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MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Revenue
(Agency or Board)

Regulation No. TAX 5 +U 100 thru 606 (amended)

Subject: Sales and Use Tax

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SALES AND USE TAX

RULES AND REGULATIONS

OF THE

DEPARTMENT OF REVENUE

AS ADOPTED

ON OCTOBER 30, 1974

Changes or additions are indicated by underscoring;
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SALES AND USE TAX RULES AND REGULATIONS

TABLE OF CONTENTS (CROSS-REFERENCE LIST)

ONE DEFINITIONS		TWO ADMINISTRATION OF SALES TAX		THREE ADMINISTRATION OF USE TAX		FOUR EXEMPTIONS		FIVE RETURNS, ASSESSMENTS & COLLECTIONS		SIX SPECIFIC BUSINESSES AND ACTIVITIES	
(old)	(new)	(old)	(new)	(old)	(new)	(old)	(new)	(old)	(new)	(old)	(new)
1	100	29	200	43	300	54	400	74	500	28	600
2	101	30*		44	301	55	401	75	501	28.1	601
3	102	31	201	45	302	56	402	76	502	28.2	602
4	103	33	202	47	303	57	403	77	503	28.3	603
5	104	34	203	50	304	28.7	404	79	504	28.4	604
6	105	35	204	52	305	28.6	405	80	505	28.5	605
7	106	36	205	53	306	58	406	81	506	73	606
8	107	37	206			59	407	83	507		
9	108	39	207			60	408	84	508		
10	109	40	208			61	409	85	509		
11	110	41	209			62	410	89	510		
12	111	42	210			63	411	93	511		
16	112	38	211			64	412				
19	113	51	212			65	413				
20	114					66	414				
22	115					68	415				
23	116					69	416				
24	117					70	417				
25	118					71	418				
26	119					72	419				
27	120					72.1	420				
						73.1**					

* deleted completely
** withdrawn from proposed regs.

CHAPTER ONE: DEFINITIONS

TAXS&U 100 INTRODUCTION

TAXS&U 101 PERSON

TAXS&U 102 SALES BY TRANSFER OF TITLE

TAXS&U 103 SALES BY TRANSFER OF POSSESSION

TAXS&U 104 LEASES

TAXS&U 105 LICENSE TO USE

TAXS&U 106 CONSIDERATION

TAXS&U 107 PRODUCING, FABRICATING, PRINTING OR PROCESSING OF PROPERTY FURNISHED BY CONSUMER.

TAXS&U 108 MEALS AND DRINKS

TAXS&U 109 ADMISSIONS AND USE OF AMUSEMENT DEVICES

TAXS&U 110 LODGING

TAXS&U 111 UTILITIES

TAXS&U 112 SALES OF BUILDING MATERIAL, SUPPLIES OR EQUIPMENT

TAXS&U 113 USE

TAXS&U 114 TEMPORARY STORAGE AND USE IN MINNESOTA

TAXS&U 115 REDUCTION IN SALES PRICE FOR PROPERTY TAKEN IN TRADE

TAXS&U 116 DEDUCTIONS NOT ALLOWABLE IN COMPUTING SALES PRICE

TAXS&U 117 DEDUCTIONS ALLOWABLE IN COMPUTING SALES PRICE

TAXS&U 118 GROSS RECEIPTS DEFINED - METHOD OF REPORTING

TAXS&U 119 RETAILER

TAXS&U 120 AGRICULTURAL PRODUCTION

TAXS&U 121-199 RESERVED

CHAPTER TWO: ADMINISTRATION OF THE SALES TAX

TAXS&U 200 IMPOSITION OF SALES TAX

TAXS&U 201 ADVERTISING TAX WILL BE ABSORBED - MISDEMEANOR

TAXS&U 202 APPLICATION FOR PERMIT TO MAKE RETAIL SALES

TAXS&U 203 PERMIT WHEN VALID AND HOW DISPLAYED

TAXS&U 204 REVOCATION OF PERMITS

TAXS&U 205 RETAIL SALES WITHOUT PERMIT- VIOLATION

TAXS&U 206 PRESUMPTION THAT TAX MUST BE PAID

TAXS&U 207 GOOD FAITH ACCEPTANCE OF EXEMPTION CERTIFICATES

TAXS&U 208 CONTENT AND FORM OF EXEMPTION CERTIFICATE

TAXS&U 209 NON-EXEMPT USE OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE

TAXS&U 210 FUNGIBLE GOODS FOR WHICH EXEMPTION CERTIFICATES GIVEN

TAXS&U 211 DIRECT PAY PERMIT PROCEDURE

TAXS&U 212 COMMON CARRIER DIRECT PAY CERTIFICATE

TAXS&U 213-299 RESERVED

CHAPTER THREE: ADMINISTRATION OF THE USE TAX

TAXS&U 300 IMPOSITION OF USE TAX

TAXS&U 301 LIABILITY FOR PAYMENT OF USE TAX

TAXS&U 302 COLLECTION OF TAX AT TIME OF SALE

TAXS&U 303 UNLAWFUL TO ADVERTISE THAT USE TAX WILL BE ABSORBED

TAXS&U 304 REGISTRATION

TAXS&U 305 PROPERTY BROUGHT INTO MINNESOTA

TAXS&U 306 CREDIT AGAINST USE TAX

TAXS&U 307-399 RESERVED

CHAPTER FOUR: EXEMPTIONS

TAXS&U 400	FOOD PRODUCTS
TAXS&U 401	DRUGS, MEDICINES, THERAPEUTIC AND PROSTHETIC DEVICES
TAXS&U 402	EXEMPTIONS IN ACCORDANCE WITH CONSTITUTIONAL PROHIBITION AGAINST TAXATION
TAXS&U 403	PROPERTY SHIPPED OUT OF STATE
TAXS&U 404	GIFTS - TRANSFERS WITHOUT MONETARY CONSIDERATION
TAXS&U 405	CARTONS AND CONTAINERS USED BY MOVING AND TRANSFER COMPANIES
TAXS&U 406	PETROLEUM PRODUCTS
TAXS&U 407	CLOTHING AND WEARING APPAREL
TAXS&U 408	PROPERTY USED IN AGRICULTURAL AND INDUSTRIAL PRODUCTION
TAXS&U 409	PUBLICATIONS
TAXS&U 410	SALES TO EXEMPT ENTITIES, THEIR EMPLOYEES OR AGENTS
TAXS&U 411	ISOLATED OR OCCASIONAL SALES
TAXS&U 412	ROLLING STOCK EXEMPTION
TAXS&U 413	AIRFLIGHT EQUIPMENT EXEMPTION
TAXS&U 414	TELEPHONE CENTRAL OFFICE TELEPHONE EQUIPMENT EXEMPTION
TAXS&U 415	EXEMPT CHARITABLE, RELIGIOUS AND EDUCATIONAL ORGANIZATIONS
TAXS&U 416	CASKETS, BURIAL VAULTS, URNS FOR CREMAINS AND MEMORIALS
TAXS&U 417	DISABLED VETERANS - PURCHASES OF AUTOMOBILES AND OTHER CONVEYANCES
TAXS&U 418	AIRCRAFT COMMERCIAL USE PERMIT
TAXS&U 419	DISABLED VETERANS - PURCHASE OF BUILDING MATERIALS
TAXS&U 420	TEXTBOOKS
TAXS&U 421-499	RESERVED

CHAPTER FIVE: RETURNS, ASSESSMENTS AND COLLECTIONS

TAXS&U 500 WHEN TAX IS DUE

TAXS&U 501 UNCOLLECTIBLE DEBT DEDUCTION

TAXS&U 502 RETURNS AND RECORDS

TAXS&U 503 COMMISSIONER MAY REQUIRE SECURITY

TAXS&U 504 EXTENSION OF TIME TO FILE RETURN AND REMIT TAX

TAXS&U 505 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS

TAXS&U 506 FAILURE TO FILE A RETURN

TAXS&U 507 TIME LIMITATION ON ASSESSMENT AND COLLECTION

TAXS&U 508 CLAIMS FOR REFUND

TAXS&U 509 APPEAL FROM DENIAL OF CLAIM FOR REFUND

TAXS&U 510 PENALTIES AND INTEREST

TAXS&U 511 LIMITATIONS ON DISCLOSURE OF SALES AND USE TAX INFORMATION

TAXS&U 512-599 RESERVED

TAXS&U 600 VETERINARIANS

TAXS&U 601 COMMERCIAL ARTISTS AND PHOTOGRAPHERS

TAXS&U 602 FLORISTS AND NURSERYMEN

TAXS&U 603 SOFT WATER EQUIPMENT AND SERVICE DEALERS

TAXS&U 604 SALES AND RENTALS OF MOBILE HOMES AND HOUSE TRAILERS

TAXS&U 605 ADVERTISING AGENCIES

TAXS&U 606 SALES BY GOVERNMENTAL UNITS; TAXABLE

TAXS&U 607-699 RESERVED

TAXS&U 100 INTRODUCTION. 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 ~~Chapter 297A~~ the Sales and Use Tax Law or these regulations will be given the meanings ascribed to them in accordance with legal, accounting, business or common usage.

Certain transactions defined in the Sales and Use Tax Law and these regulations 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 these regulations.

The use tax complements the sales tax and basically applies to the following situations:

(1) 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;

(2) Property purchased for resale or other non-taxable use and used by the purchaser for a taxable purpose;

(3) Property purchased from a Minnesota vendor on which no sales tax was paid.

These regulations are 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.

TAXS&U 101 PERSON. The term "person", as defined in Section 297A.01, Subd. 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 activites. 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 regulation.

The term includes not only natural persons or individuals but all forms of 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 "trustee", as used in Section 297A.01, Subd. 2, includes a trustee or receiver appointed by a Federal court exercising jurisdiction over the estate of a bankrupt.

TAXS&U ~~3~~ 102 SALES BY TRANSFER OF TITLE.

(a) Section 297A.01, Subd. 3(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:

(1) 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;

(2) Where the contract requires delivery at destination, title passes upon tender there;

(3) 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;

(4) 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;

(5) 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.

(b) Although the title passes in accordance with the rules stated above, unless, in the opinion of the Commissioner of ~~Taxation~~ 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.

(c) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance, revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". For example, where a customer holds a T.V. 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".

(d) 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:

(1) the value of the property transferred is insignificant as compared to the total consideration; and

(2) no separate charge is made for such property. In such cases, the repairman is regarded as rendering a non-taxable 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 $0.25 to repair a watch. He bills the customer $6.00 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.

(e) When a manufacturer acquires special tooling which is not exempt under Section 297A.25, Subd. 1(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.

(f) In the case of either prime or sub-contracts 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:

(1) 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;

(2) 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;

(3) If the Minnesota manufacturer holds a sub-contract 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 sub-contractor must collect the sales tax from the prime contractor.

All other situations will be determined on the basis of the relevant facts.

TAXS&U 103 SALE BY TRANSFER OF POSSESSION. In the ordinary course of business, in accordance with Section 297A.01, Subd. 3(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.

(a) IN GENERAL. Whether the leasing of personal property constitutes a sale within Minnesota is determined by the situs of the property leased, and not by the state wherein the contract was executed or by the state wherein lease payments are made. (Exception: See (b) below for drive-it-yourself vehicles, etc.)

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 ~~permanent~~ Minnesota situs of the lessee.

Example 1. Motor Freight Line, a Minnesota Company, leases ten tractor-trailers from 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 ~~leasing~~ lease price attributable to the seven tractor-trailers used to haul freight to and from the Minnesota freight depot constitutes a Minnesota sale. The ~~leasing~~ 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 represent Minnesota sales although such payments continue to be made in Iowa.

(b) LEASES OF DRIVE-IT-YOURSELF AUTOMOBILES, TRAILERS OR OTHER VEHICLES. Notwithstanding the provisions of (a) above, 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. Rental Agency, located in Minnesota, leases an automobile to "X". Thereafter, "X" drives the automobile to California and returns the vehicle to Rental Agency's office in Los Angeles, and there pays the total lease charge of $280.00. The lease charge constitutes a sale in Minnesota, and Rental Agency is required to include the entire $280.00 in its gross receipts subject to tax.

Example 2. Rental Agency located in New York leases an automobile to "Y". Thereafter, "Y" drives the automobile to Minnesota and returns

the automobile to Rental Agency's office in this State, and there pays the total lease charge of $150.00. No part of the $150.00 payment is subject to the Minnesota sales or use tax.

(c) 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:

(1) The equipment is advertised as available for rent.

(2) The contractor otherwise actively solicits rental business.

(3) 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.

(4) The contractor regularly leases or rents equipment to others for extended periods of time.

(d) SERVICES OF AN OPERATOR FURNISHED WITH RENTALS OF EQUIPMENT.

(1) 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 Section 297A.01, Subd. 3(a).

(2) There are enterprises which lease equipment either with or without operators. For example, a lessor of transport trucks will furnish a driver if the lessee so requests, or a lessor of heavy equipment will furnish an operator for a crane or caterpillar.

When a driver or operator is furnished along with the equipment, the lessor, by 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 Section 297A.01, Subd. 3(a).

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

(3) 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 non-taxable.

(e) 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:

(1) 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 1/3 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.

(2) Where the lease agreement does not specify such items, the entire payment is subject to tax.

(3) Items not deductible under any circumstances are oil or lubrication, replacement parts and collision and comprehensive insurance.

(f) MAINTENANCE LABOR - LUMP SUM 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.

(g) LEASES TO ELECTING COMMON CARRIER. Effective July 1, 1971, common carriers may elect under provisions of 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 common carrier direct pay

certificate. See TAXS&U ~~51~~ for rules relating to the common carrier direct pay certificate and describing the property for which the payment of tax by the lessee may be deferred.

(h) 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.

(i) A LEASE AS DISTINGUISHED FROM A CONDITIONAL SALES CONTRACT.

(1) 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:

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

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

(cc) 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.

(dd) 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.

(ee) 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.

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

(2) 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:

(aa) 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.

(bb) 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.

(cc) 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.

(dd) 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.

(ee) Agreements similar to the arrangment in (dd) above, 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.

(3) 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.

(4) 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.

(5) 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 paragraph 2(aa) and (bb) above, 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.

(6) 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 paragraph 2(cc), above, will generally be held to be sales of the equipment.

(7) 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 paragraph 2(dd) and (ee), above, in general, will be held to be sales contracts.

(j) TIME OF INCIDENCE OF TAX. 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 effec 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 t 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.

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.

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 case 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.

TAXS&U-6 LICENSE TO USE. 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 Section 297A.01, Subd. 3(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 non-standard 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 $15.00 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.

Example.--"X"-Company,-located-in-Minnesota,-leases-a-computer-from Manufacturer-for-time-sharing-purposes.--Consequently,-"X"-Company-gives Manufacturer-a-resale-exemption-certificate.--Thereafter,-"X"-Company arranges-with-Minnesota-and-Wisconsin-customers-to-share-with-them-the-use of-the-computer.--Each-customer-secures-direct-access-to-the-computer-by means-of-a-telephone.--"X"-Company-charges-customers-on-the-basis-of-$6.00-per-minute.--"X"-Company's-customers-used-the-computer-for-290-hours-during the-month-of-October,-1968.--Consequently,-"X"-Company-is-required-to-include in-its-gross-receipts-$104,400.00,-represented-by-290-hours-x-60-minutes x-$6.00-per-minute.--The-sales-to-Wisconsin-customers-are-not-exempt-under any-other-provision-of-the-Sales-and-Use-Tax-Act-

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 non-taxable service.

106
TAXS&U ~~7~~ CONSIDERATION.

(a) IN GENERAL. As used in Section 297A.01, Subd. 3(a), "consideration in money" refers to the amount of money whether in the form of currency, coins, ~~or~~ 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 $5,000.00 in cash and gives a $20,000.00, 90-day promissory note drawn to the order of "V", vendor. The note bears interest at six percent. The consideration in money is $25,000.00. The $20,000.00 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 $20,000.00 promissory note at his bank for $19,500.00. The consideration paid by "M" is $25,000.00.

Transactions described in Section 297A.01, Subd. 3(a), are sales or purchases where effected by exchange or barter. The terms "exchange" and "barter" are used synonymously. (See TAXS&U ~~22~~ 115 ~~regulation~~ for allowable exclusions from sales price.)

(b) 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.

(c) 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:

(1) 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.

(2) 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.

PRODUCING, FABRICATING, PRINTING OR PROCESSING OF 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 Section 297A.01, Subd. 3(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.

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 Section 297A.01, Subd. 3(b).

Example 1. Customer enters into agreement with upholsterer whereby latter will remove old fabric from Customer's living room sofa and replace it with fabric chosen by Customer. The cost agreed upon is $300.00. Service charges are $150.00, with remaining $150.00 representing the cost of the materials. As the reupholstering repair permits Customer to continue to use sofa for the purpose for which acquired, only the $150.00 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 Customer had furnished his own material, no sale would have resulted.

Example 2. Customer furnishes material which is thereafter produced into a slipcover for sofa. The charge for producing the slipcover is a sale in accordance with Section 297A.01, Subd. 3(b), since it results in the ~~creation~~ modification of tangible personal property. If Customer had purchased material from the upholsterer, the entire cost to 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 TAXS&U ~~22~~ 115)

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.

Existing TAXS&U ~~9~~ is superseded by the following:

TAXS&U 108 ~~9~~ MEALS AND DRINKS

(a) IN GENERAL. Under Section 297A.01, Subd. 3(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 (1) furnishing, preparing or serving of food, meals or drinks by hospitals, sanitariums, nursing homes or senior citizens' homes; (2) serving of meals and lunches at public and private schools, universities or colleges; and, (3) the furnishing, preparing or serving of an occasional meal by a charitable or church organization.

(b) CRITERIA FOR DETERMINING TAXABILITY. Whether a particular transaction constitutes the furnishing, preparing or serving of food, meals or drinks under Section 297A.01, Subd. 3(c), and thus is taxable, or whether it constitutes the sale of food products under Section 297A.25, Subd. 1(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 Section 297A.01, Subd. 3(c) will be referred to as sales of "taxable food", and sales of food products exempted under Section 297A.25, Subd. 1(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.

(1) As a general rule, a sale of "taxable food" occurs when any of the following conditions exist:

(aa) The vendor is in the business of selling "meals" or "drinks";

(bb) The food sold is ready for immediate consumption;

(cc) The food sold is usually consumed on the vendor's premises; or

(dd) The vendor furnishes tables, counters, chairs, trays, glasses, cups, dishes or other eating utensils.

(2) As a general rule, a sale of "exempt food" occurs only if all of the following conditions exist:

(aa) The food is sold in an unheated state;

(bb) 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;

(cc) The food is sold in the same form, condition, quantities and packaging as commonly sold in food stores; and

(dd) The food is of a type not otherwise taxable when sold by food stores.

(3) 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 Section 157.03, regardless of whether or not meals or drinks are served regularly to the public by such vendors.

(4) 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.

(5) 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.

(6) 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.

(7) 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".

(8) 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".

(9) Hand-prepared or dispensed ice cream cones and sundaes, from either soft or regular ice cream, are "taxable food".

(10) 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, 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".

(11) 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, 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".

(12) 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".

(13) Sales of candy and candy products are sales of "exempt food" wherever and by whomever made.

(c) MEALS AT HOSPITALS, SANITARIUMS, NURSING HOMES OR SENIOR CITIZENS' HOMES. Meals furnished, prepared or served on the premises of hospitals, sanitariums, nursing homes or senior citizens' homes 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 non-profit organization the food and drinks at the coffee shop are taxable since they are not furnished, prepared or served by the hospital itself.

"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, 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.

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 non-profit basis.

(d) MEALS AT SCHOOLS. Meals furnished, prepared or served at public and private schools, universities or colleges are non-taxable, except when non-school groups rent a portion of the institution's premises and prepare and serve meals there. Meals served by such non-school groups are taxable unless exempted by clause (e) as occasional meals of charitable or church organizations.

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.

(e) OCCASIONAL MEALS BY A CHARITABLE OR CHURCH ORGANIZATION.

(1) 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 TAXS&U ~~68~~ 415(b) and (c). No provision is made for non-taxable occasional meals by educational organizations or other non-profit groups such as Boy Scouts, American Legion, Jaycees, etc.

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

(3) 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.

(4) The furnishing, preparing or serving for a consideration of meals by a charitable or church organization described in (3) will not affect the non-taxable 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 of the fair gounds at which it prepares and serves meals for a consideration for several consecutive days. The meals served at the fair gounds are not occasional meals and thus are taxable, but the monthly Sunday night suppers are not taxable.

(5) 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.

(6) When a meal by a charitable or church organization is taxable under (3) or (5) or a meal by any other non-profit organization is taxable as explained in (1), 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, 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 Political Party.

(f) 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 Sections 144.71 through 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.

(g) 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.

(h) CATERERS. The term "caterer", as used herein, means a person, including those licensed under M. S. 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 Section 297A.01, Subd. 3(c). Any charges made by a caterer for such items as tableware or tablecloths, whether or not separately stated on the bill, are part of the charges for the catering service and are taxable.

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.

(i) 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 (h), the consideration paid for such meals represents a taxable sale.

(j) 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 therefor, no taxable sale results.

(k) 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.

(l) TIPS. A tip given voluntarily by a customer to an employee of the retailer is not includible in the gross receipts of the retailer.

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.

In the event any of the foregoing conditions of TAXS&U ~~9~~(1) 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.

(m) 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 Section 297A.25, Subd. 1(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. Non-reusable 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.

TAXS&U ~~10~~ ADMISSIONS AND USE OF AMUSEMENT DEVICES. Under Section 297A.01, Subd. 3(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.

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 ~~within the purview of~~ under Section 297A.01, Subd. 3(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 Section 297A.01, Subd. 3(d).

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

Admissions to all athletic events, including those staged by educational institutions;

Admissions to musical concerts;

Admissions to dances;

Admissions to motion picture theaters or theaters presenting stage shows and plays;

Admission to golf courses and tennis courts;

Admission to skating rinks and swimming pools;

Admission to state, county or other fairs; ~~and~~

Admission to carnival rides and hay and sleigh rides; and

Admission to bingo games and privilege of use of bingo cards.

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:

Use of billiard or pool tables;

Use of pinball machines, shuffleboards, etc.

Use of bowling alleys;

Use of lift device on a ski slope;

Use of trap-shooting facilities;

Use of golf driving range facilities, etc;

Privilege of selecting and listening to a recording on a mechanical device commonly referred to as a juke box.

Extry 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 Section 297A.01, Subd. 3(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.

Club Dues - Club dues charged as a condition of admission to a place of amusement or for the privilege of using an amusement device are taxable. If the club also sells social memberships entitling the holder to use the club house facilities only for social purposes such as dining or entertaining, a deduction is allowed from the club dues to the extent that the cost of social membership is included in the club dues. If the privilege of admission or privilege of using amusement devices is merely an incidental benefit of membership, the club dues are exempt.

Example 1. Golf Country Club charges $500.00 per year for membership dues whereby member is admitted to use available facilities including social. Golf Country Club also issues purely social memberships for $25.00 per year. Dues for social membership are exempt, and club dues are taxable only in the amount of $475.00.

Example 2. Golf Country Club does not issue social memberships. There is significant use of amusement devices by membership. The club dues are taxable in full even though the portion attributable to social use is separately stated.

The gross receipts of such sales are taxed in accordance with Sections 297A.02 and 297A.03 ~~and regulations pertinent thereto~~.

TAXS&U ~~11~~ 110 LODGING. Under Section 297A.01, Subd. 3~~(c)~~(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 thirty days or more constitutes a sale. ~~See regulation for Meals and Drinks (b) Educational programs and children's camps for rules exempting lodgings related thereto.~~ See TAXS&U ~~9~~ 108(f) for rules exempting lodging furnished in connection with educational programs and children's camps.

The following criteria will be applicable in determining whether a license to use real property for lodging purposes constitutes a sale under Section 297A.01, Subd. 3(e):

A lease of or license to use specific real property enforceable for a period of thirty 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 thirty 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 semi-monthly basis;

A lease of or a license to use real property where the consideration therefor is paid or payable at periods of less than thirty days' duration, or where the parties are not bound by an enforceable contract to give prior notice of thirty days or more of intention to terminate constitutes a sale;

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 thirty 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 thirty days, the transaction constitutes a sale in accordance with the above.

Example 2. Hotel, in addition to furnishing sleeping accommodations and related services 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 thirty 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 thirty days.

Example 4. Motel charges Guest $12.00 per day for a room. Guest makes three local telephone calls. Motel bills Guest for $12.00 plus a separately stated charge of $.45 for telephone calls, and $1.00 for use of a television set. The taxable consideration paid by Guest is $13.00 represented by the $12.00 charge for the room and $1.00 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.

TAXS&U ~~12~~ /// UTILITIES. Under Section 297A.01, Subd. 3(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. Coin-operated telephone service is excluded from the definition of "sale". See Section 297A.25, Subd. 1(h), and other clauses under this section for exceptions.

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 inter-communicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

Consequently, for purposes of Section 297A.01, Subd. 3(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 Service Commission, constitutes sales. ~~Charges for telephone service outside the "local exchange area" are not subject to the provisions of Section 297A.01, Subd. 3(f).~~ 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 $6.00 per month for local exchange service. In addition, during a certain month, he pays $20.00 for telephone service to other parts of Minnesota outside his local service area, and $30.00 for long distance calls made to other states. The $6.00 per

month charge ~~constitutes a sale, while the additional charge of $50.00, representing the calls made to other parts of Minnesota and to other states, does not constitute a sale for purposes of this clause (f)~~ for local exchange service, and the $20.00 paid for outside calls within Minnesota are both subject to tax. The charge of $30.00 for long distance calls made to other states does not constitute a sale.

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.

(1) If the billing includes service for any date before November 1, 1971, the 3% rate is applicable. For example: A billing for service from October 30 through November 30 would carry the 3% rate.

(2) If the billing includes only service on or after November 1, 1971, the 4% rate applies. For example: A billing for service from November 1 through November 30 would carry the 4% rate.

TAXS&U ~~16~~ 112 SALES OF BUILDING MATERIAL, SUPPLIES OR EQUIPMENT

(a) IN GENERAL. Under Section 297A.01, Subd. 4, sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders constitute retail sales and are thus taxable.

The term "building materials, supplies and equipment", as used in these regulations, refers to property intended to become part of a new building, ~~or~~ 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, pre-fabricated cabinets and central air conditioning units (for space cooling).

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.

(b) CONTRACTORS AND CONSTRUCTION ACTIVITIES. Contractors are generally classified into two broad groups: general contractors and subcontractors.

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 equipment and installation charges. The person for whom the general contractor performs the work is generally the owner.

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.

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.

The term "construction contract" as used herein refers to a contract under the terms of which a contractor agrees to perform construction activities. Such construction activities do not include the sale and installation of an appliance or other item of tangible personal property in such a manner as not to become a permanent part of the real estate. For example, 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.

(c) CONSTRUCTION CONTRACTS WITH EXEMPT ENTITIES.

(1) 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 Section 297A.25, Subd. 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. Village enters into a contract with Contractor for storm sewer construction. Contractor purchases materials for this job from various suppliers. The construction is clearly an alteration or improvement to real property with material purchased by contractor for use in constructing the storm sewer. ~~This constitutes a sale~~ These transactions constitute sales at retail and ~~is thus~~ are subject to the sales tax. The contractual relationship between Contractor and Village does not affect the validity of the sales tax imposed upon Contractor. Had Village undertaken such construction with its own employees, the purchase of the materials by Village would not have been subject to tax.

~~Where a governmental agency, corporation or any other institution exempt from sales tax under Section 297A.25, Subd. 1, purchases building material, supplies and equipment from materialmen or suppliers, and subsequently furnishes such property to a contractor~~

~~engaged-in-constructing-a-building-or-repairing,-altering-or improving-real-estate-at-a-fixed-price-for-such-exempt-entity,-and such-exempt-entity-receives-credit-against-the-contract-price-for the-materials-and-supplies-so-delivered,-the-transaction-between the-exempt-entity-and-the-contractor-constitutes-a-taxable-purchase by-the-contractor.~~

(2) 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. School District enters into a contract with Contractor for the construction of a school building. Contractor not only specified the price at which he agreed to deliver the completed school, but made known to School District the portion of the total cost of construction allocated to building materials and supplies. In addition, Contractor furnished 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, School District purchased the specified items at the price furnished by Contractor and made payments from its own funds to the suppliers. The material and supplies so purchased were thereafter delivered to Contractor and, in return, School District received credit against the contract price for the payments made by it.

Although the initial purchase of the material and supplies by School District is not taxable, the transfer to Contractor is a

"transfer of title or possession" and taxable as such for the following reason: 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 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.

(3) 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.

In some instances, the exempt entity, in addition to contracting with a contractor for the erection of a building or the alteration or repair of real estate, appoints and designates 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.

(d) 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 sale by a contractor-retailer of building supplies, materials and equipment which sale does not provide for installation of the merchandise sold is a sale at retail.

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.

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 a contractor and his purchase of the supplies and equipment used in installing the property constitutes a retail sale to him.

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:

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:

furnish an exemption certificate if such items are being acquired

for the purpose of resale; or

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.

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 fifty 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.

If his business activities during the prior calendar year reflect that more than fifty 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 ~~Taxation~~". 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 regulation.

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, ~~1968~~ 1972, contractor-retailer purchased ten bathtubs at $150.00 each and twenty bathroom sinks at $40.00 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 $200.00 each and five bathroom sinks at $55.00 each. He reports gross receipts from sales at retail of $675.00. The sales tax due and owing from his is ~~$20.25~~ $27.00 (4% of $675.00). 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, ~~1968~~ 1972:

Line 1	Gross sales.....	$675.00
Line 2	Deductions (see line 18)*.....	$500.00
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.....	$ ~~5.25~~ 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

Total cost of goods sold.....$500.00

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

Example 2. Contractor-retailer purchased ten bathtubs at $150.00 each and twenty bathroom sinks at $40.00 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, ~~1968~~ 1972, he sold at retail two bathtubs at $200.00 each and five bathroom sinks at $55.00 each. In addition, he utilized three bathtubs and six bathroom sinks in his contracting activities. Contractor-retailer makes the following calculation on Form ST-1 (Sales and Use Tax Return) filed by him for the month of March, ~~1968~~ 1972. (For purposes of this example, it is assumed that in March, ~~1968~~ 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--
Line	Line 3	Net sales	$ 675.00
	Line 4	Purchases subject to use tax*.	$ 690.00
	Line 5	Total taxable amount	$1,365.00
	Line 6	Total tax due	$ ~~40.95~~ 54.60

*Line 4 is calculated as follows:

3 bathtubs purchased at $150.00 each	$ 450.00
6 bathroom sinks purchased at $40.00 each	$ 240.00
Total.....	$ 690.00

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

(e) STATUS OF CONSTRUCTION CONTRACTS ON EFFECTIVE DATE OF ~~ACT~~ LAW. Where 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 virture of such contract; and

(3) If either event stated in 1 or 2 above occurred prior to June 2, 1968.

Example. Contractor signs a lump sum contract with Realty Company on April 15, 1967 whereby Contractor agrees to erect an office building for Realty Company. Contract did not contain a provision for reimbursement of future taxes. 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 Contractor of the concrete and steel framework constitutes a non-taxable 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 Contractor of the aluminum sheets constitutes a non-taxable transaction, as the conditions specified in (2) and (3), above, were satisfied.

The sale to 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.

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 ("pre-tax 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.

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.

Where a contractor has entered into more than one such pre-tax 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.

Where a general contractor retains subcontractors to perform part of the work incident to a pre-tax 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.

(f) The 3% 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 incorporated 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.

USE. Section 297A.01, Subd. 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, sixty typewriters are put to use in offices in its several Minnesota locations, while the remaining forty are placed in its Minnesota storage center. Subsequently, thirty 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 thirty 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 Section 297A.14 ~~and regulations pertinent thereto~~ regarding the imposition of the use tax with respect to property used in Minnesota.)

TAXS&U ~~20~~ 114 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 Section 297A.01, Subd. 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 ~~use or storage~~ storage or use as defined in Section 297A.01, Subd. 5 or 6, respectively.

Example 2. "Z" Corporation purchased equipment in Wisconsin and requested 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 Section 297A.01, Subd. 5 or 6, respectively.

TAXS&U ~~22~~ 115 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 property so accepted will qualify for the exclusion from the sales price provided both the following conditions are met:

Such property is taxable under the Sales and Use Tax Law;

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

Example 1. Dealer sells a new ~~AUTOMOBILE~~ boat with a list price of $3,000.00 to Customer. Dealer accepts Customer's used boat ~~automobile~~ in trade and gives Customer a credit of $1,000.00 therefor. As the conditions above are met, the credit qualifies for the exclusion. Consequently, the "sales price" is $2,000.00.

Example 2. Farm Implement Dealer sells a combine to Farmer with a list price of $4,000.00 and accepts in trade a used corn-picker for which a credit of $300.00 is given. As the conditions above are met, the credit qualifies for the exclusion. Consequently, the "sales price" is $3,700.00.

Example 3. Implement and Livestock Dealer sells a new tractor with a list price of $2,000.00 and accepts in trade three steers for which a credit of $750.00 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 $2,000.00.

Example 4. Jeweler sells a diamond ring to Customer for $2,000.00 and accepts in trade a new lady's fur coat for which a credit of $2,000.00 is given. Although the first condition is met, the second condition is not met as 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 $2,000.00.

TAXS&U ~~23~~ 116 DEDUCTIONS NOT ALLOWABLE IN COMPUTING SALES PRICE. No exclusion or deduction is allowable in computing the "sales price" for the expenses described in (a), (b), (c) and (d) below.

(a) COST OF THE 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. Interior Decorator recommends furniture for Customer's living room. Customer agrees to pay $3,000.00 to Interior Decorator for the articles recommended. Interior Decorator thereafter orders furnishings from a manufacturer at a cost of $1,800.00. No exclusion or deduction for cost of the property is allowed; consequently, the "sales price" is $3,000.00.

Example 2. ~~Automobile~~ Implement Dealer sells new ~~car~~ farm tractor to Customer for ~~$2,800.00~~ $8,000.00. Included in the price is a charge of $150.00 representing transportation costs from the factory to Dealer. As no exclusion or deduction for cost of transportation incurred prior to sale is allowed, the "sales price" is ~~$2,800.00~~ $8,000.00. See ~~regulation~~ TAXS&U ~~24~~ 117(c) regarding transportation expense incurred after sale is consummated.

(b) 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. Customer orders fur coat from Furs, Inc. for $800.00 which includes extensive alterations to be made in accordance with Customer's instructions. The cost of such alterations to Furs, Inc. is $100.00. As no exclusion or deduction for the labor or material involved in the alterations is allowed, the "sales price" is $800.00.

Example 2. TV Dealer sells Customer a color television receiver for $700.00 installed. The installation and adjustments are performed by a service company which charges TV Dealer $15.00. No exclusion or deduction for installation or adjustment labor involved is allowed since such charge is not separately stated. Consequently, the "sales price" is $700.00.

Example 3. Customer orders watch from Jeweler for $250.00 and requests that initials be inscribed in diamond chips. Jeweler agrees to do so without charge for labor but charges Customer $50.00 for the diamond chips used. As no exclusion or deduction is allowed for cost of materials used, the "sales price" is $300.00.

(c) 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. Lessor and Lessee enter into an agreement whereby Lessor will lease ten new 1968 trucks to Lessee at $2,000.00 per year per truck. The effective date of the lease contract is January 1, 1968. Lessor finances the purchase of the trucks through Bank. The interest paid to Bank in 1968 by Lessor is

$4,000.00. No part of this interest paid is allowable as an exclusion or deduction from the lease payments required to be paid by Lessee. Consequently, the "sales price" of the retail sale represented by the lease for the year 1968 is $20,000.00 (10 X $2,000.00).

(d) DISCOUNTS. In computing "sales price", the total consideration for the sale shall not be reduced by the discount allowed where the amount of the discount is determined by events that occur subsequent to consummation of the sale.

For example, Dealer sells a TV set to Customer for $500.00 on credit on January 15, 1969. May 1, 1969, Customer complains about the high price. Dealer grants a reduction of $50.00 in sales price as a discount. This discount will not be allowed as a deduction. Sales tax is computed on $500.00.

117
TAXS&U ~~24~~ DEDUCTIONS ALLOWABLE IN COMPUTING SALES PRICE. 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.

(a) 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: (1) interest on the unpaid balance; (2) carrying or finance charges; and, (3) payments to be applied against the unpaid balance.

Example 1. ~~Automobile~~ Boat Dealer sells a new Boat to Customer for $3,000.00. Customer agrees to pay $100.00 per month for 36 months, representing $450.00 interest at five percent for three years and $150.00 for collision, fire and theft insurance. Each payment made to ~~Automobile~~ 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 ~~Automobile~~ Boat Dealer when payment of $100.00 is made is $83.33 if he is on the cash basis. If he is on accrual basis, $3,000.00 is reportable at time of sale.

Example 2. Same facts as in Example 1 except that ~~Automobile~~ Boat Dealer, who is on the cash basis, discounts Customer's note at his bank before any payments are made by Customer and received $2,970.00. ~~Automobile~~ Boat Dealer thereafter is required to report the "sales price" of $3,000.00 for the month in which the note was discounted at his bank.

Example 3. Department Store sells various household furnishings and appliances to Consumer for $1,000.00. Consumer agrees to pay six percent interest plus two percent finance and service charges on the unpaid balance and further agrees to pay $100.00 per month. First payment was made one month after sale was consummated. The $100.00 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 Department Store is on the cash basis, it will report $93.33, $93.96 and $94.58 for the first three months, respecitvely. If Department Store is on the accrual basis, it will report $1,000.00 in the month the sale is made.

(b) INSTALLATION CHARGES FOR LABOR OR SERVICES. Tangible personal property may be sold either uninstalled or installed. The labor or service charge for the installation is allowable as a deduction in 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. Retailer advertises a hot water heater at $59.00 without installation, and $75.00 installed. Customer orders such a hot water heater installed. Retailer's bill reflects a sale of a

hot water heater at $59.00 and installation charges of $16.00. Consequently, the "sales price" is $59.00.

Example 2. Tire Shop sells Customer a new tire for $40.00 and replaces the old tire with a new one. The bill reads: 1 New Super Deluxe Tire - $40.00. As labor or service charges for mounting the new tire are not stated separately, the "sales price" is $40.00.

(c) 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. Department Store sells suite of living room furniture to Customer for $1,000.00. Policy of 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 $100.00. Although cost of delivering the suite of living room furniture is $25.00, no reduction in "sales price" will be allowed as the implication was that Customer, who was within the 25-mile limits, would not be

obligated to bear the cost of transportation.

Example 2. Building Supplier sells insulation at $3.00 per bag, cash and carry. Customer requires fifty bags but asks that merchandise be delivered and agrees to pay delivery charges. Building Supplier delivers merchandise with his own truck and then bills Customer as follows:

50 bags insulation at $3.00 per bag	$150.00
Shipping charges	20.00
Total	$170.00

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

50 bags insulation at $2.50 per bag	$125.00
Shipping charges	45.00
Total	170.00

The "sales price" will be deemed to be $150.00 in both the above examples as the $3.00 price is the cash and carry price offered to customers at vendor's place of business.

(d) DISCOUNTS. Discounts on sales are of three kinds: trade, quantity and cash. 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.

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--$150.00 less 30% if purchased in quantities of five or more units. Selling price is $105.00.

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 thirty days from date of sales invoice.

Example. Customer purchases a typewriter for $200.00. Terms are 2/10, n/30. Customer pays on the ninth day following receipt of invoice, and deducts the cash discount of $4.00. The "sales price" is $196.00.

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. Retailer uses "net sales" method of accounting for sales discounts. Sales for September (all subject to 2%--10 day discount) are $20,000.00. Retailer's books reflect the following summary:

Accounts Receivable.....	$19,600.00	
Sales.....		$19,600.00

Included in this total are sales of $4,900.00 derived from gross

sales of $5,000.00 on which the ten-day discount period does not end prior to October. The gross receipts reportable are $19,600.00.

In the following month of October, Retailer receives $3,920.00 (representing $4,000.00 in gross sales for which payment was made timely) and $1,000.00 (representing $1,000.00 in gross sales where discount was forfeited.)

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

Cash	$4,920.00	
Accounts Receivable		$4,900.00
Sales Discounts Forfeited .		20.00

The $20.00 of Sales Discounts Forfeited are required to be included in the gross receipts reportable for October.

~~(e)--Refunds-for-property-returned.--Where-property-subject-of-a "retail-sale"-is-returned-to-the-retailer-within-three-months-of-date-of purchase,-the-"sales-price"-shall-be-reduced-by-the-amount-of-purchase price-refunded-to-buyer,-either-in-cash-or-credit.--Where-the-goods-are returned-in-a-month-subsequent-to-the-month-when-sale-of-the-goods-was made,-a-deduction-for-the-appropriate-amount-of-sales-price-involved-may be-made-on-the-Sales-and-Use-Tax-Return,-Form-ST-1,-filed-for-the-month in-which-return-is-made.--Repossession-of-tangible-personal-property-does not-constitute-a-return-of-property.~~

(e) 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. 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. Hardware Dealer sells Customer a lawnmower for $100.00 on May 1, ~~1968~~ 1972. Customer pays $100.00 plus ~~$3.00~~ $4.00 sales tax. As lawnmower was defective, it was returned to Hardware Dealer on May 10, ~~1968~~ 1972 and ~~$103.00~~ $104.00 was refunded to Customer. Gross receipts will be reduced by $100.00.

Example 2. Retail Tires sells four new tires to Customer at $40.00 each under guarantee on June 1, ~~1968~~ 1972. August 15, ~~1968~~ 1972, Customer returns one tire and is given a cash refund of $30.00 plus ~~$-.90~~ $1.20 tax. Retail Tires may reduce gross sales by the $30.00 refunded on his August Sales and Use Tax Return.

~~Example 3.--Automobile Dealer sells a new car to Customer for $3,000.00 on April 1, 1968.--Customer gives an old car valued at $600.00 as down payment and agrees to make monthly payments.--He fails to make subsequent payments.--The car is repossessed on June 10, 1968. No deduction against gross receipts for June, 1968, shall be allowed, as repossession is not deemed to be property returned for purposes of the sales tax.~~

Example 3. "A" purchases taxable personal property from Retailer at a price of $100.00. "A" pays Retailer $104.00 or ($100.00 sales price, plus $4.00 sales tax.) "A" then makes a gift of the property to "B". "B" returns the property to Retailer and requests a refund of the amount paid for the property. "B" (the donee of the gift) is entitled to a refund of $104.00 ($100.00 sales price, plus $4.00 sales tax.) The Retailer may reduce gross sales by $100.00 on his sales tax return for merchandise returned and thereby received credit for the amount of refundment.

(f) TAXES IMPOSED BY UNITED STATES. The sales price shall be reduced by any tax imposed by the United States upon or with respect to retailers or consumers. This deduction does not apply to manufacturers' or importers' excise taxes.

Example 1. Local telephone exchange service charge is $5.70 plus U. S. excise tax of $.57. 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 ~~3%~~ 4% of $5.70 (i.e., ~~$.17~~ $.23) plus the federal tax, $.57, or a total of ~~$6.44~~ $6.50.

Example 2. Retailer sells Brand X tires for $28.00 plus applicable taxes. Federal manufacturers' excise tax is $2.32. Minnesota sales tax is ~~3%~~ 4% of $30.32 ($28.00 plus $2.32)or ~~$.91~~ $1.21. Gross receipts reportable by Retailer in respect of this transaction are $30.32.

TAXS&U ~~25~~ 118 GROSS RECEIPTS DEFINED - METHOD OF REPORTING.

(a) 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 Section 297A.01, Subd. 4 ~~and-the-regulations-pertinent-thereto~~) as measured by the "sales price." (See Section 297A.01, Subd. 8.) ~~and-the-regulations-pertinent-thereto.)--The-term-"gross-sales"-as-used-in-line-1-of-Form-ST-1,-Sales-and-Use-Tax-Return,-means-"gross-receipts"-as-defined-herein.~~

The person filing the return may report his gross receipts either:

(1) On the cash basis as the consideration is received; or

(2) 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.

(b) CASH BASIS. Where sales are made at retail on a strictly cash basis, the vendor shall report his gross receipts on the basis of cash or other consideration received, minus the exclusions ~~or~~ and deductions from the total consideration allowed under Sections 297A.01, Subd. 8, and ~~the-exemptions-from-taxable-sales-as-provided-by-Section~~ 297A.25.

(c) 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 Sections 297A.01, Subd. 8 and 297A.25 ~~for-the-items-exempt,~~ regardless of when cash from such sales is received.

Example 1. 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 Supermarket, which is on a cash basis, is as follows:

Gross receipts		$200,000
Less: refunds for property returned		1,000
Gross receipts adjusted		$199,000
Sales of exempt property	$175,000	
Less: refunds for exempt property returned	1,000	
		$174,000
Taxable gross receipts		$ 25,000

Example 2. Department Store has cash sales of $500,000 and charge sales of $750,000 for the month of October, 1968. Department Store reports on the accrual basis. Consequently, Department Store reports as gross sales ~~(gross receipts)~~ $1,250,000 on the Sales and Use Tax Return it files for this month.

TAXS&U ~~26~~ 119 RETAILER. A retailer is any person engaged in making "sales at retail". A "sale at retail" or a "retail sale" as defined in Section 297A.01, Subd. 4, means a sale for any purpose other than resale in the regular course of business. Under Section 297A.01, Subd. 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 Section 297A.01, Subd. 10, and this regulation.

For illustrative purposes, a partial listing of retailers follows:

A person who leases automobiles, trucks, trailers or tractors;

A person who leases office equipment or computers;

A person who leases machinery, heavy earth-moving equipment or any other type of tangible personal property;

A person who installs a truck body on a new chassis for a consumer;

A person who binds printed sheets furnished by a consumer;

A person who prints on paper stock furnished by a consumer;

A person who furnishes, prepares or serves foods, meals or drinks to a customer for a consideration (see Section 297A.01, Subd. 3~~(b)~~(c), ~~and regulations pertinent thereto~~ for exceptions);

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.;

A person who furnishes music ~~from records, tapes or other devices~~ through mechanical devices such as juke boxes for a consideration;

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 thirty days (see Section 297A.01, Subd. 3(e)); ~~and regulations pertinent thereto);~~

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

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 Section 297A.01~~, and regulations pertinent thereto~~; and

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

TAXS&U ~~27~~ AGRICULTURAL PRODUCTION. Under the provisions of Section 297A.01, Subd. 13, the term "agricultural production" (as used in Section 297A.25, Subd. 1(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, and the rearing, feeding and management of livestock; tillage, husbandry; 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 Section 297A.01, Subd. 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.

The following examples are illustrative:

(1) 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 homeowner.

(2) "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.

(3) "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.

(4) 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.

~~TAXS&U-29--IMPOSITION-OF-SALES-TAX.---Under-Section-297A.02,-the-tax imposed-upon-the-seller-shall-not-exceed-the-amount-of-tax-which-such seller-is-authorized-and-required-by-law-to-collect-from-a-purchaser. Under-Section-297A.03,-subd.-2,-no-tax-shall-be-collected-by-the seller-where-the-sales-price-at-retail-is-less-than-17-cents. Consequently,-if-the-general-method-of-reporting-and-paying-the-tax (three-percent-of-the-gross-receipts-of-the-seller)-results-in-the seller-reporting-and-paying-an-amount-in-excess-of-that-which-he-is required-to-collect-from-the-purchaser,-the-seller-may-elect-to-file his-sales-and-use-tax-return-and-pay-the-amount-due-thereon-under the-Actual-Tax-Collected-Method.---The-sales-and-use-tax-return-form authorized-by-the-Commissioner-permits-the-seller-to-make-this election.~~

~~The-Commissioner-will-accept-the-election-to-use-the-Actual-Tax Collected-Method-provided-the-seller-records-his-transactions-in-a manner-that-will-enable-the-Commissioner-to-verify-that-the-amount-of tax-duly-paid-by-each-customer-is-the-amount-required-to-be-collected from-him.---Thus,-unless-the-seller's-records-disclose-the-sales-price and-tax-collected-in-respect-of-each-transaction,-the-Commissioner may-disallow-the-Actual-Tax-Collected-Method-and-determine-the-seller's liability-in-accordance-with-the-Gross-Receipts-Method.---Where-the election-for-a-particular-period-is-made-to-use-the-Actual-Tax Collected-Method,-this-method-applies-to-all-transactions-made-for that-period.~~

200

TAXS&U ~~29~~ IMPOSITION OF SALES TAX. The measure of the tax imposed upon the seller is 4% 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 3% of the gross receipts from

sales of taxable items. Vending machines are any coin-operated devices dispensing food, drinks, 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 regulation.

~~TaxS&U-30--Tax-Separately-Stated--Debt-Due-Seller.--The-seller-is required-to-remit-to-the-Commissioner-a-tax-of-three-percent-of his-gross-receipts-from-sales-at-retail.--Under-Section-297A.03, subd.-1,-the-tax-shall-be-stated-and-charged-separately-from-the sales-price-or-charge-for-service-and-shall-be-collected-from-the-purchaser-by-the-seller-except-where-otherwise-provided-by-law-or regulation.--The-amount-of-tax-which-the-seller-is-authorized-and required-to-collect-shall-constitute-a-debt-owed-by-the-purchaser to-the-seller,-and-the-latter-may-enforce-payment-by-legal-means.~~

TAXS&U ~~31~~ 201 ADVERTISING TAX WILL BE ABSORBED--MISDEMEANOR. Under Section 297A.03, Subd. 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 ~~Chapter 297A~~ 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 ~~three~~ four percent sales tax ~~($3.00)~~ ($4.00), or a total of ~~$102.99~~ $103.00. The seller, if he so chooses, can advertise the item as "$99.99 plus tax" or as "$99.99 plus ~~$3.00~~ $4.00 tax." or as ~~$102.99~~ $103.99 including Minnesota sales tax."

In the computation of the amount of tax to be collected on any transaction, amounts of less than 1/2 cent may be disregarded and the amounts of 1/2 cent or more shall be considered as an additional cent. Thus, on a sale of ~~16~~ 12 cents or less, the purchaser pays no tax; on a sale between ~~17~~ 13 cents to and including ~~49~~ 37 cents, he is required to pay one cent tax; on a sale between ~~50~~ 38 cents to and including ~~83~~ 62 cents, he is required to pay two cents tax; on a sale between ~~84~~ 63 cents to and including ~~$1.16~~ 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 $1.00, he is required to pay ~~three~~ four percent on each full dollar plus the appropriate amount from the brackets above.

TAXS&U ~~33~~ APPLICATION FOR PERMIT TO MAKE RETAIL SALES.

(a) 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 ~~M.S.-Chapter-297A~~ the Sales and Use Tax Law ~~and-regulations-pertinent-thereto~~. Section 297A.04 requires that any person, as defined in Section 297A.01, Subd. 2, who is engaged in making retail sales or is engaged in other activities taxable under ~~Chapter-297A,~~ 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 Section 297A.15 ~~and-regulations-pertinent-thereto,~~ to collect the tax upon all transactions taxable under ~~Chapter-297A~~ the Sales and Use Tax Law.

(b) NON-TAXABLE RETAIL ACTIVITIES. Where a person engages in retail activities exclusively non-taxable, he is not required to apply for or secure a permit.

Example 1. "F" engages in the sale of poultry and eggs at his farm-house. He engages in no other retail activities. As such food products are exempt under Section 297A.25, Subd. 1, "F" is not required to secure a sales and use tax permit.

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

(c) 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 ~~Chapter-297A,~~ 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 ~~blank~~ 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 assiged 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.

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 ~~blank~~ to the Commissioner. (However, see clause (F) of this regulation 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 TAXS&U ~~34~~ 203 regarding application for new permits.

(d) 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 ~~cigarettes,~~ 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 ~~commonly-referred-to-as-juke-boxes.~~ providing amusement and diversion. These devices are commonly referred to as juke boxes, pinball machines, shuffleboard, etc.

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

(e) INFORMATION REQUIRED. Application for a permit shall contain the following information:

(1) The legal form of organization; that is, individual, partnership, Minnesota corporation, foreign corporation, association, etc.;

(2) Date when taxable sales were first made or date when taxable sales are expected to begin;

(3) Name and mailing address to which sales tax forms are to be sent;

(4) Minnesota ~~employer's withholding tax number~~ Tax Department Identification Number, unless no such number was previously assigned;

(5) Business name and location or appropriate name and location;

(6) If there are two or more locations, and the consolidated method is elected each business name and address;

(7) The date on which the fiscal year ends;

(8) List of owners, partners or principal officers and home addresses and social security numbers of such individuals;

(9) Type of business; e.g., retail trade, wholesale trade, manufacturing, motion picture theater, hotel, bowling alley, dance hall, etc.; and

(10) 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.

(f) FEE. At the time of making an application, the applicant shall pay the Commissioner a fee of $1.00 for each permit applied for. Where the applicant elects to file a consolidated return as provided in clause (c) above, he is required to pay a $1.00 permit fee for each location.

Where there is a change in ownership or name, the following rules are applicable:

(1) Sale of a business enterprise operated as a sole proprietorship requires a new application and payment of the $1.00 fee, although the business may be continued under the same name.

(2) Admission of a new partner or resignation, expulsion or death of a partner requires a new application and payment of the $1.00 fee, although the business may be continued under the same name.

(3) 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.

(4) 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 $1.00 fee is not required.

TAXS&U 203 ~~34~~ PERMIT WHEN VALID AND HOW DISPLAYED. Generally, after the applicant has complied with the provisions of Sections 297A.04 and 297A.05, ~~and regulations pertinent thereto,~~ 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 Section 297A.28 ~~and regulations pertinent thereto~~.) 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.

The permit issued shall be valid until revoked in accordance with Section 297A.07 ~~and regulations pertinent thereto~~, 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 Sections 297A.04, .05 and .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 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

$1.00 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 $1.00 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.

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 Section 297A.27 ~~and regulations pertinent thereto~~, shall include a list of the locations at which he transacted busines 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.

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 Section 297A.08 ~~and regulations pertinent thereto~~ regarding penalties for engaging in retail sales without the required permit or permits.)

TAXS&U ~~35~~ REVOCATION OF PERMITS. The permit or permits issued to any person, hereinafter referred to as the Permit Holder, under Sections 297A.04, .05 and .06, may be revoked or suspended by the Commissioner if the Permit holder fails to comply with any of the provisions of ~~Chapter 297A~~ the Sales and Use Tax Law ~~or any regulations pertinent thereto~~.

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 thirty (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 ~~Taxation~~ Revenue to serve notice by regular mail in all cases if he deems the use of regular mail advisable.) Such hearing shall be held at the office of the Commissioner of ~~Taxation~~ Revenue, Centennial Office Building, Saint Paul, Minnesota ~~55101~~ 55145, unless otherwise specified, and at the time stated in the notice of hearing.

An official record of the testimony and exhibits presented at the hearing shall be prepared. If the Permit Holder wishes to secure a transcript of the procedures, such transcript will be made available to him upon payment of a reasonable fee.

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 Sections 297A.04, .05 and .06 ~~and regulations pertinent thereto~~. 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 Section 297A.07, the Commissioner may request that the Permit Holder deposit any security in addition to that authorized by Section 297A.28 that the Commissioner deems reasonably

necessary in order to insure compliance by the Permit Holder.

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.

TAXS&U 205 RETAIL SALES WITHOUT PERMIT - VIOLATION. Any person required under the provisions of 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 Section 297A.01, Subd. 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.

TAXS&U ~~37~~ PRESUMPTION THAT TAX MUST BE PAID. Under Section 297A.02 ~~and-regulations-pertinent-thereto~~, the gross receipts of a retailer are subject to the sales tax of ~~three~~ four percent. 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.

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.

Under Section 297A.10 ~~and-regulations-pertinent-thereto~~, 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.

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 Section 297A.25, Subd. 1(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.

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 ~~Chapter-297A~~ the Sales and Use Tax Law ~~and-regulations-pertinent-thereto~~.

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.

TAXS&U ~~39~~ GOOD FAITH ACCEPTANCE OF EXEMPTION CERTIFICATES. In general, 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.

(a) 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 Section 297A.11.

Example 1. Supplier sells to retail customers at list, and to automotive repairmen at 60% 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 $25.00, is sold, after routine investigation, to the automobile garage operator for $15.00 (60% 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 supplier sold the generator at the list price of $25.00, 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. Jeweler orders a living room set from a distributor of

furniture and offers a Resale Exemption Certificate which states that 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. Lumber dealer receives an order for a quantity of lumber accompanied by a Resale Exemption Certificate. Customer specifies delivery to a construction site. Under such circumstances, 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.

(b) 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.

Section 297A.25, Subds.1(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.

(c) Vendors may accept the following in good faith:

(1) 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.

(2) 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 Sections 270.071 to 270.079, inclusive.

(3) 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.

(4) 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 M. S. 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.

(d) 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.

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 E. S. 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.

Refer to TAXS&U ~~68~~ 415 regarding criteria for determining whether or not organizations qualify for exemption as charitable, religious or educational.

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.

Refer to clause (f) below regarding meals, admissions and lodging.

(e) 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 clause (f) below regarding meals, admissions and lodging.

(f) Although the furnishing of meals, admissions or lodging is defined as a taxable sale by Section 297A.01, Subd. 3(c), it is not a sale of tangible personal property and, thus, is not within the exemptions described in clauses (d) and (e) above for sales of tangible personal property to governmental, charitable, religious and educational organizations in Section 297A.25, Subd. 1(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 TAXS&U ~~62~~ 410 for details.

(g) Where the sale is made to a person claiming that the sale of the property to him is exempt under Section 297A.25, Subd. 1(d), as property with an ultimate destination outside Minnesota, the seller will be relieved from the duty of collecting and remitting the tax otherwise due on sales of tangible personal property provided he delivers the property so sold to a common carrier for delivery to such outstate destination, or places the property in the United States mail or parcel post directed to such purchaser outstate, or delivers the property to such purchaser outstate by means of the seller's own delivery vehicles.

CONTENT AND FORM OF EXEMPTION CERTIFICATE. Section 297A.09 provides for the furnishing of exemption certificates with respect to exempt sales. The Commissioner has prepared ~~three-separate~~ the following certificates to assist purchasers in claiming exemption.

ST-3 is to be used for claiming exemption ~~by-an-exempt-organization, or-where-the-purchaser-intends-to-utilize-the-item-so-purchased-for-an exempt-use~~ for any of the reasons listed on the certificate.

ST-4 is to be used for claiming a percentage exemption for fuels and energy utilized in industrial or agricultural production.

ST-5 is to be used for claiming exemption on ~~the-basis-that-the-items subject-thereto-are~~ property purchased for resale in substantially unchanged form or acquired for leasing or subleasing.

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

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.

The Commissioner does not furnish exemption certificates in bulk. In order to assist purchasers in preparing their own copies, the ~~three~~ forms prepared by the Commissioner are reproduced below:

Form ST-3
(Rev. 1-1-74)

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 herein 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 intended for use or consumption in agricultural or industrial production of property intended to be sold ultimately at retail. This exemption does not pertain to machinery, equipment, implements, tools (except qualifying detachable accessory tools), accessories, appliances, contrivances, furniture and fixtures, neither does it apply to purchases exceeding $100,000 in any calendar year of paper and ink products by a publisher for use in an exempt publication.
- ☐ The property will be shipped or transported outside Minnesota by the purchaser without any intermediate use, will be used in a trade or business outside Minnesota, and will not be returned to Minnesota except in the course of interstate commerce. This exemption includes 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, 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.
- ☐ The property is rolling stock purchased by a railroad, taconite railroad, freight line, sleeping car or express company, taxed on gross earning under Minnesota Statutes, Chapters 294 and 295. Rolling stock includes engines, cars, tenders, coaches, sleeping cars and parts necessary for the repair and maintenance of such rolling stock.
- ☐ 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 airflight equipment purchased by an airline company taxed under Minnesota Statutes, Sections 270.071 through 270.079. Air flight equipment includes airplanes and parts necessary for the repair and maintenance of such air flight equipment and flight simulators.

Detailed description of property on 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. If the purchaser uses the property described herein for other than exempt purposes and subsequently, with the intent to evade the tax, fails to file a sales or use tax return declaring the taxable use of such property, the purchaser will be subject to the full penalty of the law.

_____
Purchaser's Business Name

_____
Address

_____
City State Zip Code

_____
Signature of Authorized Purchaser

_____
Title

_____
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.

STOCK NO. 58

Form ST-4 (55)

MINNESOTA DEPARTMENT OF REVENUE
FUELS AND ENERGY
EXEMPTION CERTIFICATE

Date of Purchase or Period Covered

☐ Blanket
☐ 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

Form ST-5
(Rev. 2-1-74)

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 herein, which I shall purchase, lease or rent from

_____
Name of Seller

_____
Address

will be resold, leased or rented by me; provided, however, that 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, it is understood that I am required to report and pay the tax measured by 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 the property described herein for other than exempt purposes and subsequently, with the intent to evade the tax, fails to file a sales or use tax return declaring the taxable use of such property, 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.

STOCK NO. 56

State of Minnesota
Department of Revenue – Sales and Use Tax Division
Centennial Office Building – St. Paul, Minnesota 55101

CERTIFICATE OF EXEMPT STATUS – EXEMPT ORGANIZATION

Under the provisions of Section 25, Subdivision 1 (n) of the Minnesota Sales and Use Tax Law, the organization whose name appears below is certified to be exempt from sales and use taxes applicable to purchases, rentals and leases of tangible personal property to be used solely and exclusively by that organization.

Certificate No.
E S
Date Issued

Commissioner of Revenue

By_____

Sales and Use Tax Division

This certificate is valid until revoked by the Minnesota Department of Revenue

ST–17

The exemption does not apply to purchases of meals, lodging or tickets of admission

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 ~~regulation~~ TAXS&U 66 ~~68~~ 4/5, pertinent to exemptions for charitable organizations for facsimile of certificate of exempt status to be used subsequent to June 30, 1969.

TAXS&U ~~41~~ NON-EXEMPT USE OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE. Under Sections 297A.09 and 297A.10 ~~and regulations pertinent thereto~~, the seller may accept an exemption certificate from the purchaser on items otherwise taxable under ~~Chapter 297A~~ the Sales and Use Tax Law ~~and regulations pertinent thereto~~. Under 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 ~~Chapter 297A~~ the Sales and Use Tax Law ~~and regulations pertinent thereto~~, 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 Section 297A.01, Subd. 8 ~~and regulations pertinent thereto~~ regarding the calculation of sales price) shall be reported as purchases subject to use tax on the sales and use tax return.

Example 1. Retailer, engaged in making sales of TV sets, purchases ten TV sets at $500.00 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 Retailer's business. Consequently, Retailer is required to include $500.00 as a purchase subject to use tax.

Example 2. Manufacturer of office equipment gives an exemption certificate for material used or consumed in the process of producing such equipment. Thereafter Manufacturer removes twenty 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 twenty desks was $1,000.00. As Manufacturer made use of the material other than for a purpose exempt under Section 297A.25, Subd. 1(h), 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, $1,000.00. If 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 Section 297A.04 through 297A.06 ~~and regulations pertinent thereto~~), he ~~cannot file a sales and use tax return, as any person filing such a return must record thereon his sales and use tax account number. The Commissioner permits the filing of the~~ 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 ~~Taxation~~ Revenue, Department of ~~Taxation~~ Revenue, Centennial Office Building, Saint Paul, Minnesota ~~55101~~ 55145.

~~Example 3.--"Y" Company, located in Minnesota, leases a computer from Manufacturer.--"Y" Company plans to utilize the computer for its own purposes part of the time, and to sell the balance of the available time to customers.--"Y" Company gives Manufacturer a resale exemption certificate.--Each customer secures direct access to the computer by means of a telephone.--Under the terms of the leasing contract between "Y" Company and Manufacturer, "Y" Company pays $300.00 per hour for the first 200 hours and $250.00 per hour for all additional hours during any given month.--In January, 1969, the computer is used for a total of 300 hours. Of the total so used, 250 hours were used by customers, with the remaining 50 hours being used by "Y" Company for its own purposes.--"Y" Company charges customers on the basis of $6.00 per minute.~~

~~As "Y" Company has made use of the computer other than for purposes exempted under the Sales and Use Tax Law (See Section 297A.12), such use is deemed a retail sale to "Y" Company, and "Y" Company is required to file its sales and use tax return as follows:~~

~~Line 1--Gross sale (250 hours x 60 minutes x $6.00)..... $ 90,000.00~~

~~Line 2--Deductions.....~~

~~Line 3--Net sales..... 90,000.00~~

~~Line 4--Purchases subject to use tax*..... 14,166.67~~

Line 5--Total taxable amount.....$104,166.67

Line 6--Total tax due.....3,125.00

*This amount is derived as follows:

Lease payments $300 x 200 hours = $60,000

$250 x 100 hours = $25,000

Total lease payments $85,000

$\frac{\$85,000 \text{ x } 50 \text{ hours used by "Y" Company}}{300 \text{ total hours used}} = \$14,166.67$

TAXS&U 210 FUNGIBLE GOODS FOR WHICH EXEMPTION CERTIFICATE GIVEN.

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.

If a purchaser gives an exemption certificate in respect of fungible goods as provided for by Sections 297A.09 and .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 non-taxable purchases have been accounted for.

TAXS&U ~~38~~ 211 DIRECT PAY PERMIT PROCEDURE.

(a) The Commissioner of Revenue may issue a Direct Pay Permit to certain persons who

~~(1)--are-engaged-in-industrial-production-such-as manufacturing,-printing,-mining,-generating-electricity-and-road building-(other-than-contractor-retailers),-and~~

~~(2)~~ (1) 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

~~(3)~~ (2) hold a sales and use tax permit.

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.

(b) 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.

To qualify for a Direct Pay Permit, a business must demonstrate to the satisfaction of the Commissioner of Revenue that

(1) the nature of the business is such that the direct pay method will materially reduce the administrative work of collecting the tax, and

(2) the firm's accounting system will clearly reflect the proper amount of tax due, and

(3) the firm makes taxable purchases in sufficient volume to justify the expense of regular audits by the Department of ~~Taxation.~~ 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 ~~Taxation~~ Revenue or his delegated representative. The Commissioner of ~~Taxation~~ 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.

(c) 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 (d) below), 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.

(d) A holder of a Direct Pay Permit may never use it in connection with the following transactions:

(1) Purchases of taxable food or beverages;

(2) Purchases of taxable lodging or services related thereto;

(3) Purchases of admissions to places of amusement or athletic events, or the privilege of use of amusement devices.

(e) A 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.

(f) A facsimile of the authorized Direct Pay Permit is reproduced as follows:

State of Minnesota - Department of Revenue
Sales and Use Tax Division

D I R E C T P A Y P E R M I T

This permit is not transferable

Permit Number D P
Date Issued
Sales and 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

ST-14

212

TAXS&U ~~51~~ MOTOR VEHICLE COMMON CARRIERS - DIRECT PAY. Under Section 297A.211 common carriers engaged in the transportation of property in interstate commerce 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 regulation. 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 to verify that it is a common carrier engaged in transporting property in interstate commerce.

A Common 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 Common Carrier Direct Pay Certificate is reproduced as follows:

State of Minnesota - Department of Revenue
Sales and Use Tax Division

COMMON CARRIER DIRECT PAY CERTIFICATE

Certificate Number CCDP
Effective Date
Sales and Use Tax Account Number

The holder of this certificate has elected to make direct payment of sales and use tax to the Commissioner of Revenue in lieu of payment to 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 _____

ST-14cc

Sales and Use Tax Division

Carriers which elect to pay the Minnesota Sales and Use Tax under the provisions of Section 297A.211, shall be governed by the following:

(1) 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.

(2) 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 Common Carrier Direct Pay Certificate.

(3) 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 Common Carrier Direct Pay Certificate to the seller.

(aa) "Mobile Transportation Equipment" includes trucks, tractors and trailers used in interstate transportation.

(bb) "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.

(cc) 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, snowplows, local pickup and delivery vehicles, other warehouse and plant equipment, office supplies and equipment, etc.

(4) 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:

(aa) the sales price of items purchased or leased other than mobile transportation equipment and parts and accessories attached or to be attached thereto, which are subject to the use tax and upon which no sales or use tax has previously been paid; and,

(bb) 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.

For purposes of the computation in (bb) above, "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.

(5) 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.

(6) Withdrawal of an election to come under the provisions of Section 297A.211 shall become effective only upon notice of such intent and return of the Common Carriers Direct Pay Certificate to the Commissioner of Revenue. If such election is withdrawn, subsequent re-election shall be effective only upon approval of the Commissioner of Revenue. Common Carriers which do not elect to pay Minnesota Sales and Use Tax under the provisions of Section 297A.211, shall be governed by the following:

(aa) 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.

(bb) Subsequent to December 31, 1971, "Mobile Transportation Equipment" subject to the motor vehicle excise tax under the provisions of M. S. 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.

TAXS&U ~~43~~ 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 ~~three~~ 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 ~~Chapter 297A~~ the Sales and Use Tax Law ~~and regulations pertinent thereto~~ that are controlling with respect to the imposition of the sales tax.

TAXS&U ~~44~~ LIABILITY FOR PAYMENT OF USE TAX. 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.

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:

to collect the use tax due from his customers on storage, use or consumption in Minnesota of taxable personal property in accordance with Section 297A.16 ~~and-regulations-pertinent-thereto~~;

to file a Minnesota sales and use tax return for each month on or before the twenty-fifth day of the succeeding month (see Section 297A.26 ~~and-regulations-pertinent-thereto~~), and to remit to Minnesota the use tax so collected (see Section 297A.17 ~~and-regulations-pertinent-thereto~~); and

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

302

TAXS&U ~~45~~ COLLECTION OF TAX AT TIME OF SALE. Any corporation authorized to do business in Minnesota (see M. S. 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 Section 297A.15 ~~and regulations pertinent thereto~~, 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.

"Retailer maintaining a place of business in Minnesota" is defined for purposes of this regulation as any retailer having or maintaining within Minnesota an office, distribution house, sales house, warehouse 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.

TAXS&U 303 ~~47~~ UNLAWFUL TO ADVERTISE THAT USE TAX WILL BE ABSORBED. 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 Section 297A.14, ~~and regulations pertinent thereto,~~ 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 ~~three~~ four percent use tax ~~($3.00)~~ ($4.00), a total of ~~$102.99~~ $103.99. The seller, if he so chooses, can advertise the item as "$99.99 plus tax" or as "$99.99 plus ~~$3.00~~ $4.00 tax," or as ~~$102.99~~ $103.99 including Minnesota ~~sales~~ use tax."

In the computation of the amount of use tax to be collected on any transaction, amounts of less than 1/2 cent may be disregarded and the amounts of 1/2 cent or more shall be considered as an additional cent. Thus, on a sale of ~~16~~ 12 cents or less, the purchaser pays no tax; on a sale between ~~17~~ 13 cents to and including ~~49~~ 37 cents, he is required to pay one cent tax; on a sale between ~~50~~ 38 cents to and including ~~83~~ 62 cents, he is required to pay two cents tax; on a sale between ~~84~~ 63 cents to and including ~~$1.16~~ 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 $1.00, he is required to pay ~~three~~ four percent on each full dollar plus the appropriate amount from the brackets above.

TAXS&U ~~50~~ 304 REGISTRATION.

(a) Every corporation authorized to do business in Minnesota (see M. S. Chapter 303 for provisions regarding "foreign corporations" authorized to do business in Minnesota) and every retailer maintaining a place of business in Minnesota (see Section 297A.16 ~~and regulations pertinent thereto~~) making sales of items subject to the imposition of the "use tax" under Section 297A.14, ~~and regulations pertinent thereto,~~ shall secure a Sales and Use Tax Permit from the Commissioner of ~~Taxation~~ Revenue. The provisions of Section 297A.04 and .05 ~~and regulations pertinent thereto~~ shall be applicable to any corporation or retailer subject to this regulation.

(b) Any corporation or retailer authorized to collect the use tax pursuant to Section 297A.15 shall file an application for a permit under Section 297A.04 and .05.

(c) 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.

TAXS&U 305 PROPERTY BROUGHT INTO MINNESOTA. Except as provided in Section 297A.25, Subd. 3 (which exempts personal property from the tax where brought in by a non-resident just prior to becoming a resident), 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 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 non-resident 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 Section 297A.23.

Example 1. 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 roadbuilding activities in other states. 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 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.

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 Section 297A.24.

TAXS&U ~~53~~ CREDIT AGAINST USE TAX. Under Section 297A.24, a credit is allowed against the use tax due under 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 difference between the rate imposed under Section 297A.14 and~~ 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 Section 297A.14, then no tax shall be due thereon.

~~Example 1.--Minnesota Resident purchases a new automobile from a dealer in State X for $3,000.00.--As he accepts delivery of the car in State X, he pays a sales tax thereon at the four percent rate imposed on sales in that state.--Under Section 297A.14 a use tax return must be filed as the automobile was purchased for use in Minnesota.--However, as the rate upon which a sales tax is imposed thereon by State X is in excess of the rate imposed by Minnesota, no use tax is due Minnesota thereon.~~

Example ~~2~~ 1. B Corporation located in Minnesota purchases a special machine for delivery in State Y for $30,000.00 plus six percent sales tax imposed by State Y. B 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 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 $5,000.00. As a result thereof, no sales tax is paid to State Y on the accessory equipment. Consequently, a use tax of ~~$150.00~~ $200.00 is due to Minnesota in respect of the accessory equipment. The unused credit of the original purchase, that is, the difference between the $1,800.00 sales tax paid in State Y, and the ~~$900.00~~ $1,200.00 use tax imposed under Section 297A.14 may not be applied against the purchase of the accessory equipment or any other subsequent purchases made by the B Corporation.

Example 2. Minnesota resident purchases tangible personal property from a vendor in State X for $3,000.00. He accepts delivery of the property in State X and 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.--Minnesota Resident, while in State X, purchases a new automobile for $3,500.00 and pays the sales tax thereon at the rate of two percent.--He then drives the car back to Minnesota.--As the car was purchased for use in Minnesota, the use tax is imposed thereon.--The amount required to be paid is calculated as follows:--Tax on $3,500.00 at three percent (Minnesota rate) = $105.00.--Credit for tax paid to State X ($3,500.00 at 2%) = $70.00.--Amount required to be paid to Minnesota, $35.00.~~

Example 3. Same facts as in Example 2, except that the sales tax was imposed in State X at the rate of 3%. The amount of use tax due to Minnesota is calculated as follows: Tax on $3,000.00 at 4% (Minnesota rate) - $120.00. Credit for tax paid to State X ($3,000.00 at 3%) = $90.00. Amount required to be paid to Minnesota, $30.00.

~~Example 4.--Minnesota Resident trades in his old automobile while visiting in State V.--The list price of the automobile is $4,500.00, and Minnesota Resident is allowed $1,500.00 trade-in value on his old car.--State V does not exempt value of trade-in from the tax.--He pays a two percent tax on $4,500.00 ($90.00).--He then drives the car back to Minnesota.--The use tax imposed by Section 297A.14 is computed as follows:--Tax in Minnesota, represented by the sales price~~

~~of $4,500.00 less $1,500.00 trade-in value (see Section 297A.01, Subd. 8 and regulations pertinent thereto), equals $90.00. Tax on $3,000.00 in State V at the rate of two percent equals $60.00. Tax due to Minnesota, $30.00. This calculation is based upon the provisions of Section 297A.24 which states that the provisions of Section 297A.14 shall apply only at a rate measured by the difference between the rate fixed by Section 297A.14 and the rate by which the previous tax was calculated.~~

Example 4. Minnesota Resident trades in an old machine in State V. The list price of the new machine is $2,600.00, and Minnesota Resident is allowed $1,000.00 trade-in allowance on the old machine. State V does not allow a deduction for value of the trade-in when determining tax liability. Minnesota Resident pays a tax of 2% of $2,600.00 ($52.00) to State V. The new machine is brought to Minnesota for use. The use tax imposed by Section 297A.14 is computed as follows: Tax in Minnesota, represented by the sales price of $2,600.00, less $1,000.00 trade-in allowance (see Section 297A.01, Subd. 8), at the rate of 4% equals $64.00. Tax on $1,600.00 in State V at 2% equals $32.00. Tax due to Minnesota, $32.00. This calculation is based on the provisions of Section 297A.24 which states that the provisions of Section 297A.14 shall apply only at the rate measured by the difference between the rate fixed by Section 297A.14 and the rate by which the previous tax was calculated.

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.

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.

400

TAXS&U ~~54~~ FOOD PRODUCTS.

(a) The Sales and Use Tax Law emempts 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 TAXS&U ~~9~~ 108(b) for criteria determining taxability.

(b) "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 docorations, cough drops, cracker jacks, 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, non-alcoholic 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.

(c) Beer, alcoholic beverages, non-edible cake decorations, Easter egg dye, gum, garden seeds, ice cubes, pet food, softener salt, distilled water and spring water are not "food products."

(d) When a package contains both food and non-food 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 non-food portion of the package is 10% or more of the total retail value, tax applies to the retail value of the non-food 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 non-food portion of the package is less than 10% of the total retail value, the entire package is exempt.

TAXS&U ~~55~~ DRUGS, THERAPEUTIC AND PROSTHETIC DEVICES.

(a) IN GENERAL. Section 297A.25, Subd. 1(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 non-prescribed) 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.

(b) 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.

(c) 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.

(d) 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.

(e) PURCHASES BY DOCTORS OF MEDICINE AND DENTISTRY. The purchase of materials, supplies and equipment are 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. 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.

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

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, procelain, gold, silver, alloy and synthetic filling material.

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

(f) 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.

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; jewelry, including spec chains.

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.

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.

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.

(g) GUIDE LIST OF EXEMPT AND TAXABLE ITEMS.

(1) EXEMPT:

(aa) DRUGS NOT REQUIRING A PRESCRIPTION: 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. Antacids (for relief of acidity, stomach discomfort, indigestion), such as Alka-Seltzer; alkoid; bellans; bisodol; chooz; co-gel; creamalin; gelusil; Milk of Magnesia; Rolaids; soda mint; and Tums. 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 (3% - not for bleaching hair or other toilet purposes); Phisohex; rubbing alcohol; Sea Breeze; sodium perborate; tincture of green soap; tincture of iodine; tincture of mercurochrome; and tincture of merthiolate. Astringents, such as Burow's Solution and styptic products. Baby needs, such as antiseptic powders; lotions and talcum powders; and oils and ointments. 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. Cough and cold items, such as aerosol inhalants; antihistamines, such as Coricidin; Aspergum; cough or cold syrups, drops, tablets, preparations; decongestants, such as Contac; inhalants; lozenges; and rubs, such as Vicks. Dental and oral hygiene products, such as analgesic toothache preparations and dental repair kits. Diet aids (considered as foods), such as Metrecal; Nutrament; salt substitutes; and Sustagen. Emollients (antiseptics, protective, antibiotic, and antiinflammatory), such as antibiotic ointments; Boric acid; caladryl; calamine lotion; camphor ice; Kerodex Barrier Cream; lip ice; Lobana Loto-Creme; and Zinc-Oxide ointment. Eye preparations (for healing, treatment or other therapeutic use), such as contact lens solutions; drops; ointments; and washes. Feminine and contraceptive needs, such as creams; foams;

jellies; pessaries; powders; prophylactic devices; and suppositories. 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. 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. Laxatives, cathartics, such as Alophen pills; Ex-Lax; Feenament; Milk of Magnesia; and mineral oil. Miscellaneous dosage forms, such as enema preparations; insulin, rectal preparations and suppositories. Vitamin-mineral products, such as Brewers yeast; cod liver oil; dietary supplements; Geritol; and therapeutic vitamins.

(bb) THERAPEUTIC AND PROSTHETIC DEVICES. First-aid, such as first-aid kits and infra-red lamps and bulbs. Hypodermic syringes and needles. 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.) 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. Orthopedic devices, such as braces; canes; crutches; splints; and wheelchairs. Surgical dressings and bandages, such as elastic bandages.

(cc) DIAGNOSTIC AGENTS (For Individual Use): Clinitest tablets; fever thermometers; Tes-Tape.

(dd) MISCELLANEOUS: Pesticides, such as Cuprex

(2) TAXABLE TOILETRIES, COSMETICS, AND EQUIPMENT:

(aa) GENERAL:

Antiseptics, such as B. K. Powder; for general household cleaning agents, such as Clorox bleach, Hilex and Lysol; peroxide (20%) for bleaching hair and other toilet purposes. Astringents, such as astringent aftershave products and astringent deodorants. Dental and hygiene products, such as dental floss; liners; mouthwashes; stain removers; toothbrushes; and toothpastes and powders. Eye preparations, such as cosmetics. Feminine and contraceptive needs, such as belts; douche kits; sanitary napkins; and tampons. Foot products (for comfort, appearance or cosmetic use), such as deodorizers and foot lotions (for cosmetic use).

Miscellaneous items such as ultra-violet (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.

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

Facial preparations, such as face creams and makeup preparations and accessories. Fragrance preparations, such as colognes; perfumes; and toilet waters. Hair care items, such as combs; curlers; dandruff shampoo; dyes; hats; lotions; rinses; shampoos (all kinds except on Rx); tints; and wave sets. Hand products, such as beautifiers; and creams and lotions. Suntan preparations (for tanning), such as Bronze Tan; Coppertone; Sea and Ski tan; and Skol.

Pesticides, such as Black Flag spray or liquid; bug bombs; insect repellants, such as 6-12; mothballs; rat poison; and D-Con.

(bb) 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; brilliantines; and 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; hypo-allergentic preparations (including cleaning preparations 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 on Rx); skin balms, bleaches, creams, fresheners, lotions, oils, tonics, whiteners, stain removers; shaving preparations; sunburn preventives (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.

402

TAXS&U ~~56~~ EXEMPTIONS IN ACCORDANCE WITH CONSTITUTIONAL PROHIBITION AGAINST TAXATION.

(a) IN GENERAL. Section 297A.25, Subd. 1(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 exempt from taxation.

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.

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.

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.

TAXS&U ~~57~~ PROPERTY SHIPPED OUT OF STATE. 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 Section 297A.25, Subd. 1(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, Section 297A.25, Subd. 1(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.

(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.

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.

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.

Effective January 1, 1974, Section 297A.25, Subd. 1(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.

404

TAXS&U ~~28.7~~ GIFTS-TRANSFERS WITHOUT MONETARY CONSIDERATION.

(a) 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 prizes in games of change or skill, personal gifts, calendars, catalogs, etc.

Except as provided in clause (b) and (c) of this regulation 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.

(b) 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 TAXS&U ~~57.~~ 403

(c) 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.

405

TAXS&U ~~28.6~~ CARTONS AND CONTAINERS USED BY MOVING AND TRANSFER COMPANIES. 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. An exemption certificate must be furnished to the seller when such packing materials are purchased.

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 Section 297A.01, Subd. 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 or billing indicated a sale of the cartons or containers, the carrier is subject to the use tax imposed by Section 297A.14.

406

TAXS&U ~~58~~ PETROLEUM PRODUCTS. An exemption from sales and use tax is provided for petroleum products upon which a tax has been imposed under M. S. Chapter 296, regardless of whether any part of the tax is subsequently refunded. The tax imposed by M. S. Chapter 296 applies to all gasoline (including aviation and marine gasoline), and special fuels for highway or aircraft use.

All fuels not subject to the tax imposed by M. S. 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 Section 296.01, Subd. 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 Ocotber, 1968, Trucking Company reports and pays the "special fuel" (as defined in Section 296.01, Subd. 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 Section 297A.14 for application of use tax.

TAXS&U ~~59~~ CLOTHING AND WEARING APPAREL.

(a) IN GENERAL. Sales of clothing and wearing apparel are exempt from tax. "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.

"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.

Section 297A.25, Subd. 1(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 $40.00; the retail value of the wool material is $90.00. The sale of the coat is exempt from tax.

Examples of EXEMPT items	Examples of TAXABLE items
aprons (household and shop)	bags, overnight, beach, etc.
baby blankets (used as babies' clothing)	barrettes

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

billfolds

cosmetics, hair dyes, etc.

crib blankets, sheets, mattress pads, rubber sheets, etc.

furs on the hide or pelts

hair clips

handbags

jewelry:

- bracelets
- broaches
- cufflinks
- earrings
- necklaces
- pins
- rings
- tie clasps and tacks

lapel pins

money belts

money clips

perfume

pocketbooks

purses

umbrellas

wallets

watchbands

neck scarves

neckties

overshoes

receiving blankets (used as babies' clothing)

roller bonnets

rubber gloves

rubber pants

scarves, head and neck

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.)

sewing materials:

- buttons
- fabric
- lace
- thread
- yarn
- zipper

watches

wigs

sewing equipment:

- knitting needles
- patterns
- pins
- scissors
- sewing machine
- sewing needles
- tape measure
- thimbles

(b) 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.

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, coveralls, etc.

caps and hats, ski, hunting, fishing, golf and baseball

safety shields and visors for

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 (non-prescription)

name patches or emblems for suits and jackets, if sold separately (that is, if snowmobile suit may be

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

boots (not more than knee high)

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

rainwear (ponchos, jackets, parkas, shirts and trousers)

ballet and tap shoes

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.

masks or shields, protective, such as 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 vests

fishermen's wading vests and jackets

hunting or game pouches and carriers

life preservers, vests, belts

dancing costumes

gym suits and shorts

leotards and tights

(c) 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 Section 297A.25, Subd. 1(g). These items are generally referred to as, "safety equipment" and can be included within two or more of the following categories:

(1) The article is principally purchased and used for the purpose of performing an industrial or general job activity;

(2) 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

(3) 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 are 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.

Examples of EXEMPT items

coveralls, uniforms

workclothes, etc.

overshoes

workshoes

Examples of TAXABLE items

breathing masks

ear and hearing protectors

face shields

reflective or asbestos vests, aprons, gloves, suits, etc.

cloth gloves

safety glasses and goggles (prescription)

hard hats and liners

welding helmets

safety glasses and goggles (non-prescription)

safety belts

finger guards

TAXS&U ~~60~~ PROPERTY USED IN AGRICULTURAL AND INDUSTRIAL PRODUCTION.

(a) 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 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 Section 297A.01, Subd. 3(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 Section 297A.25, Subd. 1(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 sections (a), (b) and (c) of this regulation, 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 section (d) of this regulation.

(b) EXEMPT MATERIALS. Section 297A.25, Subd. 1(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.

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

(c) TAXABLE EQUIPMENT. The exemption provided by Section 297A.25, Subd. 1(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 clause (b) above 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.

(d) EXEMPTIONS EFFECTIVE JANUARY 1, 1974. Exemptions for industrial and agricultural production, provided for under the provisions of Section 297A.25, Subd. 1(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:

(1) 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, clamps, wrenches, screwdrivers, crowbars, etc., are not considered to be "separate detachable units" and are thus taxable.

(2) 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.

(3) Ordinary Useful Life: An item will be considered exempt if its 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.

(e) PACKAGING MATERIALS.

(1) General. 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 non-returnable containers, but does not include returnable containers except as otherwise specified herein.

Price tags, shipping tags and address labels, invoices, packing 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.

(2) Returnable Containers. Returnable containers constitute equipment and in general do not come within the scope of the exemption provided under Section 297A.25, Subd. 1(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 re-use. 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 TAXS&U 102(d) apply.

(3) Internal Components. 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.

(4) Dunnage. 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 Sections 297A.01 to 297A.44.

(4) Packaging Materials Used in Performing Nontaxable Services. 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 Section 297A.25, Subd. 1(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.

409

TAXS&U ~~61~~ PUBLICATIONS.

(a) IN GENERAL. The exemption of certain gross receipts from the sales and use tax provided for by Section 297A.25, Subd. 1(i) is related to publications regularly issued at average intervals not exceeding three months.

Generally the exemption applies to gross receipts from sales of:

(1) 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 clause (c) of this regulation for rules regarding paper and ink.)

(2) such publications;

(3) any advertising contained in or with such publications.

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

(b) 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 M. S. 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 "shoppers guides" distributed by a publisher, where space in such publication generally is available to advertisers for the purpose of inducing readers to purchase goods or services from such advertisers.

House organs, trade, professional and other types of magazines and journals regularly issued at average intervals not exceeding three months are included within the meaning of "publication." "Comic books" are "publications" if published serially under the same title at least once quarterly; however, comic books complete in themselves and without continuity of title and subject matter are not "publications."

The following are representative of items not included within the meaning of "publication": books, including those issued at regular or stated intervals, e.g. books sold by a book-of-the-month or other club or organization; so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues; price lists; hand bills; catalogs; programs; score cards; maps; sheet music; yearbooks; directories; bulletins; political newsletters issued during a campaign only, and not of a continuing nature at regular intervals not exceeding three months; loose leaf or similar personal service publications such as tax information services, labor information services, credit or financial information services (however, special reports not distributed generally are deemed personal services), law cases and briefs; realtors' descriptive listings, financial and statistical reports, unless published as a supplement or enclosure with or part of a legal newspaper.

(c) PAPER AND INK. Taxability of paper and ink products used in producing publications exempt under Section 297A.25, Subd. 1(h) should be determined as follows:

(1) Purchases in period 8-1-67 through 10-31-71 are exempt;

(2) Purchases in period 11-1-71 through 12-31-73 are taxable except paper and ink used as specified in (4) and (5) below;

(3) Purchases subsequent to 12-31-73 in excess of $100,000.00 in any calendar year for use on any publication are taxable except when used as specified in (4) and (5) below;

(4) 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;

(5) 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,

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

(bb) 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 (4) and (5) immediately above.

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.

(d) 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 Section 297A.25, Subd. 1, 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.

TAXS&U ~~62~~ SALES TO EXEMPT ENTITIES, THEIR EMPLOYEES OR AGENTS.

(a) IN GENERAL. The exemptions provided in Section 297A.25, Subd. 1(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 Section 297A.25, Subd. 1(p), to organizations operated exclusively for charitable, religious or educational purposes, apply only to the sale or use of tangible personal property.

The furnishing for a consideration of meals, admissions or lodging as provided in Section 297A.01, Subd. 3(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 Section 297A.25, Subd. 1(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.

(b) 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.

TAXS&U ~~63~~ 411 ISOLATED OR OCCASIONAL SALES.

(a) IN GENERAL. As provided in Section 297A.25, Subd. 1(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.

(b) ISOLATED OR OCCASIONAL SALES. The following transactions are considered to be isolated or occasional sales:

(1) Infrequent sales of a non-recurring 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.

(2) Infrequent sales of a non-recurring nature of tangible personal property 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 sale 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.

(c) NON-ISOLATED SALES. The following are examples of transactions that are not considered isolated or occasional sales:

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

Example 1. "Auctioneer" regularly engages in the business of selling property at auction on a commission basis. He either leases or owns the place of business where sales are made. All sales made by the "Auctioneer" under such circumstances are considered to be transfers of possession for a consideration and thus "sales" within the meaning of Section 297A.01, Subd. 3(a). Since such sales are not isolated or occasional they are taxable unless otherwise exempt.

Example 2. 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.

(2) 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.

(3) 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).

(4) 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.

(d) 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.

(e) SALES BY NON-PROFIT ORGANIZATIONS. Sales of tangible personal property by non-profit organizations at bazaars, fairs, picnics or similar events will be deemed to be isolated or occasional if two non-consecutive 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. Where sales are made at such events by a "person" holding a sales and use tax permit, or where such "person" is required to hold a sales and use tax permit because its selling events are in excess of the number permitted, such sales will constitute sales made in the regular course of business and are taxable.

A sale made by a non-profit organization at which only items exempt from tax under Section 297A.25, Subd. 1(a), (b) or (g) are sold shall not be included as an event for purposes of this clause (e).

Example 1. Non-profit Organization "X" conducts sales on two non-consecutive days during the calendar year, the first on January 15, 1971, and the seccnd 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. Non-profit 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. Non-profit 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 clause (e) 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 non-isolated 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 Non-profit 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, Non-profit 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.

(f) OCCASIONAL MEALS. While the furnishing, preparing or serving or 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 Section 297A.25, Subd. 1(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 regulation TAXS&U ~~9~~ 108, clause (e), regarding the status of meals by charitable or church organizations.

(g) 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 Section 297A.01, Subd. 1(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 Section 297A.25, Subd. 1(k).

TAXS&U ~~64~~ ROLLING STOCK. 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.

For purposes of this exemption, "rolling stock" includes all portable or moveable 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 moveable equipment which is not intended for use on railroad tracks shall not be included with the meaning of rolling stock.

TAXS&U ~~65~~ AIRFLIGHT EQUIPMENT. 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 Sections 270.071 through 270.079.

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 Sections 270.071 through 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.

TAXS&U ~~66~~ TELEPHONE CENTRAL OFFICE TELEPHONE EQUIPMENT. 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.

"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 quipment 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 P.B.X. boards of 100 lines or less included in Account 231 of Title 47, Telecommunications, Chapter 1, Part 31, Uniform System of Accounts, Class A and Class B telephone companies, of the Federal Communications Commission's Rules and Regulations 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 P.B.X. 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.

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.

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.

415

TAXS&U ~~68~~ CHARITABLE, RELIGIOUS AND EDUCATIONAL ORGANIZATIONS.

(a) IN GENERAL. Section 297A.25, Subd. 1(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."

Although the furnishing of meals, admissions and lodgings are defined in Section 297A.01, Subd. 3(c), (d) and (e) as sales, they are not sales of tangible personal property and cannot be exempted under Section 297A.25, Subd. 1(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."

(b) CHARITABLE DEFINED. "Charitable" is used in its generally accepted legal sense and includes relief of the poor, under-privileged, 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.

(c) 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.

(d) 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 P.T.A. Boy Scouts, Girl Scouts, Camp Fire Girls, Y.M.C.A., Y.W.C.A., and youth athletic and recreational programs such as Little Leagues. 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.

(e) ORGANIZATION AND OPERATIONAL TESTS. In order to be an "exempt organization", an organization must be organized and operated exclusively for "exempt purposes." The following tests will be used in determining whether or not an organization qualifies as an "exempt organization":

(1) 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 by-laws, and its financial statements that:

(aa) 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.

(bb) 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."

(2) If an organization, by the terms of its articles, has purposes that are broader than the "exempt purposes" specified in Section 297A.25, Subd. 1(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."

(3) 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.)

(4) 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.

(5) 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) 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.

(g) 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".

4/6

TAXS&U ~~69~~ CASKETS, BURIAL VAULTS, URNS FOR CREMAINS AND MEMORIALS.

(a) 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.

(b) EXEMPTION NOT APPLICABLE TO MEMORIALS.

(1) 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.

(2) 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.

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

(4) 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.

(5) 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 Section 297A.25, Subd. 1(h)).

TAXS&U ~~70~~ DISABLED VETERANS--PURCHASES OF AUTOMOBILES AND OTHER CONVEYANCES. Section 297A.25, Subd. 1(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 Title 38 United States Code, 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.

To effect the exemption, the following procedure should be followed:

(1) 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.

(2) 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 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.

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 M. S. 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 38 United States Code, 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 (1) and (2) above.

4/8

TAXS&U ~~71~~ AIRCRAFT COMMERCIAL USE PERMIT

(a) An aircraft dealer who is licensed in accordance with Minnesota Statutes, Section 360.63, may make application, under the provisions of 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 ~~Taxation~~ 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.

(b) 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.

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

(2) 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.

(c) 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.

(d) 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.

(e) 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.

(f) A facsimile of the authorized Aircraft Commercial Use Permit is reproduced as follows:

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 Laws 1971, Chapter 740.

COMMISSIONER OF REVENUE

TAXS&U ~~72~~ DISABLED VETERANS--PURCHASE OF BUILDING MATERIALS. Section 297A.25, Subd. 1(u), of the Minnesota Sales and Use Tax Law provides exemption for the gross receipts from the sale 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 Title 38 United States Code, Sections 801 to 805, as amended.

The exemption is not allowed when the building materials are sold to the contractor, subcontractor, builder or owner, but will be allowed to the recipient of the benefits provided in 38 United States Code, 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:

(1) 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).

(2) 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.

(3) 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.

TAXS&U ~~72.1~~ TEXTBOOKS

(a) IN GENERAL. Section 297A.25, Subd. 1(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. For the purposes of this regulation, the following words, terms and phrases shall have the meanings ascribed to them below:

"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.

"Public school" is defined as one that furnishes courses of study, enrollment and staff that meet standards of the state board of education.

"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.

"Business and trade schools" are defined as those schools licensed pursuant to Section 141.25.

"College" is defined to include all professional schools, paramedical and other para-professional schools and nursing schools.

"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.

(b) CRITERIA FOR DETERMINING TAXABILITY. 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 regulation may consist of a listing of student's signatures, purchase dates, and purchase amounts entered beneath the certification statement.

TAXS&U ~~74~~ 500 WHEN TAX IS DUE.

(a) Generally, sales and use taxes imposed under law are due and payable at the office of the Commissioner monthly on or before the twenty-fifth day of the month immediately following the month in which the taxable event or events occurred.

(b) In addition, under authorization granted to him by law (see Section 297A.26, Subd. 1), the Commissioner may authorize other reporting periods. Such authorizations may be granted provided:

(1) 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;

(2) The application for a quarterly or annual returns must be filed not later than thirty days immediately preceding the first day of a quarter period beginning on either January 1, April 1, July 1 or October 1. ~~The application for an annual return should be filed not later than thirty days immediately preceding the beginning of a calendar year; and~~

(3) The person applying for authorization to file on a quarterly basis must have had average sales and use tax liability of less than ~~$25.00~~ $100.00 per month for the six-month period preceding the period for which the change in filing is requested. The person applying for authorization to file an annual return must have had an average sales and use tax liability of less than ~~$5.00~~ $10.00 per month for the preceding one-year period.

Where 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 twenty-fifth day of the month immediately following the close of the authorized period.

(c) Authorizations granted by the Commissioner to file sales and use tax returns, either on a quarterly or annual basis, may be revoked if:

(1) The person granted such authorization is either delinquent in filing his return or in paying the tax due;

(2) ~~Each~~ Such person's tax liability exceeds ~~$75.00~~ $300.00 for any subsequent quarter where the filing of quarterly returns has been authorized, or where such person's tax liability exceeds ~~$60.00~~ $120.00 for any subsequent calendar year where an annual return has been authorized; or

(3) Where the Commissioner determines that the procedures authorized under this regulation unduly jeopardize the orderly and efficient administration of the Sales and Use Tax Law.

(d) 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 regulation.

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 twenty-fifth day of the month following the discontinuance of such business.

TAXS&U ~~75~~ UNCOLLECTIBLE DEBT DEDUCTION.

(a) ~~No deduction for bad debts shall be allowed to a person filing on the cash basis.~~ 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. 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 $1,000.00 and a corresponding increase in the Reserve for Bad Debts Account. Accounts Receivable actually charged off during this month were $800.00 with a corresponding decrease in the Reserve for Bad Debts Account. The bad debt deduction for sales tax purposes is $800.00.

(b) Where ~~the retailer reports on the accrual basis and~~ a debt ~~due him~~ 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:

(1) Where the uncollectible bad debt arose in respect of a sale required to be included in gross receipts, subject to a tax imposed under ~~Chapter 297A~~ the Sales and Use Tax Law, the entire amount of the debt remaining uncollected shall be allowed as a deduction;

(2) Where the uncollectible debt arose in respect of a sale partly subject to the tax imposed under ~~Chapter 297A~~ 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;

(3) Where 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 $200.00 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 $400.00. 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 $400.00 in November, 1968. The remaining balance of $200.00 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 $200.00 balance remaining uncollected.

Example 2. Electric Power Company furnishes power to Industrial Production Company. Of the electric power so furnished, approximately sixty percent is used in the productive process and forty percent is used for space heating, lighting and air conditioning the production and office premises. Industrial Production Company files a voluntary petition in bankruptcy on March 15, 1968. At that time, it owed Electric Power Company $3,000.00 for power furnished. Electric Power Company had included in its gross receipts $3,000.000, which were reported on an accrual basis, and had deducted $1,800.00 as exempt sales, leaving a net of $1,200.00 of taxable

electric power services. At the termination of the bankruptcy proceedings in February, 1969, Electric Power Company received a distribution of $1,600.00. 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 $3,000.00, there is subtracted $1,600.00, representing the amount paid to Electric Power Company in February, 1969. This leaves a balance of $1,400.00 uncollectible. This amount is multiplied by a fraction, the numerator of which is the amount taxable, $1,200.00, and the denominator of which is the total amount charged for power; that is, $3,000.00. Thus, $1,400 X $\frac{\$1,200}{\$3,000}$ = $560.00, the amount allowable as a deduction.

Example 3. Supplier, who is on the accrual basis, sells Contractor-Retailer building supplies on March 15, 1968 for $20,000.00. At that time, there was no debt due Supplier from Contractor-Retailer. As these supplies were to be used by Contractor-Retailer in the alteration of real property, the sale is taxable. On April 5, 1968 Contractor-Retailer purchases tangible personal property for resale in the amount of $8,000.00 from supplier and gives to the latter an exemption certificate. On April 10, 1968 Contractor-Retailer purchases an additional $3,000.00 of building supplies to be used in his contracting activities. This last transaction represents a taxable sale. Contractor-Retailer makes payments to Supplier during March, April and May of 1968 totaling $8,000.00. Thereafter, Contractor-Retailer is unable to meet his obligations. An out-of-court settlement with his creditors is reached, and on September 1, 1968, Supplier is paid $10,000.00 representing final settlement of his claims. 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
Balance due	2,000
April 10, 1968 taxable sales	3,000
Total uncollectible debt allowed as deduction on Supplier's September, 1968 return	$ 5,000

The $8,000.00 debt due to Supplier in respect to the April 5, 1968 transaction is non-taxable and may not be deducted subsequently.

(c) 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 Example 3 above that, for the month of September, 1968, Supplier was required to report $4,000.00 in gross receipts before taking a deduction for the uncollectible debt of $5,000.00 He would be entitled to deduct the remaining $1,000.00 in a subsequent month.

(d) 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.

TAXS&U ~~76~~ 502 RETURNS AND RECORDS.

(a) SALES AND USE TAX RETURN. Any person to whom the Commissioner has issued a permit under Sections 297A.04, .05 and .06, ~~and regulations pertinent thereto~~ 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 Section 297A.27, Subd. 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.

(b) CONSUMER'S USE TAX RETURN. Any person required to file a use tax return under Section ~~297A.14~~ 297A.27, Subd. 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 twenty-fifth day of the month immediately following the month in which the property subject to use tax was first brought into Minnesota.

(c) CONSOLIDATED RETURNS PERMITTED. Where 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:

(1) He has been granted a sales and use tax account number by the Commissioner; and

(2) He furnishes to the Commissioner a list containing the business name and address ~~of~~ and reporting information specified in clause (e) below for each separate place of business; and

(3) 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 Commissioner may be able to perform a proper audit with respect to the return so filed.

(d) TIME AND PLACE OF FILING. All tax returns shall be filed at the office of the Commissioner on or before the twenty-fifth 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 twenty-fifth 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.

(e) REPORTING REQUIREMENTS.

(1) 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:

(aa) charges for personal services rendered;

(bb) labor or service charges for installing or applying goods sold if separately stated;

(cc) charges for interest, financing and transportation incurred after the sale if separately stated;

(dd) trade-in allowances;

(ee) cash discounts and cash or credit refunds on taxable property returned by customers;

(ff) 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.

(2) 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.

(3) 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).

(4) 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.

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

(6) 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.

(7) 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:

(aa) Name;

(bb) Sales and Use Tax Account Number;

(cc) The period(s) in which the error was made;

(dd) Computation to arrive at amount of adjustment; and,

(ee) The reason(s) for the adjustment (attach pertinent supporting documents.)

Overpayments in excess of $500.00 may not be entered on line eight. Refunds of such overpayments should be requested by filing a Claim for Refund, Form ST-11.

(f) 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:

(1) 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.

(2) All deductions allowed by law and claimed in filing returns.

(3) 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.

(g) 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:

(1) Appropriate facilities are provided for preservation of the films for periods required.

(2) 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.

(3) The taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for purposes of verification of tax liability.

(4) 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.

(h) 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 act 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 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 subsection refer to printed "hard copy" records, and do not eliminate the necessity of maintaining the corresponding machine-sensible records as required by the previous subsection. These requirements apply to any taxpayer who maintains any records on EDP. The records to be maintained are as follows:

(1) 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.

(2) 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.

(3) 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.

(4) Adequate records retention facilities must be available for storing all machine-sensible records as well as supporting documents.

(5) A general description of the EDP protion of the accounting system includes but is not limited to:

(aa) 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.

(bb) Documentation of the system including a problem statement, systems flowcharts, operator instructions, record layouts, program flowcharts and sense switches, program listing, test data and approval and changes log.

(cc) 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 insure 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.

TAXS&U ~~77~~ COMMISSIONER MAY REQUIRE SECURITY

(a) 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 ~~Chapter 297A~~ the Sales and Use Tax Law.

The security so deposited may be in the form of a 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.

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 $10,000.00, 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 paragraph.

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 ~~Chapter 297A~~ the Sales and Use Tax Law.

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 ~~a notice of deficiency~~ service of notice in Section 297A.31.

(b) NOTICE OF REQUIREMENT. 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.

504
TAXS&U ~~79~~ EXTENSION OF TIME TO FILE RETURN AND REMIT TAX. 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 sixty days from the date on which the return and the tax thereon are due. (See Section 297A.26, Subd. 1, and Section 297A.27, ~~and regulations pertinent to these sections~~ 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.

Where an extension of time for payment has been granted, interest shall be payable at the rate provided in Section 297A.39 from the date when such payment should have been made if no extension had been granted, until such tax is paid.

Extension may be granted subject to the following conditions:

(1) the application must be filed on or before the due date for filing the return;

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

(3) each application must be filed in duplicate;

(4) the application must be signed by an applicant or his duly authorized agent; and

(5) the application must be forwarded to the Minnesota Department of Revenue, Sales and Use Tax Division, Centennial Office Building, Saint Paul, Minnesota ~~55101~~ 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.)

 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS.

(a) 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.

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.

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 ~~thirty-days-after-receipt-thereof~~ 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 non-controversial or reflects mathematical or computational errors.

(b) 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.

~~(b)~~ (c) PROTESTS. Where a person does not acquiesce in the proposed assessment, he may file a protest within the ~~thirty-day~~ 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 ~~Sales-and-Use-Tax~~ Division after such hearing, either the proposed assessment will be cancelled, 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.

With the exceptions of the provisions of Section 271.06, Subd. 5, and Section 271.12, the issuance of an order by the Commissioner constitutes a final determination. The person filing the return is granted a period of thirty days from the date of mailing of such order within which to file an appeal with the Minnesota Tax Court.

The procedure outlined in this Regulation shall not preclude the Commissioner from imposing immediate assessments under 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.

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 non-payment within the thirty-day period after issuance of such order, see Section 297A.39 ~~and regulations pertinent thereto~~.

The protest, of which there must be two copies submitted to the ~~Sales and Use Tax~~ 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:

(1) The name, address and the sales and use tax account number of the person filing the return;

(2) If such person is a corporation, the state wherein incorporated, as well as its principal office or place of business;

(3) The period for which the return was filed, and the amount of tax in dispute;

(4) An itemized schedule of the findings to which exception is taken;

(5) A summary statement of the grounds upon which such person relies in connection with each exception;

(6) In case a hearing is desired, a statement to that effect; and

(7) 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.

~~The notice of adjustments and 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 if no such address is given, or if the return was prepared by the Commissioner in accordance with law, then to his last known address.~~

TAXS&U 506 ~~01~~ FAILURE TO FILE A RETURN.

(a) The following persons are required to file returns in accordance with the provisions of this Regulation:

(1) A "retailer" as defined in Section 297A.01, Subd. 10;

(2) A purchaser making use of the subject of purchases obtained with an exemption certificate for other than the exempt purpose (see Section 297A.12);

(3) A person upon whom liability for use tax is imposed by Section 297A.14; and

(4) A "retailer" (either located within or without Minnesota) subject to Sections 297A.16 and 297A.17 ~~and-regulations-pertinent-thereto~~.

(b) 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 correct return, as the case may be, within thirty 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.

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.

(c) Pursuant to 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.

TAXS&U ~~83~~ 507 TIME LIMITATION ON ASSESSMENT AND COLLECTION.

(a) IN GENERAL. Except as otherwise provided in ~~Chapter 297A~~ the Sales and Use Tax Law and except for such circumstances referred to in other regulations pertinent to 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.

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.

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.

(b) OMISSION OF TWENTY-FIVE PERCENT. ~~of gross receipts.--Where a person required to file a return has omitted from gross sales (gross receipts) an amount properly includable therein in excess of 25 percent of the gross sales as stated in the return, the Statute of Limitations does not run until five years after the return was filed.--In determining the items omitted, there shall not be taken into account any item which has been disclosed on the return, or in some other means adequate enough to apprise the Commissioner of the nature and the amount of such items.~~

~~Example.--"X" files Form ST-1, Sales and Use Tax Return, and reports gross sales of $10,000.00.--Upon audit, it is ascertained that his gross sales for the period under review were $13,000.00.--As~~

~~$3,000 (amount unreported)~~
~~$10,000 (amount reported)~~

~~--is in excess of twenty five percent, the Commissioner may assess the tax on the unreported amount within five years of the date when the return was filed.~~ In the case of omission

from the return of a dollar amount properly includible therein which is in excess of 25% 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.

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.

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. Taxpayer's return stated the following:

1.	Gross Sales	$500,000.00
2.	Deductions	$450,000.00
3.	Net Sales	$ 50,000.00
4.	Purchases Subject to Use Tax	None
5.	Total Taxable Amount	$ 50,000.00

Upon audit it was discovered that there was omitted from the return a purchase of a machine for $20,000.00 upon which no tax had been paid. The percentage of the omission is:

$$\frac{\$20,000.00 \text{ (dollar amount of omission)}}{\$50,000.00 \text{ (dollar amount reported)}} = 40\%$$

Example 2. Taxpayer's return stated the following:

1.	Gross Sales	$500,000.00
2.	Deductions	$440,000.00
3.	Net Sales	$ 60,000.00
4.	Purchases Subject to Use Tax	$ 10,000.00
5.	Total Taxable Amount	$ 70,000.00

Upon audit it was determined that deductions claimed in the

amount of $440,000.00 included certain sales in the amount of $10,000.00 which were properly subject to the tax. The audit also disclosed purchases (properly taxable) in the amount of $15,000.00 upon which no tax was paid. The percentage of omission is:

$$\frac{\$15,000 \text{ (dollar amount of omission)}}{\$70,000 \text{ (dollar amount reported)}} = 21.4\%$$

(c) FALSE AND FRADULENT RETURNS. In the case of a false or fradulent 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.

(d) 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 clause (b) of this regulation, 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.

~~(d)~~ (e) COLLECTION OF TAX BY COURT ACTION. Where 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.

TAXS&U ~~84~~ CLAIM FOR REFUND.

~~(a)--Where a person, as defined in Section 297A.01, subd. 2, and regulations pertinent thereto, has overpaid sales or use tax for any period, he may file a claim for refund with the Commissioner for the amount claimed to be overpaid.~~

~~The Commissioner will entertain such claim for refund provided:~~

~~(1)--The person filing the claim 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, and was subsequently paid over to the Commissioner);~~

~~(2)--Such person shall have filed the claim within two years after payment or collection of the tax upon which the claim is based, or within three years from the date of filing of the return, whichever period is the longer;~~

~~(3)--Such person shall have filed the sales and use tax return upon which such claim is based; and~~

~~(4)--The claim for refund should be submitted on Form ST-11, Claim for refund of Sales and Use Tax, and shall be completed in the manner prescribed therein. --An amended sales and use tax return may constitute a claim for refund.~~

~~(b)--For purposes of ascertaining whether a claim for refund was timely submitted to the Commissioner, a sales and use tax return filed prior to the date on which such return was due shall be deemed to have been filed on the date when due. --A return postmarked on the date when due shall be deemed to have been filed as of that date.~~

~~(c)--Upon receipt of the claim for refund, the Commissioner will 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 will then prepare written findings,~~

either-denying-or-allowing-the-claim,-in-whole-or-in-part,-and-will mail-a-notice-to-the-person-filing-the-claim-at-the-address-stated-on the-return-or-to-any-other-address-furnished-by-the-claimant-in writing.

(d)--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-shall-be refunded-to-him.--Interest-at-four-percent-shall-be-paid-on-the-amount refunded-or-credited-from-the-date-of-overpayment-to-the-date-when-such refund-or-credit-is-authorized-by-the-Commissioner.

(e)--Where-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.--In-the-event-that-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.

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-$900.00,-plus-penalties-and-interest.--As-"X"-Company-did-not-pay the-tax,-penalties-or-interest-within-thirty-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-$300.00.--"X"-Company-submitted

~~additional-information-tending-to-substantiate-its-claim.--However, as-the-payment-was-collected-by-means-of-a-court-action-(see-Section 297A.33, subd. 1-and-3), the-Commissioner-must-deny-the-refund.~~

~~Example-2.--"R"-filed-a-sales-and-use-tax-return-on-January-15, 1968-for-the-month-of-December, 1967-and-paid-to-the-Commissioner $1,200.00, the-tax-due-on-the-return.--On-January-20, 1968, "R"-filed a-claim-for-refund-of-$300.00-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, 1968.~~

~~Example-3.--Electrical-Power-Cooperative-billed-Consumer-for-the total-amount-recorded-on-the-latter's-meter.--Consumer, who-was engaged-in-agricultural-production, paid-the-amount-billed, plus-sales tax-thereon, although-fifty-percent-of-the-electricity-used-by-him-was exempt-from-the-tax-because-employed-in-agricultural-production. Thereafter, Consumer-filed-a-claim-for-refund-of-that-portion-of-the tax-exempt.--The-claim-for-refund-will-be-denied-as-Consumer-did-not-pay-the-tax-to-the-Commissioner.--However, Electrical-Power-Cooperative may-file-with-the-Commissioner-in-respect-of-such-overpayment.~~

(a) IN GENERAL. A person, as defined in Section 297A.01, subd. 2, and regulations pertinent thereto, 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.

(b) CONDITIONS TO BE MET BEFORE THE COMMISSIONER SHALL ENTERTAIN A CLAIM FOR REFUND.

(1) 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:

(aa) A person who has paid an amount of tax to a retailer of electricity on the purchase of electricity for agricultural production which is exempt from tax under Section 297A.25, Subd. 1(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 Section 290.501.

(bb) 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 38 United States Code, Sections 801 to 805, as amended, may claim a refund directly from the Commissioner. Claim for Refund Form ST-11dv is available upon request from the Department of Revenue for use by disabled veterans in making such claims. See TAXS&U 419 ~~72.~~

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 $900.00, plus penalties and interest. As "X" Company did not pay the tax, penalties or interest within thirty 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 $300.00. "X" Company submitted additional information tending to substantiate its claim. However, as the payment was collected by means of a court action (see Section 297A.33, Subds. 1 and 3), the Commissioner must deny the refund.

Example 2. "Z" Company billed Consumer for the purchases made by the latter. 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, Consumer filed a claim for refund of tax on materials properly exempt. The claim for refund will be denied as Consumer did not pay the tax to the Commissioner. However, "Z" Company may file with the Commissioner for refund of such overpayment.

Example 3. Electrical Power Cooperative billed Farmer for the total amount recorded on the latter's meter. Farmer, who was engaged in agricultural production, paid the amount billed, plus sales tax thereon, although fifty percent of the electricity used by him was exempt from tax because it was consumed in agricultural production. Electrical Power Cooperative may complete the affidavit portion of Form EAC and furnish it to Farmer to be completed and filed by Farmer with his Minnesota Income Tax Return in accordance with Section 290.501.

(2) 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 Section 297A.34, Subd. 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 $1,200.00, the tax due on the return. On January 20, 1971, "R" filed a claim for refund of $300.00 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.

(3) 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.

(c) ACTION TAKEN BY THE COMMISSIONER AFTER A CLAIM FOR REFUND IS FILED.

(1) 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.

(2) 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 at four percent per year shall be paid on the amount refunded or credited from the date of overpayment to the date when such refund or credit is authorized by the Commissioner.

(3) Where 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.

(d) 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 regulation for filing a claim for refund, Form ST-11, apply to amended returns filed in lieu of Form ST-11.

(e) No refund shall be made where the amount is $1.00 or less.

TAXS&U 509 APPEAL FROM DENIAL OF CLAIM FOR REFUND. 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 Section 271.06. Such an appeal shall be made normally within thirty 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 sixty days from the date of filing of the Commissioner's order.

The claimant may, in the alternative, bring an action in the district court of the district wherein lies the county in which the 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.

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 eighteen months after the notice of the order denying the claim. The claim is not considered denied by reason of non-action on the part of the Commissioner. The eighteen 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.

510
TAXS&U ~~89~~ PENALTIES AND INTEREST.

(a) IN GENERAL. Effective May 24, 1969, the rate of interest payable on delinquent tax and penalty was increased by law from four percent to eight percent per annum. Interest on unpaid liabilities that became due prior to May 24, 1969, is computed at four percent per annum from the due date to May 24, 1969, and thereafter at the rate of eight percent per annum from May 24, 1969, until date of payment. The rate of penalties was also changed. Refer to prior regulation for appropriate rate of penalty on tax which became due prior to May 24, 1969.

~~(a)~~ (b) LATE PAYMENT. In accordance with Section 297A.39, if a taxpayer fails to pay any tax imposed by the Sales and Use Tax Law ~~chapter 297A~~ or any portion of such tax when due, a penalty equal to ~~five~~ 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 Section 297A.26, .27 and .30 ~~and regulations pertinent thereto~~ 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 interest at the rate of ~~four~~ eight percent per annum 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, ~~1968~~ 1971, Retailer remits tax of $200.00 due on October 25, ~~1968~~ 1971, for the ~~period~~ month of September. A ~~five~~ ten percent penalty is assessed. The required amount to be paid on November 24, ~~1968~~ 1971, is calculated as follows:

Tax due and owing.....$200.00

~~Five~~ Ten percent penalty.....~~10.00~~ 20.00

Tax and penalty.....~~210.00~~ $220.00

Interest for 30 days at ~~4%~~ 8%..... ~~.70~~ 1.45

~~210.70~~

Total amount due.....$221.45

Example 2. "R" requests an extension of thirty days in which to file the return and remit the tax thereon for the month of August, ~~1968~~ 1971. The Commissioner grants an extension of thirty days until October 25, ~~1968~~ 1971. The tax due is $500.00. On November 24, ~~1968~~ 1971, Retailer remits the tax, penalty and interest computed as follows:

Tax due and owing.....$500.00

~~Five~~ Ten percent penalty..... ~~25.00~~ 50.00

~~525.00~~

Tax and penalty.....$550.00

~~Interest for 30 days at 4%.....1.75~~

Interest on tax due of $500.00 from original due date to extended due date at 8%.....$3.29

Interest on tax and penalty from extended due date to date filed at 8%.....$3.62

6.91

Total amount due.....~~526.75~~ $556.91

~~Example 3.--Retailer requests an extension of sixty days in which to file the return and remit the tax for the month of August, 1968.--The Commissioner grants an extension of sixty days until November 25, 1968 providing that Retailer file a tentative return~~

~~by-September-25,-1968-which,-on-the-basis-of-past-experience,-reflects approximately-the-tax-due.--Retailer's-tentative-return-filed-on September-25,-1968,-reflects-a-tax-of-$400.00-which-he-remits-with the-tentative-return.--Although-there-was-no-wilful-neglect,-Retailer was-unable-to-file-his-return-prior-to-February-23,-1969.--At-that time,-he-filed-a-return-reflecting-a-tax-of-$500.00.--The-tax,-penalty and-interest-due-on-February-23,-1969-is-computed-as-follows:~~

~~Tax-due-and-owing~~	~~$500.00~~
~~Less-amount-paid-with-tentative return~~	~~400.00~~
~~Remaining-tax-due~~	~~100.00~~
~~Five-percent-penalty~~	~~5.00~~
~~Interest-for-90-days-at-4%~~	~~1.05~~
~~Total-amount-due~~	~~$106.05~~

~~(b)~~ (c) 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 Section 297A.39, subd. 2, the Commissioner shall add to the tax in lieu of the ~~five~~ ten percent specific penalty provided in (a) above, a ~~five~~ ten percent penalty from the first thirty days immediately following the failure to file the return or remit the tax timely, and an additional five percent for each additional thirty days or fraction thereof during which failure continues. The total penalty assessed under this clause shall not exceed 25 percent in the aggregate. However, if the penalty as computed for the period does not exceed $10.00, 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 clause is in lieu of the ~~five~~ ten percent penalty imposed under clause (a) above. Consequently, as in the case in respect of the ~~five~~ ten percent penalty imposed under clause (a), the tax plus penalty bears interest for the period during which failure to file continues. The following example is illustrative: The return for August, ~~1968~~ 1971, reflecting the tax of $300.00 is filed on December 24, ~~1968~~ 1971.

Tax due and owing.....	$300.00
~~Fifteen~~ Twenty percent penalty.....	~~45.00~~ 60.00
Tax and penalty.....	~~345.00~~ $360.00
Interest for 90 days at ~~4%~~ 8%.....	~~3.45~~ 7.10
Total amount due.....	~~348.45~~ $367.10

~~(c)~~ (d) FAILURE TO FILE WITH INTENT TO EVADE TAX--FRAUD. Where a person is required to file a return under ~~Chapter 297A~~ 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 Section 297A.39, whether such

penalties be civil or criminal.

~~(d)~~ (e) CRIMINAL PUNISHMENT; PERSONS TO BE CHARGED. In addition to the penalties prescribed above, Section 297A.39, subd. 4., 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 ~~M.S. Chapter 297A~~ the Sales and Use Tax Law on behalf of the State of Minnesota.

Where the tax due exceeds $100.00 for the period involved, the person shall be guilty of a felony; for amounts not exceeding $100.00 for the period involved, the person shall be guilty of a gross misdemeanor.

For purposes of imposing criminal liability under this clause (d), 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.

~~(e)--PRIORITY-OF-PAYMENTS.--Pursuant-to-Section-297A.39,-subd. 5,-a-payment-received-from-a-person-upon-whom-penalties-and-interest in-respect-of-a-delinquent-return-have-been-imposed,-shall-be credited-first-to-penalties,-next-to-interest-and-then-to-the-tax due.~~

~~Example.--On-November-24,-1971,-Retailer-remits-tax-of-$1,000.00 which-had-been-due-and-payable-on-October-25,-1971.--The-Commissioner-assessed-a-penalty-of-ten-percent.--The-amount-received-is-credited as-follows:--$100.00-to-penalty,-interest-at-eight-percent-is-$7.23, $892.77-to-tax-due.--Consequently,-the-unpaid-tax-of-$107.23-may-be subjected-to-additional-penalties-as-well-as-interest-at-eight percent.~~

(f) ABATEMENT OF PENALTIES. Pursuant to Section 297A.39,

subd. 6, the Commissioner shall have the power to abate penalties 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 <u>if the abatement exceeds $500.00.</u> All requests for abatement of penalties shall be in writing and shall set forth the reasons for the failure to file the return and pay the tax timely.

TAXS&U ~~93~~ 511 LIMITATIONS ON DISCLOSURE OF SALES AND USE TAX INFORMATION. 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 ~~Chapter 297A~~ the Sales and Use Tax Law. Any person violating this provision shall be guilty of a misdemeanor.

The secrecy provision of 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.

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 inquirer may be furnished such particulars in respect of information contained on the permit, such as name and mailing address, business name and location, permit number, sales and use tax account number, and date of issuance of the permit.

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.

To insure consistent application and enforcement of all tax laws administered by him, the Commissioner is also authorized by 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.

TAXS&U ~~28~~ VETERINARIANS. 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.

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.

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.

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.

601

TAXS&U ~~28.1~~ COMMERCIAL ARTISTS AND PHOTOGRAPHERS. 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, preliminary or creative art, assistants, etc., whether or not separately stated on the bill or invoice. All preliminary or creative art service involved in a project which results in a sale of finished art is subject to tax, whether or not separately stated on the billing or invoice.

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.

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 Section 297A.25, Subd. 1(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.

An exemption certificate submitted by a purchaser and accepted in good faith by a commercial artist and/or photographer pursuant to TAXS&U ~~39~~ 207 shall be sufficient to relieve responsibility to collect the tax.

602
TAXS&U ~~28.2~~ FLORISTS AND NURSERYMEN.

(a) TAXABLE. 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 conversation, 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.

(b) EXEMPT. 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 non-returnable 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 is also exempt, except that the portion used for space heating or lighting is taxable.

(c) TELEGRAPHIC ORDERS. Where 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:

(1) Sending Florist: 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.

(2) Receiving Florist: 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.

(3) Other Charges: 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.

(d) SALES TO NON-RESIDENTS. 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 non-resident 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.

603
TAXS&U ~~28.3~~ SOFT WATER EQUIPMENT & SERVICE DEALERS.

(a) 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.

(b) RENTALS. Receipts from rentals of automatic and semi-automatic 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 semi-automatic equipment and tanks intended to be used only for leasing to customers are considered "sales for resale."

(c) 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 therefore 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.

TAXS&U ~~28.4~~ 604 SALES AND RENTALS OF MOBILE HOMES AND HOUSE TRAILERS.

(a) 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 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.

(b) 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:

(1) The unit must be affixed to the land, the title of which is in the same name as the owner of the unit.

(2) The unit must be affixed to the land by a permanent foundation or in a manner similar to other real property in the district.

(3) 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.

(4) The wheels must be removed.

Sales of property meeting this criteria are exempt sales of real property.

(c) EXEMPT LODGING. Where mobile homes and house trailers

are permanently affixed to realty in accordance with clause (b), amounts received by the lessor for the rental or use solely for the purpose of lodgings by the lessee for a continuous period of thirty days or more are exempt.

605

TAXS&U ~~28.5~~ ADVERTISING AGENCIES.

(a) 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 Section C relative to requirements relating to principal-agent relationships.

(b) AGENCY AS INDEPENDENT SERVICE BUSINESS.

(1) Nontaxable services. 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.

(2) Preliminary Art. "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 photo-mechanical or other processes.) Tax does not apply to separate charges for prliminary 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.

(3) Retail Sales. 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.

(4) Items Purchased by Agency. 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.

(c) 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 TAXS&U ~~39~~ 207 in the name of the principal and signed by the advertising agencies as true agent.

606

TAXS&U ~~73~~ SALES BY GOVERNMENTAL UNITS; TAXABLE. 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.

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.

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.

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.

APPROVED AS TO FORM AND LEGALITY
11-20 1974
WARREN SPANNAUS, ATTORNEY GENERAL
BY Michael B Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

3:45 P.M.
STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV2 01974
Arlen I. Erdahl
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
NOV 20 1974 3:55 pm
BY Eda Staudenmaier
AUTH. SIGNATURE
EJ

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR C. ROEMER

COMMISSIONER OF REVENUE

In the Matter of the Proposed Adoption of Rules and Regulations of the Department of Revenue Relating to Sales and Use Tax

ORDER FOR HEARING

To effectively implement the provisions of Minnesota Statutes, 1971, Chapter 297A, as amended, the Minnesota Commissioner of Revenue deems it necessary to consider adoption of the proposed rules and regulations captioned above pursuant to the authority vested in me by Minnesota Statutes 1971, Section 297A.29.

NOW, THEREFORE, IT IS ORDERED, this 24th day of March, 1974, that a public hearing on the proposed regulations captioned above be held in Room 116A and B, Administration Building, St. Paul, Minnesota, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

Arthur C. Roemer

COMMISSIONER OF REVENUE

Exhibit A

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR C. ROEMER

COMMISSIONER OF REVENUE

In the Matter of the Proposed Adoption of Rules and Regulations of the Department of Revenue Relating to Sales and Use Tax

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 1971, Section 15.0412, Subdivision 4, in the above-entitled matter, in the Administration Building, Room 116A and B, St. Paul, Minnesota, on May 3, 1974, commencing at 9:00 a.m. and continuing until all representatives or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules and regulations captioned above by submitting either oral or written data, statements or arguments. Persons may submit written statements or briefs without appearing at the hearing.

The Commissioner proposes to adopt rules and regulations to effectively implement legislation relating to Minnesota sales and use tax. A summary of the principal changes and additions is enclosed. Copies of the proposed rules and regulations (two hundred and thirty-six pages, double spaced) will be available at the hearing. Copies will also be available at the office of the Director of the Sales and Use Tax Division, Capitol Square Building, St. Paul, Minnesota 55155, and at the following regional sales and use tax offices:

Warnert Building
44 North 28th Ave.
St. Cloud, MN 56301

Lincoln Hall, Room 223
Mankato State College
Mankato, MN 56001

6510 Nicollet Ave.
Mpls., MN 55423

4 North 3rd St.
Mpls., MN 55401

108 South Sixth St.
Brainerd, MN 56401

215-4th St. N.E.
Rochester, MN 55901

2223 East Highway 10
Moorhead, MN 56560

Persons who wish to present oral comments in addition to written comments or suggestions should submit to the Director of Sales and Use Tax by April 26, 1974, an outline of the topics and the time they wish to devote to each topic.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

Arthur C. Roemer

COMMISSIONER OF REVENUE

SYNOPSIS OF SALES AND USE TAX REGULATIONS
SHOWING PRINCIPLE PROPOSED CHANGES OR PROPOSED NEW REGULATIONS

TAXS&U 1 INTRODUCTION. Amended to explain nature of use tax and arrangement of these regulations.

TAXS&U 2 PERSON. Amended to incorporate provisions of law including officers, directors and agents of corporations in the definition of person.

TAXS&U 3 SALES BY TRANSFER OF TITLE. Amended to classify transactions involving performance of repair services and the use of tooling, molds and dies in the manufacturing process.

TAXS&U 5 LEASES. Amended to add provisions relating to equipment rentals, with or without operator furnished; prescribes deductible items from full-service leases of equipment.

TAXS&U 6 LICENSE TO USE. Amended to change example as computer time sharing, as used in example, has been determined to be a service.

TAXS&U 7 CONSIDERATION. Amended to set guidelines for inclusion of trading stamps and coupons.

TAXS&U 8 PRODUCING, FABRICATING, PRINTING OR PROCESSING OF PROPERTY FURNISHED BY CONSUMER. Amended to classify taxability of tire recapping, pipe cutting or threading, wood-milling charges and engraving services.

TAXS&U 9 MEALS AND DRINKS. Amended to provide that prepared, hot food sold by supermarkets and other foodstores are taxable.

TAXS&U 10 ADMISSIONS AND USE OF AMUSEMENT DEVICES. Amended to add provisions relating to club dues, bingo, tennis courts and swimming pools.

TAXS&U 11 LODGING. Amended to correct an error in reference to law and to change reference to other regulations.

TAXS&U 12 UTILITIES. Amended to supplement statutory provisions taxing intrastate telephone toll service; prescribes rules for transitional sales of utility service.

TAXS&U 16 SALES OF BUILDING MATERIAL, SUPPLIES OR EQUIPMENT. Amended to classify taxability of building materials relating to construction contracts with exempt entities and contracts enforceable prior to effective date of rate change.

TAXS&U 19 USE. Amended to eliminate the phrase "and regulations pertinent thereto."

TAXS&U 20 TEMPORARY STORAGE AND USE IN MINNESOTA. Amended to correct order of reference in Example 1.

TAXS&U 22 REDUCTION IN SALES PRICE FOR PROPERTY TAKEN IN TRADE. Amended Example 1. Automobile changed to boat because automobiles are subject to Motor Vehicle Excise Tax in lieu of Sales and Use Tax.

TAXS&U 23 DEDUCTIONS NOT ALLOWABLE IN COMPUTING SALES PRICE. Amended Example 2 to have example conform to current law.

TAXS&U 24 DEDUCTIONS ALLOWABLE IN COMPUTING SALES PRICE. Amended to explain circumstances whereby donee of gift returned to vendor receives refund of tax.

TAXS&U 25 GROSS RECEIPTS DEFINED - METHOD OF REPORTING. Amended to eliminate reference to gross sales and unnecessary language.

TAXS&U 26 RETAILER. Amended to include furnisher of intrastate telephone service in definition of retailer.

TAXS&U 27 AGRICULTURAL PRODUCTION. Issues a definition of agricultural production. (New)

TAXS&U 28 VETERINARIANS. Prescribes taxability of items used or sold by veterinarians. (New)

TAXS&U 28.1 COMMERCIAL ARTISTS AND PHOTOGRAPHERS. Includes these persons into the legal definition of a retailer. (New)

TAXS&U 28.2 FLORISTS AND NURSERYMEN. Issues rules concerning taxability of sales and purchases of these persons. (New)

TAXS&U 28.3 SOFT WATER EQUIPMENT & SERVICE DEALERS. Issues rules on taxability of sales, rental and service transactions made by these persons. (New)

TAX S&U 28.4 SALES AND RENTALS OF MOBILE HOMES AND HOUSE TRAILERS. Issues criteria whereby such property is classified either as real or personal property. (New)

TAXS&U 28.5 ADVERTISING AGENCIES. Establishes persons rendering advertising services. (New)

TAXS&U 28.6 CARTONS AND CONTAINERS USED BY MOVING AND TRANSFER COMPANIES. Establishes rules to ascertain taxability of such items. (New)

TAXS&U 28.7 GIFTS-TRANSFERS WITHOUT MONETARY CONSIDERATION. Prescribes that donor of gift is user and consumer thereof. (New)

TAXS&U 29 IMPOSITION OF SALES TAX. Deletes provisions relating actual tax collected method to conform with corrent statute in force.

TAXS&U 30 TAX SEPARATELY STATED-DEBT DUE SELLER. Deletes entire regulation.

TAXS&U 31 ADVERTISING TAX WILL BE ABSORBED--MISDEMEANOR. Amended to change figures to reflect current rate of tax.

TAXS&U 33 APPLICATION FOR PERMIT TO MAKE RETAIL SALES. Amended to illustrate when change in ownership or name requires a new permit application.

TAXS&U 34 PERMIT WHEN VALID AND HOW DISPLAYED. Amended to eliminate phrase "and regulations pertinent thereto."

TAXS&U 35 REVOCATION OF PERMITS. Amended to eliminate reference to Chapter 297A and substitute "the Sales and Use Tax Law" and to eliminate phrase "and regulations pertinent thereto."

TAXS&U 37 PRESUMPTION THAT TAX MUST BE PAID. Amended to change rate from three to four percent and to eliminate phrase "and regulations pertinent thereto."

TAXS&U 38 DIRECT PAY PERMIT PROCEDURE. Amended to revise qualifications for direct pay permit and restricting its use.

TAXS&U 39 GOOD FAITH ACCEPTANCE OF EXEMPTION CERTIFICATES. Amended to reflect changes in statutes relating to exempt entities.

TAXS&U 40 CONTENT AND FORM OF EXEMPTION CERTIFICATE. Amended to include ST-17 and update other exemption certificates.

TAXS&U 41 NON-EXEMPT USE OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE. Amended to eliminate phrase "and regulations pertinent thereto."

TAXS&U 43 IMPOSITION OF USE TAX. Revised to reflect current rate of tax.

TAXS&U 44 LIABILITY FOR PAYMENT OF USE TAX. Amended to eliminate phrase "and regulations pertinent thereto."

TAXS&U 45 COLLECTION OF TAX AT TIME OF SALE. Amended to eliminate phrase "and regulations pertinent thereto."

TAXS&U 47 UNLAWFUL TO ADVERTISE THAT USE TAX WILL BE ABSORBED. Amended to change figures to reflect current rate of tax.

TAXS&U 50 REGISTRATION. Amended to enumerate registration requirements of retailers authorized to collect use tax.

TAXS&U 51 COMMON CARRIER DIRECT PAY CERTIFICATE. Establishes rules relating to eligibility and procedures prerequisite to permit direct payment by common carriers of tax to Commissioner of Revenue. (New)

TAXS&U 53 CREDIT AGAINST USE TAX. Amended to add examples to illustrate computation of credit for use tax paid to another state and deletes irrelevant examples.

TAXS&U 54 FOOD PRODUCTS. Establishes rules to define food and food products. (New)

TAXS&U 55 DRUGS, MEDICINES, THERAPEUTIC AND PROSTHETIC DEVICES. Establishes rules to determine taxability and contains guide list of exempt and taxable items. (New)

TAXS&U 56 EXEMPTIONS IN ACCORDANCE WITH CONSTITUTIONAL PROHIBITION AGAINST TAXATION. Enumerates constitutional prohibitions against tax. (New)

TAXS&U 57 PROPERTY SHIPPED OUT OF STATE. Issues rules concerning property taken or shipped out of state. (New)

TAXS&U 58 PETROLEUM PRODUCTS. States rules relating to imposition of sales or use tax on petroleum products. (New)

TAXS&U 59 CLOTHING AND WEARING APPAREL. Establishes rules for distinguishing clothing and wearing apparel from athletic and sporting articles or safety and protective articles. (New)

TAXS&U 60 PROPERTY USED IN AGRICULTURAL AND INDUSTRIAL PRODUCTION. Establishes criteria for determining exemption of property used in agricultural and industrial production. (New)

TAXS&U 61 PUBLICATIONS. Defines publication and establishes rules to determine taxability of paper and ink used in publications. (New)

TAXS&U 62 SALES TO EXEMPT ENTITIES, THEIR EMPLOYEES OR AGENTS. Explains incidence of tax on governmental agency relief orders and clarifies taxability of food or lodging furnished to exempt entities. (New)

TAXS&U 63 ISOLATED OR OCCASIONAL SALES. Defines isolated or occasional sales, including sales by non-profit organizations, with numerous illustrative examples. (New)

TAXS&U 64 ROLLING STOCK EXEMPTION. Defines rolling stock exemption available to railroads, freight line companies, sleeping car companies and express companies. (New)

TAXS&U 65 AIRFLIGHT EQUIPMENT EXEMPTION. Defines subject property. (New)

TAXS&U 66 TELEPHONE CENTRAL OFFICE TELEPHONE EQUIPMENT EXEMPTION. Defines subject property. (New)

TAXS&U 68 EXEMPT CHARITABLE, RELIGIOUS AND EDUCATIONAL ORGANIZATIONS. Supersedes existing TAXS&U 66 and establishes procedure and criteria to qualify as exempt charitable, religious or educational organization for sales tax purposes. (New)

TAXS&U 69 CASKETS, BURIAL VAULTS, URNS FOR CREMAINS AND MEMORIALS. Issues rules for determining taxability of tombstones, markers and memorials and installation thereof by dealer or cemetery. (New)

TAXS&U 70 DISABLED VETERANS - PURCHASES OF AUTOMOBILES AND OTHER CONVEYANCES Prescribes rules and procedure whereby certain disabled veterans may purchase automobile and adaptive equipment exempt from sales tax. (New)

TAXS&U 71 AIRCRAFT COMMERCIAL USE PERMIT. Establishes rules whereby aircraft dealers may qualify for exempt use of aircraft purchased for resale. (New)

TAXS&U 72 DISABLED VETERANS - PURCHASE OF BUILDING MATERIALS. Prescribes rules and procedure whereby certain disabled veterans may receive refund of tax paid on building materials for residence after July 1, 1971. (New)

TAXS&U 72.1 TEXTBOOKS. Defines textbooks and establishes criteria for determining taxability. (New)

TAXS&U 73 SALES BY GOVERNMENTAL UNITS; TAXABLE. Illustrates when sales by governmental units are taxable. (New)

TAXS&U 73.1 TACONITE PLANT MATERIAL; EXEMPTIONS. Supplements Minnesota Statutes Section 297A.251 whereby certain materials, supplies and equipment used to construct or expand taconite plant are exempt from tax. (New)

TAXS&U 74 WHEN TAX IS DUE. Amended to permit retailers to file quarterly sales tax return if average monthly liability is less than $100; annually if less than $10 per month.

TAXS&U 75 UNCOLLECTIBLE DEBT DEDUCTION. Amended to permit cash basis retailer to claim loss on bad checks, and repossession losses are explained.

TAXS&U 76 RETURNS AND RECORDS. Amended to define gross receipts to be reported and state record keeping requirements generally and with EDP processing or microfilm.

TAXS&U 77 COMMISSIONER MAY REQUIRE SECURITY. Amended to eliminate reference to Chapter 297A and substitute "the Sales and Use Tax Law" and specific reference to Law.

TAXS&U 79 EXTENSION OF TIME TO FILE RETURN AND REMIT TAX. Amended to conform to statute providing interest payable when time for payment has been extended.

TAXS&U 80 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS. Amended to provide for alternate forms of notice to the taxpayer to eliminate proposed assessment reports at the discretion of Commissioner of Revenue or in jeopardy situation.

TAXS&U 81 FAILURE TO FILE A RETURN. Amended to eliminate phrase "and regulations pertinent thereto."

TAXS&U 83 TIME LIMITATION ON ASSESSMENT AND COLLECTION. Amended to define dollar amount properly includable in return, showing illustrations of omission.

TAXS&U 84 CLAIMS FOR REFUND. Amended to state conditions to be met before Commissioner will entertain claims for refund.

TAXS&U 89 PENALTIES AND INTEREST. Amended to conform examples to statute and to define wilful neglect penalty.

TAXS&U 93 LIMITATIONS ON DISCLOSURE OF SALES AND USE TAX INFORMATION. Amended to permit Commissioner to exchange information with taxing authorities.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR C. ROEMER

COMMISSIONER OF REVENUE

In the Matter of the Proposed Adoption of Rules and Regulations of the Department of Revenue Relating to Sales and Use Tax

CERTIFICATE

I hereby certify that the attached list consisting of 340 labels and one sheet constitute the complete list of persons, associations and other interested groups who as of 8:15 o'clock A.M., this twenty-sixth day of March, 1974, have requested pursuant to M.S. 1971, Section 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Arlen I. Erdahl

Secretary of State
ARLEN I. ERDAHL

By Ceil Dion

PLEASE NOTE:

If you intend to supplement this list with other lists when mailing a hearing notice, please compare lists and eliminate duplicate notices.

Thank you.

ALSO
NOTIFY ALL INTERESTED STATE DEPARTMENTS, BOARDS AND COMMISSIONS
AND
PLEASE SORT OUT INTEROFFICE MAIL FROM LABELS

REVENUE

[redacted]

Cassidy, Adrian C., N. W. Bell Tel. Co., 224 S. 5th St., Mpls. 2 — unable to locate at N.W. Bell

Dickinson, A. James, 1200 NW Natl Bk Bldg, 55 E 5th St., St.Paul 55101

First Natl. Bank of Mpls., Mpls. 2, Att'n: M. C. Satterberg — unable to locate at First Nat'l

Higgins, J. C., Brotherhood Rwy. Clks., 2317 W. 7th St., Duluth

Investors Syndicate Life Ins. & Annuity Co., Attn. Gen. Counsel, Investors Bldg

Merrick, Grosman [illegible] Schultz & Lockie Life Insurance Bldg Mpls. Mpls 55402 55402

Mundt, Daniel, c/o Van Evera, Mundt et al, 700 Torrey Bldg., Duluth 55802

Northwest Petroleum Ass'n., 512 Nicollet Mall, Rm. 917, Mpls 55402

Phillips, William L., 113 West University Ave., St. Paul 55101

Standard Ins. Co. of America(Attn: Law Dept.), Box 1[illegible], Mpls.

Savings & Loan League of Minn., 625 2nd Ave. S., Suite 303, Mpls. 2

INCOME & FRANCHISE

Doidge, Chas. J. - 309 E. Wyoming St. Redwood Falls, Minn.

Pitt, James F., 13[illegible]

55 E 5th St.
St. Paul 55101

ALBERT,AA CALDER CORP
366 JACKSON ST
ST PAUL MN
55101

ALLEN CLAUDE H
1200 N W BK BLDG
ST PAUL MN
55101

ALTMAN MILTON H
707 DEGREE OF HONOR BLD
ST PAUL MN
55101

AM CAMPING ASSN MRS LEACOCK
1235 BRIGHTON SQ
NEW BRIGHTON MN
55112

AM INST PROF GEOLOGISTS
2201 PRINCETON AVE
ST PAUL MN
55105

ANCHOR BLOCK COMPANY
PO BOX 3360
ST PAUL MN
55165

ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
55792

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ANDERSON STANFORD P
14600 MINNETONKA BLVD
MINNETONKA MN
55343

ANDREWS MOSBURG ET AL-NICHOL
MIDLAND CENTER
OKLAHOMA CITY OK
73102

ANTHONY R.S. E.L.M.
1222 FOURTH ST. S.E.
MINNEAPOLIS MN
55414

ARMOUR AND COMPANY
UNION STOCK YARDS
SO ST PAUL MN
55075

ARROWHEAD REGIONAL DEV COMM
900 ALWORTH BLDG
DULUTH MN
55802

ARVER JOHN A
2467 COHANCY
ST PAUL MN
55113

ASMUSSEN,DENNIS,MPIRG
3036 UNIV AVE SE
MPLS MN
55414

ASSOCIATED INDUST OF MPLS
NATIONAL BLDG
MPLS MN
55402

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

AUTOMOBILE MFRS ASSN INC
55 SHERBURNE AVE
ST PAUL MN
55103

BABCOCK LOCHER NELSON ET AL
118 E MAIN ST
ANOKA MN
55303

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BARKER KENT
8100 34TH AVE SO
MPLS MN
55420

BARTHOLOW HAROLD E FIRE CHF
2600 109 AVE N W
COON RAPIDS MN
55433

BECKLIN ROBERT C
447 N W 4TH
CAMBRIDGE MN
55008

BEECHER EVERETT
10 10 1ST ST SO
HOPKINS MN

BELISLE JON
2040 WILSON #28
ST PAUL MN
55119

BEMIDJI STATE COLLEGE
PLACEMENT BUR.J.C.BRADY
BEMIDJI MN
56601

BENSONI PETER USW OF AM.
609 PROVIDENCE BLDG.
DULUTH MN

BERGERUD ALF
300 ROANOKE BLDG
MPLS MN
55402

BEST FLANAGAN ET AL
1ST NATL BANK BLDG
MPLS MN
55402

BEUTEL ROBERT
BOX 1205
ST CLOUD MN
56301

BLOMQUIST BARRY L

NORTH BRANCH MN
55056

BREHL JAMES W
332 HAMM BLDG
ST PAUL MN
55102

BRIGGS & MORGAN - B F FRI
2200 W 1ST NATL BK BLDG
ST PAUL MN
55101

BRIGHAM E M III
BR4
RED WING MN
55066

BROEKER JOHN
2850METRO DR. SUITE 504
BLOOMINGTON MN
55420

BROOKS WILLIAM F JR
854 MIDLAND BK BLDG
MPLS MN
55401

BROWN D M GOODRIDGE PUB S
IND DIST #561
GOODRIDGE MN
56725

BRUBACHER RICHARD COMM ADM
208 ADM BLDG
ST PAUL MN

BRUNING C.R.DEPT.CLINIC.EXP.
BURTON HALL
MPLS. MN

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
55101

BUR.ENGR.IND.DIV. MR.KIBI
219 N. 2ND ST.
MPLS. MN

BRUBACHER RICHARD COMM ADM
208 ADM BLDG
ST PAUL MN
55101

BRUNING C.R.DEPT.CLINIC.EXP.
BURTON HALL
MPLS. MN
55455

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
55101

BUR.ENGR.IND.DIV. MR.K161
219 N. 2ND ST.
MPLS. MN

BUR NATL AFFAIRS INC
1231 25TH ST NW
WASHINGTON DC
20037

CARLSON CARL L
7516 80TH ST S
COTTAGE GROVE MN
55016

CARPENTER MRS MARY LEE
DOW CHEMICAL 47 BLDG
MIDLAND MICH.
48640

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

CENTRAL BUSINESS DATA
BENSON RADIO ARCADE BLD
BENSON MN
56215

CHAMBER OF COMMERCE
30 SO 1ST AVE EAST
ELY MN
55731

CHAMBERLAIN JOHN L
PO BOX 241
MPLS MN
55440

CHAMBERLAIN WARREN D
87 SW 4TH AVE
FARIBAULT MN
55021

CHERCHES CHRIS CITY MGR
5005 MTKA BLVD
ST LOUIS PARK MN
55416

CHRISTIAN SCI COMM ON PUB
1821 UNIV AVE SUITE 271
ST PAUL MN
55104

CITY CLERK
386 CITY HALL
ST PAUL MN
55102

CITIZENS LEAGUE
530 SYNDICATE BLDG
MPLS MN
55402

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

COLEMAN NICHOLAS D
700 LINWOOD AVE
ST PAUL MN
55105

COLLIN LAURENCE
RT 2
ISANTI MN
55040

COMMUNITY DESIGN CENTER
118 E 26TH ST
MPLS MN
55404

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

CONSUMER SERVICES DEPT COMM
230 STATE OFF BLDG
ST PAUL MN
55101

COUNTY ATTYS COUNCIL
95 SHERBURNE AVE S203
ST PAUL MN
55103

COX AND KING
600 BUILDERS EXCH
MPLS MN
55402

CROW WING CO PLANNING & ADV
COURT HOUSE
BRAINERD MN
56401

CUSHMAN J S DAYTON HUDSON
700 NICOLLET MALL
MPLS MN
55402

DANFORTH & ALLEN
731 NW BANK BLDG
MPLS MN
55402

DANKERS,KENNETH
1200 WEST FOURTH STREET
RED WING MN
55066

DANIELSON RODNEY L
418 AUDITORIUM
ST PAUL MN
55102

DAVIS HENRY
6301 SHINGLE CREEK
BROOKLYN CTR MN
55429

DAYTON CHAS SIERRA CLUB
400 ROANOKE
MPLS MN
55402

DIEHL JOHN
26 KENWOOD PKWY
ST PAUL MN
55105

DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
ST PAUL MN
55101

DORSEY MARQUART
2400 1ST NATL BANK BLDG
MPLS MN
55402

DOUGLASS BELL
525 OSBORN BLDG
ST PAUL MN
55102

DOYTON MAURICE, MET SEWER BD
350 METRO SQ BLDG
ST PAUL MN
55101

DUDLEY E H
RT 7 BOX 122
EXCELSIOR MN
55331

DUNN OLIVER PLUMBERS LOC
708 SO 10TH ST
MPLS MN
55404

EBELING EDWARD H.
161 W. MAIN
PERHAM MN

EDINA FIRE D JAMES MCNELLIS
4801 W 50TH ST
EDINA MN

ELDER DR JAMES B
11140 WASHBURN AVE SO
BLOOMINGTON MN

EBELING EDWARD H.
161 W. MAIN
PERHAM MN
56573

EDINA FIRE D JAMES MCNELLIS
4801 W 50TH ST
EDINA MN
55424

ELDER DR JAMES B
11140 WASHBURN AVE SO
BLOOMINGTON MN
55431

ELDRED R W ARMOUR & CO
UNION STOCK YARDS
SO ST PAUL MN
55075

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

EMERICK RICHARD A
1908 IDS CENTER
MPLS MN
55402

EMP HANDICAPPED PERSONS C
527 JACKSON RM 227
ST PAUL MN
55101

ENV SERV-GEN RESOURCE CORP
6340 INDUSTRIAL DR
HOPKINS MN
55343

ERDMAN ROGER TENNANT CO
701 N LILAC DR
MPLS MN
55441

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN
55403

ESSE KENNETH
4801 W 50TH ST
EDINA MN
55424

EVANS CHAS.L. PRENTICE-HALL
ENGELWOOD CLIFFS
NEW JERSEY.

EVERETT JERRY NW PETRO ASSN
512 NICOLLET MALL RM917
MPLS MN
55402

EWALD DOUGLAS MINN HOSP ASSN
2333 UNIV AVE SE
MPLS MN
55414

EWING MRS WM
42 ASTAR RD
BABBITT MN
55706

FAEGRE & BENSON ATTN LIBR
1260 NW BANK BLDG
MPLS MN
55402

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FINLEY JAMES F
920 MINN BLDG
ST PAUL MN
55101

FINNEGAN J.R.
55 E. 4TH
ST.PAUL MN
55101

FLEMING FREDERICK A
1860 HIGHLAND PARKWAY
ST PAUL MN
55116

FLETCHER RONALD
7900 XERXES AVE S
MPLS MN
55431

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55408

FORBES GORDON MINN RRS ASSN
207 UNION DEPOT
ST PAUL MN
55101

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

FRANKLIN ROBERT B MPLS TRIB
426 PORTLAND
MPLS MN
55415

FURLONG DR JOHN
RT 1
BOVEY MN
55709

F W WOOLWORTH CO
3316 W 66TH ST
EDINA MN
55424

GALVIN M J JR
W2162 1ST NATL BK BLDG
ST PAUL MN
55101

GAS HUT INC
4940 VIKING DR
MINNEAPOLIS MN
55435

GEORGE K GRAISE CO
1477 SELBY AVE
ST PAUL MN
55104

GIEL DAVID
RM B-28 STATE CAPITOL
ST PAUL MN
55155

GLEN. HILLS HOSP.R.VAN HAUER
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GRANATH MARVIN -HONEYWELL
2701 4TH AVE SO
MPLS MN
55408

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

GREEN GARY J
41 SHERBURNE AVE
ST PAUL MN
55102

GUSTAFSON MRS D MINN VET
24 S 6TH ST
MPLS MN
55402

GUSTAFSON WALLACE
BOX 567
WILLMAR MN

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HARVEY MICHAEL
1390 W M HAHA PKWY
MPLS MN
55409

GUSTAFSON WALLACE
BOX 567
WILLMAR MN
56201

HALLBERG LEE & MCCABE
4927 34TH AVE S
MPLS MN
55417

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HULTMAN WARREN R
C/O BARBAROSSA R3
OSSEO MN
55369

HUTCHISON R.M. ANCKA CO.COMP
COURT HOUSE
ANOKA MN
55303

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

JOHNSON M.D. FRUNDT & FRUNDT
BLUE EARTH MN
56013

KANE ANTHONY
176 E FIFTH ST
ST PAUL MN
55101

KNOWLES, LARRY D
8025 33RD AVE N
CRYSTAL MN

HAYES, THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

AICHINGER-MARK PLANNING
421 WABASHA ST
ST PAUL MN
55102

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUMAN RIGHTS DEPT
60 STATE OFF BLDG
ST PAUL MN
55101

IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

JACKMAN DONALD G
4023 E LAKE ST
MPLS MN
55406

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

KIMBALL ROBERT
647 CAPITOL SQ BLDG
ST PAUL MN
55101

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HESS DONALD MIDWEST PLANNING
2101 HENN BLDG
MPLS MN
55405

HILL JIM ASSOC.MILK PROD.
7850 METRO PARKWAY
MINNEAPOLIS MN
55420

HOUSE ED STANDING SUB COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUNT MRS CHAS L MECCA
26 E EXCH CENTRAL MANOR
ST PAUL MN
55101

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

KING, TIMOTHY
3333 OAKLAND AVE S
MPLS MN
55407

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST PAUL MN

HARVEY MICHAEL
1390 W M HAHA PKWY
MPLS MN
55409

HARTFELDT WILL
415 HAMM BLDG 6TH ST
ST PAUL MN
55102

HOPKINS WM.B. DIR.MISCCA
3915 GOLDEN VALLEY ROAD
GOLDEN VALLEY MN
55422

HULSTRAND ANDERSON & LARS
PO BOX 130
WILLMAR MN
56201

HUNT JAMES P JR
11470 GALTIER DR
BURNSVILLE MN
55378

INGVALSON VERN MN.FARM BU
3110 WOODDALE DR PO 337
OST PAUL MN
55165

IVERSON GARY L
1212 PIONEER BLDG
ST PAUL MN
55101

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

KABLE RICHARD W
BETHEL MN
55006

KLUZ STEVEN J
1910 1ST NATL BK BLDG
MPLS MN
55402

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN

KNOWLES, LARRY D
8025 33RD AVE N
CRYSTAL MN
55427

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KORTZ MRS LOUISE
1064 FOREST HILLS DR SW
ROCHESTER MN
55901

LANSING & OAKES
400 SIBLEY ST
ST PAUL MN
55101

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LAUNDERERS&DRY CLEANERS ASSN
W 1ST NATL BK BLDG
ST PAUL MN
55101

LEAGUE MN MUNIC MC HADICKS
~~3300 UNIV AVE S E~~ 300 HANOVER
~~MPLS~~ MN
~~55414~~ 480 CEDAR
ST PAUL MN 55101

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

LOWE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MANTHEY T J PICKANDS MATHER
1000 UNION COMM BLDG
CLEVELAND OH
44115

MASTCR MATTSON HART ET AL
414 ROANOKE BLDG
MPLS MN
55402

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MERRITT GRANT POLLUTION CONT
OAK & DELAWARE
MPLS MN
55440

MILLER RICHARD A
1020 PLYMOUTH BLDG
MPLS MN
55402

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MINN ASSN ELEC COOPERATIVES

MINN. ASSN. RET RETAILERS

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

LAKE SUPERIOR INDUSTRIAL
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SE
717 DELAWARE ST SE
MPLS MN
55440

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

MCKIBBCN MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MANKATC STAT STUDENT SENA
CENTENNIAL STUDENT UN
MANKATC MN
56001

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MECCA R.F. NELSON
26 E EXCHANGE ST
ST PAUL MN
55101

MET OPEN SPACE INFOR PROJ
111 E FRANKLIN AVE SO
MPLS MN
55404

MET TFR MEN ASSN A ROSENT
1821 UNIV AVE
ST PAUL MN
55104

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MINN AFL-CIO, L O LA SHOMB
414 AUDITORIUM ST
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG

MINN BD PODIATRY EXAM & R
1111 W 2ND ST.

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

MINN BD PODIATRY EXAM & R
1111 W 2ND ST.
CROCKSTON MN
56716

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
5544C

MINN DENTAL HYGIENISTS
5041 YVONNE TERRACE
MPLS MN
55436

MINN ELECTRICAL ASSN INC
525 SO 7TH
MPLS MN
55415

MINN ENV CONTROL CITIZEN ASN
CENTRAL MANOR 26 E EXCH
ST PAUL MN
55101

MINN ENV LAW INST INC
PO BOX 15076 COMM STA
MPLS MN
55415

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN HWYS MANAGEMENT SERVICE
410 HWY BLDG
ST PAUL MN
55101

MINN HOUSING INST N T CARTER
7801 METRO PKWY
MPLS MN
55420

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINNE MINE CREDIT UNION
3000 HUDSON PK S 100
ST PAUL MN
55119

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MINN PETROLEUM COUNCIL
446 BUILDERS EXCH BLDG
MPLS MN
55402

MINN POULTRY & HATCHERY A
BOX 158
MADELIA MN
56062

MINN PUB INT RES DAYTON
2418 UNIV AVE SE
MPLS MN
55414

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN 55
104

MINN RETAIL FEDERATION
7600 PARKLAWN STE 457
MPLS MN
55435

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN SCH BUS OPERATORS ASSN
FARIBAULT MN
55021

MINN SOCIETY ARCHITECTS AIA
NW NATL BK BLDG
ST PAUL MN
55101

MINN SOC CERTIFIED PUB AC
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN ST BD PHAR P G GRUSSING
1965 FORD PKWY
ST PAUL MN
55116

MINN STATE CAPITOL EMP UNION
PO BOX 3215
ST PAUL MN
55165

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE OPTOMETRIC ASSN
333 E HENNEPIN AVE
MPLS MN
55414

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN ASSN WATERSHED DIST'S
ADA MN
5651C

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MINN-WISC BOUNDARY AREA C
600 2ND ST
HUDSON WI
54016

MOFFITT R.C. DIR.ENV.CONTROL

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO

MOONEY, MICHAEL A.
BOX 903, ST.JOHN'S UNIV
COLLEGEVILLE MN

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN

MOFFITT R.C. DIR.ENV.CONTROL
MPLS.CITY HALL RM 301M
MPLS MN
55415

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MOONEY, MICHAEL A.
BOX 903, ST.JOHN'S UNIV
COLLEGEVILLE MN
56321

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

NASS GEO V HENN CO GEN HOSP
5TH AND PORTLAND AVE
MPLS MN
55415

NATL CAR RENTAL ATT D MITZEL
5501 GREEN VALLEY DR
MPLS MN
55437

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NELSON DONALD E NSP CO
414 NICOLLET AVE
MPLS MN
55401

DELL HAROLD - MEINEKE
300 W LOOP S SUITE 200
HOUSTON TX
77027

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BLDG
MPLS MN

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXAMRS
277 W UNIV AVE
ST PAUL MN
55103

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NYQUIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

O'BRIEN J.DENNIS
1200 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OCONNOR GREEN THOMAS ET AL
845 NW BANK BLDG
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OLD COLONY GAS & OIL COMPANY
17TH AVE N AT 2ND ST
MPLS MN
55411

OSTRUM DONALD E
10213 PIERCE ST NE
BLAINE MN
55434

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PAYNE COL ALVIN

DEGRAFF MN
56233

PAYNE WM B
2400 FIRST NATL BK BLDG
MPLS MN
55402

PETERSON GARY
854 MIDLAND BK BLDG
MPLS MN
55401

PETERSEN JOHN W
525 OSBORN BLDG
ST PAUL MN
55102

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST NW
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
113 W UNIV AVE
ST PAUL MN
55103

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER LYLE O

TRACY MN
56175

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

PULSCHER RBT SPRINGSTED I
813 OSBORN BLDG
ST PAUL MN
55102

RACHNER MARY JANE
~~1917 PINEHURST AVE~~
ST PAUL MN

RANALLO CLARENCE
~~800 CENTRAL AVE N E~~
MPLS MN

RED OWL STORES INC
~~215 E EXCELSIOR AVE~~
HOPKINS MN

RACHNER MARY JANE
1917 PINEHURST AVE
ST PAUL MN
55116

RANALLO CLARENCE
800 CENTRAL AVE N E
MPLS MN
55413

PED CWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

RENNIER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RAMSEY CO MEDICAL SOCIETY
1500 LOWRY MEDICAL BLDG
ST PAUL MN
55102

RICHARDSON THOS
7851 METRO PKWY S 103
MPLS MN
55420

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROCHE T E
5007 FREMONT AVE S
MPLS MN
55419

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SATHRE, HARVEY
77 SHERBURNE
ST PAUL MN
55103

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

ST PAUL ASSN PLBG HTG MECH
614 AM NATL BK
ST PAUL MN

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHAPS NICHOLAS
100 DAIN TOWER
MPLS MN
55402

SCHMIDT D R MN ASSN REALTORS
6101 WAYZATA BLVD
MPLS MN
55416

SCHMIDT H W TCHRS RETIREMENT
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY WCCO-TV NEW
50 S 9TH ST
MPLS MN
55402

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
[illegible]058

SCHWARTAU NEAL METH HOSP
201 W CENTER ST
ROCHESTER MN
55901

SCHWERMAN EARL JR
1535 8TH AVE SE
ROCHESTER MN
55901

SCHWINN ROBT.P.
1400 SCO LINE BLDG.
MPLS. MN
55402

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SEARS ROEBUCK & CO
2929 ELLIOT AVE D 703MW
MPLS MN
55401

SENATE CCUN OFF J ST MARI
STATE CAPITOL
ST PAUL MN
55101

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

SHELL OIL CO. W.A. ROQUET
ONE SHELL PLAZA BX 2463
HOUSTON TX
77001

SHINER JOHN T.
297 GOODRICH AVE
ST PAUL MN
55102

SKELLY OIL CO R R WELLINGTON
PO BOX 436
KANSAS CITY MO

SLOCUM CHARLES A
1203 IDS TOWER
MPLS MN
55402

SMERIKA WM.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SODERMAN ANTHONY
152 S PLAZA BLDG
MPLS MN

STANSFIELD ARLENE LAND OLKS
PO BOX 116
MPLS MN

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN

STATE BD VETERINARY EXAMI
C/O DR A C SPANNAUS DVM
WACONIA MN

SODERMAN ANTHONY
132 S PLAZA BLDG
MPLS MN
55416

STANSFIELD ARLENE LAND OLKS
PO BOX 116
MPLS MN
55440

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN
55102

STATE BD VETERINARY EXAMI
C/O DR A C SPANNAUS DVM
WACONIA MN

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

STENSLAND M.E. PRES. MVMA
203 NW 22ND ST.
AUSTIN MN
55912

STOLPESTAD BROWN & SMITH
1550 NW BK BLDG
ST PAUL MN
55101

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SULLIVAN J KIRK
PO BOX 200
BOISE ID
83701

SUMMIT NATL BANK D L MORRILL
205 AURORA AVE
ST PAUL MN
55103

SUSSEL CO.ATTN:TED SCHWEN
1850 COMO AVE.
ST PAUL MN
55108

SWANSON BURT E
[redacted]2162 1ST NATL BK BLDG
[redacted]PAUL MN
55101

SWANSON GERALD H
212 CITY HALL
ROCHESTER MN
55901

SWEITZER R L HONEYWELL INC
2701 4TH AVE S
MPLS MN
55408

THOMPSON CONRAD
1107 23RD ST NW
ROCHESTER MN
55901

THOMPSON HESSIAN ET AL
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

TIMESAVERS INC ATT R S VOLD
5270 HANSON COURT
MPLS MN
55422

TWIN CITY RETAIL DRUGGIST
2388 UNIV AVE
ST PAUL MN
55104

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VAN DRAKE STEPHEN R
BOX 353
PELICAN RAPID MN
56572

VAN EVERA MUNDT ET AL
700 TORREY BLDG
DULUTH MN
55802

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VILLAGE OF WOODBURY-F.STR
561 TOWER DRIVE
NEWPORT MN
55055

VOGEL HOWARD G
814 FLOUR EXCH BLDG
MPLS MN
55415

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WELLS,G W.
19280 LAKE AVE
WAYZATA MN
55391

WEST & GOWAN
ATTORNEYS AT LAW
PINE ISLAND MN
55963

WEST MIDWAY-SO.ST ANTH.PK.AS
898 RAYMOND AVE.
ST PAUL MN
55114

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WINTERS JOHN A
POLK CO STATE BK BLDG
CROOKSTON MN
56716

WM.MITCHEL COLLEGE LAW LIB.
2100 SUMMIT AVE.
ST.PAUL MN
55105

WIS FEEDER PIG MARKET CO-OP
FRANCIS CREEK WI

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

WOZNIAK D D
401 FIRST FED BLDG
ST PAUL MN
55101

WYANT CLINTON W ATTY
ATKIN MN
56431

ZATARGA A E CPA
1800 MIDWEST PLAZA BLDG
MPLS MN
55402

Exhibit "B"

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules and Regulations of the Department of Revenue Relating to Sales and Use Tax

AFFIDAVIT OF MAILING

Gerald W. Pahl, being first duly sworn on oath says; that he now is and at all times material hereto, was the Research Attorney of the Department of Revenue of the State of Minnesota; that on March 26, 1974, he did cause the attached notice to be mailed through the United States mails to all of the individuals or associations who are registered with the Secretary of State as desiring to be notified of hearings concerning tax matters by placing a copy of said notice in an envelope addressed to said individuals or associations at the address furnished by the Secretary of State and placing said envelope in the United States mails with adequate postage thereon.

Gerald W. Pahl

Gerald W. Pahl

Subscribed and sworn to before me this 26th day of March, 1974.

Katherine J. Zimmerman

KATHERINE J. ZIMMERMAN
Notary Public, Ramsey County, Minn.
MY COMMISSION EXPIRES
April 26, 1978

AFFIDAVIT

Gerald W. Pahl, being duly sworn on oath deposes and says:

1) That he is an employee of the Department of Revenue of the State of Minnesota.

2) That on the twenty-sixth day of March, 1974, he sent to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the twenty-sixth day of March, 1974, in response to the above request, the Secretary of State provided him with such a list, consisting of 340 mailing labels and one sheet.

Further affiant sayeth not.

Gerald W. Pahl

Subscribed and sworn to before me this

26th day of March,

1974.

Katherine J. Zimmerman

Notary Public,

Ramsey County, Minnesota

My Commission expires April 26, 1978.

KATHERINE J. ZIMMERMAN
Notary Public, Ramsey County, Minn.
MY COMMISSION EXPIRES
April 26, 1978

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR C. ROEMER

COMMISSIONER OF REVENUE

In The Matter of the Proposed
Adoption of Rules and Regulations
of the Department of Revenue
Relating to Sales and Use Tax

STATEMENT OF NEED

The above-captioned rules and regulations are amendments to existing rules and regulations of the Department of Revenue. The last time the above-captioned rules were amended was in March, 1969.

The need to adopt these rules and regulations arises because of numerous amendments to Minnesota Statutes, Chapter 297A since the adoption of the rules and regulations in March, 1969. Under authority of M.S. 1971, Section 297A.29, the Commissioner of Revenue is authorized and directed to prescribe rules and regulations for the enforcement and the administration of Chapter 297A.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

Arthur C. Roemer

COMMISSIONER OF REVENUE

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR C. ROEMER

COMMISSIONER OF REVENUE

In The Matter of the Proposed Adoption of Rules and Regulations of the Department of Revenue Relating to Sales and Use Tax

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Commissioner of Revenue of the State of Minnesota on the 3rd day of May, 1974, at 9:00 a.m. in the Administration Building, Room 116A and B, St. Paul, Minnesota, after proper notice required by M.S. 1971, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

1. The Minnesota Legislature has authorized the Commissioner of Revenue by Minnesota Statutes 1971, Section 297A.29, to issue such interpretative rulings and regulations as he deems necessary for enforcement and administration of Chapter 297A.

2. The retailers, consumers and industry affected by the provisions of Chapter 297A.29 have had significant questions concerning the impact of sales and use tax to them.

3. The questions concerning Chapter 297A have resulted in significant litigation in this state, and several decisions on this subject matter have been rendered by the Minnesota Supreme Court.

4. Amendments to Chapter 297A enacted since the adoption of the existing rules and regulations require clarification and supplementation.

5. The rules as proposed for adoption are the product of extensive input by persons affected, as evidenced by the limited number of persons appearing at the hearing, and confirmed by testimony at the hearing.

6. It is the general practice of states which impose sales and use tax to issue rules and regulations to supplement the statutes.

DATED this 30th day of October, 1974.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

Arthur C. Roemer

ARTHUR C. ROEMER
COMMISSIONER OF REVENUE

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR C. ROEMER

COMMISSIONER OF REVENUE

In The Matter of the Proposed
Adoption of Rules and Regulations
of the Department of Revenue
Relating to Sales and Use Tax

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before the Commissioner of Revenue of the State of Minnesota on the 3rd day of May, 1974, at 9:00 a.m. in the Administration Building, Room 116A and B, St. Paul, Minnesota, after proper notice required by M.S. 1971, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards for criteria, and having confirmed the need for the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules and Regulations of the Department of Revenue Relating to Sales and Use Tax are adopted this 30th day of October, 1974, pursuant to authority vested in me by Minnesota Statutes 1971, Section 297A.29.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

Arthur C. Roemer

COMMISSIONER OF REVENUE

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Gerald W. Pahl, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Gerald W. Pahl

Research Attorney
Department of Revenue
State of Minnesota

Dated: October 29, 1974

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption
of Rules and Regulations of the
Department of Revenue Relating to
Sales and Use Tax

May 3, 1974

Diane E. DeNet

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules and Regulations of the Department of Revenue Relating to Sales and Use Tax) TRANSCRIPT

The above-entitled matter came duly on for hearing on May 3, 1974, at 9:00 a.m., before Arthur C. Roemer, Commissioner of Revenue, in Room 116A and B in the Administration Building, St. Paul, Minnesota.

APPEARANCES:

Arthur C. Roemer, Commissioner of Revenue, Department of Revenue

R. Earl Franz, Deputy Commissioner of Revenue, Department of Revenue

Gerald W. Pahl, Research Attorney, Department of Revenue

Donald S. Mundahl, Director of Sales and Use Tax Division, Department of Revenue

John J. Majerle, Assistant Director of Sales and Use Tax Division, Department of Revenue

John E. Streiff, Attorney, Sales and Use Tax Division, Department of Revenue

Robert W. Johnson, State Representative

Dave Kuduk, Attorney, Chestnut, Brooks & Burkard, representing the Vending Industry, and in particular the Minnesota Automatic Merchandising Council

William Brooks, Attorney, representing Gold Bond Stamp Company

Richard K. Rothschild, Tax Counsel, Midwestern Territory, Sears, Roebuck and Company

Joseph Hamilton, Attorney, representing Minnesota Hospital Association

Jerome J. Lutz, Corporate Sales Tax Manager, Montgomery Ward & Company

Eloi Hamre, Vice-President of Governmental Relations for the Minnesota Retail Federation

Ronald C. Ruud, Attorney, Peterson, Popovich, Knutson & Flynn, representing Minnesota Mobile Home Association

William Hibbs, Attorney, Dorsey, Marquart, Windhorst, West & Halladay, representing Mayo Clinic and North Star Steel

Robert F. Christensen, Executive Director of Minnesota Association of Rehabilitation Facilities, also representing Minnesota Committee for the Handicapped and Minnesota Rehabilitation Association

Frank Nevers, Manager of Taxes for the Northern Area, United States Steel Corporation

Alfred E. France, President, Lake Superior Industrial Bureau

James Keller, Manager of State and Local Taxes, Control Data Corporation

John Jantschik, Honeywell, Incorporated

Bob Mueller, Tax Department, General Mills, Incorporated

Paul Senio, Gamble-Skogmo, Incorporated

Peter Popovich, Attorney, Peterson, Popovich, Knuston & Flynn, representing Minnesota Broadcasters Association, Minnesota School Boards Association and Northwest Publications

John W. Forney, John W. Forney, Incorporated

John V. Hoene, Minnesota Asphalt Pavement Association

Robert Shaw, Executive Director, Minnesota Newspapers Association

- - - - - - - - - - - - - - - - -

WHEREUPON, the following proceedings were had:

MR. ROEMER: The purpose of the hearing today is to hold a public hearing, pursuant to Minnesota Statutes 1971, Section 15.0412, to afford the public an opportunity to express themselves on the adoption of the proposed new regulations relating to the administration of the law governing Minnesota sales and use tax. This hearing is held pursuant to a notice, and I'm required to read that notice. That notice provided as follows:

"Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 1971, Section 15.0412, Subdivision 4, in the above-entitled matter, in the Administration Building, Room 116A and B, continuing until all representatives or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules and regulations captioned above by submitting either oral or written data, statements or arguments. Persons may submit written statements or briefs without appearing at the hearing.

The Commissioner proposes to adopt rules and regulations to effectively implement legislation relating to Minnesota sales and use tax. A summary of the principal changes and additions is enclosed. Copies of the proposed rules and regulations (two hundred and thirty-six pages, double spaced) will be available at the hearing. Copies will also be available at the office of the

Director of the Sales and Use Tax Division, Capitol Square Building, St. Paul, Minnesota 55155, and at the following regional sales and use tax offices:

Warnert Building
44 North 28th Ave.
St. Cloud, MN 56301

Lincoln Hall, Room 223
Mankato State College
Mankato, MN 56001

6510 Nicollet Ave.
Mpls., MN 55423

4 North 3rd St.
Mpls., MN 55401

108 South Sixth St.
Brainerd, MN 56401

215-4th St. N.E.
Rochester, MN 55901

2223 East Highway 10
Moorhead, MN 56560

Persons who wish to present oral comments in addition to written comments or suggestions should submit to the Director of the Sales and Use Tax by April 26, 1974, an outline of the topics and the time they wish to devote to each topic."

This is the end of the reading of the contents of the notice.

I will ask the reporter to mark this notice as Department of Revenue Exhibit "A", which will become a part of the record of this hearing.

This notice was mailed on March 26, 1974, to the accredited representatives of trade associations and other groups and individuals who registered their names with the Secretary of State as desiring to be notified of hearings of this kind in respect to tax matters, as shown by the latest list furnished by the Secretary of State. The mailing of these notices is evidenced by the Affidavit of Gerald Pahl, Research Attorney of the Department of Revenue. I have here this Affidavit, which I will ask the

reporter to mark as Exhibit "B", which will also become a part of the record of this hearing.

As the notice indicates, an opportunity will be afforded to anyone who wishes to present any comments or information in writing. We must keep the record open for at least a period of twenty (20) days for people to submit written comments. We propose to allow until Monday, June 3, for the submission of any written information that anyone may wish to submit.

Is there anyone here that feels that they would need a longer period than Monday, June 3, for the submission of any written information? If not then, the record will be held open until Monday, June 3, for the receipt of written information.

I'd like to call your attention now to a proposed change in our regulations on page 180 of the proposed regulations, the regulation called "68(e)." We propose to delete the material contained in clause (e) and to substitute, therefore, a slightly changed proposal, copies of which were handed out to most of you at the door earlier. This relates to exempt organizations.

There are a number of people who have indicated that they wish to be heard concerning the proposed rules and regulations, and I propose to hear these people in the order in which they have asked to be heard.

Incidentally, before I get to people who have asked to be heard, I would like to introduce the people from our staff that are here. Earl Franz, Deputy Commissioner; Jerry Pahl, Department Attorney; Don Mundahl, Director of the Sales and Use Tax Division; Mr. Majerle, Assistant Director; and Mr. Streiff of our Sales and Use Tax Division.

Now, I'd like to give everyone an opportunity in the order in which they have asked to be heard. I will ask everyone to come to the podium that is the front here, and speak into the microphone because this is being recorded and will be transcribed. Also, please identify yourself as to your name, and if you do represent an organization or a firm, please identify also the firm or individual that you represent.

The first person that I'd like to recognize is the Honorable Robert W. Johnson, State Representative.

REPRESENTATIVE JOHNSON: Thank you very much, Mr. Commissioner.

I'd first like to make a couple of general comments. I guess having met with members of the Tax Department for a good number of times following the passage of the sales and use tax in 1967, I would first like to indicate, again publicly, that I think, Art, from you, the Commissioner, down through Mr. Mundahl and Mr. Franz that you've been most cooperative, and I think that certainly thinking back of the attitude of the Legislature and having to legislate the whole Legislature, and being the floor manager of this bill in the House, that many of us, when we pass bills, indicate we pass it and we let you people administer. I would hope that, from my interest, that this has changed somewhat in this bill, and I can't tell you, and probably you know better than anybody else, how many hours we spent together trying to make this a truly fair, equitable and operative bill. Yet I can look around the room and I see many familiar faces that have talked to me on proposed changes of the law, and I guess, probably, there is no easy answer to the problems that exist within certain industry.

But I would again, as I say, for the record, indicate that certainly you and the entire staff have done a tremendous job, and I think you've gone the extra miles time and time again, to try and resolve what we're trying to do and make this whole sales tax law operate smoothly and effectively within the State.

I guess the one overall picture that we always forget is that this particular tax was a part of a tax reform and relief bill. It would be something remiss of myself, an author of that bill, to not put into the record, I think, a statement that if I have had any criticisms of the Department, I guess we always forget that this was a relief bill for business and that many times when we are dealing on specific questions, it looks somewhat that probably the Tax Department is taking a "hard nose" attitude and sometimes forget that this was really a bill set up to assist business, not to sometimes harass business. But, I think that many times we've overcome this difficulty and we have, I think, done a tremendous job within the State.

Being a Legislator and an Attorney, I also would like the record to state that I'm not specifically retained by anybody to be here today. I am not receiving any fees for being here. I read over the regulations. I have over a period of time had clients that have been interested, and I'm going to comment on certain areas that, I know that in the past, that I've talked to the Department about, but specifically, I'm not retained, not being paid by anybody to be here today.

I think the first, well, I have over a period of time, and I'm going to mention the three organizations that I'll probably be talking specifically to, and where I know that we have specific

problems, and I have not heard from these people or industries that anybody else might be here today. One would be the telephone industry, and of course, I've been General Counsel to that industry dating back many years prior to my being in the Legislature. The other industry would be the hospitality industry, which I've represented for a good number of years, and one other industry which I have been working with most closely, both with members of that group, and with the Executive Secretary, and the Department, has been in the area of the transfer men or the people who are involved in household moving, particularly. I would have a few comments in each of the areas.

In the telephone industry, if you will turn to page 39 of the rules and regulations, I would like to make a practical suggestion, and I will submit it to you in writing.

From the audits that have taken place, there is some conflict in the minds of the auditors and the treatment given to each of the operating telephone companies in Minnesota. That has to do with toll calls made by the telephone company itself. As I understand, some of the companies do not, in any way, show this is a billing. It's really an expense in operation of doing business. Some of the companies, particularly the independents, smaller companies in Minnesota, in order to balance out their accounting to Northwestern Bell, insert their own personal calls. It's really an accounting entry, rather than any other billing. I'm concerned if this is a sale or if this is the type of telephone service that would come under your particular regulation. I will submit this question to you in writing. I think it's important because, while there isn't a lot of dollars involved, it happens

to be one of two issues that your auditors are having as they are auditing telephone companies throughout the State.

The other point that comes up under the area of telephone under page 178, this is under the use tax portion. The law provided an exemption for central office equipment and after several meetings involving technical provisions of this particular regulation, we find that there is some question in the minds, again, of some of your auditors, and I wonder if we shouldn't revise this particular regulation to include one additional classification. The first thing that we should do, we should delete the reference to the F.C.C., 1960. That should be deleted and it should be the F.C.C. Rules and Regulations of March, 1970, as I recall the correct, and I will again give that in writing.

The other concern that we have is that there are P.B.X. boards which are included in Account 234 and these include the P.B.X. boards or P.A.B.X.'s with more than 100 lines and included in an account known as 231 are the P.B.X. boards with less than 100 lines. It seems to me that we within the industry gave you the wrong information. I think if P.B.X.'s are exempt as part of central office equipment, it should include if they are less than 100 lines or if they have more than 100 lines. I will submit this and give you the background on that particular information. The way the regulation stands, purely for corrective measures, we ought to cstrike the January 1, 1960, date and put there March, 1971.

One other point, which I think should be clarified, and maybe can be clarified by interpretation of the Department, but it seems to me that it should be in the regulations so that there are no questions, and that comes about on the repair parts for central

office equipment as they are placed within these exempt items. It would seem to me that there are a lot of subassemblies today that, for ease of administration, that the repair parts should likewise be exempt, but it doesn't so say within the proposed Regulation 66.

I think that basically covers the question within the area of telephony.

In the area of the hospitality industry, on page 24, under meals and drinks, I believe, there are no major changes there. Mr. Mundahl, I think I've discussed that with you as far as the operation of restaurants and the people from the vending industry are here, following their rare experience of being the first industry to lose a case before the Supreme Court. They're here and I'm sure they're going to have many thoughts as far as how they ought to be fairly treated.

I'd like you to turn to the question of tips on page 33. Here I have some suggestions on wording. I think that we all agree that the intention is to follow the Hilton Case, and I guess, probably, in line 2 we ought to, so there's no question, indicate say, after the word "paid," insert "is a tip or service charge in lieu of a tip which is made to the customer's bill." This had to do with the catered services or the live banquets, where either a service charge was placed on the bill. I guess, I would also, in my own mind, feel a little better, and I have no quarrels with present administrators of these rules and regulations, but on the definition of "tip employees" I guess I see no reason to use the word "compelling" in there. I don't know exactly where that came from. I have some ideas personally, but I really don't think the word "compelling" has any real meaning there. I'm also a little

concerned, and we've had some problems in the past, not under our tax laws, but under our minimum wage and wage orders when we start indicating who should be covered. I think that we should put a period after "fixed wages" and we should exclude the words "including busboys, waiters and waitresses." There are other people within each of the organizations who are, in fact, tipped, and who are so recognized under Federal law. In fact, a tipped employee under Federal law, which is basically the definition now under our minimum wage law, is anybody who receives more than $20 a month in tips. So, I think that to indicate who would fall in that category, either we should refer to the Federal law or another part of the section, but not to enumerate who we think should be involved here. I will give you an outline of that, that I feel might clean up the wording a little bit, and I think basically follows the intentions of each of us.

Then, I'd like to go to the one, and this one could take so much time that everybody else wouldn't have a chance to say anything here today. This has to do with the problems involving the transfer men and the house moving industry.

I thought I understood the sales and use tax law fairly well from my experience in the Legislature and my experience at Honeywell for some years prior to that time, but when you get into the problem that exists within this industry, and the problems of tariffs and all of the rest of the reading in of the problems of the sales and use tax, I think I would like to start out with the premise that I think that this particular rule or regulation should be very simple. I think everybody could live with it. I think it would save time, litigation and everything else if we would merely

indicate that the cartons and containers used by moving and transfer companies, if used within destination or interstate commerce outside the State of Minnesota, would be exempt under the commerce laws and any cartons, containers used by moving and transfer companies within the State of Minnesota, are intrastate service, commerce, would be subject to the tax.

I would just like to leave with you some of the inconsistencies, if you look through and some of the other problems that this particular industry has, but they're so great, that I'd like to outline, again, in writing and would request that despite the many meetings that we've had on this subject, that a final meeting be had, Mr. Commissioner, with you and probably Mr. Mundahl, Mr. Franz and Mr. Pahl, the Counsel, and work out something that is simple and workable.

I would suggest that under the exemptions on pages 148, 149 and 150, we talk about only the exemption under (c), but it seems to me that as far as the transfer men or the house moving industry is concerned, if you're going to read them into this particular generality, we have to talk about the exemptions as provided for in subdivisions (d) and (e) at the same time.

We have the problem on page 130, and this has to do, I think, with the provision that has to do with the allocating of inter and intrastate use, no, this is an interpretation, and here we have a situation on page 130 where they are allocating the particular item, and this particular item is an electronic equipment unloader, which is carried on the trucks in interstate commerce. The item is purchased, in all instances, in Milwaukee, loaded on a truck in Milwaukee and comes back in Minnesota in

interstate commerce. It is not used, ever, within Minnesota. It's used to load and unload computers, but it is never used in Minnesota because the manufacturer has his own particular equipment. It is used in unloading usually in Chicago, and in all instances, outside the State of Minnesota. That particular item, there's a couple of them on each truck, two particular people use these items to haul these computers out of Minnesota, and we're a computer center, thank goodness. But, by interpretation and audit, your auditors have said that these particular item should be taxed on an allocable basis. I don't know the theory behind it, but, it's not a part of the truck, not attached to the truck, it's merely some item carried.

Another point, going to page 129, here we have a particular difficulty, this is on the direct pay provision, again. We have several companies within Minnesota who do not have an I.C.C. certificate. They really are irregular route common carriers, but they operate interstate under a license or a franchise from a national organization. This is primarily in the house furnishing movement. Some good examples in that area are Allied and Global. We just wondered if that franchise agreement would fall into the area of the other to verify that they are regularly in interstate commerce, as well, and would follow, even though they do not have a certificate directly from the I.C.C.

These are just typical, I think, of the problems that we have within the industry. As I say, I read the interrelationship of sales and use tax and I honestly haven't found any other industry where we have such tremendous problems as trying to identify and come to some simple conclusion. After many hours of

thought, as I said, I think the only way that this industry is going to be able to understand this law, the only way it's going to be equitably administered, is to just tax the items, particularly on these containers and things that I'm talking about, those that go out-state would be exempt, and those that stay within the State would be taxable. We can talk about transferring of title, we can talk about sales and all the rest of the items, but it's so difficult to tie into the practices within the industry, that for each argument that I have that is valid, I know that you have an argument against. But, I really do think that the law should be simplified, and my suggestion, I think, really would solve the problem. I think, at that particular time, I would again submit a letter outlining the various, I think, conflicts if we don't accept some simplified rule as far as containers for these particular carriers.

With that, I thank you for the time. I apologize for taking so much time, but I think it is important. I'm glad that we're having the opportunity to publicly state our concern, and I hope that by June 3 the regulations will be out, and will all be continued operating smoothly. Thank you very much.

MR. ROEMER: Thank you, Representative Johnson. We will await your letter in these three areas of telephone, hospitality and transfer men, and after we receive your letter, if necessary, we'll be in touch with you on any adjustments that might be necessary.

The next person that I will call upon is one of those who has asked to be heard many weeks ago in connection with these

regulations is William Brooks, who represents, I believe, the Vending Machine Companies.

MR. BROOKS: Mr. Commissioner, I've been out of the city and my associate, Mr. Kuduk, has been looking over the rules and I would like to have him make a brief presentation.

MR. ROEMER: Would you identify yourself and who you represent?

MR. KUDUK: Certainly.

Mr. Commissioner, and members of the Department, my name is Dave Kuduk, and it's spelled K-U-D-U-K. I am a practicing attorney in the law firm of Chestnut, Brooks & Burkard, located at 854 of the Midland Bank Building in Minneapolis. I'm here as a representative of the vending industry, in particular, the Minnesota Automatic Merchandising Council.

I have only very general comments at this time, Mr. Commissioner, and we will be submitting written materials to you, and we would request a chance to meet with you after we've submitted those materials.

Primarily, we're concerned with the items contained in proposed Regulation Sales and Use 9. Basically, we feel that the Legislature clearly defined what a food product is, and they said that food products would be exempt from the sales tax. They then said that meals would be taxable. We feel that the intent was clear in those two definitions that the Legislature intended the Department to tax only luxury sales of foods. We will go into some considerable detail in this in our written materials, but we won't take up the time now.

We feel the Tax Department has gone far beyond it's intent with the proposed regulations, and that the effect of them would be to tax nearly every sale of a food product made through a vending machine.

We also have some question about the section of the proposed regulations that would tax hospital and institutional sales of food. As I'm sure the Commissioner is aware, during the last Legislative session, a bill, I believe it was Senate File 597, was introduced in the Senate, if that bill passed the Senate it would have done exactly what you proposed here, but that bill died in the House. I think it's clear that the Legislature, by that negative act, decided not to do what you're proposing to do here.

Again, we'll make some written comments and ask that the Department would give us the time after we've submitted those.

Thank you.

MR. BROOKS: Mr. Commissioner, I have a question on a different rule.

MR. ROEMER: Would you identify yourself, please, for the record?

MR. BROOKS: William Brooks, I'm an attorney in Minneapolis, and for the purpose of this question I represent the Gold Bond Stamp Company.

On your proposed change in Sales and Use Tax 7, paragraph (b) at the bottom of page 19, you say, "the basis of the tax is the fixed value of the trading stamps plus any cash required for the redemption of a particular premium." My question, Mr. Commissioner, is what is the Department's definition of "fixed value?"

MR. ROEMER: Mr. Mundahl will provide an answer to your question.

MR. MUNDAHL: I wish you had followed the Commissioner's notice and given us advance notice of your question so we wouldn't have to be fumbling around here, but...

MR. BROOKS: If you prefer, Mr. Mundahl, I could take it up with you after the hearing is over.

MR. MUNDAHL: Well, I'll just give you a rough answer, but I would prefer that.

The trading stamps, I believe green stamps, for example, are worth roughly $3.00, probably on the basis that this is their retail price if you're buying something that's roughly worth $6.00, it costs you two stamp books. And this was the value we had in mind.

MR. BROOKS: All right, thank you.

MR. ROEMER: On that protest then, we will await, also, the written information which you had indicated that you will be submitting.

The next person on the list who has asked to be heard is Rich Rothschild.

MR. ROTHSCHILD: Gentlemen, good morning. My name is Richard Rothschild. I'm Tax Counsel for Sears, Roebuck and Company's Midwestern Territory, which includes the State of Minnesota. I welcome this opportunity to comment on the proposed Minnesota Sales and Use Tax rules and regulations.

A suggested amendment, following the tenure of my comments today, will be forwarded to you at a later date.

Sears enjoys the status of being the world's largest retailer, but the thrust of my comments today will be related to attachments to real property, installed sales. Many traditional retailers, including Sears, sell items which can be attached to real property on an installed basis.

With respect to installed sales, we function as does the traditional contractor, with an offering including the installation of roofing, siding, water heaters, furnaces and storm windows. Pursuant to such sales, the customer is given an estimate, a contract is executed and Sears guarantees the workmanship, as it does its merchandise. This type of sale is identical to those entered into by numerous other retailers and contractors in the State of Minnesota.

Section 297A.01(4) of the Minnesota Statutes annotated, which defines "sale at retail," is similar to like statutes in numerous other states, in that it indicates a contractor to be the ultimate consumer of materials purchased for the improvement of real property. I assume the theory underlying this section to be that the sale of an attachment to realty is a sale of realty, and therefore, not subject to the sales tax. Thus, the ultimate consumer of such materials is the contractor, and the tax is based upon his cost of materials.

The sales and use tax statute speaks in terms of particular transactions and particular uses, seemingly recognizing the fact that a given vendor engages in both sales at retail and sales in which the vendor is the ultimate consumer. It is my understanding that this principle has been recognized by the

Department of Revenue and by retailers in the state who pay use, rather than sales tax, on merchandise installed in real property.

Retailers who make improvements to realty are treated in Sales and Use Tax Regulation 16, "Sales of Building Materials, Supplies or Equipment," at subsection (d), "Contractor-Retailer." This regulation states at subsection 2, that:

"Where the transaction is negotiated in a normal retail market situation and where the materials are sold at specified retail (sic) prices available to the public and the customer has the option of purchasing the material at the specified price whether he elects to purchase the installation or not, such transaction shall be deemed to be a sale of tangible personal property."

This subsection and the examples contained therein indicate that a retailer will not be recognized as a contractor, except in a competitive bidding situation. The statute seems to make no distinction between the sale of an improvement to realty by way of negotiation or competitive bidding. Thus, I am of the opinion that the competitive bidding situation should be expanded to include any retailer improving real property. The applicability of the sales tax should be based upon the nature of the transaction rather than upon the principle vocation of the seller.

If Regulation 16 is not amended, retailers improving real property will be placed at a competitive disadvantage in that they will be required to charge customers sales tax for improvements to realty which, if purchased from a conditional (sic) contractor would be non-taxable to the customer. In effect, the state would

be charging a premium for the purchase of an improvement to realty from a contractor-retailer.

It seems inconsistent that a retailer be required to be licensed as a contractor and not taxed as one. Further, Sales and Use Tax Regulation 28.3, "Soft Water Equipment & Service Dealers," at subsection (a), "Sales," indicates that a water softener affixed to realty by a dealer is not subject to the sales tax. This section accurately reflects the law, but appears to be inconsistent with the example cited in Regulation 16(d)2, which states that a water heater attached to realty by a contractor-retailer is subject to the sales tax.

Therefore, I urge that Regulation 16 be amended to clearly indicate that a contractor-retailer is the ultimate consumer of merchandise attached to real property. I respectfully request that proposed Sales and Use Tax Regulation 16 be amended. I am of the opinion that the amendment I have suggested is consistent with the sales and use tax statute.

Thank you.

MR. ROEMER: Thank you, Mr. Rothschild.

You indicated you would be submitting something in writing?

MR. ROTHSCHILD: Yes, I will, within the next twenty days.

MR. ROEMER: All right. We will await that.

Do you have anything further you wish to...

MR. ROTHSCHILD: No, that's it. Thank you.

MR. ROEMER: O.k.

I passed up Mr. Joseph Hamilton on the list. He should have been before Mr. Rothschild, so, I'll now call upon Mr. Joseph Hamilton.

MR. HAMILTON: Mr. Chairman, my name is Joseph Hamilton. I'm an attorney, and I represent the Minnesota Hospital Association.

When I called to appear here, I was looking at Section 68 and the revisions you gave this morning took care of the problem we had with 68(e), and we're very appreciative of that clarifying amendment.

I would like to just bring one other matter to your attention, however, which is of the same vein. I think it may help clarify the intent of the Department, and that has to do with 68(b) where the charitable is defined. The Department uses the language "charitable as used in the generally accepted sense," and then proceeds to give various illustrations. I would suggest that perhaps you could include in there the traditional language that talks about nonprofit hospitals and nursing homes, language such as, "the care of the sick, the infirmed or the aged." I think that would help clarify any problem we may have on it. I think that's included within the general definition of charitable, but since you've listed some other specifics, I think that one may be helpful.

Thank you.

MR. ROEMER: Thank you, Mr. Hamilton.

The next person on the list is Jerry Lutz.

MR. LUTZ: Thank you, Mr. Commissioner. My name is Jerome J. Lutz. I'm with the Montgomery Ward & Company. My title with Wards is Corporate Sales Tax Manager.

I have a statement I wish to read, and I will present the written version of that to the panel after I've completed it.

The following statement is submitted with respect to the proposed amendment to rules and regulations of the Department of Revenue.

Specifically, TAXS&U 16, "Sales of Building Material, Supplies and Equipment," subparagraph (d), "Contractor-Retailer," as amended will present a problem.

As indicated under paragraph (a) of this regulation, Section 297A.01, Subdivision 4 of the Sales Tax Act, states the general proposition that contractors performing work on real property are to be treated as consumers. The Act is quoted in part as follows:

"'Retail sales' or 'sales at retail' means a sale for any purpose other than resale in the regular course of business.... Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings, alterations, repairs or improvements of real property are 'retail sales' or 'sales at retail' in whatever quantity sold and whether or not for purposes of resale in the form of real property or otherwise."

We believe that the statutory language quoted above is intended to be applied equally to all contractors performing the erection of buildings or the alteration, repair or improvement of real property when the declared contractual intent of the parties is to accomplish that objective in accordance with customary contracting trade practices. To this end, a regulation interpretating the statutory language must concern itself

principally with the nature of the work involved and the form of the contract employed by the parties. More specifically, the nature of the work must be examined to determine whether the final result is the creation, alteration or repair of real property, or merely the transfer of tangible personal property in some form. Also, the formal contract must be examined to determine whether a transfer of realty from the contractor to the owner is intended, or a simple sale of tangible personal property was made, together with an agreement for additional services in connection with that property. The amended language of Regulation 16, paragraph (d)2, seems to establish tests for taxing improvements to realty which are inconsistent with the statute and the above principles, and rely upon the selling methods of the contractor-retailer to determine the tax status for the transfer of property.

Montgomery Ward, and many other retailing entities larger and smaller than Wards, fall within the classification of contractor-retailer, as defined in Regulation 16. Montgomery Ward is a national department store retailer, operating hundreds of stores throughout the United States and selling a product line of clothing, hardware, building and home improvement materials and appliances. Concurrent with the retail activities, Wards also operates other types of businesses, one of which is contracting for the installation of certain items of tangible personal property or the repair, alteration or improvement of realty. This combination is quite common for retailers of building and home improvement materials. As a contractor, Montgomery Ward is licensed, where necessary, and to the extent that it performs such work, is

governed by the rules of law and practice prevailing in the contracting business.

Materials used for the alteration, improvement or repair of realty are sold at retail by Montgomery Ward, without alteration or installation services, and such sales are treated, for sales tax purposes, as any ordinary taxable sale. Alternately, however, if a customer desires a completed job, estimates of materials and labor required to complete the job are prepared and a total job price is offered to the customer. If the specifications and job price can be agreed to, a contract is executed between Wards and its customer and the work is then performed in accordance with the specifications of that contract. In these circumstances, Wards is responsible for the entire job and warrants the materials and workmanship as a completed project. Therefore, we believe that Wards falls within Regulation 16 as a contractor-retailer.

Turning to paragraph (d)2 of Regulation 16, the present wording construes the statute to mean that any tangible personal property used or consumed by a contractor-retailer in the performance of a contract must be taxed to the ultimate owner based on the ordinary retail price charged if that material is sold separately without contractor services. The regulation contains no tests to determine whether materials used in the work become a part of realty or remain as tangible personal property when the contract is completed. Absent such tests, it appears that customers of a contractor-retailer will be assessed sales tax for the retail value of all materials used for the improvement of realty, whereas customers of a pure contractor would not be assessed sales tax. In other words, customers of a contractor-retailer are taxed, whereas

customers of a pure contractor are not taxed. We believe that this was not intended by the statute and is an apparent discriminatory application. We believe that the statutory language means that construction, improvements or repairs to realty should always be taxed at the contractor level, even though he also sells materials at retail.

The proposed amendments to paragraph (d)2 of Regulation 16 seem to have one single effect. As stated above, all transfers of property by contractor-retailers are treated as sales of tangible personal property under the existing regulation. The proposed amendment retains those conditions with the exception that jobs performed by a contractor-retailer which were arranged after competitive bidding are no longer to be treated as retail sales. Absent competitive bidding, however, customers of contractor-retailers would still be taxed on retail value of materials used. The proposed revision of subparagraph 2 will bring the tax statute of certain contractor-retailer jobs, namely those arranged through competitive bidding, into conformity with the statute. The criteria used to make this distinction seems to be arbitrary, however, resting entirely upon the use of the bidding process as a selling-purchasing techinque. The true criteria for establishing the taxable status of contracting jobs is the nature of the work itself; namely, is the work the creation, alteration, improvement or repair of real property, or merely the transfer of tangible personal property with related services?

It is our belief that paragraph (d)2 should be amended tc eliminate both the existing test and the proposed test, and to establish a test of tax status based on the nature of the

contracting work performed and the contract itself. The present regulation and the proposed amendments are discriminatory toward customers dealing with a contractor-retailer as opposed to those dealing with a pure contractor and as such are inconsistent with the letter and intent of the sales tax statute.

Although paragraph (d)3 also makes an arbitrary distinction, for tax purposes, based upon selling procedures, it has the advantage of placing contractor-retailer situations subject to that rule on a basis consistent with other pure contractors. To this extent it is satisfactory. However, the intent of paragraph (d)3 might be carried out more fully if it were incorporated with changes to paragraph (d) 2 as suggested above, thereby bringing the entire regulation into conformity with the sales tax statute.

That's the end of my statement, Mr. Commissioner.

MR. ROEMER: Thank you, Mr. Lutz.

Will you be submitting anything in writing? Do you have your statement in writing or anything further?

MR. LUTZ: Yes, I have a copy of my statement.

MR. ROEMER: O.k., thank you.

The next person that we have on our list is Eloi Hamre.

MR. HAMRE: Commissioner, I am Eloi Hamre, Vice-President of the Governmental Relations for the Minnesota Retail Federation, a trade association of about 1500 member stores in Minnesota, of which 90% of our voting membership are single unit local owned operations.

Following my remarks, I do have a copy of the statement to present to you.

My remarks regarding the revision of the sales and use tax regulations will be short and limited. I would first like to express my appreciation to you, Commissioner, and to the Department of Revenue, and in particular to the person or persons who drafted the proposed changes in the format that were presented to us for review. This, I believe, is one of the finest jobs I've ever seen completed, and if all departments of State government would follow the same procedure, it would make misunderstandings, I think, a thing of the past.

For the most part, the proposed changes in the regulations would cause the retailers of Minnesota no great problems. I would like to mention, however, a couple of points.

Firstly, I concur with Mr. Rothschild and Mr. Lutz regarding the status of the regulation on page 47, "Contractor-Retailer." The adoption of the regulation as presently written would not only place the retailer, whether independent or chain, at a competitive disadvantage in some cases, depending as to how the tax is levied, but, just as important, however, would be the image problem the retailer would have with the customer, for even though the contractor does pay the tax, in all appearances to the customer, it doesn't show up.

Agreed, on the sale of a water heater, the tax figure difference may not be great, but in the case of a major home improvement, the tax item may become a large factor in determining if the retailer can be competitive or will be forced out of the picture.

The second item I would refer to is on page 67, the second line, starting with the word "repossession." I would

suggest this sentence be reworded. Understanding that the concern is with regard to merchandise that is out to a customer on "approval," but the title of the personal property is still with the seller, and should the merchandise be returned, the seller cannot deduct the item from the gross sales figure. The usage of the word "repossession" in this case, I believe, would come in direct conflict with the proposed regulation on page 202, item (d), dealing with actual repossessions of defaulted contracts.

The final item I would like to bring to your attention would be the addition of an item (f), I believe, properly on page 67. When merchandise is returned under present conditions, our retailers have no problems with the refunding of the tax imposed on the sale. We, however, have a concern that under different conditions in the future, and with the passage of Chapter 692 of the 1973 Session, which in part concerns itself with "implied warranties," clarification of a practice now in the market place is needed. Many times under present conditions, a sale of tangible personal property takes place, the title to the property transferred is from the seller to the buyer, the property is then put in use by the buyer. Occasionally, a defect in the property will show up under operating conditions, but does not adversely affect the operation of the property. The buyer then requests some adjustment in the price of the property, and rather than replace the entire article, the seller will simply refund a portion of the selling price that is mutually agreed upon by both parties. We anticipate with the implied warranty section of Chapter 692, this practice may become greater in its scope.

In view of these factors, we request that a specific section be written into the regulations that would allow the seller of the property to deduct from the gross sales volume, the amount of the adjustment that would be made, for in actuality, the gross sales volume has been diminished by the size of the adjustment in the selling price.

These are the extent of the recommendations that we have from the Minnesota Retail Federation. I would like to express our thanks for a chance to voice our opinions.

MR. ROEMER: Thank you, Mr. Hamre, for your suggestions.

The next person on the list is Ron Ruud, Ronald Ruud.

MR. RUUD: Thank you, Commissioner. My name is Ronald C. Ruud. I am a practicing attorney with the law firm of Peterson, Popovich, Knutson & Flynn, 314 Minnesota Building, St. Paul.

I have already presented a written memorandum, so my remarks this morning will be brief.

I am concerned only with page 202, the proposed amendment to Regulation 75(d). This deals with repossessions as they may affect the bad debt deduction. This regulation pertains to Minnesota Statutes, 297A.26, Subdivision 2, which allows retailers an offset deduction against the sales tax in the amount of a bad debt which becomes uncollectable. The term "uncollectable" is not qualified by repossession or otherwise. We object to only that portion of the proposed amendment which would reduce the bad debt deduction by the wholesale value of the repossessed article. In effect what this does is imposes a sales tax, or treats as cash payment, the repossessed article which was brought back by the seller upon the buyer's default. This will often times result in

an effective sales tax of 15, 20, 25 or 30%. I'm sure we all agree that the purpose behind the sales tax is to be 4% of gross receipts. If the amount of the bad debt is reduced by the wholesale value of the item repossessed, whatever that might be, the effect is to greatly increase the effective sales tax rate.

I think this is borne out by the fact that M.S. 297A.01, Subdivisions 4 and 8, allow as a deduction against the sales price, property taken in trade. For example, a $5,000 item, which was purchased and a $3,000 item taken in trade, there's a sales tax of 4% imposed on the difference, or 4% of $2,000. But, if a sale is made of a $5,000 item, and it's repossessed, the entire sales tax is imposed upon that. If the value of the property returned is $3,000, the deduction is reduced by that amount.

So, Mr. Commissioner, we would recommend that amendment (d) be amended as follows: striking on line 3, the language "including the wholesale value of the repossessed article," and striking the second paragraph. I think the regulation then would more conform to the provisions of the sales tax law.

Thank you.

MR. ROEMER: Thank you, Mr. Ruud. Your suggestions will be considered.

The next person who has asked to be heard is Mr. William Hibbs.

MR. HIBBS: Thank you, Mr. Commissioner. My name is William Hibbs. I'm with the law firm of Dorsey, Marquart, Windhorst, West & Halladay, 2400 First National Bank Building in Minneapolis. I'm representing two clients: first, Mayo Clinic; second, North Star Steel Company.

My comments with respect to items of concern to Mayo Clinic, the preponderance of those comments were with respect to the definition of exempt organizations under 68(e). At the outset of the meeting there was a revision in those definitions, and we find those to be satisfactory, with the exception of just one comment. (bb) of subsection 1 of 68(e) provides that an organization is an exempt organization if it can show by its articles of incorporation and its financial statements that "it is supported and maintained at least in part by benevolent contributions; that is, one of its sources of funds are donations, income from donations," etc. We just suggest that perhaps we might want to change the words "funds" to "support" for the benefit of organizations such as child care centers and legal aid groups, which receive their donations or contributions in kind or through furnishing of facilities, rather than in the form of funds, that is cash, if "funds" is interpreted to be cash. Other than that, no problems at all with respect to TAXS&U 68.

Two other sections to make comments on, though.

TAXS&U 55 deals with the exemption for drugs in theraputic and prosthetic devices. It is our suggestion, perhaps, under (c) of TAXS&U 55, in the list of examples of exempt items, perhaps the addition of, at the end of the words, "and equipment and supplies necessary for dialysis treatment." Individuals who need dialysis treatment spend from $15 to $40 per dialysis treatment on the equipment they need to buy, or to have the treatment. They need to have the treatment sometimes from three to four times a week. So, their expenditures for that type of materials is considerable and it seems to me that that sort of

change would be well within the spirit of that exemption.

Finally, TAXS&U 72.1 exempts the sale of textbooks which are prescribed for use in the course of study in a public or private school, college, university, business or trade school to regularly enrolled students. I would suggest there an addition of a paragraph, perhaps right above the (b), "Criteria for Determining Taxability," by adding the definition of college, providing college, as defined, includes professional schools, paramedical and other paraprofessional schools, and nursing schools. It seems to me, again, that that is within the spirit and definition of the word "college," although not expressly stated in the regulations in their presently proposed form.

Those are the only comments that I have with respect to the sales tax regulations on behalf of Mayo Clinic.

A couple of comments with respect to North Star Steel Company, all dealing with TAXS&U 60. This deals with property used in agricultural and industrial production.

Effective January 1, 1974, the exemption for industrial and agricultural production provided for under the provisions of Section 297A.25, Subdivision 1(h), had 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." My comments pertain to subsection (d) of TAXS&U 60, specifically, subsections (2) and (3).

Subsection (2) defines "used in producing a direct effect," and I have submitted a statement indicating the changes

that I would propose under that subsection (2), and I'll read them and comment upon them.

Presently, "used in producing a direct effect," provides in the first sentence "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 the manner of which directly causes a physical or chemical change upon or within the material being processed." Well, that sentence is used to interpret the sentence within the statutes which provides that the exemption will cover separate detachable units used in producing a direct effect. So, what I would like to do is focus upon the statute using the term "used in producing a direct effect" as compared with the regulations, now, which provide if they are used in or consumed in industrial or agricultural production in a manner which directly causes a physical or chemical change. I would like to revise that sentence to provide that "materials are exempt if they are used or consumed in industrial or agricultural production in a manner which produces a direct physical or chemical change upon or within the materials being processed." And then I would like to add or would suggest the addition of a sentence immediately following, stating: "An item will be considered to be used or consumed in a manner which produces such a change if the item itself causes the change or if the item is a necessary part of a larger machine or unit which, with aid of such item, produces such change." And I would suggest then adding in the examples of items within the exemption, refractory materials, which is a particular item I am focusing on. The refractory materials are part of a larger unit which does produce a direct effect. It

seems to me to come within the language of the statute, but in the regulations as presently proposed format, that's questionable because the present language says, "which directly causes a physical or chemical change." Those are my suggestions under (2) of TAXS&U 60 (d).

My comments with respect to (d)(3) of TAXS&U 60 deal with the definition of "ordinary useful life." At present that provision states that an item will be considered exempt if its ordinary useful life to a taxpayer is less than 12 months, and the cost of the item qualifies as an expense rather than as a capital item for Federal income tax purposes. Certain taxpayers, perhaps, as a matter of accounting, will account for the acquisition of an item by capitalizing that item, and charging it directly to particular jobs over a period of less than 12 months. In factum, the material is used or consumed in 12 months, but for accounting purposes, initially, the item is charged to capital as net expense, rather than needly expense. Therefore, I would suggest this change in the first sentence of (3): "An item will be considered exempt if its ordinary useful life to the taxpayer is less than 12 months and the cost of the item is charged to expense over a period of more than 12 months for Federal income tax purposes."

I have no problems with the second sentence of that section, but I would propose then the addition of a third sentence immediately following the sentence which states: "This can be done by providing evidence that prior purchases of similar items had a useful life of 12 months." I would propose the addition of this sentence: "Useful life of an item shall be determined on the

basis of its useful life if the item is in continuous rather than in intermittent use." It would seem to me that an addition of this sort would eliminate what I think would be discrimination between a large and small business, or businesses which use a particular item continuously versus a business which acquires an item that doesn't happen to be using that item on a continuous basis. Nevertheless, if the item was used on a continuous basis, it would be used or consumed within 12 months. Again, in the written statement that I afforded your office, I provided my position in that regard.

The next sentence, provided again in (3) of TAXS&U (d), states that: "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." I would suggest changes in that sentence, really, just for purposes of clarification, to provide that: "If the taxpayer can prove that in his ordinary practice a majority of the units have a useful life of less than 12 months, then he need not prove that all such units have a similar useful life." This applies more of a mechanical test, in other words, a majority test, if he can show the majority of the units have the requisite useful life, then he need not prove that all of the units have such useful life. Again, I changed the word "provide" to "prove," which I think is a matter of clarification here.

And finally, in the last sentence of that same (3), the last sentence now provides: "Retention subsequent to usage of an item is not evidence of continued useful life unless the item is again held for use and put into use in the taxpayer's ordinary

production process." My proposal on that sentence is, I believe, not substantive, but merely for purposes of clarification, I would suggest the sentence to provide: "Retention of a substantial portion of the items for a period of more than 12 months is not evidence of continued useful life unless the item is again held for use and put into use in the taxpayer's ordinary production process." As I said, I don't believe that is substantive, but I think it does clarify that last sentence of that section.

I've already submitted written statements with respect to the suggestions on TAXS&U 60. I have not with respect to the earlier comments, and with repsect to the comments on 55 and 72.1 and the short comment on 68, and I will be affording written comments on those sections at a later date.

Thank you.

MR. ROEMER: Thank you, Mr. Hibbs. The material which you have submitted showing the changes that you proposed has been very helpful in following along with you in your presentation. I'm sure that there will be other comments later in this hearing on this Regulation 60, so, your suggestions will be considered, along with the other comments that others may have on Regulation 60.

We have a number of persons from exempt entities that have asked to be heard concerning Sales and Use Tax Regulation 68. For those of you who have not been here at the start of this hearing, we did pass out a revision of our original proposal, so, I don't know how many of you may still be interested in being heard concerning sales tax proposed Regulation 68.

The people I have on my list to be heard concerning the original proposal were, number one, Wes Brustad of Guthrie Theatre.

Was there anyone else from Guthrie Theatre, Don Schoenbaum, who is also on the list?

Next, Donald Engle of the Orchestral Association, does he still want to be heard?

Next on the list, Suzanne Weil of Walker Art Center.

Next one on the list, William Semans of Cricket Theatre.

Next, Mr. Robert Christensen, Executive Director of the Minnesota Association of Rehabilitation Facilities.

MR. CHRISTENSEN: Thank you, Commissioner. I'd like to join with the others in showing our appreciation for the fine work that your Department has done, particularly regarding the amendment incorporated under 68(e). I think that took care of most of the problems that we have.

I represent the Minnesota Association of Rehabilitation Facilities, Minnesota Committee for the Handicapped and the Minnesota Rehabilitation Association.

I did have one quick question regarding this amendment. Under (1), it states: "making a profit which inures to the benefit of any private shareholder or individual." Now, I assume that the word "individual" means an individual owner. We have individuals in our workshop that are mentally retarded adults, for example. They benefit from the things we do in our workshop, but I imagine that the word "individual" would not include them.

MR. MUNDAHL: That is correct.

MR. CHRISTENSEN: Thank you, very much.

MR. ROEMER: That is correct. We mean the word "individual" to mean individual owner.

Thank you, Mr. Christensen.

Next on our list is Mr. Robert Halley of Theatre in the Round.

Ruth Humleker of the Minnesota State Arts Council.

That completes that list, so, we're up to the people who have asked to be heard yesterday. The first one on that list is Mr. Frank Nevers of United States Steel.

MR. NEVERS: Mr. Commissioner, my name is Frank Nevers and I'm Manager of Taxes for the Northern Area for United States Steel Corporation and I'm from Duluth, Minnesota.

I'm here to make a very short statement with regard to Regulation 60, with particular emphasis on Section 297A.25, Subdivision 1(h), noted on page 160 of the proposed regulations.

After I finish my short statement, Mr. Al France will speak on behalf of United States Steel as part of a Lake Superior iron ore association and his remarks will include our thoughts with regard to the matter that he will discuss.

We wish to, for the record, point out that our company has a continuing major disagreement with the Department of Revenue as to the intent and the meaning of Section 297A.25, Subdivision 1(h), as passed by the 1967 Legislature. This matter is being litigated and we hope will be clarified by the litigation currently before the Minnesota Supreme Court. We also feel that if our company is successful in its contentions it will also apply to the statute currently in effect here in the State of Minnesota. As far as the current status of the litigation, it's progressed so far that we have filed a brief with the Minnesota Supreme Court.

This concludes my statement.

MR. ROEMER: Thank you, Mr. Nevers.

Next on this list is Mr. Al France.

MR. FRANCE: Thank you, Mr. Commissioner. My name is Alfred E. France and I am President of the Lake Superior Industrial Bureau, an association of some of the iron mining and taconite companies operating in Minnesota, and as such I represent the members thereof with respect to the following statement.

Mr. Commissioner, notwithstanding on any counterpoint in any way, the comments of Mr. Nevers, representing United States Steel Corporation, we would like to address ourselves to two sections of the proposed regulations. Specifically, they are Regulation 60, which you might have suspected, and Regulation 73.1, both of which subject themselves to the exemptions extended to sales tax imposition and purchases made by mining and taconite companies located within the State of Minnesota. Recognizing at the outset that mining as an industry is quite different and quite distinctive from manufacturing and other industry in the State, which I would say is tantamount and evident in the fact that there is a specific definition set forth in Regulation 60, which refers to mining.

Dealing first with Regulation 60, the language proposed on page 159, which sets forth to define the definition of the mining production process, is not entirely inclusive of the various essential operations involved. In particular, we find that the first sentence of the definition is not quite sufficient as a description of the productive process of mining. In the production of iron ore, taconite pellets, or any other mineral product, for that matter, extraction of the raw material is not the beginning of the production process. Extraction cannot be commenced until the mine has been defined, usually by exploratory or developed

drilling, a geological evaluation. Extraction cannot be commenced until the mine area has been prepared and developed, these steps involving removal of surface overburden, drilling preparation, site preparation, that is, and blasting. Only after these steps, which are not preliminary, but rather the explicit and implementation of engineering plans, can there be extraction, and if there's no extraction, obviously, there can be no productive processing.

Accordingly, we would suggest that the first sentence of the paragraph found at the bottom of page 159, would purport to define the mining production process, be amended as follows: "In the case of mining, the production process shall be deemed to begin with the preparation and development of the mine, followed by the extraction of the natural raw product being recovered from the earth and the improvement of that product to the end at which the last process prior to stockpiling is performed."

We would agree with the second sentence of that paragraph and suggest that that stand as written or proposed.

Now, with regard to the exemptions afforded under the amendments adopted by the 1973 Legislature dealing with separate and detachable units used in producing a direct effect upon the product where such items have an ordinary useful life of less than 12 months, we'd like to make these observations:

The very nature of mining requires the movement of material. Without moving the material from the earth, and without having first removed the overburden to get at the material, there is no mining possible. Again, there is no production process. Without removing waste material there is no production process. Movement of materials is the essence of mining, and the essence of

the mining production process, and as such, it has a direct and vital effect upon the ultimate mineral product. In the mining of a material, certain steps are taken to segregate materials to remove impurities and to recover ore value. The movement of this material through these steps, whether mechanically or by a gravity process, is as intimately and inseparably a part of the production process. Mining is moving and in modern usage it is the improvement of the mineral bearing raw material into a commercial ore product. This is the production process of mining; movement, improvement and disposal of the material.

Now, it is in the movement of the material, together with the nature of the material, that combines to cause the wear and tear upon the facilities designed to handle and improve the product of the material. If the material cannot be handled, moved, that is, then it can't be improved and it cannot become a commercial ore product. So, essentially, the movement and improvement or beneficiation processes involved include the mine development, the extraction of the material, crushing and grinding of the material to reduce it to a size so that it is manageable, concentration steps so that the work constituent can be separated and recovered, and then agglomeration or pelletizing. Also the disposal of materials which are a waste material to the fundamental part of the process and one of seeming great importance. Throughout this entire production process constant wear and abrasion occur and we would suggest that in consideration of the exemption contemplated for the mining production process under the 1973 amendment, the following list of typical wear parts be utilized as guidelines. These items are not meant to be all inclusive, but rather, to

serve as examples of the type of separate detachable units, which we feel qualify clearly for exemption under the language adopted by the 1973 Legislature. These would be, for instance, in the mine, shovel and mobile equipment: dipper teeth, adapters, bucket liners, blade cutting edges. Also in the mine, drilling equipment is a big factor, so, drill bits and bars, rods and stems, burner tips and reamers, in the case of jet piercers, wall liners, splitter castings, grizzly castings, to be included. In the concentrating area, milling wear parts: concaves, mantles, spider caps, spider rim liners, wear rings, screens and filters, separator skins, which are fundamental in the magnetic separation of a product, belts and welding rod. In the agglomerating section of mining, we would think that filter cloth, filter bags, grate bars, pellets and side plates, screens and refractory brick should be considered. And I believe we have, in past discussions, submitted this list to the Department, which should be given due consideration, we feel.

Turning now to the Regulation 73.1, Mr. Commissioner, I realize we're dealing here with, really, what constitutes an untested area. I would submit that a reading of the regulation does, however, raise certain questions as to the extent to which the incentive exemption goes, and, indeed, it can be described as an incentive exemption. The legislature, in adopting this act in 1971, and the governor in signing it, signaled their intent to encourage and provide incentive for new and additional taconite expansion and projects. As I say, it's an untried area as yet. But with the recent announcement of intentions to commit close to

$500,000,000 in new taconite projects, the regulation takes on a very timely importance and significance.

A taconite plant is not a taconite plant alone. A taconite plant is a complex entity involving mine development, roads, the mine itself, equipment to move and mine materials, crushing facilities, grinding, concentration and agglomerating facilities, all, of course, interdependent and reliant upon the other, and all, obviously requiring large outlay for capital. Consequently, it would be our hope that the regulation, as proposed, is congnizant of the variety of essential operations which must be tied together and geared with each other if there is to be a taconite project. As an illustration, a mine haul truck, which may be used to haul taconite ore on a given day and which may be used to haul overburden on another given day, is still a mine haul truck and in either case is performing a vital and essential role in the functioning taconite project, and its initial purchase, under the intent of the 1971 amendment, would, we think, be properly exempt from payment of the sales tax. And I emphasize the word "initial" purchase so that we all understand we're talking about new taconite projects or new expansions.

I'm sure the regulation will be amended to reflect the change brought by the 1974 Legislature extending the exemption date to February 1, 1975. And I would hope that the regulation would be construed in the field, so as to reflect the legislative intent that lies behind the wall. That intent simply being to strengthen, to improve and to expand the economic base in Minnesota through a stronger and improved and expanding taconite industry.

Mr. Commissioner, subsequent, and within the thirty days I guess we have, we will submit a written statement similar to this and perhaps somewhat augmented.

MR. ROEMER: Thank you, Mr. France.

The dates you point to will be changed. The July 1, 1974 date was based upon the statutes as they existed prior to the 1973 Omnibus Tax Bill, but the Legislature, last month, extended the period for sales tax exemptions on taconite plants, the construction of which was commenced prior to February 1, 1975. So, this July 1, 1974 date will be changed.

At this point I'd like to take a short break of ten minutes in the proceedings. To give the rest of you some idea of where we are, there are approximately six people on yesterday's list that was turned over to us to be heard. These people are Jim Keller, Bill Spangler, Bob Dillon, Bob Mueller, Paul Senio, Harvey Sathre, and then there are a number this morning that have indicated that they wish to be heard: Peter Popovich, John Forney and then others whose names I do not have. So, we will recess for ten minutes. Then we'll go until noon, and if necessary, adjourn for lunch and continue this afternoon.

(Recessed)

MR. ROEMER: The next scheduled speaker this morning on the proposed adoption of the sales and use tax regulations is Mr. James Keller. Is he here?

MR. KELLER: My name is Jim Keller. I am Manager of State and Local Taxes for Control Data Corporation.

First of all, I'd like to thank the Commissioner and his staff for the opportunity to be heard.

Secondly, I'd like to thank them also for the opportunity they gave the related taxpayers in relation to the industrial exemption to be heard in the original drafting of the regulations. I think it was beneficial both for industry and for the Tax Department.

However, my comments today will be very brief and they're primarily related to Regulation 84, regarding "Claim for Refund." Specifically, the provision beginning on page 224, "Conditions to be Met Before the Commissioner Shall Entertain Claim for Refund." My question is in regard to the first sentence, (1) on page 225: "A 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)". My question is how direct to the Commissioner is direct? Specifically, under an examination, typically with a large company that cannot be done within the time limits, the taxpayer and the Tax Department enter into waiver agreements. Through these waiver agreements the taxpayer can extend his liability backward for a rather extended period. My question is if the taxpayer then paid tax to a vendor that is found later to be refundable, but in a period that is closed to the vendor, but open to the taxpayer, is this refund available to the taxpayer, and if so, how would it be covered in the regulation?

MR. MUNDAHL: It's not refundable. We would say in that instance that the vendor is the one that has to file the claim,

and if the vendor's return is not opened we couldn't allow the claim.

MR. KELLER: I see, in other words, what I wanted to make certain as I read these, that as a taxpayer enters into an agreement with an extension with the Tax Department, he is then only extending his liability, but not extending his ability for refund?

MR. MUNDAHL: Well, there's a possibility, in use tax you may have a refund, you may be on direct pay, and it would all be subject to refund.

MR. KELLER: But, if you are purchasing through a vendor, you would be extending only your liability, and not your ability to refund.

MR. MUNDAHL: If you want to put it that way. You're not extending the vendor's time to file.

MR. KELLER: I really question whether that is the intent of the law and whether or not the taxpayers that enter into these waiver agreements are really aware that that's what they are doing, that they should be in the same position that the State is in. In other words, as we find in all other states, if you sign a waiver it is a two edge sword. You're open as much for refund as you are for liability. I don't think that the intent of the law was that it be a one way street.

MR. MUNDAHL: You mean other states would allow you to get the refund of tax that was paid through a vendor?

MR. KELLER: If the state was in a position to collect the tax as a use tax, and I believe that would be some of the question here, that if they have the legal power to collect the

tax, you have the rights of, also, refund collection. In other words, it's always a two way street.

MR. MUNDAHL: Why don't you submit that in writing for us to review?

MR. KELLER: Certainly.

MR. ROEMER: I think you're referring to the provision in the law which permits extensions of time for assessment of the tax. That is contained on Section 297A.35, Subdivision 4, and provides that:

"If the commissioner and a person required to file a return have within the periods prescribed in subdivision 1 consented in writing to any extension of time for the assessment of the tax under provisions of section 297A.34, subdivision 6, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the taxpayer have consented to an extension of time for the assessment of the tax."

In other words, if we do enter into an extension of time for the assessment of additional tax, that extension also provides automatically to any refund that such audit may determine.

MR. KELLER: Well, my question though was that if the tax was paid to a vendor, rather than directly to the Commissioner, according to the regulations, and the period is closed to the vendor, then the tax would not be refundable according to the regulations. Is that really the intent of the Tax Department, was my question.

MR. ROEMER: Well, I think that, I don't know of any provision in the law that provides for a refund directly to someone

other than the taxpayer.

MR. KELLER: In other words, you're saying it's impossible under the law?

MR. ROEMER: That is my understanding of the law, yes. It's my belief that this would require a change of the statutes.

MR. KELLER: Well, then getting back to page 225, I would like a clarification as to what is stated in the parenthesis: "or the tax was collected from such person".

MR. FRANZ: I think that's referring to the use tax.

MR. KELLER: I see, in other words, not tax collected by a vendor?

MR. FRANZ: Correct.

MR. KELLER: Thank you.

MR. ROEMER: The next person who has asked to be heard is John Jantschik of Honeywell.

MR. JANTSCHIK: Mr. Commissioner, my name is John Jantschik. I work for Honeywell, Inc.

Our presentation will be brief. It deals only with Regulation 38 and direct pay permit.

We believe that Regulation 38, as written, would cause an unnecessary burden on taxpayers and vendors, particularly the section that holds that a holder of a direct pay permit cannot pay tax to a vendor when a direct pay permit has been furnished by the holder to that vendor. We believe that as long as the taxpayer's records clearly reflect whether the tax was self assessed or paid to the vendor, that this should be sufficient.

We will submit further arguments in this matter in written form to you.

Thank you.

MR. ROEMER: O.k., thank you.

We will await your written letter or comments on this point.

Next person to be heard is Bob Mueller of General Mills.

MR. MUELLER: Mr. Commissioner, I'd like to add our thanks to those expressed by Jim Keller for the opportunity to have worked with your staff previously in drafting the language for Regulation 60.

My name is Bob Mueller and I work in the Tax Department of General Mills, Inc., in Golden Valley, Minnesota.

My comments relate to proposed Regulation 28.7, "Gifts - Transfers Without Monetary Consideration," found on page 89 of the pamphlet of the proposed regulations. Briefly, in part, this regulation states that tangible personal property purchased in this State, given to an out-of-state donee by the buyer, and shipped directly to the out-of-state donee by the vendor is taxable.

We believe this regulation is invalid and that it contradicts at least two sections of Chapter 297A.

First, Section 297A.01-7, "Definitions," states that storage and use do not include keeping tangible property in Minnesota for the purpose of subsequently being transported outside Minnesota.

Second, and more clearly to the point, Section 297A.25-1(d), "Exemptions," states that "gross receipts from a sale of tangible personal property are exempt from tax if (1) the property is merely stored in the state and then shipped out of the state, or

(2) the seller delivers the property to a common carrier for delivery outside Minnesota."

Proposed Regulation 28.7 puts forth a doctrine of constructive delivery, which the regulation suggests has precedence over any statutory provisions. We find no such concept in the sales and use tax law, and no basis for the assertion that that concept, whatever its source, can take legal precedence over the statute.

Section 297A.25-1(d)(ii) specifies various conditions under which property can be shipped to out-of-state locations by a seller and be exempt from tax. Included in these conditions is delivery of property by a seller to a common carrier for delivery outside Minnesota. That is all that is required. There are no statutory qualifications limiting the exemption. The statute says nothing about the purpose for which the property was delivered by the common carrier outside the state. In fact, that particular section of 297A.25-1(d)(ii) doesn't specify to whom the property must be delivered. It simply states, if the property is delivered by a seller to a common carrier for delivery outside the state, the sale is exempt. Proposed Regulation 28.7 seems to say that in a fact situation precisely conforming to Section 297A.25-1(d)(ii), the tax does apply when that section specifically says the tax does not apply. There is no statutory basis for the regulations introducing a concept of constructive delivery in Minnesota. Furthermore, even if that point were conceded, the property is still exempt from tax under Section 297A.25-1(d)(i). The final destination out-of-state, which proposed Regulation 28.7

presupposes, cannot simply be tossed aside and said to have no relevancy.

Proposed Regulation 57, "Property Shipped Out of State," found on page 149, refers, among other things, to court decisions which speak of the point at which beneficial use of property takes place. If our company were to purchase property from a Minnesota supplier for use as prizes for employee-salesmen, all of whom are located outside of the State of Minnesota, and if on the one hand we took delivery of that property here in Minnesota and then reshipped the property to the out-of-state employees, or on the other hand, we instructed the vendor to ship the property directly to the out-of-state employees, is there beneficial use in Minnesota, or do we make any use of the property in Minnesota? We believe the answer is no to both questions. We make first use of the property when we put it in the hands of the out-of-state employee, and not before.

We believe that the purchase of the tangible personal property, which proposed Regulation 28.7 refers to, are exempt under proposed Regulation 57. We believe that proposed Regulation 28.7, as presently drafted, is invalid, has no statutory basis and should be withdrawn.

That completes my comments and I will leave a copy of them for your review.

MR. ROEMER: Thank you, Mr. Mueller.

What you're in effect saying, then, you feel that Section 28.7 conflicts with Regulation 57.

MR. MUELLER: And the statutes.

MR. ROEMER: And the statutes, yes. Thank you.

The last person on our yesterday's list that has asked to be heard before we get to the ones that have asked to be heard today, is Paul Senio.

MR. SENIO: Mr. Roemer, my name is Paul Senio, spelled S-E-N-I-O. I am with Gamble Skogmo in Minneapolis.

I have some very brief comments on two of the sales tax regulations.

The first one would be 28.1, "Commerical Artists and Photographers." I guess I have really no constructive criticism. As I understand it, as far as it goes, I think the problem here was that we're trying to distinguish between what was a service as opposed to what was a product, and if a commercial artist or photographer ends up with this product, fine. That is tangible and I can see that quite clearly. Other states are all over the law down here, but if that's the way we want to go, fine. But I'm afraid what's going to happen in practice is that we need a clarification here.

Primarily, we're dealing with people who are not particularly sophisticated in the sales and use tax area, and if they get a black and white regulation such as this, they're going to say everything we deliver is a taxable product or tangible personal property. I'm suggesting that the subjective exemptions could very well apply in these areas. For example, we have a new law that talks about the delivery of advertising material out-of-state. We have a law that exempts publications. We have constitutional prohibitions and exempt organizations, and the like. In other words, it's going to be very difficult for these people,

these free lance artists and the like, to accept an exemption certificate in this area.

Now, we might have a commercial artist draw up some pictures or a store sign. Let's say we get six of those store signs. Three of them will be put up on a Minnesota store, and they would be taxed. Three of them would be ultimately delivered out-of-state, and they would not be subject to tax. I think, all we need is a cross-reference here and maybe in some other areas of the regs, but something like this, "nothing in this regulation is deemed to preempt or preclude an exemption certificate validly given."

Do we need any dialogue on this for the discussion?

I am also thinking of a drawing that ends up as part of an advertisement that is in a newspaper insert. I consider that merely a component before the final product is produced. This is no different than the drill bit or sand paper analogy, perhaps.

So, it's just a little too black and white here. If we just had some reference that perhaps exemptions do apply, we might save ourselves some future problems in dealing with these nonsophisticated vendors.

MR. MUNDAHL: This is the same as was given to the commercial artists back in 1971 or 1970.

MR. SENIO: Yes, we're having a little trouble with that right now.

MR. MUNDAHL: Oh, you are. I was going to say that it isn't changed.

MR. SENIO: They're saying, you know, that the Sales Tax Department told us we have to collect sales tax, and then they

don't want to accept exemption certificates, which we feel are valid in many cases. And unfortunately they're not all 100% exempt. Sometimes we can see where it's immediately going to be put to a taxable purpose, we want to pay the tax, and in other cases we have an idea it's likely to end up out-of-state, or in a publication, we want to give an exemption certificate. The audit is quite thorough at our place, so I don't think the State or the ultimate consumer is gaining a whole lot one way or the other.

The only other comment I have is on 61, "Publications," and again, my comments are pretty much as a user here as opposed to a collector of the sales tax. I'm just a little surprised that my tax services, such as this, Minnesota Sales and Use Tax, is not considered a publication. I get these things weekly, the Internal Revenue Code, and Minnesota Sales and Use Tax, 50 other states. Apparently, the Sales Tax Department has had dialogue with C.C.H. and Prentice-Hall, and the like, and apparently, reached the conclusion that this was taxable some time ago. If that is true, was there any input by the ultimate consumer here? Perhaps C.C.H. was only interested in having a definitive rule one way or another. But, I am a user of these publications and I get them weekly on many, many different services. Publication is defined, it talks about something that a tax service is a personal service. Well, I don't think you really mean that. I think it is a tangible product and, if anything, we're dealing with the publication exemption.

Now, it is true that some of these services come out once a year and only about 50 or 60% of the pages are deleted through the year. The original pages will be there from the beginning of the year, just about 50% of the time. As to the pages that are

changed, or the reprint, so to speak, I have no idea how many times during the year they cycle in and out. It would depend on changes in the law. But these things do come out weekly in most cases, and there's a covering sheet that we all use very extensively that highlights what's involved. It seems to me that at least part of this thing is a publication, issued at regular intervals, more often than three months or ninety days, or whatever the law is.

Do we need any dialogue in that area from the users, or is this merely a situation that has been thoroughly discussed and put away by the Sales Tax Department?

MR. MUNDAHL: I don't know at the beginning just how much discussion went into it, but our idea on the Prentice-Hall and C.C.H. was that these loose leaf sheets become part of a book, and the book being taxable. I don't think Prentice-Hall charges separately for the weekly newspaper type deal. C.C.H. does. We would say that the C.C.H. separate weekly item, State Tax Review, I think it's called, for $2.50 a year, that is a publication, and it is exempt. The other part is a book, we feel.

MR. SENIO: I went through the bills, and apparently, like the U.S. Tax Leaf, the thing that comes with the stapler, is not taxed, but my loose leaf service is. But, let me point out that this thing is useless without the weekly complement. And let me point out, too, that in those cases where they don't change, you have a volume coming over from year to year, all you are really, in effect, buying are the changes. Do you follow me? It's true they're in a volume, and I think we buy the covers, if that makes the distinction, we have title to the covers once and we keep it.

But, it's the pages that are very, very important in our work, and I'm sure in other areas of the law as well as...

MR. MUNDAHL: Yes, each area has these services.

MR. SENIO: So, we can get in a can of worms, as other states have, as to whether or not this is a service and exempt, as opposed to tangible products. And I think we're dealing with a tangible product. We then have to define it to what is a publication, and I suggest perhaps we need just a little broader definition of what is a publication here on a weekly supplement thing.

MR. MUNDAHL: Are you going to submit a proposed...

MR. SENIO: If you would like it.

MR. MUNDAHL: Yes, why don't you.

MR. SENIO: Fine. I don't have my comments prepared this morning, but I'll draft something up on both items, if you'd like.

MR. MUNDAHL: Fine.

MR. SENIO: Thank you.

MR. ROEMER: Thank you, Mr. Senio.

We will await, then, your written suggestions.

Now, we have had a number of people that have indicated this morning that they wish to be heard. On one of the notes that I received, he indicated that he has to leave as soon as possible, in the area of 11:00, and could he be heard, so, Mr. Peter Popovich, we're slightly after 11:00, but we'll certainly recognize you first.

MR. POPOVICH: Thank you, Commissioner. That's fine. I did make a call during the break, so I have a few minutes leeway.

I appreciate your calling on me.

My name is Peter Popovich. I am an attorney in St. Paul with the firm of Peterson, Popovich, Knutson & Flynn. I represent the Minnesota Broadcasters Association, the Minnesota School Boards Association, Northwest Publications and there are other clients, I am sure, that will be affected by the large volume that's being under consideration.

This morning, however, I wanted to address my remarks particularly to pages 166 on, relating to publications.

On page 166, the paragraph starting (b), where it says: "Publication Defined," I would suggest that you struck the words on that line "encompasses only" and insert in lieu thereof, the words "means to make public or known and includes". I'll repeat it. Strike two words, "encompasses only" and insert in lieu thereof, the words "means to make public or known and includes" and then the second sentence would come into play, "written or printed materials" and what have you. The reason I make that suggestion is that the word publication is not defined in the statutes, and as you know, 297A.25, Subdivision 1(i), which talks about "the gross receipts from the sale of storage, use and consumption of... in any publication regularly issued at average intervals not exceeding three months." And any such publication, "for purposes of this section, 'publication' as used herein shall include". The Legislature, when they passed the act, did not define "publication." They just went to say, "'publication shall include".

Now, the proposed regulation, as you have it now, would define it as just written and printed materials, and I'm suggesting

that your definition be in line with the statutes, so that it would include what the statute says, but doesn't foreclose any other areas. I do this on the basis of the case that just came down from the Supreme Court, the Hancock Nelson case. And you will recall on that particular case, the matter of catalogues was involved, and the court for the first time then defined "publication." In the Court's definition, that case came down February 15, the Court said: "The inclusion in publication of a legal newspaper is merely exemplary and inserted for the purposes of clarification, rather than a limitation upon the scope of the exemption. Inasmuch as we lack a precise definition of the term publication, it becomes incumbent upon this court to so delineate the term as to best implement the intent of the legislature." And then they went on to say that the word "publication" has for its main purpose informing the general public and is always present in that basic definition. They went on and used some other particular language by saying, "publication is defined as to make public, to make known, to bring before the public, to exhibit, display, disclose or reveal." Consequently, I have taken the language of the Supreme Court and I have made the suggestion that you include the Court's language, which are the words that I asked that you insert, "means to make public or known and includes". Then the proposed regulation would be in line with the statutes. The reason for that, I'm sure there are other areas of publication that might be exempt under the Sales Tax Act where the material is purchased for purposes of publication. I refer particularly in the broadcasting industry to the tapes and to the film that is used in news

gathering, which is used and which occurs daily. Obviously, it's at intervals shorter than three months.

Now, that's a gray area, Commissioner, as I realize, and that's a matter that would have to be taken care of with the Department in further interpretation. But, in view of the Supreme Court saying the legislature did not define publication, that the words, as used in the newspaper, was merely an example and not a word of limitation. I think your rules have to be consistent with the definition as the Court interpreted it, and that's why I think that suggestion in (b). Now what will flow from that will, obviously, have to be something that we'll have to handle on a case by case basis with the Department as they arise before the Department. But my language would define publication with the Court definition. Your definition is completely limiting and does what the Court said the legislature did not do, and I think would be a basis for challange if you left it the way it is.

It has a further implication. If you look at page 168. At the bottom of the page you have, "Gross Receipts From Advertising," and you say, "The statute specifically provides that the gross receipts from the sale of any advertising material" and then you go on, "which is contained in or with an exempt publication". Well, since the statute doesn't define exempt publication, since your rules that I just previously referred to, would define exempt publication, since it would only be for written or printed material, such as newspapers and the other items that you have there, it would then cover that whole other area of advertising. So, I suggest that in page 168, number (d), in the third line you strike the words after the word "material." Strike

these words, "which is contained in or with an exempt". Strike those words and insert in lieu thereof, these two little words, "in a". So, it would be "material in a publication". And after the word "publication," insert, "defined in M.S. 297A.25, Subdivision 1(i)." The reason I suggest that is because you can't lift yourself up by the boot straps by making your own definition, and then here referring to the definition as to what would be taxable for advertising purposes based on your own definition, which goes further than what the statute is. And, so, my proposal in number (d) would then tie right back into the statute, and from that point on you're going to have it on a case by case basis. If you leave it the way this is, as you propose both in the definition and in here, all advertising on radio and television would be now taxable, because you say in an exempt publication as you define it. And your definition is much more narrower than the Supreme Court's definition or the statutory definition, which is examples only and not one of limitation. That would then put the broadcasting industry, and anyone who utilizes their media, all that advertising would be taxable, and the only advertising that wouldn't be taxable would be that that would be exempt under your definition. Well, you'd have a law suit right away. And because there obviously would be a dual basis of advertising, and advertising, as you correctly put it further on, is one of a personal service, but this would create enough confusion that I want to eliminate it at this point and that's why I called it to your attention.

The third observation that I wish to make is on page 167. I am perplexed as to how to handle it, and I might say that

Mr. George Mc Fadden, who's Director of Community Services for Northwest Publications is here to get involved in the discussion, should there be more, and Mr. Shaw, the Executive Director of the Minnesota Newspaper Association, who will also, I understand, make a comment this morning. But on page 167, the second to the last paragraph has a number of items as not included within the word "publication." Now, some of those items that are in there we do use in public. For example, you have so-called "one-shot" magazines. Many times, as part of a legal newspaper, there is a commemorative issue, a centennial issue, a community has a 25-year celebration. A magazine may be prepared and published as part of that paper. It's a "one-shot" magazine, but it's published as part of the paper. Now, under this definition, I'm sure it's not your intention that anything published as part of a paper would now be taxable, other than the 100,000 limitation that falls on paper and ink. But, we're concerned as to that particular example.

Later on down you have "realtors' descriptive listings and financial and statistical reports." We publish, as you know, the stock reports in the business section every day. And we have the ads of realtors' house listings, in our papers as well. I'm sure you don't mean that portion of our publications, because you cite them as examples of not being included and therefore exempt would now be taxable. And so, somewhere in that large paragraph, you've got to put some words in, unless included as part of the definition that you have under 61(b). And if you revise the definition of 61(b) to comply with the Hancock Nelson case and the statute, I'd have no objection to that. Therefore, then all of these items here would be taxable unless they came within the

statutory reference or the Hancock Nelson decision on what is a publication. So, this is some draftsman things that I think you'd have to go through to clarify that. I'm sure that's not your intention that anything published as part of a newspaper would be taxable. For example, on page 166, on the last paragraph on 166, the beginning of the third sentence, that paragraph starts with the words, "'Publication' includes any legal paper." The third sentence starts, "The term does not include hand bills, circulars, flyers, unless distributed as part of a newspaper." So, obviously, a realtor's descriptive list, stock reports, centennial magazines or special editions, would be part of a newspaper, and coming within that definition. But, when you have it here and then you have something else over here, that's what caused a little ambiguity in our minds, and I know that was not your intention.

So, we would suggest, both from the newspaper point of view, that be clarified, these later remarks, and so far as the broadcasters are concerned, that the definition that I orginally gave you with the striking of the two words and the insertion of the other words be included.

I will submit a more detailed written statement to you by June 3, and I might say I will review the exempt organization thing as it applies to school districts and the School Boards Association, and I may have something on that as well. You may have taken care of it this morning.

Thank you, very much.

And you may wish to call on Mr. Mc Fadden or Mr. Shaw, too, while we're on the subject matter, if you wish.

MR. ROEMER: Well, I have people who have asked to be heard prior.

Thank you, Mr. Popovich.

You are indeed right that it is not our intention to subject to the sales tax any one-time magazine or any other material that is to be distributed as part of a newspaper.

MR. POPOVICH: Obviously, there is another open question as far as what is a publication.

MR. ROEMER: Yes, that is a question as to what is a publication. As I understand your opening remarks, you are contending that the materials used in radio and television should be given the same exemption as the materials in a newspaper because a publication is broader than something that is written, it includes radio and television media. This is a substantive question that we will have to decide.

MR. POPOVICH: That's why I cited the case to you, and I hope that you don't go further than the Supreme Court, or limit the Supreme Court decisions.

It does raise a further question, Commissioner, as to what then would be taxable on advertising, and if you leave your definitions here, I think you've opened up a whole area of taxes that no one really intended and that, too, is a very substantive question, one the legislature should deal with rather than a rule and regulation. I'm sure you've gathered the import of that as well.

MR. ROEMER: Yes, I did, Mr. Popovich.

Thank you, Mr. Popovich. We will await a letter from you.

Early this morning I had a request to be heard from John W. Forney.

MR. FORNEY: My name is John W. Forney, and I represent a company of the same name with Inc. on the end of it.

Mr. Commissioner, I want to thank you for your courtesy in hearing me this morning. I have been an advertising man for practically a lifetime. I'm all too painfully aware of the necessity for deadlines, and I was long after the deadline. Most of the reason that I wanted to appear here today was answered and taken care of by your opening statement to the effect that written statements can be filed as late as June 3. But while I am on my feet, I felt as the hearing went on that at least one taxpayer could get up here. I'm not a tax collector, I'm a taxpayer. I'm not an attorney, I'm not a tax expert, I'm not trade association man, and maybe it's about time a taxpayer got on his feet here.

I would like to ask you or your colleagues a question. The trade association of which I am a member did not appear here this morning, is it fair to ask, has that trade association or its attorney filed a statement, and if so, is such a statement available?

MR. ROEMER: It's my understanding that they have not, as yet, filed a statement. Certainly, they have 30 days, until June 3, in order to file any statement that they wish.

MR. FORNEY: Well, thank you. I was a little dismayed to learn that there was no one from our industry present, and I would just like to close with just one rather personal observation. I've sat through the whole hearing and I've been amazed and a little bit disturbed at the terribly brutal task you have of bumping up

against as many different industries and all their technicalities, and so on. We, in the advertising agency business, seem to be having a hard time to get through to you, and I would hope that in my own statement that I will want to file before June 3, I can rather vigorously set the record straight.

Thank you, very much.

MR. ROEMER: Thank you, Mr. Forney.

We will be expecting, then, a further statement from you.

The next on my list of persons that have asked to be heard is John Hoene of the Minnesota Asphalt Pavement Association.

MR. HOENE: Mr. Commissioner and members of the staff, I appreciate this opportunity. I believe you have my letter, but I would like to take the time to read it.

"Dear Mr. Roemer: It is my intention appearing at your hearing May 3, 1974, to raise some doubts and questions with reference to sales tax on road building materials. Specifically, I refer to TAXS&U 16, starting on page 41 (my secretary made an error there) in your proposed rules.

First, what is the rationale behind the statements, and why are they so different from previous rulings?

And second, is your ruling intended to eliminate the road building exemption as spelled out in paragraph (h) of Section 25 of the law? Does your ruling conflict with the law?

Third, does your ruling revoke the ruling of Commissioner Logan dated August 15, 1967, which exempted county and city roads, and so on, and also overrule a similar rule rendered by Judge J. Mulally, District Judge of Ramsey County Court, on August 21, 1967?

Since there is no clear statement in these proposed rulings, but there seems to be an umbrella superimposed, we are wondering whether the Department has forgotten or ignored these two important decisions. Does this ruling reverse the 1967 Department ruling and the Court's ruling?

We would like an answer soon as we can file a further statement within the time legally alloted."

Thank you.

MR. ROEMER: Thank you, Mr. Hoene.

Rather than answer your questions here, is it satisfactory, since you have quite a few questions, if we give you a written answer within the next two or three days, so that you have adequate opportunity?

MR. HOENE: So our attorney can work on it.

MR. ROEMER: We will do that.

The next person who has asked to be heard is Robert Shaw.

MR. SHAW: Mr. Commissioner, I also will be writing a letter within the next few days summarizing my remarks.

We have one major observation to make here, which was touched on before. In 61(c) as it relates to publications, in effect, you're setting some new tests for what tax purposes constitutes a publication, and we can see the possibility of some ambiguity as this would collide with what we interpret the statute to mean. We would favor some sort of an amendment which would make it very clear that the statute controls, some language such as this: "The legal newspaper definition of M.S. Chapter 331 will control in event of a conflict in interpretation or ambiguity." I'll put that in my letter. As we understand the statutes there

are two controlling tests. One is the publication, an exempt publication is something that comes ninety days, not more than ninety day periods, and also, the reliance on Chapter 331, which defines a legal newspaper. That's the first point.

Secondly, we think that there's some chance of ambiguity with respect to supplements. That's on page 166 in (c), where it says, "'Publication' includes any legal newspaper" and so forth, "together with any supplements or enclosures accompanying such newspaper or representing a part thereof." It seems to us that a little tighter definition might be called for. There are some definitions elsewhere, the postal service has come up with some goodies, and we'd be very happy to write that to you, also, in the letter. We think that would avoid possible confusion.

Then, with respect to, I'm confused. I have to ask for a clarification here, with respect to (c) where you're talking about the time period, which is (c) on page 167, "Paper and Ink." I don't understand, and maybe this doesn't relate to our group at all, but I don't understand the decision to tax paper and ink for the period 11-1-71 through 12-31-73. Can you tell me how the Department arrived at this period of time? I'm just not aware of what...

MR. ROEMER: Mr. Shaw, I think that is the date, that is the time between the statute changes, which did affect paper and ink. Mr. Mundahl can give you a little further definition of exactly how those dates were arrived at.

MR. MUNDAHL: Right quick, I don't find them, but, these were statute changes. We intended to follow what the statute said, and if we made a mistake I'd like to have you call it to our

attention, but I don't believe we did. There was a period in there that all paper and ink used in an exempt publication was taxable, and these are the dates that we've spelled out here.

MR. SHAW: Well, I guess, it might be a misprint. It's in the second line of (c), it says Subdivision 1(h). Now, do you mean (h) or do you mean (i)? I don't understand what, (h) is the manufacturing exemption, which includes printing. What kind of printing do you mean? Are these the charitable? I'm referring to the second line in paragraph (c).

MR. MUNDAHL: Yes, I believe we have said many times that a newspaper, producing newspaper, before any of these law changes with our original law, did come under (h) as they were in production, producing a newspaper. And this is why the reference to (h) here. A newspaper or anyone else producing a publication was still in production as specified under (h), (i) seemed to provide the exemption for advertising material and a specific exemption for the sale of newspaper. We felt the production items were exempt in (h).

MR. SHAW: I see. That answers that question. I have a couple of others here.

With respect to the use of the word "fixtures," which I notice is used somewhere else, excuse me, I can't give you the exact place. As you know we've had lots of problems with respect to taxation of plates and negatives used in the lithographic process. Now, fixtures is a word that I don't, I am not a tax lawyer, but I've tried to understand what you mean, or what is meant by the word "fixtures" and I'm puzzled why this is creeping back into the regulations. Tangible personal property, to me, is

a term that I can understand better and to me has a more clearer meaning.

MR. ROEMER: I think, Mr. Shaw, we don't know where you're referring to. I don't see fixtures on page 167 or 166.

MR. SHAW: Can I just pose a question then, Commissioner? Is there anything in this batch of regulations that would reimpose or create new ambiguities with respect to the taxation of lithographic plates and negatives? Is there any change in that?

MR. MUNDAHL: No, we only specifically state that lithographic plates are exempt. This is the only change in there.

MR. SHAW: And then there was this previous discussion on the time, which would cover our purposes, I think.

Those are our main things. I'll have some talk to put in the letter on what Mr. Popovich said this morning on publications. This is the first time I've heard it. I couldn't copy down his language fast enough to understand that either, but I'm going to get it and study it, and we might have some comments on that in our testimony.

MR. ROEMER: I have a copy here, Mr. Shaw, if you will be here at the conclusion of the hearing I can give it to you.

MR. SHAW: Fine, I'll wait.

MR. ROEMER: Thank you, Mr. Shaw, and you will be submitting a statement in writing?

MR. SHAW: Yes, we will.

MR. ROEMER: All right.

This concludes the people that have talked to me and asked to be heard. Is there anyone else here that wishes to be

heard, make any comments of any kind on the proposed sales and use tax regulations?

I see no one that wishes to be heard, so therefore, again, for the purpose of any written comments that any of you may wish to submit or anyone who is not in attendance here today, they have until Monday, June 3, to submit anything in writing, any comments or suggestions in writing on the proposed sales and use tax regulations, and this written material received through June 3 will be made a part of this record.

Thank you, very much.