer required to remit payment of the tax under the Sales and Use Tax Law.

Subp. 2. **Form of security.** The security so deposited may be in the form of corporate surety bond furnished by a surety licensed to do business in Minnesota, or United States savings bonds so registered that the proceeds will be made available to the commissioner in the event that the necessity of recovering unpaid taxes arises; or such security may be in cash or in any other form agreed upon by the commissioner and the person required to remit the tax.

Subp. 3. **Amount of security.** The amount of security furnished shall not be more than twice the estimated liability for the period, or periods, in respect of which the returns are required to be filed, or \$10,000, whichever amount is the lesser. The commissioner, from time to time, may increase or decrease the amount of security but in no event shall such increase result in total security in excess of the limitation stated in this subpart.

Subp. 4. **Sale of security property.** The commissioner may offer for sale any property deposited as security, either at public auction or by any other appropriate method usually utilized in the sale of such property, provided such sale is necessary in order to recover any tax, penalty, and interest required to be collected under the Sales and Use Tax Law.

Subp. 5. **Notice of sale.** Notice of sale of such security must be served either personally upon the person who deposited the security or by mail in the same manner as used with respect to service of notice in Minnesota Statutes, section 297A.31.

Subp. 6. **Notice of retirement.** Whenever the commissioner requires a security deposit, he shall so notify, in writing, the person from whom the deposit is required. The written notification shall be signed either by the commissioner or his authorized representative. The notice shall set forth the amount of security and the basis upon which the amount so required was computed. In addition, the notice shall inform the recipient as to the last effective date for depositing such security without incurring stated penalties.

Statutory Authority: *MS s 297A.29*

8130.7700 EXTENSION OF TIME TO FILE RETURN AND REMIT TAX.

Subpart 1. **General rule.** Whenever, in his judgment, good cause exists, the commissioner may, upon application, extend the time for filing a return and paying the tax due thereon. Such extension shall not exceed 60 days from the date on which the return and the tax thereon are due. (See Minnesota Statutes, sections 297A.26, subdivision 1, and 297A.27, regarding due dates for filing returns and remitting tax.) If an extension of time is granted, and the remittance of tax is submitted prior to the expiration of the period for which the extension is granted, the tax will be deemed to have been paid timely.

Subp. 2. **Interest payable.** When an extension of time for payment has been granted, interest shall be payable at the rate provided in Minnesota Statutes, section 297A.39 from the date when such payment should have been made if no extension had been granted, until such tax is paid.

Subp. 3. **Conditions.** Extension may be granted subject to the following conditions:

A. the application must be filed on or before the due date for filing the return;

B. separate applications must be made for each return (blanket requests for extensions will not be granted);

C. each application must be filed in duplicate;

D. the application must be signed by an applicant or his duly authorized agent; and

E. the application must be forwarded to the Minnesota Department of Revenue, Sales and Use Tax Division, Centennial Office Building, Saint Paul, Minnesota 55145, and should be submitted in an envelope marked "Extension Request."

If the application is approved, the original copy, marked "Approved," will be returned to the applicant. The application, as approved, should be attached to the completed return when filed.

(Note: Form ST-9, application for extension of time to file Minnesota sales and use tax return, is available upon request.)

Statutory Authority: *MS s 297A.29*

8130.7800 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES, AND DEMANDS.

Subpart 1. Proposed assessments. If, upon examination of the books of account and records of the person filing the return, facts are obtained which, in the opinion of the commissioner, warrant an adjustment of the tax liability reported, a proposed assessment report will be prepared and mailed to him. This report will contain an explanation of adjustments together with a recomputation of tax in accordance with such adjustments.

Subp. 2. Notice. The notice of adjustments and the demand for payment (if additional tax is due) or any other notice or demand upon the person filing the return required by law shall be sent to him at the address given in his return or to his last known address. In the alternative, the commissioner may cause to be served upon such person a written statement of the computation of tax due.

Subp. 3. Failure to protect. In the event the person filing the return acquiesces in the changes reflected on the proposed assessment report, or fails to file a protest within the period specified in the letter accompanying the proposed report, the commissioner will issue an order in accordance with the proposed assessment report, adding thereto statutory interest and penalty, if any. The commissioner in his discretion may issue an order and omit the proposed assessment report where the adjustment is noncontroversial or reflects mathematical or computational errors.

If the commissioner has reason to believe that the collection of any tax due under the Sales and Use Tax Law may be jeopardized, he may immediately terminate the reporting period of the person required to pay such tax. Thereupon the commissioner may assess a tax on the basis of information or knowledge available to him and demand immediate payment. If such payment is not immediately made, the commissioner may collect the tax by the use of any of the methods authorized by the Sales and Use Tax Law.

Subp. 4. Protest. Where a person does not acquiesce in the proposed assessment, he may file a protest within the period specified in the letter accompanying the proposed report. The proper form to be used in filing such protest follows. If, after a review of his protest, the Sales and Use Tax Division, hereinafter referred to as the division, is unable to acquiesce therein, he will be afforded an opportunity to have a hearing before a representative of the division upon request. If he is in agreement with the division after such hearing, either the proposed assessment will be canceled, or an order of the commissioner will be issued in accordance with the terms of the agreement. If the person filing the return does not acquiesce in the position taken by the division, he may request a hearing with respect to the same issues before the commissioner. A letter addressed to the commissioner and signed either by such person or by his attorney or agent is sufficient. The commissioner subsequently will notify such person of the date set for the hearing. If he does not desire a hearing, an order will be issued within a reasonable time. If a hearing before the commissioner is requested and granted, an order will not be issued until such time as the commissioner has made a final determination.

Subp. 5. Commissioner's order generally is final determination. With the exceptions of the provisions of Minnesota Statutes, sections 271.06, subdivision 5, and 271.12, the issuance of an order by the commissioner constitutes a final determination. The person filing the return is granted a period of 30 days from

the date of mailing of such order within which to file an appeal with the Minnesota Tax Court.

Subp. 6. Imposition of immediate assessment. The procedure outlined in this part shall not preclude the commissioner from imposing immediate assessments under the circumstances where the statute of limitations is about to run with respect to any return, or where the commissioner has reasonable grounds for believing that the collection of any taxes, interest, or penalties due under the Sales and Use Tax Law will be jeopardized.

Subp. 7. Order effective upon filing. Every order of the commissioner shall take effect immediately upon the filing thereof and no appeal therefrom or review thereof shall stay the execution thereof or extend the time for the payment of any tax or other obligation unless otherwise expressly provided by law, except that no order for refundment by the commissioner other than an order for the full amount of a claim for refund shall take effect until the time for appeal therefrom or review thereof by all parties entitled thereto has expired. For penalties and interest in the case of nonpayment within the 30-day period after issuance of such order, see Minnesota Statutes, section 297A.39.

Subp. 8. Protest information. The protest, of which there must be two copies submitted to the division, must be signed either by the person filing the return or by an individual authorized by him to do so, and should contain the following information:

A. the name, address, and the sales and use tax account number of the person filing the return;

B. if such person is a corporation, the state wherein incorporated, as well as its principal office or place of business;

C. the period for which the return was filed and the amount of tax in dispute;

D. an itemized schedule of the findings to which exception is taken;

E. a summary statement of the grounds upon which such person relies in connection with each exception;

F. in case a hearing is desired, a statement to that effect; and

G. in case the protest is prepared or filed by an attorney or agent, a statement, signed by such attorney or agent, indicating that he prepared it and stating whether or not he knows that the facts therein are true.

Statutory Authority: *MS s 297A.29*

8130.7900 FAILURE TO FILE A RETURN.

Subpart 1. Persons required to file. The following persons are required to file returns in accordance with the provisions of this part:

A. a retailer as defined in Minnesota Statutes, section 297A.01, subdivision 10;

B. a purchaser making use of the subject of purchases obtained with an exemption certificate for other than the exempt purpose (see Minnesota Statutes, section 297A.12);

C. a person upon whom liability for use tax is imposed by Minnesota Statutes, section 297A.14; and

D. a retailer (either located within or without Minnesota) subject to Minnesota Statutes, sections 297A.16 and 297A.17.

Subp. 2. Failure to file. Any person described above who is required to file a return and fails to do so within the time prescribed by law or by regulation, or who files an incorrect, false or fraudulent return, shall, upon the written demand of the commissioner, file the return required or the corrected return, as the case may be, within 30 days after the written demand for such return has been mailed to him, and at the same time pay any tax due on the basis of such return.

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Subp. 3. Failure to comply. If the person upon whom the written demand has been made shall fail to comply therewith, the commissioner, from his own knowledge and from such information as he can obtain through testimony or by any other means available to him, shall prepare a return or corrected return and assess a tax on the basis thereof. The tax so assessed shall be paid within ten days after the commissioner has mailed to such person a written notice of the amount thereof and a demand for its payment.

Pursuant to Minnesota Statutes, section 297A.32, any return or corrected return or assessment made by the commissioner shall be prima facie correct and valid, and the person for whom the return or corrected return was prepared and the tax thereunder assessed shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Statutory Authority: *MS s 297A.29*

8130.8000 TIME LIMITATION ON ASSESSMENT AND COLLECTION.

Subpart 1. In general. Except as otherwise provided in the Sales and Use Tax Law and except for such circumstances referred to in other regulations pertinent to Minnesota Statutes, section 297A.34, the assessment of tax for any period for which a tax is due must be made within three years from the date the return was filed. A return filed before the last day prescribed by law for filing thereof shall be considered as filed on such last day.

Subp. 2. Assessment when mailed. An assessment of taxes shall be deemed to have been made whenever the commissioner has prepared an order assessing such taxes and mailed such order to the post office address furnished on the return.

Subp. 3. Presumption of notice. The commissioner's record of the date of the order assessing the tax and the amount of tax assessed shall be presumptive evidence that the notice was duly given.

Subp. 4. Omission of 25 percent. In the case of omission from the return of a dollar amount properly includible therein which is in excess of 25 percent of the dollar amount reported in the return the tax may be assessed or a proceeding in court for the collection of such tax may be begun at any time within five years after the return was filed.

A. The dollar amount reported in the return shall mean the total taxable amount as shown on the return which includes both taxable sales and purchases subject to the use tax.

B. For purposes of computing the dollar amount of the omission there shall not be included amounts disallowed as deductions or unreported retail sales which would constitute allowable deductions in determining net taxable sales.

Example 1. A taxpayer's return stated the following:

1. Gross sales	\$500,000
2. Deductions	450,000
3. Net sales	50,000
4. Purchases subject to use tax	None
5. Total taxable amount	50,000

Upon audit it was discovered that there was omitted from the return a purchase of a machine for \$20,000 upon which no tax had been paid. The percentage of the omission is:

$$\frac{\$20,000 \text{ (dollar amount of omission)}}{\$50,000 \text{ (dollar amount reported)}} = 40\%$$

Example 2. A taxpayer's return stated the following:

1. Gross sales	\$500,000
2. Deductions	440,000
3. Net sales	60,000

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4. Purchases subject to use tax	10,000
5. Total taxable amount	70,000

Upon audit it was determined that deductions claimed in the amount of \$440,000 included certain sales in the amount of \$10,000 which were properly subject to the tax. The audit also disclosed purchases (properly taxable) in the amount of \$15,000 upon which no tax was paid. The percentage of omission is:

$$\frac{\$15,000 \text{ (dollar amount of omission)}}{\$70,000 \text{ (dollar amount reported)}} = 21.4\%$$

Subp. 5. False and fraudulent returns. In the case of a false or fraudulent return filed with intent to evade tax, or in the case where the person required to file a return fails to do so, the tax may be assessed at any time, or a proceeding in court for collection of such tax may be started at any time.

Subp. 6. Waivers. The commissioner of revenue and the taxpayer may consent in writing to an extension of the period in which the tax may be assessed, provided a waiver is executed by both parties either within three years after the return was filed or, in the case of an omission of an amount as specified in subpart 4, within five years after the return was filed. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Subp. 7. Collection of tax by court action. When the assessment of tax is made within the period of limitation as prescribed above, the tax due and owing may be collected by a proceeding in court, provided that such action is instituted not later than nine months after the expiration of the period prescribed above for the assessment of the tax, or if there is an appeal from the commissioner's order assessing the tax, not later than nine months after final disposition of such appeal.

Statutory Authority: *MS s 297A.29*

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 shall be submitted on form ST-11 and shall be completed in the manner prescribed therein. Every adjustment to total taxable amount, credits, and tax computation shall be adequately supported. The claim shall set forth in detail each ground upon which it is made, and facts sufficient to indicate to the commissioner the exact basis thereof.

Subp. 2. Requirements for refund claim. Conditions to be met before the commissioner shall entertain a claim for refund:

A. The person filing a claim for refund shall have paid the tax 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 an amount of tax to a retailer of electricity for agricultural production which is exempt from the tax under Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), may claim a refund or credit of such tax on his Minnesota income tax return notwithstanding any other provisions of the Sales and Use Tax Law. Such refund or credit shall be made pursuant to Minnesota Statutes, section 290.501.

(2) A disabled veteran who himself purchases building materials or on whose behalf a contractor, subcontractor, or builder purchases building materials after June 30, 1971, for use in the construction or remodeling of his 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. Claim

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for refund form ST-11dv is available upon request from the Department of Revenue for use by disabled veterans in making such claims. See part 8130.6600.

Example 1. X company failed to file sales and use tax returns for the periods beginning August 1, 1967, and ending January 31, 1968. Acting upon information obtained from various sources, the commissioner prepared returns for X company for these periods and assessed a tax of \$900, plus penalties and interest. As X company did not pay the tax, penalties, or interest within 30 days, the commissioner brought an action in Ramsey County District Court to collect the tax. Although X company contested the action, the court rendered judgment in favor of the commissioner for the entire amount of the assessment plus penalties and interest. Thereafter, X company paid the amount due and filed a claim for refund for \$300. X company submitted additional information tending to substantiate its claim. However, as the payment was collected by means of a court action (see Minnesota Statutes, section 297A.33, subdivisions 1 and 3), the commissioner must deny the refund.

Example 2. Z company billed a consumer for the purchases made by latter. The consumer, who was engaged in industrial production, paid the amount billed, plus sales tax thereon, although the materials used by him were exempt from the tax because they were consumed in industrial production. Thereafter, the consumer filed a claim for refund of tax on materials properly exempt. The claim for refund will be denied as the consumer did not pay the tax to the commissioner. However, Z company may file with the commissioner for refund of such overpayment.

Example 3. An electrical power cooperative billed a farmer for the total amount recorded on the latter's meter. The farmer, who was engaged in agricultural production, paid the amount billed, plus sales tax thereon, although 50 percent of the electricity used by him was exempt from tax because it was consumed in agricultural production. The electrical power cooperative may complete the affidavit portion of form EAC and furnish it to the farmer to be completed and filed by the farmer with his Minnesota income tax return in accordance with Minnesota Statutes, section 290.501.

B. A claim for refund shall be filed within two years after a tax was paid or collected, or within three years after a return was filed, whichever period is longer. If the commissioner and the claimant have consented to extend the time for assessment of tax under the provisions of Minnesota Statutes, section 297A.34, subdivision 6, the claim may be filed within such extended period. For purposes of ascertaining whether a claim for refund is timely filed with the commissioner, a return filed prior to the date on which such return was due shall be determined to have been filed on the date when due. A return postmarked on the date due shall be determined to have been filed as of that date.

Example 1. R filed a sales and use tax return on January 15, 1968, for the month of December 1967, and paid to the commissioner \$1,200, the tax due on the return. On January 20, 1971, R filed a claim for refund of \$300 and submitted evidence tending to substantiate his claim. The commissioner will act on the claim for refund as it was filed within three years of the period beginning on January 25, 1968, the due date for filing the return for December 1967.

C. Such person shall have filed the sales and use tax return upon which such claim is based. 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 authenticated copy of the document specifically authorizing such 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 such return, and a refund claim is thereafter filed by a legal representative of the decedent, certified copies

of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, 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.

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 shall examine the return and make any investigation or examination of any of the accounts and records pertaining to such claim that he deems necessary. The commissioner shall then prepare written findings, either denying or allowing the claim, in whole or in part, and shall 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 shall first be 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 shall be allowed on the amounts refunded or credited from the date of overpayment to the date when such refund or credit is authorized by the commissioner.

On overpayments made on returns due before July 2, 1975, interest shall be allowed at the rate of four percent per annum.

On overpayments made on returns due after July 1, 1975, interest shall be allowed at the rate of six percent per annum.

C. If a claim for refund made by a vendor is based upon overpayment of sales tax by a consumer to the claimant, the commissioner, for purposes of ascertaining the validity of such claim, may request substantiation of such overpayment by the consumer, or examine such consumer's records. If the commissioner is unable to establish the validity of such overpayment after conducting an examination of the consumer's records, he shall deny the claim.

Subp. 4. Amended sales and use tax return may be filed in lieu of claim for refund form ST-11. An amended sales and use tax return or consumer's use tax return may be filed in lieu of form ST-11. However, it is necessary that every adjustment to the total taxable amount on the amended return be adequately supported. The amended return shall be filed for the same period as the period that is being corrected and the words "Amended Return" shall be placed at the top of the return. The same requirements indicated in this part for filing a claim for refund, form ST-11, apply to amended returns filed in lieu of form ST-11.

Subp. 5. One dollar limitation. No refund shall be made where the amount is \$1 or less.

Statutory Authority: *MS s 297A.29*

NOTE: Minnesota Statutes, section 290.501, was repealed by Laws of Minnesota 1983, chapter 342, article 1, section 44.

8130.8200 APPEAL FROM DENIAL OF CLAIM FOR REFUND.

Subpart 1. General rule. If a claim is denied in whole or in part, the taxpayer may take an appeal from the commissioner's order denying the claim, directly to the Minnesota Tax Court pursuant to the provisions of Minnesota Statutes, section 271.06. Such an appeal shall be made normally within 30 days from the filing of the commissioner's order denying the claim, and, in any event, if such period is extended by the Minnesota Tax Court, within 60 days from the date of filing of the commissioner's order.

Subp. 2. Alternative action. The claimant may, in the alternative, bring an action in the district court of the district wherein lies the county in which the

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claimant resides or has his principal place of business. If the claimant is an estate or trust, it may, if it so elects, commence its action in Ramsey County District Court.

Subp. 3. Statutory period. The statutory period within which an action in district court may be commenced is six months after the claim is filed if the commissioner has not taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim. The claim is not considered denied by reason of nonaction on the part of the commissioner. The 18-month period does not begin to run in such case until notice of the commissioner's order denying the claim is mailed to the claimant.

Statutory Authority: *MS s 297A.29*

8130.8300 PENALTIES AND INTEREST.

Subpart 1. Interest. Interest on unpaid liabilities shall accrue as follows:

A. On returns due prior to May 24, 1969, unpaid tax plus the late payment penalty shall bear interest at the rate of four percent per annum until May 24, 1969, and thereafter at the rate of eight percent per annum on the total of the tax plus all penalties.

B. On returns due after May 23, 1969, and prior to July 2, 1975, unpaid tax plus all penalties shall bear interest at the rate of eight percent per annum.

C. On returns due after July 1, 1975, unpaid tax plus all penalties shall bear interest at the rate of ten percent per annum.

Subp. 2. Late payment. In accordance with Minnesota Statutes, section 297A.39, if a taxpayer fails to pay any tax imposed by the Sales and Use Tax Law or any portion of such tax when due, a penalty equal to ten percent of the tax unpaid shall be assessed unless the commissioner has extended the time for filing the return and remitting the tax. (See Minnesota Statutes, sections 297A.26, 297A.27, and 297A.30 regarding the due date for filing the return and remitting the tax.)

The amount of tax not timely paid together with the penalty imposed thereon shall bear the applicable rate of interest from the time the tax should have been paid until paid. The phrase "timely paid" means the due date as provided by law or under an extension of time as granted by the commissioner.

Example 1. On November 24, 1971, a retailer remits tax of \$200 due on October 25, 1971, for the month of September. A ten percent penalty is assessed. The required amount to be paid on November 24, 1971, is calculated as follows:

Tax due and owing	\$200.00
Ten percent penalty	20.00
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Tax and penalty	\$220.00
Interest for 30 days at 8 percent	1.45
	<hr/>
Total amount due	\$221.45

Example 2. A retailer requests an extension of 30 days in which to file the return and remit the tax thereon for the month of August 1971. The commissioner grants an extension of 30 days until October 25, 1971. The tax due is \$500. On November 24, 1971, the retailer remits the tax, penalty, and interest computed as follows:

Tax due and owing	\$500.00
Ten percent penalty	50.00
	<hr/>
Tax and penalty	\$550.00
Interest on tax due of \$500.00 from original due date to extended due date at 8 percent	\$3.29

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Interest on tax and penalty from extended due date to date filed at 8 percent	\$3.62
	6.91
Total amount due	\$556.91

Example 3. On November 24, 1975, a retailer remits tax of \$200 due on October 25, 1975, for the month of September. A ten percent penalty is assessed. Since the return was due after July 1, 1975, the tax and penalty bear interest at the rate of ten percent. The amount required to be paid is calculated as follows:

Tax due and owing	\$200.00
Ten percent penalty	20.00
	\$220.00
Tax and penalty	\$220.00
Interest for 30 days at 10 percent	1.80
	\$221.80
Total amount due	\$221.80

Subp. 3. Wilful neglect. A penalty is provided for failure to file a return and pay the tax due thereon at the due date or at the expiration of the period for which an extension has been granted by the commissioner. Unless the person required to file the return shows at the time of filing that his failure to do so is not by reason of wilful neglect, pursuant to Minnesota Statutes, section 297A.39, subdivision 2, the commissioner shall add to the tax in lieu of the ten percent specific penalty provided in subpart 2, a ten percent penalty from the first 30 days immediately following the failure to file the return or remit the tax timely, and an additional five percent for each additional 30 days or fraction thereof during which failure continues. The total penalty assessed under this subpart shall not exceed 25 percent in the aggregate. However, if the penalty as computed for the period does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added shall be collected at the same time and in the same manner as the tax due.

The wilful neglect penalty will be assessed unless the person required to file the return exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time. The burden of proving that the imposition of this penalty is erroneous rests on the person required to file such return.

The progressive penalty imposed by this subpart is in lieu of the ten percent penalty imposed under subpart 2. Consequently, as in the case in respect of the ten percent penalty imposed under subpart 2, the tax plus penalty bears interest for the period during which failure to file continues. The following example is illustrative: The return for August 1971, reflecting the tax of \$300 is filed on December 24, 1971.

Tax due and owing	\$300.00
Twenty percent penalty	60.00
	\$360.00
Tax and penalty	\$360.00
Interest for 90 days at 8 percent	7.10
	\$367.10
Total amount due	\$367.10

Subp. 4. Failure to file with intent to evade tax; fraud. If a person is required to file a return under the Sales and Use Tax Law, and with intent to evade the tax fails to do so, or files a fraudulent return, an amount equal to 50 percent of the amount found to be due shall be added thereto. This penalty shall be in addition to any other penalties and interest provided by Minnesota Statutes, section 297A.39, whether such penalties be civil or criminal.

Subp. 5. Criminal punishment; persons to be charged. In addition to the penalties prescribed above, Minnesota Statutes, section 297A.39, subdivision 4,

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provides criminal penalties for wilfully failing to file a return or for wilfully filing a false return, or for wilfully refusing to pay over to the commissioner the tax collected under the Sales and Use Tax Law on behalf of the state of Minnesota.

A. If the tax due exceeds \$100 for the period involved, the person shall be guilty of a felony; for amounts not exceeding \$100 for the period involved, the person shall be guilty of a gross misdemeanor.

B. For purposes of imposing criminal liability under this subpart, the term "person" includes any officer or employee of a corporation or a member or employee of a partnership where such officer, member, or employee of a partnership or corporation, as the case may be, is under a duty to perform the act in respect to which the violation occurs.

Subp. 6. Abatement of penalties and interest. Pursuant to Minnesota Statutes, sections 297A.39, subdivision 6, and 270.07, subdivision 1, the commissioner shall have the power to abate penalties and interest when, in his opinion, their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general if the abatement exceeds \$500. All requests for abatement of penalties and/or interest shall be in writing and shall set forth the reasons for the failure to file the return and pay the tax timely.

Statutory Authority: *MS s 297A.29*

8130.8400 LIMITATIONS ON DISCLOSURE OF SALES AND USE TAX INFORMATION.

Subpart 1. General rule. The particulars disclosed in any report or sales and use tax return as well as any information acquired from the records or from officers or employees concerning affairs of the person filing the return may not be divulged or made known other than to persons qualified or authorized under the Sales and Use Tax Law. Any person violating Minnesota Statutes, section 297A.43, shall be guilty of a gross misdemeanor.

Subp. 2. Statistics. The secrecy provision of Minnesota Statutes, section 297A.43, does not prohibit the commissioner from publishing statistics regarding sales and use tax returns in cases where the statistics do not identify in any manner the persons who filed the returns.

Subp. 3. Inquiry as to a named retailer. The secrecy provisions will not be violated where the commissioner or one of his employees, with respect to any inquiry regarding the issuance of a permit to a named retailer, advises the person making the inquiry whether or not a permit has been issued to such retailer. The inquiry may be furnished such particulars in respect of information contained on the permit, such as sales and use tax account number, and date of issuance of the permit, and whether the permit is still active.

Subp. 4. Reciprocity. The commissioner is authorized on a reciprocal basis to exchange information with the taxing officials of another state or with the taxing officials of any municipality of this state which has a local sales or use tax.

Subp. 5. Relation to other tax laws. To ensure consistent application and enforcement of all tax laws administered by him, the commissioner is also authorized by Minnesota Statutes, section 270.065, to use information on sales and use tax returns to administer laws relating to other taxes under his jurisdiction. He may also use any information in his possession relating to other taxes to administer the Sales and Use Tax Law.

Subp. 6. Motor vehicle excise tax. The commissioner may, at his discretion, furnish the Motor Vehicle Division, Department of Public Safety, all information necessary to administer the motor vehicle excise tax, Minnesota Statutes, chapter 297B.

Statutory Authority: *MS s 297A.29*

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 domestic animals, through care, medication, and treatment of such animals. He is the user and consumer of all such items of tangible personal property as drugs, medicines, bandages and dressings, serums, tonics, and vitamins used by him in connection with the performance of his services unless he bills the customer separately for the services rendered and the materials used in the course of rendering such services. The veterinarian may accept unit or blanket exemption certificates from persons engaged in agricultural production for such sales that are billed separately or for other retail sales of the above items where services are not rendered in connection with the sales.

Subp. 2. **Retail sale.** Retail sales by the veterinarian of items that are not used or consumed in agricultural production are taxable. For example, worm pills sold for treatment of the family pet dog would be taxable.

Subp. 3. **Mixed transaction.** If the veterinarian both sells and administers a drug or medicine to an animal, merely charges for his services and absorbs the cost of drugs and other materials in his 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.

Subp. 4. **Reporting period.** If the sales tax was not paid on purchases of such items at time of purchase from suppliers because purchased for resale, the veterinarian must report the use tax due thereon in the sales and use tax return covering the period in which professional use was made of the item by the veterinarian.

Statutory Authority: *MS s 297A.29*

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 1, paragraph (h). 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. Exemption certificate. An exemption certificate submitted by a purchaser and accepted in good faith by a commercial artist and/or photographer pursuant to part 8130.3000 shall be sufficient to relieve responsibility to collect the tax.

Statutory Authority: *MS s 297A.29*

8130.8900 FLORISTS AND NURSERYMEN.

Subpart 1. Taxable transactions. Sales at retail by florists, nurserymen, or other producers or vendors of trees, flowers, wreaths, bouquets, potted plants, shrubbery, hospital baskets, funeral designs, grass, seeds, nursery seedling stock (to be used for landscaping, windbreaks, shelterbelts, erosion control, soil conservation, wildlife cover, commercial production of fruit and cut flowers, and other such purposes), and all other flowers, plants, or merchandise, whether grown by such vendors or not, are sales of tangible personal property to which the tax applies.

Sales by florists, nurserymen, or other persons of shrubbery, plants, sod, trees, and similar items which such vendors are required to transplant on the land of the purchaser for a lump sum or flat rate are subject to tax. The total sales price of such property and services shall be the basis of the tax unless the vendor separately states the charge for the services in transplanting, in which event the basis of the tax shall be the charge for the tangible property only.

Purchases by such vendors 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.

Subp. 2. Exempt transactions. 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) if such purchasers are commercial growers of the particular items purchased. 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.

Purchases by florists, nurserymen, or other like producers or vendors of plants and other merchandise, including nonreturnable containers and 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 and ultimately sold along with the 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 and ultimately sold at retail. Electricity and fuel are also exempt, except that the portion used for space heating or lighting is taxable.

Subp. 3. Telegraphic orders. When florists or nurserymen conduct transactions through a florist telegraphic delivery association, or otherwise by telephone, telegraph, or other means of communication with other florists or nurserymen, the following rules will apply in the computation of the tax:

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A. Where an order for flowers, wreaths, or other merchandise is taken from a customer by a Minnesota florist or nurseryman and transmitted to another florist or nurseryman located within or outside of Minnesota for delivery, the florist or nurseryman who initially takes the order from the customer is required to collect the tax.

B. Minnesota florists or nurserymen who receive orders from other florists or nurserymen, whether located within or outside this state, for delivery of flowers, wreaths, or other merchandise to locations either within or outside of Minnesota, do not collect the tax.

C. The sales tax does not apply to telegraph, telephone, or service charges if such charges are separately stated from the price of the flowers or other merchandise ordered by the customer.

Subp. 4. **Sales to nonresidents.** Sales of flowers or other merchandise which the florist or nurseryman delivers to points outside Minnesota by messenger or common carrier are not subject to the tax if the order is received from a nonresident customer to whom such flowers or other merchandise are sent. If the flowers or other merchandise are to be delivered to a third person (i.e. someone other than the customer who makes the purchase), title passes to the purchaser in this state at time of sale and the tax applies even though delivery is to a point outstate.

Statutory Authority: *MS s 297A.29*

8130.9000 SOFT WATER EQUIPMENT AND SERVICE DEALERS.

Subpart 1. **Sales.** Receipts from sales of water softening equipment and tanks which are permanently affixed by the dealer to real property leased or owned by the purchaser are considered sales of equipment for the improvement of real property and are exempt from the Minnesota sales tax. 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, who is considered the user thereof. 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 rentals of automatic and semiautomatic water softener 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 purchases of such equipment and tanks constitutes a sale at retail of tangible personal property, and all persons regularly engaged in such business are retailers. The tax does not apply to the installation charges if separately stated on the initial invoice or billing. Sales to dealers of automatic and semiautomatic equipment and tanks intended to be used only for leasing to customers are considered sales for resale.

Subp. 3. **Service.** The installation of exchange water softening equipment in the premises of customers, and the subsequent, regular replacements of chemically treated tanks by water softener dealers constitute a personal service. The installation and regular replacement charges therefor are not subject to the tax. The sales of minerals, salts, and other chemicals, and equipment, tanks, parts, and materials to water softener dealers to be used in conjunction with such service are subject to the sales and use tax.

Statutory Authority: *MS s 297A.29*

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 297A.29*

8130.9200 ADVERTISING AGENCIES.

Subpart 1. In general. An advertising agency may operate as an independent service business or as an agent of the advertiser. Therefore, a principal-agent relationship shall not be presumed. See subpart 3 relative to requirements relating to principal-agent relationships.

Subp. 2. Agency as independent service business. When agency is active as an independent service business:

A. Tax does not apply to charges for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines, or other advertising, or to be broadcast on television or radio; compiling statistical and other information; placing and/or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications, billboards and other forms of outdoor advertising, cards in cars, buses, and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, etc. Charges for such items as supervision, consultation, research, postage, express, telephone and telegraph messages, transportation and travel expense, if involved in the rendering of such services, are likewise not taxable.

When an amount billed as an agency fee, service charge, or commission represents a charge or part of the charge for any of the nontaxable services described in the above paragraph, the amount so billed is not taxable. Such a charge by a recognized advertising agency will be considered to be made for nontaxable services.

B. Preliminary art as used herein means roughs, visualizations, comprehensives, and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. ("Finished art" as used herein means the final art used for actual reproduction by photomechanical or other processes.) Tax does not apply to separate charges for preliminary art except where the preliminary art becomes physically incorporated into the finished art, as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.

The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art, of one or more of the types mentioned in the preceding paragraph. Proof of ordering or producing the preliminary art prior to date of contract or approval for finished art shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller. No other proof shall be required.

C. Where an advertising agency acts as a commercial photographer or other similar independent business and agrees to provide certain material to a client (e.g., sell a quantity of advertising brochures to such client) at a flat fee, the advertising agency is acting as a retailer and is required to collect the tax from the purchaser and remit the same to the commissioner of revenue. The tax also applies to the entire amount charged to clients for items such as drawings, paintings, designs, photographs, lettering assemblies, and printed matter.

D. An advertising agency is the consumer of tangible personal property used in the operation of its business, such as stationery, ink, paint, tools, drawing tables, T-squares, pens, pencils, and other office supplies. Tax applies to the sales of such property to the agency.

The agency is the seller of, and may purchase for resale, any item that it resells before use, or that becomes physically an ingredient or component part of tangible personal property sold by it; as, for example, illustration board, paint, ink, rubber cement, flap paper, wrapping paper, photographs, photostats, or art purchased from other artists.

Subp. 3. Principal-agent relationship. In order that vendors, advertising agencies, and advertisers may be more certain of their obligations and liabilities or potential liabilities for sales and use taxes in respect of transactions in which advertising agencies are a party and for purposes of orderly, efficient, and equitable administration of the Minnesota Sales and Use Tax Law a principal-agent relationship shall not be recognized unless there is a written agreement expressing and establishing such relationship and clearly setting forth the scope of the agent's authority.

In dealing with advertising agencies, vendors shall 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 a true agent pursuant to a written agreement and that the purchase is within the scope of authority expressed in such agreement. Advertising agencies acting as true agents making purchases on behalf of specific clients are required to pay sales and use tax on all purchases of tangible personal property to the exact degree that the respective client would be liable if purchasing such materials directly from primary suppliers; and, therefore, 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 true agent.

Statutory Authority: *MS s 297A.29*

8130.9300 SALES BY GOVERNMENTAL UNITS; TAXABLE.

Subpart 1. General rule. Although sales of tangible personal property to the United States and its agencies and instrumentalities or to a state and its agencies, instrumentalities, and political subdivisions are exempt from tax, this exemption does not extend to tangible personal property purchased from the United States, the state of Minnesota, and other governmental units.

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 297A.29*

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 297A.29*

8130.9500 AIRCRAFT REGISTRATION.

Subpart 1. In general. Minnesota Statutes, section 297A.255, requires persons who wish to license or register an aircraft in Minnesota to furnish proof to the Department of Transportation, Aeronautics Division, that the Minnesota sales or use tax has been paid, or that the purchase of the aircraft was not subject to the Minnesota sales or use tax. The effect of this law is to impose a use tax on occasional or isolated sales of aircraft in those cases involving sales to individuals not in the business of selling aircraft. The law is effective for registrations applied for after June 30, 1973.

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The necessary forms (form UT-1 and form ST-24) for reporting and paying the use tax or for claiming exemption are available upon request from the Minnesota Department of Revenue and the Minnesota Department of Transportation, Aeronautics Division.

This statute does not affect the exemption provided for purchases of air flight equipment by airlines taxed under Minnesota Statutes, sections 270.071 to 270.079.

When the sales tax has not been paid to the dealer as set forth in subpart 2, item A, the Department of Revenue will forward a completed certificate of tax payment or exemption, form ST-24, to the Department of Transportation, Aeronautics Division.

Subp. 2. Registration of aircraft by individuals. When the sales tax is paid or not paid:

A. Minnesota sales tax paid to dealer. When a purchaser pays the Minnesota sales tax to a Minnesota aircraft dealer who holds a Minnesota sales and use tax permit, the dealer shall furnish the purchaser with a statement showing that the sales tax has been paid. The aircraft dealer will report and pay the sales tax to the Minnesota Department of Revenue as in the past. It is not necessary for the purchaser of the aircraft to obtain a certificate of tax payment or exemption, form ST-24, from the Minnesota Department of Revenue. The purchaser should present the statement, which he received from the aircraft dealer, directly to the Department of Transportation, Aeronautics Division, in order to license or register the aircraft.

B. No Minnesota sales tax paid to seller. When the purchaser does not pay a Minnesota sales tax to the seller on his purchase of an aircraft, he must obtain a certificate of tax payment or exemption, form ST-24, from the Minnesota Department of Revenue. If a use tax is due, the purchaser must complete a consumer's use tax return, form UT-1, and file it along with his tax payment when applying for the certificate form ST-24. If the purchaser claims exemption from the tax, he must furnish a copy of his purchase invoices or bill of sale along with necessary proof showing that he is entitled to the exemption when applying for the certificate. Exemptions are allowed for purchases by governmental units and by organizations that are organized and operated exclusively for charitable, religious, or educational purposes; for aircraft purchased outside Minnesota by a nonresident and later brought into Minnesota for use; and for aircraft purchased for resale or lease.

Subp. 3. Registration of aircraft by dealers who are licensed in accordance with Minnesota Statutes, section 360.63. When a licensed dealer purchases an aircraft for resale and places it in a withholding status, no certificate of tax payment or exemption is required. When a licensed dealer registers an aircraft for commercial use, he must present a certificate of tax payment or exemption to the Minnesota Department of Transportation, Aeronautics Division. He will be required to pay a use tax on his purchase price of the aircraft unless he makes application to the commissioner of revenue for an aircraft commercial use permit, form ST-23, and pays a \$20 fee. By obtaining an aircraft commercial use permit, form ST-23, a licensed dealer may purchase an aircraft for resale and put it to commercial use such as crop dusting, charter service, freight transportation, and flight instruction, for up to one year without paying a sales or use tax on his purchase. When he sells the aircraft, he is required to collect a sales tax. If he keeps the aircraft for more than one year or makes personal use of such aircraft, a use tax is also due on his purchase price. A licensed aircraft dealer who obtains a commercial use permit, form ST-23, should check the box of section B of form ST-24 which indicates that the aircraft was purchased for resale or lease by the holder of a Minnesota sales and use tax permit.

Subp. 4. Registration by dealers who are not licensed in accordance with Minnesota Statutes, section 360.63. This type of dealer is required to file form

ST-24, and should check the box of section B which indicates the aircraft was purchased for resale or lease by the holder of a Minnesota sales and use tax permit. However, if the dealer purchases an aircraft for personal or commercial use, he is required to file form ST-24 and form UT-1 and pay the use tax on the purchase price.

Subp. 5. Registration of aircraft by lessor or lessee. When a lessor registers an aircraft in his name, he may furnish his sales and use tax account number when applying for the certificate of tax payment or exemption, form ST-24, and claim exemption for resale. He must continue to collect and remit sales tax on lease payments he receives, as in the past.

When a lessee registers an aircraft in his name, and the lessor does not hold a Minnesota sales and use tax permit, the lessee is required to obtain a permit. The lessee must pay the use tax on the amount of his lease payments in the same manner as all other Minnesota permit holders who are required to file sales and use tax returns.

Subp. 6. Form ST-24. A facsimile of the authorized aircraft certificate of tax payment or exemption (form ST-24) is reproduced at part 8130.9996.

Statutory Authority: *MS s 297A.29*

8130.9600 IRON MINING INDUSTRY EXEMPTIONS.

Subpart 1. Scope. The industrial production exemption provided in Minnesota Statutes, section 297A.25, subdivision 1, paragraph (h), as amended effective January 1, 1974, 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.25, subdivision 1, paragraph (o), 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.25, subdivision 1, paragraph (h) became effective January 1, 1974. 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 adaptors;
- 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 cobbers;
- 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.25, subdivision 1, paragraph (o), 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.25, subdivision 1, paragraphs (h) or (o), are:

- A. all motors and engines (electrical or otherwise);

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- 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 297A.29*

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. 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 foregoing 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 herein 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. “Key punching” means recording information in cards, paper tapes, or magnetic tapes, disc, or drum 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. Key punching 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 key punching 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. “On-line” 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:

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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 his premises if the lessee or his employees operate the equipment, or if the equipment is operated under the direction and control of the lessee or his employees. Subleasing receipts are taxable without any deduction or credit for tax paid by the original lessee to his 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. 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 discussed in subpart 4, item A.

Agreements providing solely for key punching, key punching and keystroke verification, or key punching, providing a proof list, and/or verifying of data, are regarded as contracts for the fabrication of punched cards and sales of proof lists. Charges therefor are 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 taxable whether the magnetic tapes are furnished by the customer or by the service bureau. Tax also 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 application would be the same even though paper tape or other media were used in the operation.

D. 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, are not subject to the tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

E. 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.

F. 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.

G. 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. Computer-generated mailing lists alone involving no transferable product are not taxable. However, 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.

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.

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 (on-line) at high speeds and then record 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.

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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. Nontaxable transactions. Certain transactions are treated as nontaxable:

A. Prewritten (canned) programs are programs prepared, held, or existing for general or repeated use, including programs developed for in-house use and subsequently held or offered for sale or lease. The 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 prewritten (canned) programs have been coded, punched, or otherwise recorded is not subject to tax. These items are classified as intangible personal property.

The tax does not apply whether title to the tape or other property upon which the program is coded, punched, or otherwise recorded, passes to the customer, or the program is recorded on tape or other property furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded by the customer, is not a lease of tangible personal property and the tax does not apply. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a minimum use or for extended periods, are not includable in the measure of tax.

Programming changes to a prewritten program to adapt it to a customer's equipment, including translating a program to a language compatible with a customer's equipment, are not in the nature of fabrication or services that are part of a sale and are not taxable.

Charges for assembler, compiler, utility, and other prewritten programs provided to those who lease or purchase automatic processing equipment are not subject to tax.

B. Custom programs are programs prepared to the special order of a customer. This type of program is classified as intangible personal property, and is not subject to tax.

Statutory Authority: *MS s 297A.29*

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8130.9912 SALES AND USE TAXATION

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8130.9912 FORM ST-3; CERTIFICATE OF EXEMPTION.

Form ST-3 (Rev. 7/83) RV 01001-03

Minnesota Department of Revenue Sales and Use Tax Division CERTIFICATE OF EXEMPTION

I, the undersigned purchaser, hereby certify that I am engaged in the business of _____

(Describe nature of business activity)

and that the tangible personal property described below which I shall purchase, lease or rent from

Name of Seller
Address

is exempt for the following reason:

- The purchaser is an organization organized and operated exclusively for educational or religious purposes.
The property is for use or consumption in agricultural or industrial production of property intended to be sold ultimately at retail.
The property is packing materials used to pack and ship household goods to destinations outside Minnesota, and material designed to advertise and promote the sale of merchandise or services, purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside Minnesota.
The property is rolling stock purchased by a railroad, taconite railroad, freight line, sleeping car or express company, taxed on gross earnings under Minnesota Statutes, Chapters 294 and 295.
The property is telephone central office telephone equipment used in furnishing intrastate and interstate telephone service to the public.
The property is mill liners, grinding rods, and grinding balls purchased by a company taxed under the in lieu provisions of Minnesota Statutes, Chapter 298, and is substantially consumed in the production of taconite, the material of which primarily is added to and becomes a part of the material being processed.
The property is airlift equipment purchased by an airline company taxed under Minnesota Statutes, Sections 270.071 through 270.079.

Detailed description of property for which exemption is claimed: _____

Check applicable box: Single purchase certificate Blanket certificate

If blanket certificate is checked, this certificate continues in force until cancelled by the purchaser.

PENALTY - The law provides that any person who gives an exemption certificate for property which will be used for purposes other than the exemption claimed with the intent to evade payment to the seller of the amount of the tax applicable to the transaction shall be subject to a penalty payable to the commissioner of revenue of \$100 for each transaction where an improper use of an exemption certificate has occurred. M.S.A. 297A.121.

Signature of Authorized Purchaser Title Date

Purchaser's Business Name

Address City State Zip Code

Purchaser's Sales and Use Tax Account Number

If you have no number, give reason:

NOTE: Sellers must keep this certificate as a part of their records. Incomplete certificates cannot be accepted in good faith.

Statutory Authority: MS s 297A.29; 297A.37

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SALES AND USE TAXATION 8130.9913

8130.9913 FORM ST-3A; CERTIFICATE OF EXEMPTION FOR PROPERTY PURCHASED FOR BUSINESS USE OUTSIDE MINNESOTA.

Form ST-3A

MINNESOTA DEPARTMENT OF REVENUE
Sales and Use Tax Division

CERTIFICATE OF EXEMPTION FOR PROPERTY PURCHASED FOR BUSINESS USE OUTSIDE MINNESOTA

Read instructions on back before completing this certificate. Do not use this certificate if another certificate is applicable.

I, the undersigned purchaser, certify that I am engaged in the business of (describe nature of business activity) _____

and that the tangible personal property described below (give detailed description) _____

which I shall purchase from

Seller's Name _____

Address _____

will be shipped or transported to _____ by me without any intermediate use, will be used in a trade

(list state)

or business in that state and will not be returned to Minnesota except in the course of interstate commerce. (A separate exemption certificate must be filed for each state to which property will be transported.)

This purchase is exempt from Minnesota sales tax because:

- the property is not taxable in that state and no exemption certificate is necessary in that state.
- the property is not taxable in that state if an exemption certificate may be given to the vendor in that state. Attached is a completed copy of that certificate.
- that state allows a similar exemption for property purchased there and brought to Minnesota by the purchaser for use in Minnesota. Attached is a copy of the exemption certificate used in that state.
- the property will be used in that state as part of a maintenance agreement.

This purchase is taxable at less than Minnesota's rate because:

- the applicable use tax rate is _____%, the rate of the above state.

I am aware that I am liable for Minnesota sales or use tax due, and for the penalties and interest incurred as a result of making a false or erroneous exemption claim, if I use this property for other than the above exempt purpose or give false information about this purchase.

Signature of Authorized Purchaser _____ Title _____ Date _____

Purchaser's Business Name _____

Address _____ City _____ State _____ Zip Code _____

Purchaser's Sales and Use Tax Account Number _____

Minnesota No. _____ Other State _____ No. _____

(Name)

If you have no number, see back of form and check appropriate box.

A B C D E

NOTE: Sellers must keep this certificate as part of their records. Incomplete certificates cannot be accepted in good faith.

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INSTRUCTIONS

To the Purchaser: Use this certificate when you purchase taxable items in Minnesota which you or your agent will transport to another state for use in a trade or business. The term "state" includes states or provinces in other countries, as well as in the United States. This certificate is not to be used when you purchase items for resale purposes (use Form ST-5) or when you purchase items which are exempt by law for other purposes, such as raw materials which become part of a product manufactured for resale (use Form ST-3).

Attach proof of exemption: Unless the taxable item being removed from Minnesota is exempt in the other state by law without proof of exemption, or will be used in a maintenance contract, you must attach to this certificate a completed copy of the other state's exemption certificate which authorizes the exemption.

Example: The other state allows your business to purchase certain machinery exempt from tax provided the machinery is used in manufacturing, and provided you give your supplier the appropriate exemption certificate. A completed copy of that state's exemption certificate must be given to the Minnesota vendor along with this certificate in order to buy those items exempt in Minnesota.

List your Minnesota tax account number and the tax number you have in the state to which the property is being transported.

If you have no numbers — and are not required to have the registration or permit numbers in Minnesota or the other state, select the reason below that best describes your situation and check the appropriate box on the front of this certificate:

- A. You are a wholesaler and do not make direct retail sales to customers and are not required to have a sales tax permit.
- B. You are a manufacturer and are not required to have a sales tax permit.
- C. Your business does not involve making taxable retail sales (examples are farming, real estate or non-taxable services).
- D. You are a governmental agency or other nonprofit exempt organization and are not required to have a sales tax permit.
- E. Other: (state the reason your business is not required to have a sales tax permit or registration number) _____

If you need help in completing this certificate, or if you have questions about other states' laws or rates, call or write our office. See information below.

To the vendor: Accept this certificate only when it has been properly completed by the purchaser. If the purchaser cannot furnish supporting information where requested, such as other exemption certificates, charge your customer Minnesota sales tax. You may later refund the sales tax if the customer gives you the necessary proofs of exemption.

When your customer's purchase is taxable, charge your customer the tax based on the use tax rate of the other state. If the other state's rate is more than Minnesota's tax rate, no exemption claim is necessary; charge tax at Minnesota's rate.

Remember: you are responsible for collecting sales tax on all taxable sales to your customers, unless you can substantiate your exempt sales with proper certificates.

If you need help in determining whether or not an item is taxable, and/or the tax rate which applies, call or write the sales tax office.

Write to: Minnesota Department of Revenue
Sales and Use Tax Division
Centennial Office Building
St. Paul, MN 55145

Call: Twin Cities, 296-6181
Elsewhere in Minnesota, toll free
1-800-652-9747 (ask for sales tax)

Statutory Authority: *MS s 297A.29; 297A.37*

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SALES AND USE TAXATION 8130.9916

8130.9916 FORM ST-4; FUELS AND ENERGY EXEMPTION CERTIFICATE.

Blanket

Date of Purchase or Period Covered

Unit

The undersigned hereby claims tax exemption for the purchase of fuels, electricity, gas and/or steam described within and made under this certificate in the proportion so declared for exempt usage in agricultural or industrial production. The undersigned further agrees to pay the required tax upon the remainder of the purchase subject to the Minnesota Sales and Use Tax.

Percentage of Fuel or Energy Used for Exempt Purposes %

Statement describing how percentage was determined

Quantity and type of energy or fuel purchased

Vendor's name and address

Purchaser's name and address

Purchaser's Business Activity

Purchaser's Sales & Use Tax Account Number

I hereby certify that the above statements are true, that all information given is accurate to the best of my knowledge and that I am duly authorized to sign this application.

Signature

Date

Statutory Authority: MS s 297A.29; 297A.37

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8130.9920 SALES AND USE TAXATION

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8130.9920 FORM ST-5; RESALE EXEMPTION CERTIFICATE.

Form ST-5
(Rev. 5-80)
RV01003-02

MINNESOTA DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION
RESALE EXEMPTION CERTIFICATE

I, the undersigned purchaser, hereby certify that I am engaged in the business of selling, leasing or renting

(List items sold, leased or rented)

and that the tangible personal property described below, which I shall purchase, lease or rent from

Name of Seller

Address

will be resold, leased or rented by me; however, if any such property is used for any purpose other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of business, I understand that I am required to report and pay the tax on the purchase price of such property.

Detailed description of property to be purchased for resale:

Check applicable box:

Single purchase certificate

Blanket certificate

If blanket certificate is checked, this certificate continues in force until cancelled by the purchaser. If the purchaser uses this property for other than exempt purposes, and fails to file a sales or use tax return declaring the taxable use of such property, with the intent to evade the tax, the purchaser will be subject to the full penalty of the law.

Purchaser's Business Name

Signature of Authorized Purchaser

Address

Title

City

State

Zip Code

Date

Purchaser's Sales and Use Tax
Account Number

If no number,
state reason

NOTE: Sellers must keep this certificate as a part of their records.
Incomplete certificates cannot be accepted in good faith.

Statutory Authority: MS s 297A.29; 297A.37

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SALES AND USE TAXATION 8130.9930

8130.9930 FORM ST-8; CONTRACTOR'S EXEMPTION CERTIFICATE.

Form ST-8
(Rev. 1/83)

Minnesota Department of Revenue - Sales and Use Tax Division

Contractor's Exemption Certificate

To be used for contract designated below

Read instructions on back of this form

Certificate Number
CN

The undersigned hereby claims exemption from the additional one percent sales or use tax on otherwise taxable property purchased from

Supplier's name _____

Address _____

and certifies that such property described herein will be used only in completion of the contract designated as

Contract or project number _____ Date of Contract _____

Location of construction _____

and enforceable prior to January 1, 1983.

Quantity and description of property purchased or leased (certificate is void unless quantity, description and price is furnished by the purchaser or lessee):

Purchase and lease price \$ _____

Name of Contractor or Subcontractor making purchase _____

Sales and Use Tax account number, if any _____

Address of firm _____

Authorized signature and title _____ Date _____

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INSTRUCTIONS TO CONTRACTORS AND VENDORS

This Certificate authorizes the purchase of materials and the lease of equipment at the 5% sales and use tax rate, instead of the 6% rate. It covers materials purchased and delivered from January 1, 1983 through December 31, 1983 for the contract shown. It also covers equipment leases, if the lease payments are applicable to this contract, for the same period.

The 5% rate applies to purchases of protective coverings, saw blades, form lumber, welding rods, heating fuel, water and similar items used or consumed and exhausted on the construction project.

The increased rate of 6% applies to equipment purchases such as hammers, saws, drag lines, trucks, etc., or to any item listed above (taxed at 5%) if its useful life extends beyond the completion of the construction project.

The contractor or subcontractor performing the work on this contract must give a copy of this certificate to the vendor as evidence of exemption for each applicable purchase or lease. There is no "blanket" exemption certificate for these purchases. **A certificate number alone is not sufficient evidence that a purchaser is exempt from the 1% increase in tax.** Purchase orders and invoices should be coded to identify the items purchased or leased for this contract.

A contractor who purchases more materials than are needed to complete this contract must show on this certificate only the amount to be used on this contract.

A contractor who enters into a lease for equipment to be used on more than one project must show on this certificate only the lease payments applicable to this contract.

If a contractor makes a single purchase of materials or enters into a lease agreement for equipment to be used on more than one exempt contract, s/he must complete separate exemption certificates under the appropriate certificate numbers for the purchases or leases for each contract.

Anyone who willfully misuses this certificate will be subject to penalties as provided by law.

Statutory Authority: *MS s 297A.29; 297A.37*

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SALES AND USE TAXATION 8130.9956

8130.9956 ST-14 DIRECT PAY PERMIT.

Form ST-14
Rev. 9/82

Minnesota Department of Revenue - Sales and Use Tax Division
Centennial Office Building - St. Paul, Minnesota 55145
(612) 296-6181

DIRECT PAY PERMIT

This permit is not transferable

Permit Number D P
Date Issued
Sales & Use Tax Account Number

This permit constitutes authority to make direct payment of sales and use tax to the Commissioner of Revenue in lieu of payment to the vendor.

The Commissioner may revoke a Direct Pay Permit at any time for failure to comply with the conditions under which such authority was granted or for any other reason constituting misuse of such authority, and in cases where the continued use of such permit is found by the Commissioner to be not in the best interests of the State of Minnesota.

Commissioner of Revenue

By _____

Sales and Use Tax Division

Statutory Authority: *MS s 297A.29; 297A.37*

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8130.9958 SALES AND USE TAXATION

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8130.9958 FORM ST-14MC; MOTOR CARRIER DIRECT PAY CERTIFICATE.

Form ST-14mc
Rev. 5/81

Minnesota Department of Revenue - Sales and Use Tax Division
Centennial Office Building - St. Paul, Minnesota 55145
(612) 296-6181

MOTOR CARRIER DIRECT PAY CERTIFICATE

Certificate No. MCDP	
Effective Date	
Sales and Use Tax Account Number	

The holder of this certificate has chosen to pay sales and use tax directly to the Commissioner of Revenue instead of paying the vendor on purchases or leasing of interstate mobile transportation equipment and parts and accessories attached or to be attached to such equipment.

This certificate is not transferable and applies only to purchases or leasing of mobile transportation equipment to be used within and without Minnesota and parts and accessories attached or to be attached to such equipment.

Commissioner of Revenue

By _____

Sales and Use Tax Division

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SALES AND USE TAXATION 8130.9968

8130.9968 FORM ST-17; CERTIFICATE OF EXEMPT STATUS; EXEMPT ORGANIZATION.

Form ST-17
(Rev. 7-83)
RV-01014-02



Minnesota Department of Revenue – Sales and Use Tax Division
Centennial Office Building – St. Paul, Minnesota 55145
(612) 296-6181

CERTIFICATE OF EXEMPT STATUS – EXEMPT ORGANIZATION

Under the provisions of Section 297A.25, Subdivision 1 (p) of the Minnesota Sales and Use Tax Law, the organization listed below is certified to be exempt from sales and use taxes on purchases, rentals and leases of tangible personal property. The property must be used exclusively in the performance of charitable, religious or educational functions or, in the case of senior citizen groups, in the pleasure, recreation or other nonprofit functions, of the group.

[]

[]

Certificate No.
E S
Date Issued

This certificate is valid until revoked by the Minnesota Department of Revenue.

Commissioner of Revenue

By _____

Sales and Use Tax Division

The exemption does not apply to purchases of meals or lodging.

Statutory Authority: MS s 297A.29; 297A.37

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8130.9972 SALES AND USE TAXATION

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8130.9972 FORM ST-18; VETERANS ORGANIZATION EXEMPTION.

Minnesota Department of Revenue

Sales and Use Tax Division

Centennial Office Building

St. Paul, Minnesota 55145

Phone: Twin Cities 296-6181

Elsewhere in Minnesota call toll-free

1-800-652-9747 (ask for Sales Tax)

Veterans Organization Exemption

(Minnesota Statutes, section 297A.25, subdivision 1 (z))

Effective July 1, 1980 veterans' organizations (and their auxiliaries) may purchase items without paying sales tax if they meet these conditions:

The organization must be organized in Minnesota and must be exempt from Federal tax, under the definition in the Internal Revenue Code, Section 501(c), clause 19.

The purchases must be for charitable, civic, educational or nonprofit uses. For example: flags, uniforms and equipment for youth sports teams, and materials to be made into poppies given for donations.

The organization must still pay tax on purchases of items for social, recreational, pleasure or profit uses. For example: equipment, office supplies, gambling devices (including bingo equipment), utilities, heating fuel, uniforms for adult sports teams, meals, lodging and admission tickets.

The law does not exempt sales by veterans' organizations or auxiliary units. Such sales remain taxable.

REQUEST FOR EXEMPTION

To vendor: _____

Seller's Name

I, the undersigned purchaser, hereby certify that I am exempt from Federal taxation under section 501(c), clause (19) of the Internal Revenue Code and will use the tangible personal property identified below for exempt purposes as set forth in the above explanation of the law.

Detailed description of property to be purchased: _____

Name of Organization or
Auxiliary

Signature of Authorized
Purchaser

Address

Title

City State Zip Code

Date

Statutory Authority: *MS s 297A.29; 297A.37*

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SALES AND USE TAXATION 8130.9980

8130.9980 FORM ST-19; FLEA MARKET OPERATORS CERTIFICATE OF COMPLIANCE.

Form ST-19
(7/83)

Minnesota Department of Revenue, Sales and Use Tax Division
Centennial Office Building, St. Paul, Minnesota 55145

PHONE: Twin Cities 296-6181 Elsewhere in Minn: toll free 1-800-652-9747(ask for Sales Tax)

FLEA MARKET OPERATORS CERTIFICATE OF COMPLIANCE

Effective July 1, 1983, M.S.A. 297A.041 requires the operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, or similar event to obtain evidence that any person desiring to engage or conduct business on the premises owned or controlled by the operator is a holder of a valid seller's sales tax permit or obtain a written statement from the seller that items offered for sale are not subject to sales tax. This provision does not apply to a community sponsored festival which has a duration of four or fewer consecutive days no more than once a year. Failure to comply can result in a civil penalty of \$100 for each day of each selling event. Penalty is payable to the Commissioner of Revenue.

To insure compliance with this provision of the law, I as the operator of the event named below, request that you the seller check the appropriate box in A or B below, list your sales and use tax 7 digit account number where appropriate, and sign this form.

Name of Operator _____
Location of Event _____
Date(s) of Event _____

A. Evidence seller holds a Minnesota Sales Tax Permit.

- I have shown the operator my sales tax permit. My sales tax account number is: _____.
- I have attached a photo copy of my sales tax permit to this form. My sales tax account number is: _____.
- I have applied to the Minnesota Department of Revenue for a sales tax permit on _____
(date)

B. Seller is not required to hold a Minnesota Sales Tax Permit for the following reason:

- I am selling only non-taxable items, such as food products and clothing.
- Occasional sales - I am selling items purchased for my own use which were not collected, purchased, or manufactured for the purpose of resale, and I am not in the business of selling this kind of property.
- I participate in a direct selling plan, selling for _____ whereby the home
(name of company)
office or top distributor holds the sales tax permit and remits the sales tax.

I, the undersigned seller, hereby certify that these statements are correct and I am duly authorized to sign this form.

Print Name of Seller

Signature of Seller

Address

Phone Number

City, State, Zip Code

Date

Note: Operator must keep this certificate as part of their records. Incomplete certificates cannot be accepted in good faith.

Statutory Authority: MS s 297A.29; 297A.37

MINNESOTA RULES 1987

8130.9992 SALES AND USE TAXATION

7660

8130.9992 FORM ST-23; AIRCRAFT COMMERCIAL USE PERMIT.

Form ST-23

Minnesota Department of Revenue—Sales and Use Tax Division
AIRCRAFT COMMERCIAL USE PERMIT

Permit Number	Date Issued	Dealer's Name
Federal Aircraft Registration Number N -	Permit Expiration Date	Dealer's Address
Make, Model, Year, Description of Aircraft	Dealer's Sales and Use Tax Account Number	

DISPLAY THIS PERMIT CONSPICUOUSLY IN AIRCRAFT

This permit is issued pursuant to authority contained in
Minnesota Statutes, Section 360.654

COMMISSIONER OF REVENUE

Statutory Authority: *MS s 297A.29; 297A.37*

MINNESOTA RULES 1987

7661

SALES AND USE TAXATION 8130.9996

8130.9996 FORM ST-24; CERTIFICATE OF TAX PAYMENT OF EXEMPTION; AIRCRAFT.

Form ST-24

MINNESOTA DEPARTMENT OF REVENUE - SALES AND USE TAX DIVISION
 CERTIFICATE OF TAX PAYMENT OR EXEMPTION - AIRCRAFT
 Pursuant to M.S. Section 297A.255

SECTION A - GENERAL INFORMATION			
Purchaser's Name		Federal Registration Number N-	
Purchaser's Address (Street or RFD, City, State, Zip Code)			
Make	Year and Model	Trade Name	Date Purchased
Seller's Name and Address			

SECTION B - APPLICATION FOR CERTIFICATE	
<p>I, the undersigned purchaser, hereby make application to the Commissioner of Revenue for a Certificate of Tax Payment or Exemption as indicated below:</p> <p><input type="checkbox"/> A use tax of \$ _____ has been paid to the Commissioner of Revenue on my purchase of the aircraft described above.</p> <p><input type="checkbox"/> The purchase of the aircraft described above is exempt from Minnesota Sales and Use Tax for the following reason:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Purchaser is a governmental unit. <input type="checkbox"/> Purchaser is an exempt religious or educational organization. <input type="checkbox"/> Purchaser is a charitable organization holding a Certificate of Exempt Status, No. ES _____. <input type="checkbox"/> Purchaser was not a resident of Minnesota when the aircraft was purchased. <input type="checkbox"/> Aircraft was purchased for resale or lease by the holder of Minnesota Sales and Use Tax Account No. _____. <p>I hereby declare, under the penalties of criminal liability for willfully making a false certificate, that this certificate has been examined by me and to the best of my knowledge and belief is true and correct and that I am duly authorized to sign this certificate.</p>	
AUTHORIZED SIGNATURE _____	TITLE _____ DATE _____

SECTION C - CERTIFICATION TO BE COMPLETED BY DEPARTMENT OF REVENUE	
<p>Based on the information furnished by the above-named purchaser, I certify that:</p> <p><input type="checkbox"/> The use tax of \$ _____ has been paid.</p> <p><input type="checkbox"/> The exemption claimed in section B is properly allowable, and no sales or use tax is due on the transaction.</p>	
SIGNATURE _____	TITLE _____ DATE _____
THIS CERTIFICATE REMAINS SUBJECT TO AUDIT BY THE DEPARTMENT OF REVENUE	

Mail to: Minnesota Department of Revenue
 Sales and Use Tax Division
 Centennial Office Building
 St. Paul, Minnesota 55145

MINNESOTA RULES 1987

8130.9996 SALES AND USE TAXATION

7662

INSTRUCTIONS

Complete this form in duplicate. Original copy to be furnished to the Department of Aeronautics. Duplicate to be retained by the Department of Revenue.

SECTION A - GENERAL INFORMATION

This section must be completed in all cases.

SECTION B - APPLICATION FOR CERTIFICATE

Check the appropriate box or boxes.

If the applicant is required to pay a use tax on the purchase price of an aircraft, he must complete a Consumer's Use Tax Return, Form UT-1, and Section B of this form (Form ST-24) by checking the appropriate box and indicating the amount of use tax paid.

If the applicant claims exemption from the use tax, he must check the appropriate boxes in Section B of this form (Form ST-24). furnish the required number, if any, and furnish a copy of his purchase invoices and/or the documents to support the exemption claimed.

In all cases, Section B must be signed by the applicant.

SECTION C - CERTIFICATION TO BE COMPLETED BY DEPARTMENT OF REVENUE

Upon proper completion of Sections A and B by the applicant and upon receipt of necessary supporting documents, the Department of Revenue will examine the application and certify that the tax has been paid or that an exemption is allowable.

Statutory Authority: *MS s 297A.29; 297A.37*