CHAPTER 8130
DEPARTMENT OF REVENUE
SALES AND USE TAXES

8130.2700 REINSTATEMENT OF REVOKED PERMITS.

[For text of subps 1 to 4, see M R]

Subp 5 **New application, or application for reinstatement of revoked permit.** The commissioner may reinstate a revoked sales and use tax permit, or issue a new permit to a taxpayer whose permit had been revoked if the taxpayer

A files all unfiled sales and use tax returns,

B pays with a certified check, cashier's check, or money order the entire balance of tax, penalty, and interest due,

C deposits with the commissioner, security or a surety bond in an amount equal to three times the average liability for the period for which returns are required to be filed, or six times the average liability in the case of a taxpayer who has had another permit revoked within the preceding 24 months,

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

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

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

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

The commissioner will pay interest on any money deposited as security The interest will be calculated from the date of deposit to the date of refund, or date of application to any outstanding tax liability, at a rate specified in Minnesota Statutes, section 270C 405 The security deposit will be refunded to the taxpayer at the end of the two-year period, plus any extensions for violations, unless the taxpayer has any unpaid tax liabilities The commissioner may apply the security deposit to any unpaid tax liabilities The commissioner may refund the security deposit to the taxpayer before the end of the two-year holding period (or extended holding period) if the taxpayer's business ceases to operate and the taxpayer is no longer required to file sales and use tax returns and pay sales and use tax

[For text of subps 6 and 7, see M R]

Statutory Authority: *MS s 270C 06*

History: *32 SR 1283*

8130.4705 FOOD SOLD WITH EATING UTENSILS.

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

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

A. it is the seller's practice to hand the utensil to the customer along with the food,

B. it is the seller's practice to place the utensil in a package containing the customer's food, including prepackaged food when the seller places the utensil in the package,

C. it is the seller's practice to sell food with a utensil that has been prepackaged by a person other than the seller, except when the person who originally placed the utensils in the package has a North American Industry Classification System (NAICS) classification code of a manufacturer, sector 311, the utensil is not provided by the seller, or

D it is the seller's practice to place the utensil on a table, counter, or similar surface for the customer to use A utensil previously placed by the seller, for example, as part of a place setting, is considered physically given to the customer For purposes of this item, "table, counter, or similar surface" means furniture or surfaces where a customer sits or stands to eat.

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

A if a plate, glass, cup, or bowl is necessary to receive the food from the seller, for example, milk dispensed from a milk dispenser is sold with an eating utensil provided by the seller because the customer must use a glass in order to receive the milk, or

B if the seller's prepared food sales percentage, as determined in subpart 5, is greater than 75 percent; except that

C in the case of a food item that contains four or more servings packaged as one item sold for a single price, as provided for in subpart 4, even if the sales percentage of prepared food is greater than 75 percent, a utensil is not provided by the seller merely because the seller makes the utensil available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp 6 **Examples.**

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

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

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

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

(1) A restaurant, with a convenience food area near the cash register, sells a package of cinnamon rolls, labeled at 12 servings, for $5 98, an apple for 75 cents, and a

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

(2) A bakery, owned by a seller whose establishments in this state combined have a sales percentage of 80 percent, sells fruit pies it baked at $2 a slice Each slice equals one serving Five slices are packaged and sold for $9 40 The sales receipt simply provides that the price of the apple pie is $9.40 This package is sold for a single price Since the item of four or more servings is sold for a single price, the item is not considered prepared food unless the utensils are physically given or handed to the customer, even if the seller has utensils available to the customer

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

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

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

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

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

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

Example a pizzeria prepares, heats, and sells pizzas by the slice solely for pick-up, and does not have any utensils available or given to the customer The business has a prepared food sales percentage greater than 75 percent, so that it only need have utensils available for any food sold at the establishment for the utensils to be considered "provided by the seller." However, the fact that no utensils are provided by the seller does not mean that the pizza is not prepared food Rather, it is prepared food because it is heated by the seller and also because the seller combines food ingredients and sells it as a single item.

Statutory Authority: *270C.06*

History: *32 SR 461*

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

Subpart 1. **In general.**

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

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

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

A. "Isolated" means standing alone or solitary

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

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

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

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

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

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

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

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

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

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

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

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

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

Example A company has a retail hardware business, as well as a building construction division The records of the businesses are kept separately The retail hardware business closes while the construction division continues to exist The sale of all the assets of the hardware business is exempt from tax Sales of inventory items are taxable

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

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

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

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

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

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

Subp. 3. **Nonisolated sales.** The following are examples of transactions that are not considered isolated or occasional sales:

A. The sale of property held primarily for sales to customers in the ordinary course of trade or business.

Example 1. Leasing company sells to X a bulldozer that was previously used in its business by leasing to others. Since a lease constitutes a sale, leasing company is deemed to be in the business of selling this kind of property. The sale of the bulldozer to X is not an isolated or occasional sale.

B. The infrequent sale of an inventory item by a retailer, jobber, or other vendor, even though such sales do not happen often and only comprise an insignificant part of the vendor's total business.

Example 1. Sporting goods store sells one power cruiser during the calendar year. The sale is taxable.

C. Sales that constitute an integral part of a business even though the sale of such tangible personal property is not the primary business of the seller (as the sale of repossessed property by a finance company).

D. The sale of by-products, waste, scrap, and other obsolete and used equipment by a person engaged in a business, when sales are regularly made to employees or to the public to dispose of these items.

Subp. 3a. **Sale of property used in trade or business in transactions qualified and reported under Internal Revenue Code.**

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

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

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

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

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

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

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

Subp 3c **Sale of property used in trade or business in transaction with $1,000 gross receipts limitation.** The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling such property and the total amount of gross receipts from the sale of trade or business property made during the calendar month of the sale, as well as sales of property made in the previous 11 months, does not exceed $1,000, as provided under Minnesota Statutes, section 297A 68, subdivision 25, paragraph (a), clause (6) A buyer of property is not subject to use tax if the buyer has a written statement from the seller confirming that the sale of the property meets this requirement. In this case, if the seller sells property for an amount exceeding $1,000, the seller is subject to tax on the total amount received, including the first $1,000 The limitation of $1,000 does not apply when the business sells substantially all of its assets

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

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

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

Subp 4 **Garage sale or personal sale.** A "garage sale or personal sale" is a sale by a person or persons selling their personal belongings. A garage sale or personal sale does not include flea markets, craft shows, antique shows, coin shows, stamp shows, comic book shows, convention exhibit areas, or similar selling events, as provided under Minnesota Statutes, section 297A 87 A garage sale includes moving sales, estate sales, and other similar sales If a person does not regularly hold garage sales or personal sales and the items sold have not been collected or purchased for the purpose of resale, the sales are isolated or occasional A person who collects or purchases items for resale is deemed to be in business, and must obtain a sales and use tax permit and collect and remit tax on sales of taxable items.

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

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

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

[For text of subps 5 and 6, see M R]

Subp 7. [Repealed, 33 SR 771]

Subp 8 **Auctions.**

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

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

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

(1) the title is exchanged directly between the owner and the buyer,

(2) the auctioneer does not carry insurance on the property, and

(3) the auctioneer and the owner of the property to be sold have entered a written agreement as provided under Minnesota Statutes, section 330 10

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

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

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

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

Subp. 9. **Brokered sales.**

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

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

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

(1) the title to the property passes directly from the owner to the buyer,

(2) the payment does not pass through any accounts of the broker,

(3) the broker does not carry insurance on the property, and

(4) the rights to accept or reject any offer are retained by the owner

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

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

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

Subp 10 **Consignment sales and consignment auctions.**

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

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

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

D Consignment sales and consignment auctions are exempt from tax if

(1) the title to the property passes directly from the owner to the buyer;

(2) the payment does not pass through any accounts of the retailer or auctioneer,

(3) the retailer or auctioneer does not carry insurance on the property, and

(4) the rights to accept or reject any offer are retained by the owner

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

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

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

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

Statutory Authority: *MS s 270C 06*

History: *33 SR 771*