

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Revenue

TO : Lee Sheehy
Special Assistant Attorney General

DATE: September 5, 1978

FROM : Dorothy A. McClung
Research Attorney

PHONE: 1022

SUBJECT: Sales Tax Rules

Enclosed is the hearing record and an Order Adopting Rules. The last sentence of example 3 in Tax S&U 116A is shown as being deleted. I also have corrected the reference to the form ST-24 in Tax S&U 608.

DAM:klc

RECEIVED
SEP 6 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

#448 Dept of Revenue

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/17 Temporary Rule ____

Resubmitted and Received 8/11/78 8/23

DUE DATE ~~8/4~~ 8/21/78 9/2 Rec't - 9/6 9/15 Rec'd wrong - see note in FG

a. Returned to Agency w/o filing w/Secy of State 8/21

b. Approved ____ Date Sent Back to Agency ____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

File No. 448

Attorney General

Dorothy A. McClung
Research Attorney
Department of Revenue

August 28, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

Department of Revenue's Proposed Rules for Sales and Use Tax

As you have requested, I am returning the above-captioned rules for further consideration by the Department. When they are resubmitted to this office, please enclose original and requisite numbers of copies of Order Adopting and Rules as Adopted.

If you have any questions, please do not hesitate to call me.

LES:mb

Enclosure

448
Lee's file

Attorney General

Dorothy A. McClung
Research Attorney
Department of Revenue

August 3, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

Proposed Rules For Sales and Use Tax

I am returning the above-captioned rules. These rules were not submitted to this office in compliance with the rules of the Attorney General relating to such submittals. See particularly AttyGen 302. As we discussed, you may wish to call me to discuss the requisite numbers of copies which meet the practical requirements of AttyGen 302. When resubmitted, these rules must also be accompanied by a Certificate of Compliance. See Exhibit H-3 of the Attorney General's Rules cited above for a sample of a Compliance Certificate.

If you have any questions, do not hesitate to call me.

LES/dw

DRE #1

RECEIVED
JAN 11 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF REVENUE) ORDER FOR HEARING
GOVERNING SALES AND USE TAX)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Hearing Room, Office of Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota, on February 7 and 8, 1978, commencing at 9:30 A.M., and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Arthur C. Roemer

Arthur C. Roemer
Commissioner of Revenue

Date: December 20, 1977

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF THE RULES OF THE DEPARTMENT OF) NOTICE OF HEARING
REVENUE GOVERNING SALES AND USE TAX)

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Hearing Room, Office of Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, on February 7 and 8, 1978, commencing at 9:30 a.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone (612) 296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would incorporate amendments to the sales and use tax statutes and court decisions since 1974. Generally, the amendments are proposed as clarification to existing rules with additional examples for illustrative purposes. New rules are being proposed in Chapter Four: Exemptions covering taconite plants and senior citizen organizations. New rules are also being proposed for Chapter Six: Specific Business and Activities covering advertising signs and billboards, aircraft registration, iron mining, and automatic data processing. The numbering of the rules has been conformed to the requirements of the State Register.

Amendments are proposed to clarify the definition of a "person;" leases subject to tax; producing, fabricating; printing or processing of property furnished by consumer; meals and drinks; admissions; building materials; property taken in trade; allowable and nonallowable deductions in computing sales price.

The rules pertaining to application for and revocation of sales tax permit are to be amended if the proposed rules are adopted. Clarification of exemption and direct pay certificates is also proposed.

Definitions and examples of the following are included: collection of use tax; exemptions for dental braces; gifts; clothing; property used in agriculture; isolated or occasional sales; and charitable, religious, and educational organizations. Amendments are proposed to update the procedures for claiming refunds and penalties, interest, and privacy procedures.

In the area of specific business activities, amendments are proposed to the rules dealing with commercial artists and photographers and persons selling or renting mobile homes or house trailers.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Don Mundahl, Director, Sales and Use Tax Division, 9th Floor, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes, Section 297A.29.

Notice: All persons have the right to be notified of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. All persons have the right to be informed of the date on which the hearing record has been submitted to the Attorney General by the agency. If you desire to be so notified, you may do so by so indicating at the hearing or by written request sent to the Hearing Examiner prior to the close of the record.

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Please be advised that pursuant to Minnesota Statutes, Section 10A.01, Subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual.

December 20, 1977

Arthur C. Roemer

Arthur C. Roemer
Commissioner of Revenue

DR E #3

RECEIVED
JAN 11 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION) CERTIFICATE OF DELIVERY
OF RULES OF THE DEPARTMENT OF REVENUE) SECRETARY
GOVERNING SALES AND USE TAX) OF STATE LIST

I hereby certify that the attached 184 labels, 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 8:00 o'clock A.M., this 28th day of December, 1977, have requested 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.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Mattson

DRE # 4

RECEIVED
JAN 11 1978
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION) AFFIDAVIT OF RECEIPT OF
OF RULES OF THE DEPARTMENT OF REVENUE) THE SECRETARY
GOVERNING SALES AND USE TAX) OF STATE'S LIST

John E. Streff being duly sworn on oath deposes and says:

1) That he is an employee of the Sales and Use Tax Division of the State of Minnesota.

2) That on the 28th day of December 1977, he went 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 28th day of December 1977, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

John E. Streff

Subscribed and sworn to before me this

29th day of December, 1977.

Notary Public,

Ramsey County, Minnesota

My Commission expires November 1, 1984

Lennea A. Lopez

LENNEA A. LOPEZ
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 1, 1984

DR #85

RECEIVED
JAN 11 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF REVENUE) AFFIDAVIT OF MAILING
GOVERNING SALES AND USE TAX)

Anne L. Johnson, being first duly sworn, deposes and says:

That on the 29th day of December, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Anne L. Johnson

Subscribed and sworn to before me this
29th day of December, 1977.

Lennea A. Lopez

LENNEA A. LOPEZ
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 1, 1984.

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

ALLEN M KARLS
2333 UNIV AVE SE
MPLS MN
55414

ALLENDORF MARSHALL
220 GRAIN EX 400 S 4TH
MPLS MN
55415

ALLERS JOHN
1501 W 80TH ST SUITE210
BLOOMINGTON MN
55431

AMER CAMPING ASSN
3639-21/2 ST N.E.
MPLS MN
55418

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 HAROLD
BOX 3047
MANKATO MN
56001

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ANDERSON MARY
4425 RUTLEDGE AVE
EDINA MN
55436

ANDERSON STANFORD P
14600 MINNETONKA BLVD
MINNETONKA MN
55343

ANTHONY DICK WDSM RADIO
230 E SUPR ST
DULUTH MN
55102

ANTI-TRUST DIV.ATTY GEN.
160 STATE OFF BLDG
ST PAUL MN
55155

ARNOLD ROBERT MESPA
41 SHERBURNE
ST PAUL MN
55103

ARROWHEAD ECONOMIC OP AGENCY
CO S BROSTUN BOX 1066
VIRGINIA MN
55792

ARROWHEAD REG. DEV COMM.
211 W 2ND ST
DULUTH MN
55802

ARROWHEAD REGIONAL DEV CO
200 ARROWHEAD PLACE
DULUTH MN
55802

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

ASSOCIATED GEN CONTROF MN
48 E 8TH STREET
ST PAUL MN
55101

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

ASSN RESIDENCES FOR RETARDED
459 RICE SUITE 301
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

BARATTO DIVINE M
1192 BUSH ST
ST PAUL MN
55106

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

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

BECK PAT
953 HYACINTH AVE
ST PAUL MN
55106

BEGALKA D REV
212 N ELK ST
BELLE PLAINE MN
56011

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

BERGERUD ALF
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MPLS MN
55402

BERGSETH THOMAS
1011 NICOLLET MALL
MPLS MN
55403

BEST FLANAGAN ET AL
4040 IDS CENTER
MPLS MN
55402

BEUTEL ROBERT
2200 SILVER LAKE RD
NEW BRIGHTON MN
55112

BLADIN PAPER CO W J LICKE
115 1ST ST SW
GRAND RAPIDS MN
55744

BLOMQUIST BARRY L

NORTH BRANCH MN
55056

BLOOMINGTON CITY CLERK
2215 W CLD SHAKOPEE RD
BLOOMINGTON MN
55431

BOLTON MALCOLM
422 ALDRICH AVE NO
MPLS MN
55405

BOWMAN & BRUNS ATTN P MAS
1616 PIONEER BLDG
ST PAUL MN
55101

BREHL JAMES W
332 HAMM BLDG
ST PAUL MN
55102

BRICK PHILIP D
807 SELLWOOD BLDG
DULUTH MN
55802

BRIGGS & MORGAN - B F FRIEL
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ST PAUL MN
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BRUEKER JOHN
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55420

BROOKS WILLIAM F JR
854 MIDLAND BK BLDG
MPLS MN
55401

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

BROWN H D
4961 KINGSBERRY LANE
MINNETONKA MN
55343

BRUBACHER RICHARD COMM AD
208 ADM BLDG
ST PAUL MN
55101

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

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MPLS MN
55402

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INV GRV HTS MN
55075

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
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BUR.ENGR.IND.DIV. MR.KIBIGER
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MPLS. MN

BUR NATL AFFAIRS INC
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WASHINGTON DC
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55342

CAIN RUTH
730 E 38TH ST
MPLS MN
55407

CAIRNS JOHN A
47TH FLR IDS CENTER
MPLS MN
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7516 80TH ST S
COTTAGE GROVE MN
55016

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BOX 755 CITY HALL
WILLMAR MN
56201

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

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ELY MN
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ST LOUIS PARK MN
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55104

CHRISTIANSEN FREDRIK
RM 505 CAPITOL SQ BLDG
ST PAUL MN
55155

CHRYSALIS CENTER FOR WOME
2104 STEVENS AVE S
MPLS MN
55404

CITY CLERK
386 CITY HALL
ST PAUL MN
55102

CITIZENS LEAGUE
530 SYNDICATE BLDG
MPLS MN
55402

CITY OF ROBBINSDALE
C LARSON 4221 LAKE RD
ROBBINSDALE MN
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CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
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CLAUSEN PHILLIP
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ST PAUL MN
55108

CLAWSON CONNIE
HELP CT 317-17TH AV SE
MPLS MN

COLEMAN NICHOLAS
208 STATE CAPITOL
ST PAUL MN
55155

COLLIN LAURENCE
RT 2
ISANTI MN
55040

COMMUNITY DESIGN CENTER
116 E 26TH ST
MPLS MN
55404

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

CONSUMER SERVICES DEPT COMM
5TH FLR METRO SQ BLDG
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55101

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DEVELOP DISABILITIES PROGRAM
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55155

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DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
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DUNN OLIVER PLUMBERS LOC 15
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55404

DUPONT MIKE
5720 EXCELSIOR BLVD
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DZUGAN KEN ST PAUL PLANNING
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E CENTRAL REG. DEV. COMM
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55051

EBELING EDWARD H.
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UNION STOCK YARDS
SO ST PAUL MN
55075

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

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BABBITT MN
55706

FAEGRE & BENSON ATTN LIBR
1300 NW BANK BLDG
MPLS MN
55402

FARMERS ELEVATOR ASSN
852 GRAIN EXCH BLDG
MPLS MN
55415

FARRELL FRANK BUR NOR
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55016

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1860 HIGHLAND PARKWAY
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ST PAUL MN
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CANBY MN
56220

FREDRIKSON BYRON ET AL
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PLS MN
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VIRIGINIA MN
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RM 305 200 SO ROBERT
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GOLDBERG PROF MELVIN
WM MITCHELL COL OF LAW
ST PAUL MN
55105

GOODMAN DF TEL CABLE TV
302 E SUPERIOR
DULUTH MN
55802

GRAHAM THOS H
854 MIDLAND BK BLDG
MPLS MN
55401

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

GREATER MET AREA HOSPITALITY
5152 CEDAR AVE S
MPLS MN
55417

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

GREEN GARY J
41 SHERBURNE AVE
ST PAUL MN
55102

GREEN JANET
9773 N SHORE DR
DULUTH MN
55804

GRUMMERT REV DONALD
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MPLS MN
55413

GUSTAFSON DAN-LABOR TEMPLE
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MPLS MN
55414

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55402

HOLEY GEORGE
1509 SW SIXTH STREET
FARIBAULT MN
55021

HOLT JOHN
517 4TH ST NW
FARIBUALT MN
55021

HUMAN RIGHTS
200 CAPITOL SQ BLDG
ST PAUL MN
55101

HYLAND DEAN
1501 W 50TH ST
MPLS MN
55419

INGVALSON VERN MN.FARM BU
1976 WOODDALE BOX 43370
ST PAUL MN
55164

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

HAYES,THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HEARING EX.OFF. M GREENBERG
1745 UNIV AVE
ST PAUL MN
55104

HENDRICKSON A WM
100 FREEMAN DRIVE
ST PETER MN
56082

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HUMAN SERVICES
414 LAFFAYETTE RD 5THFL
ST PAUL MN
55101

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

IZAAK WALTON MN DIV
111 E FRANKLIN RM-210
MPLS MN
55404

HAFNER DR A J
BOX393 MAYO U OF M
MPLS MN
55455

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ST PAUL MN
55101

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MANKATO MN
56001

HEADWATERS REG DEV. COMM
BOX 584 MENTAL HEALTH
BEMIDJI MN
56601

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3944 IDS CENTER 80 S 8
MPLS MN
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BURNSVILLE MN
55337

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GOLDEN VALLEY MN
55422

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUSEBYE, CRAIG J.
5036 FRANCE S.
EDINA MN
55410

IMAGE
BOX 3215
ST PAUL MN
55165

INTERSTATE POWER RW STEELE
1000 MAIN ST
DUBUQUE IA
52001

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

HARRY RICK
RT 1 BOX 138
KETTLE RIVER MN
55757

HARTFELDT WILL
434 HAMM BLDG
ST PAUL MN
55102

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HEISENFELT WM
BOX 516
BEMIDJI MN
56601

HINRICHSEN PATRICK
MANKATO FREE PRESS
MANKATO MN
56001

HORNER WALDORF - KAZIUKEW
PO BOX 3260
ST PAUL MN
55165

HULSTRAND ANDERSON & LARS
PO BOX 130
WILLMAR MN
56201

HUTCHISON R.M. ANOKA CO.C
COURT HOUSE
ANOKA MN
55303

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

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

JAIN NIRMAL ENIV PROCESS
1220 GLENWOOD AVE
MPLS MN
55405

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN ARTHUR,CITY CLK
2215 W OLD SHAKOPEE RD
BLOOMINGTON MN
55431

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

JENSEN MRS GAYNOLD
111 WEST 107TH ST
MPLS MN
55420

JOHANSEN BUS SERV INC
19 DAYTON RD
CHAMPLIN MN
55316

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
55406

JOHNSON G ROBERT
4344 IDS CENTER
MPLS MN
55402

JOHNSON LEROY
9939 BLUEBIRD ST NW
COON RAPIDS MN
55433

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

JONES C NORTHSIDE RES RED
1800 OLSON MEMORIAL HWY
MPLS MN
55411

KABLE RICHARD W

BETHEL MN
55006

KAVANEY RICHARD
1220 NORTHERN FED BLDG
ST PAUL MN
55102

KEABLE MIKE
909 6TH AVE N
ST CLOUD MN
56301

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

KJERVIK DIANE
4302 POWEL HALL U OF M
MPLS MN

KLOSTER MARION PEAVEY CO
730 2ND AVE S
MPLS MN
55402

KLUZ STEVEN J
1910 1ST NATL BK BLDG
MPLS MN
55402

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

KNUTSON DR KEITH,BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

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

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

KROEGER CHARLES
122 NW 7TH STREET
FARIBAULT MN
55021

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

KROON H CLIFTON
210 E WALNUT
MANKATO MN
56001

KUHL CARL
4421 4TH ST NE
COL HEIGHTS MN
55421

KVB ENGINEERING INC
600 S CO RD 18
MPLS MN
55426

LABELLE JUANITA MRS
5816 AQUILA AVE NO
NEW HOPE MN
55428

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LANAHAN E F - SIBLEY CO
184 E 6TH ST
ST PAUL MN
55101

LANGVIN DAVID
7500 80TH ST S
COTTAGE GROVE MN
55016

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SERV
717 DELAWARE ST SE
MPLS MN
55440

LEAGUE MN MUNIC
300 HANOVER 480 CEDAR
ST PAUL MN
55101

LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LEG.REF.LIB-Z. DEWITT
RM 111 STATE CAPITOL
ST PAUL MN
55155

LEVEY JESS MET STATE UNIV
METRO SQ RM 121
ST PAUL MN
55101

LEAVEY THOS
829 22ND AVE SE
MPLS MN
55414

LEWIS DR.G.M JR.
ABBOTT 110 E 16TH ST
MPLS MN
55403

LIBBEY LEONARD
BOX 17011 NOKOMIS STA
MPLS MN
55417

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION) OF RULES OF THE DEPARTMENT OF REVENUE) GOVERNING SALES AND USE TAX)	FINDINGS OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Peter Erickson, a hearing examiner appointed by the Chief Hearing Examiner, on the 7th and 8th day of February, 1978, at 9:30 A.M. in Room 300, 1745 University Avenue, St. Paul, Minnesota, after proper notice required by Minnesota Statutes, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

Having now, therefore, reviewed the record of the hearing, including the verbatim transcript, the exhibits and written materials submitted before the close of the record, the report of the Hearing Examiner, and materials submitted directly to me following my receipt of the hearing record, I now adopt as my findings of fact in this matter, the Findings of Fact of the Hearing Examiner with the following exception: the last sentence of Example 3 contained in Tax S&U 116A is deleted and will be reconsidered at a later hearing.

Now, Therefore, It Is Ordered that these rules identified as rules of the Department of Revenue governing sales and use tax as published at State Register, Volume 2, Number 26, pages 1289 through 1339, January 2, 1978 (2 S.R. 1289-1339) and as amended as shown in the attached Exhibit A are adopted this 5th day of Sept., 1978, purusant to authority vested in me by Minnesota Statutes, Section 297A.29.

State of Minnesota

Arthur C. Roemer

ARTHUR C. ROEMER
Commissioner of Revenue

Exhibit A

DEPARTMENT OF REVENUE

Adopted Rules Governing the Administration
of the Sales and Use Tax Law

The following rules published at State Register, Vol. 2, No. 26, p. 1289 through p. 1339, January 2, 1978 (2 S.R. 1289-1339) are adopted and are identical in every respect to the proposed form: Tax S&U 101 Person; Tax S&U 107 Producing, fabricating, printing or processing of property furnished by consumer; Tax S&U 109 Admissions and use of amusement devices; Tax S&U 115 Reduction in sales price for property taken in trade; Tax S&U 117 Deductions allowable in computing sales price; Tax S&U 202 Application for permit to make retail sales; Tax S&U 204 Revocation of permits; Tax S&U 207 Good faith acceptance of exemption certificates; Tax S&U 208 Content and form of exemption certificate; Tax S&U 302 Collection of tax at time of sale; Tax S&U 404 Gifts - transfers without monetary consideration; Tax S&U 408 Property used in agricultural and industrial production; Tax S&U 411 Isolated or occasional sales; Tax S&U 415 Charitable, religious, and educational organizations; Tax S&U 421 Taconite plant construction and expansion exemptions; Tax S&U 422 Senior citizen organizations; Tax S&U 508 Claim for refund; Tax S&U 510 Penalties and interest; Tax S&U 511 Limitations on disclosure of sales and use tax information; Tax S&U 601 Commercial artists and photographers; Tax S&U 604 Sales and rentals of mobile homes and house trailers; Tax S&U 607 Advertising signs and billboards; Tax S&U 609 Iron mining industry exemptions;

The rule published at State Register, Vol. 2, No. 26, p. 1289 - 1293, January 2, 1978 (2 S.R. 1289 - 1293), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 104 Leases

B. Example 1. Rental Agency, located in Minnesota, leases an automobile to

"X". Thereafter, "X" drives the automobile to ~~Minnesota~~ California and returns the automobile 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.

G. Leases to electing ~~common~~ motor carrier. Effective July 1, 1971, ~~common~~ motor carriers may elect under provisions of Minnesota Stat. S 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~~ motor carrier direct pay certificate. See Tax S&U 212 for rules relating to the ~~common~~ motor carrier direct pay certificate and describing the property for which the payment of tax by the lessee may be deferred.

The rule published at State Register, Vol. 2, No. 26, p. 1294 - 1298, January 2, 1978 (2 S.R. 1294-1298), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 108 Meals and Drinks

H. 1. ~~Holes~~ Holds a Minnesota Sales and Use Tax Permit:

The rule published at State Register, Vol. 2, No. 26, p. 1299 - 1304, January 2, 1978 (2 S.R. 1299-1304), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 112 Sales of Building Material, Supplies or Equipment

C. 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.

~~If the~~ An 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~~ may appoint and designate the contractor as "purchasing agent" for such exempt entity in connection with the construction contract. In such situations the department will recognize the agency relationship asserted only if the written contract clearly sets forth: (1) that such appointment has been made; (2) that title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the owner or principal at point of delivery; (3) that the risk of loss with respect to such materials and supplies is that of the owner or principal; and (4) that the owner or principal, and not the agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner. In the event that the contract in question does not specify as to risk of loss, other competent evidence, such as insurance coverage, will suffice.

Any contractor who has been appointed agent for the purchase of materials and supplies, as specified above, shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the obligation for payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.

The rule published at State Register, Vol. 2, No. 26, p. 1304 - 1305, January 2, 1978 (2 S.R. 1304-1305) is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 116 Deductions not allowable in computing sales price.

A. Example 3. Lumber dealer sells a carload of lumber to a building contractor at an agreed upon price of $8,000 including the cost of transportation. The lumber is to be ordered ~~and shipped from a point out of state~~ and drop-shipped directly to

the purchaser. No exclusion or deduction for cost of transportation is allowed even if the purchaser pays the transporation charges directly to the common carrier and deducts the same from the amount due the seller. The delivered price is the "sales price." ~~The "time of sale" reference in~~ Minn. ~~Stat. § 297A.01, subd. 8 is that point in time when the seller is able to complete performance of his contract by the physical tender of delivery of goods to the customer.~~

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, ~~including assembly of component parts or materials,~~ 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.

~~B.--Example-4.--Retailer-stocks-shelving-components-in-unassembled-form-and sells-such-property-unassembled-or-assembled.--Customer-purchases-shelving-components and-requests-that-retailer-also-assemble-such-components.--Retailer-bills-customer $150.00-for-the-components-and-$10.00-for-labor.--The-entire-charge-of-$160.00-is subject-to-tax.~~

The rule published at State Register, Vol. 2, No. 26, p. 1313 - 1314, January 2, 1978 (2 S.R. 1313-1314), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 211 Direct pay permit procedure

C. The holder of a Direct Pay Permit shall furnish a copy of this 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.

The rule published at State Register, Vol. 2, No. 26, p. 1314 - 1317, January 2, 1978 (2 S.R. 1314-1317), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 212 Motor ~~Vehicle-Common~~ carriers - direct pay

D. 6. Withdrawal of an election to come under the provisions of Minn. Stat. S 297A. 211 shall become effective only upon notice of such intent and return ~~to~~ of the ~~Common~~ Motor Carrier 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~~. If such election is withdrawn, subsequent re-election shall be effective only upon approval of the Commissioner of Revenue. Motor Carriers which do not elect to pay Minnesota Sales and Use Tax under the provisions of Minn. Stat. S 297A.211, shall be governed by the following:

a. Prior to January 1, 1972, carrier 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 tax directly to the Commissioner of Revenue.

b. Subsequent to December 31, 1971. "Mobile Transportation Equipment" subject to the motor vehicle excise tax under the provisions of Minn. Stat. ch. 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 purchase 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.

The rule published at State Register, Vol. 2, No. 26, p. 1317 - 1320, January 2, 1978 (2 S.R. 1317-1320), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 401 Drugs, theraupeutic and prosthetic devices.

E. Purchases by doctors of medicin 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, porcelain, gold, silver, alloy and synthetic filling material, teeth braces and retainers.

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

The rule published at State Register, Vol. 2, No. 26, p. 1320 - 1321, January 2, 1978 (2 S.R. 1320-1321), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 407 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 mittons, 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.

Minn. Stat. S 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

aprons (household and shop)
baby blankets (used as babies' clothing)
baby buntings
bathing suits and caps
belts
bibs
blankets, baby and receiving (used as babies' clothing)
boots (not more than knee high)
bridal wear
buntings
caps
corsets and corset laces
costumes (except masks)
diapers, diaper inserts, disposable diapers
footlets
formal wear
garters and garter belts
girdles
gloves (not designed for a specific sport)
hair bows and nets
handkerchiefs
hats
head scarves
hosiery
leotards
mittens
neck scarves
neckties
overshoes
receiving blankets (used as babies' clothing)
roller bonnets
rubber gloves
rubber pants (baby)
scarves, head and neck
sewing materials:
- buttons
- fabric
- lace
- thread
- yarn
- zipper

shoes and shoe laces
shower caps and clogs
slippers
sneakers
suspenders
suimsuits and caps
tennis shoes
tights
uniforms (Scout, Camp Fire Girls, policemen, firemen, etc.)

Examples of Taxable items

bags, overnight, beach, etc.
barrettes
billfolds
cosmetics, hair dyes, etc.
crib blankets, sheets, mattress pads, rubber sheets, etc.
furs on the hide or pelts
hair clips
handbags
iron-on transfers or emblems
jewelry:
- bracelets
- broaches
- cufflinks
- earrings
- necklaces
- pins
- rings
- tie clasps and tacks

lapel pins
money belts
money clips
perfume
pocketbooks
purses
sewing equipment:
- knitting needles
- patterns
- pins
- scissors
- sewing machine
- sewing needles
- tape measure
- thimbles

umbrellas
wallets
watchbands
watches
wigs

The rule published at State Register, Vol. 2, No. 26, p. 1334 - 1335, January 2, 1978 (2 S.R. 1334-1335), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 608 Aircraft Registration

A. In general. Minn. Stat. S 297A.255 require persons who wish to license or register an aircraft in Minnesota to furnish proof to the Department of ~~Aeronautics~~ Transportation, Aeronautics Division that the Minnesota Sales or Use Tax has been paid, or that the purchase of the aircraft was not subject to the Minnesota Sales or Use Tax. The effect of this law is to impose a use tax on occasional or isolated sales of aircraft in those cases involving sales to individuals not in the business of selling aircraft. The law is effective for registrations applied for after June 30, 1973.

The necessary forms (Form UT-1 and Form ST-24) for reporting and paying the use tax or for claiming exemption are available upon request from the Minnesota Department of Revenue and the Minnesota Department of ~~Aeronautics~~ Transportation, Aeronautics Division.

This statute does not affect the exemption provided for purchases of air flight equipment by airlines taxed under Minn. Stat. SS 270.071 through 270.079.

When the sales tax has not been paid to the dealer as set forth in B.1. below, the Department of Revenue will forward a completed certificate of tax payment or exemption, Form ST-24, to the Department of Transportation, Aeronautics Division.

B. Registration of aircraft by individuals.

1. Minnesota sales tax paid to dealer. When a purchaser pays the Minnesota sales tax to a Minnesota aircraft dealer who holds a Minnesota Sales and Use Tax Permit, the dealer shall furnish the purchaser with a statement showing that the sales tax has been paid. The aircraft dealer will report and pay the sales tax to the Minnesota Department of Revenue as in the past. It is not necessary for the purchaser of the aircraft to obtain a Certificate of Tax Payment or exemption, Form ST-24, from the Minnesota Department of Revenue. The purchaser should present the statement, which he received from the aircraft dealer, directly to the Department of ~~Aeronautics~~ Transportation Aeronautics Division in order to license or register the aircraft.

C. Registration of aircraft by dealers who are licensed in accordance with Minn. Stat. S 360.63. When a licensed dealer purchases an aircraft for resale and places it in a withholding status, no Certificate of Tax Payment or Exemption is required. When a licensed dealer registers an aircraft for commerical use, he must present a Certificate of Tax Payment or Exemption to the Minnesota Department of Transporation Aeronautics Division. He will be required to pay a use tax on his purchase price of the aircraft unless he makes application to the Commissioner of Revenue for an Aircraft Commercial Use Permit, Form ST-23, and pays a $20 fee. By obtaining an Aircraft Commercial Use Permit, Form ST-23, a licensed dealer may purchase an aircraft for resale and put it to commerical use such as crop dusting, charter service, freight transportation and flight instruction, for up to one year without paying a sales or use tax on his purchase. When he sells the aircraft, he is required to collect a sales tax. If he keeps the aircraft for more than one year or makes personal use of such aircraft, a use tax is also due on his purchase price. A licensed aircraft dealer who obtains a Commercial Use Permit, Form ST-23, should check the box of Section B of Form ST-24 which indicates that the aircraft was purchased for resale or lease by the holder of a Minnesota Sales and Use Tax Permit.

The rule published at State Register, Vol. 2, No. 26, p. 1336 - 1339, January 2, 1978 (2 S.R. 1336-1339), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 610 Automatic data processing

C. Taxable transactions, unless otherwise exempt under Minn. Stat. ch. 297A.

1. Retail sales of new or used data processing equipment are taxable.

2. Leases of equipment are subject to tax. A lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be on his premises if the lessee or his employees operate the equipment, or if the equipment is operated under the direction and control of the lessee or his employees. Subleasing receipts are taxable without any deduction or credit for tax paid by the

original lessee to his lessor, if the original lessee uses the property in addition to subleasing it. Use of equipment on a time-sharing basis, where access to the equipment is only by means of remote access facilities, is not a taxable leasing of such equipment.

~~3.---Prewritten-(canned)-programs.--These-are-programs-prepared,-held-or existing-for-general-or-repeated-use,-including-programs-developed-for-in-house use-and-subsequently-held-or-offered-for-sale-or-lease.--The-programs-may-be-transferred-to-the-customer-in-the-form-of-punched-cards,-data-on-magnetic-tape-or-by listing-the-program-instructions-on-coding-sheets.--In-some-cases-they-are-usable as-written.--However,-in-most-cases-it-is-necessary-that-the-program-be-modified, adapted-and-tested-to-meet-the-customer's-particular-needs.--Tax-applies-to-the sale-of-all-tangible-personal-property,-including-coding-sheets,-cards-or-magnetic tape,-on-which-or-into-which-such-prewritten-(canned)-programs-have-been-coded, punched-or-otherwise-recorded.~~

~~The-tax-applies-whether-title-to-the-tape-or-other-property-upon-which-the program-is-coded,-punched-or-otherwise-recorded,-passes-to-the-customer,-or-the-program-is-recorded-on-tape-or-other-property-furnished-by-the-customer.--The-temporary transfer-of-possession-of-a-program,-for-a-consideration,-for-the-purpose-of direct-use-or-to-be-recorded-by-the-customer,-is-a-lease-of-tangible-personal property-and-the-tax-applies.--Where-the-consideration-consists-of-license-fees-or royalty-payments,-all-license-fees-or-royalty-payments,-present-or-future,-whether for-a-minimum-use-or-for-extended-periods,-are-includable-in-the-measure-of-tax.~~

~~Programming-changes-to-a-prewritten-program-to-adapt-it-to-a-customer's equipment,-including-translating-a-program-to-a-language-compatible-with-a-customer's equipment,-are-in-the-nature-of-fabrication-or-services-that-are-a-part-of-a-sale-and, as-such,-are-taxable.~~

~~Charges-for-assembler,-compiler,-utility-and-other-prewritten-programs provided-to-those-who-lease-or-purchase-automatic-processing-equipment-are-subject~~

~~to tax whether the charges are billed separately or are included in the lease or purchase price of the equipment.~~

~~4. Custom programs. These are programs prepared to the special order of a customer.~~

~~Effective April 1, 1978, tax applies to the sale of custom programs transferred to the customer in the form of punched cards or in tape, disc, drum or similar form, or in the form of typed or printed sheets to be used as input media in an optical character recognition system. However, tax does not apply to the transfer of these custom programs in the form of written procedures, such as program instructions listed on coding sheets.~~

~~5.~~ 3. Keypunching and keystroke verifying. This item covers situations where a service bureau's agreement provides only for keypunching, keystroke verifying and proof listing of data or any combination of these operations. It does not include contracts under which these services are performed as steps in processing a client's data as discussed in D.1.

Agreements providing (a) solely for keypunching; (b) keypunching and keystroke verification; or (c) keypunching, providing a proof list and/more verifying of data, are regarded as contracts for the fabrication of punched cards and sales of proof lists. Charges therefor are taxable, whether the cards are furnished by the customer or by the service bureau. Data from source documents may also be recorded directly on magnetic tape (off-line). This operation may include keystroke verifying and/or proof listing of data and is comparable to the punch card operation. Charges for this operation are taxable whether the magnetic tapes are furnished by the customer or by the service bureau. Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax applications would be the same even though paper tape or other media were used in the operation.

~~6.~~ 4. Training materials. Persons who sell or lease data processing equip-

ment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to the tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

~~7.~~ 5. Generally tax applies to the conversion of customer-furnished data from one physical form of recordance to another. For example, if all or some data in punched cards is duplicated into another set of cards, charges for this service are taxable.

~~8.~~ 6. When additional copies of records, reports, or tabulations are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. Charges for copies produced by means of photocopying, multi-lithing, or by other means are also subject to tax.

~~9.~~ 7. ~~Sales of mailing lists (including listings in the form of mailing labels produced as a result of a computer run) are taxable.~~ Sales of mailing lists in the form of cheshire tapes, gummed lables and heat transfers produced as a result of a computer run are taxable. However, where the service bureau, through the use of its automatic data processing equipment, addresses material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares labels to be affixed to material to be mailed, with names and addressed furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the lables, when the

service bureau itself affixes the labels to the material to be mailed.

F. Non-taxable Transactions

1. Prewritten (canned) programs. These are programs prepared, held or existing for general or repeated use, including programs developed for in-house use and subsequently held or offered for sale or lease. The programs may be transferred to the customer in the form of punched cards, data on magnetic tape or by listing the program instructions on coding sheets. In some cases they are usable as written. However, in most cases it is necessary that the program be modified, adapted and tested to meet the customer's particular needs. The sale of all property including coding sheets, cards or magnetic tape, on which or into which such prewritten (canned) programs have been coded, punched or otherwise recorded is not subject to tax. These items are classfied as intangible personal property.

The tax does not apply whether title to the tape or other property upon which the program is coded, punched or otherwise recorded, passes to the customer, or the program is recorded on tape or other property furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded by the customer, is not a lease of tangible personal property and the tax does not apply. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a minimum use or for extended periods, are not includable in the measure of tax.

Programming changes to a prewritten program to adapt it to a customer's equipment, including translating a program to a language compatible with a customer's equipment, are not in the nature of fabrication or services that are part of a sale, and are not taxable.

Charges for assembler, compiler, utility and other prewritten programs provided to those who lease or purchase automatic processing equipment are not subject to tax.

2. Custom Programs. These are programs prepared to the special order of a customer. This type of program is classifed as intangible personal property, and is not subject to tax.

APPROVED AS TO FORM AND LEGALITY

SEP. 7 1978 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY Lee E. Sherby

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP - 8 1978
Joan Anderson Growe
Secretary of State
11:45 AM

LOWE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

LUTH SOC SERVICE OF MN
2414 PARK AVE
MPLS MN
55404

LYNCH DONALD SIBLEY CO
184 E 6TH ST
ST PAUL MN
55102

MADSON HUGH
AETNA 212 S 6TH ST
MPLS MN
55402

MAHCF RICK CARTER
2850 METRO DR SUITE 431
BLOOMINGTON MN
55420

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANKATO STATE STUDENT ASSN
BOX 58 MANKATO COLLEGE
MANKATO MN
56001

MANTHEY T J PICKANDS MATH
1100 SUPERIOR AVE
CLEVELAND OH
44114

MARRINAN MARGARET M
1117 COMMERCE BLDG
ST PAUL MN
55101

MASTOR & MATTSON LTD
315 PEAVEY BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MAYO FOUNDATION G ORWOLL
200 FIRST AVE NW
ROCHESTER MN
55901

MCCLURG EUNICE
1061 109TH AVE NE
BLAINE MN
55434

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCFADDEN G H DISPATCH-PRESS
55 E 4TH ST
ST PAUL MN
55101

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MCNEILLY GREG MNDSVIEW ED AS
41 SHERBURNE AVE
ST PAUL MN
55103

MET. WASTE CONTOL COMM.
350 METRO SQ BLG
ST PAUL MN
55101

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MET TFR MEN ASSN A ROSENTHAL
1821 UNIV AVE
ST PAUL MN
55104

METROPOLITAN COUNCIL LIBRARY
300 METRO SQUARE
ST PAUL MN
55155

MEYER HERBERT
10824 ZENITH AVE S
BLOOMINGTON MN
55431

MIDLAND GLASS-HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER M ADMIN AGENCIES DIV
GISK STATE ADM BLDG
ST PAUL MN
55155

MILLER PAUL J PHARMACY SERV
ST MARYS HOSP
ROCHESTER MN
55901

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

MINN ASPHALT PAVEMENT ASSN
555 WABASHA RM 209
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN ASSN ELEC COOPERATIV
4901 W 77TH ST
MPLS MN
55435

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN ASSN VOL SOC SERVICE
1821 UNIV SUITE 389
ST PAUL MN
55114

MINN ASSN WATERSHED DIST'S

ADA MN
56510

MINN CHAP ASSOC BLDRS-CON,
7204 W 27TH ST
MPLS MN
55426

MINN COMM FOR HANDICAPPED
METRO SQ 492 7TH & ROBT
ST PAUL MN
55101

MINN COMMUNITY DEVELOP SERV
512 ROSSMOR BLDG
ST PAUL MN
55101

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINNESOTA FARMERS UNION
1717 UNIVERSITY AVE
ST PAUL MN
55104

MINN FCCC RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN GOV ENG COUNCIL
2400 SHERWOOD HILL RD
MINNETONKA MN
55343

MINN HEREFORD-LJ SCHAFER

BUFFALO LAKE MN
55314

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN HOUSING INST N T CARTER
1573 SELBY AVE APT 101
ST PAUL MN
55104

MINNE MINE CREDIT UNION
3000 HUDSON PK S 100
ST PAUL MN
55119

MINN POULTRY & HATCHERY ASSN
BOX 158
MADELIA MN
56062

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN STATE EMP UNION COUNC o
236 E PLATO BLVD
ST PAUL MN
55107

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MN.BD OF NURSING
717 DELAWARE ST SE
MPLS MN
55414

MN ST PHARMACEUTICAL ASSN
2469 UNIVERSITY AVE
ST PAUL MN
55114

MOOD R BLCOMINGTON HLTH DEPT
10200 PENN SQ
BLOOMINGTON MN
55431

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MINN HWYS MANAGEMENT SERVICE
407 HWY BLDG
ST PAUL MN
55101

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MINN STATE MEDICAL ASSOC
STE 900 AM NATL BK BLDG
STPAUL MN
55101

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MN AUTOMOBILE DEALERS ASSN
277 UNIV AVE
ST PAUL MN
55103

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

MN STATE SER BLIND-K NATARDY
1745 UNIVERSITY AVE
ST PAUL MN
55104

MORTON BUILDINGS INC
R #1
FOLEY MN
56329

MPLS ASSN RETARDED CITIZENS
3100 W LAKE ST
MPLS MN
55416

MT OLIVET ROLLING ACRES
R 1 BOX 576
EXCELSIOR MN
55331

MINN LAND USE COMMITTEE
4344 IDS CENTER
MPLS MN
55402

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN
55104

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN VETERANS MED ASSN
2175 W HWY 36
ROSEVILLE MN
55113

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MIXA FRANK LK MNTKA CONS DIS
402 E LAKE ST
WAYZATA MN
55391

MOSS DR JEROME
125 PEIK 159 PILLSBURY
MPLS MN
55455

MPLS CITY ATTORNEY
325M CITY HALL
MPLS MN
55415

MURPHY DIANA E
4200 IDS-LINDQUIST VENN
MPLS MN
55402

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN POLLUTION CONTROL AG
1935 W CO RD B2
ROSEVILLE MN
55113

MINN RETAIL FED INS
131 METRO SP
ST PAUL MN
55101

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN TEAMSTERS CREDIT UNI
2021 HENN AVE E
MPLS MN
55413

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MN AFL-CIO L.O. LASHOMB
175 AURORA
ST PAUL MN
55103

MN SOC SERV ASS J HOOD
614 PORTLAND
ST PAUL MN
55102

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MOTOR VEHICLE MFRS ASSN
411 MAIN ST (215)
ST PAUL MN
55102

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MURPHY PATRICK DUFFY
1440 SUMMITT AVE
ST PAUL MN
55105

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

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NELSON JOHN
4809 180TH ST N
HUGO MN
55038

NEREN MADONNA
376 NEAL AVE S
AFTON MN
55001

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NO SUB MONTESSORI-S SADDLER
2487 HELEN COURT
NO ST PAUL MN
55109

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NURSING HOME ADMRS BD EXAMRS
RM 340 717 DELAWARE SE
MPLS MN
55414

NURSING HOME RES ADV CO.
111 E FRANKLIN S210
MPLS MN
55404

NUTTER JULIA
743 W MONTANA
ST PAUL MN
55117

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NW REG. DEV. COMM
425 WOODLAND AVE
CROOKSTON MN
56716

NYQUIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

O'CONNELL RAY
MN GAS CO 733 MARQ AVE
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OLOFSON ARTHUR MBO & MAI
927 SOO LINE BLDG
MPLS MN
55402

OLSON KATHLEEN
192 SEYMOUR AVE SE
MPLS MN
55414

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

PFEIFER AND SHULTZ, INC
1433 UTICA AVE S
MPLS MN
55416

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST NW
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

PINNETTI NICK M HALEY & ASS.
40 CENTRAL PARK S
NEW YORK NY
10019

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER DAVID
3002 27 AVE S
MPLS MN
55406

PORTER LYLE O

TRACY MN
56175

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

POSS DONALD G
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

POYZER ROBT
BOX 675
FERGUS FALLS MN
56537

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

PROCTOR&GAMBLE L THEOHAROUS
IVORYDALE TECH CENTER
CINCINNATI OH
45217

PULSCHER RBT SPRINGSTED I
813 OSBORN BLDG
ST PAUL MN
55102

RADMAN RICHARD-LABOR TEMPLE
418 AUDITORIUM
ST PAUL MN
55102

RALPH BURKE ASSOCIATES
7710 COMPUTER #S101
MPLS MN
55435

RAMSEY CO MEDICAL SOC
908 AM NATL BK BLDG
ST PAUL MN
55101

RAUENHORST CORP-C ANDERSON
7900 XERXES S. S-2200
MPLS MN
55431

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

REARDON MRS HELEN
1125 S E 6TH ST
WILLMAR MN
56201

REID DAVID H
6469 N GRAHAM RD
INDIANAPOLIS IN
46220

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REGION FIVE REG. DEV. COMM.
102 6TH ST N
STAPLES MN
56479

REGION NINE DEV. COMM.
709 N FRONT ST
MANKATO MN
56001

REINO O LAINE 3M COMPANY
3M CENTER
ST PAUL MN
55101

RENNER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RENQUIST ARTHUR NSP CO
414 NICOLLET MALL
MPLS MN
55401

RICHARDSON THOS
7851 METRO PKWY S 103
MPLS MN
55420

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

RIEKE DAVID
PO BOX 9311
MPLS MN
55440

ROE DAVID
175 AURORA
ST PAUL MN
55103

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROBERTS DR ALAN
BOX 297 MAYO U OF M
MPLS MN
55455

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

ROSS ROY J
CLK TREAS
LITCHFIELD MN
55355

ROSLEY STEPHEN
4305 15TH AVE S
MPLS MN
55407

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

SE MN REG DEV COMM
301 MARQ BK BLDG
ROCHESTER MN
55901

SPRAGUE CHARLOTTE B
AREA HOSPITAL BOX 339
WINDOM MN
56101

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

SW REGIONAL DEV COMM
2811 BDWY
SLAYTON MN
56172

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHAEN ETHEL
1745 UNIVERSITY AVE
ST PAUL MN
55104

SCHLICHT REV ROBT
611 W MAIN ST
BELLE PLAINE MN
56011

SCHMIDT D R MN ASSN REALTORS
6101 WAYZATA BLVD
MPLS MN
55416

SCHMIDT H & TCHRS RETIREM
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY KCCO-TV NEWS
50 S 9TH ST
MPLS MN
55402

SCHMIDT WARREN WELLCOME MHS
GARDEN CITY
MN
56034

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

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 SOO 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

SELECTVISION INC FR VALENTIN
1 DAG HAMMARSKJOLD PL
NEW YORK NY
10017

SENATE COUNSEL OFFICE
ROOM 480 STATE OFF BLDG
ST PAUL MN
55055

SENATE FINANCE COMMITTEE
ROOM 121 STATE CAPITOL
ST PAUL MN
55155

SENATE GOV OP COMM
RM 303 STATE CAPITOL
ST PAUL MN
55155

SITE ENGINEER INC
12 OLD DEERFIELD RD
WELCH MN
55089

SMITH MICHAEL
120 PLEASANT STREET SE
MPLS MN
55455

SODERMAN ANTHONY
1414 FOSHAY TOWER
MPLS MN
55402

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

SULLIVAN JEANETTE
CDIC SW STATE UNIV
MARSHALL MN
56258

SWANSON DALE
P O BOX 339
FOREST LAKE MN
55025

TENNESSEN SEN ROBERT J
RM 309 STATE CAPITOL
ST PAUL MN
55165

TOUCHE ROSS & CO K H STOCKE
780 NORTHSTAR CNTR
MPLS MN
55402

UTLEY JOHN
4610 IDS CENTER
MPLS MN
55402

VAN EVERA MUNDT ET AL
700 TORREY BLDG
DULUTH MN
55802

VOSS REV GORDON O
11120 NE 7TH ST
BLAINE MN
55434

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SIX EAST REG. DEV. COMM.
311 W 6TH ST
WILLMAR MN
56201

SNELL LYN
BOX 314
EDEN VALLEY MN
55329

STANSFIELD ARLENE LAND OLKS
PO BOX 116
MPLS MN
55440

STOLPESTAD BROWN & SMITH
1550 NW BK BLDG
ST PAUL MN
55101

SUMMIT NATL BANK D L MORRILL
205 AURORA AVE
ST PAUL MN
55103

SWANSON MORTIMER C
5824 FRANCE AVE S
EDINA MN
55410

THOMPSON CONRAD
1107 23RD ST NW
ROCHESTER MN
55901

TWIN CITIES PIPING IND ASSN
2829 UNIV SE SUITE 304
MPLS MN
55414

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

SIX W REG. DEV. COMM
128 W SORENSON
APPLETON MN
56208

SNYDER, R.W. U OF M
RM 248C CLASS OFF BLDG.
ST PAUL MN
55108

STATE BD VETERINARY EXAMINER
C/O DR A C SPANNAUS DVM
WACONIA MN

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SUSSEL CO.ATTN:TED SCHWENKER
1850 COMO AVE.
ST PAUL MN
55108

THOMPSON HESSIAN ET AL
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

VANDERVOORT T J MET WASTE
350 METRO SQUARE BLDG
ST PAUL MN
55101

VIITALA, W.C. HONEYWELL
HONEYWELL PLAZA
MPLS MN
55408

SILVERMAN JUDITH
8545 W 28TH ST
ST LOUIS PARK MN
55426

SMERIKA WN.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

SULLIVAN J KIRK
PO BOX 200
BOISE ID
83701

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

TATE VERN 3M CO
3M CENTER 220/6W
ST PAUL MN
55101

TIMESAVERS INC ATT R S VO
5270 HANSON COURT
MPLS MN
55422

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VAN DRAKE STEPHEN R.
BOX 353
PELICAN RAPID MN
56572

VILLAGE OF WOODBURY
2100 RADIO DRIVE
WOODBURY MN
55042

WALTERS THOS H
4510 W 77TH ST STE 235
MPLS MN
55435

WAMPLER LINUS DIR USW OF AM
609 PROVIDENCE BLDG
DULUTH MN

WELLINGTON R R SKELLY OIL
PO BOX 1650
TULSA OK
75102

WHITLOCK MARSHALL
RM 3 CAPITOL BLDG
ST PAUL MN
55155

WILEY ENTERPRISES
101 5TH AVE SE
OSSEO MN
55369

WOZNIAK E D
401 FIRST FED BLDG
ST PAUL MN
55101

WANQUIST ALLEN
RM 252 FEDERAL BLDG
ST PAUL MN
55101

WEST CENTRAL REG. DEV.
ADM BLDG,COMMUNITY COLL
FERGUS FALLS MN
56537

WHITING RALPH
7316 BAILEY ROAD
NEWPORT MN
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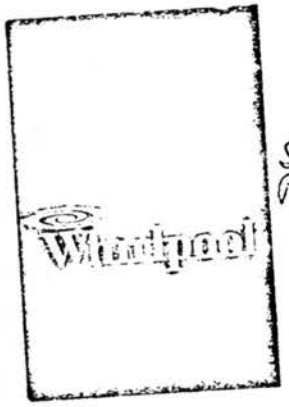

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STATE OF MINNESOTA
DEPARTMENT OF REVENUE
SALES & USE TAX DIVISION

In the Matter of the Proposed Amendments and Additions to the Rules of the Department of Revenue Governing the Administration of the Sales and Use Tax Law.

STATEMENT OF NEED
AND
SUMMARY OF EVIDENCE

The above captioned rules are amendments to existing rules of the Department of Revenue, Sales and Use Tax Division. The last time these rules were amended was November 20, 1974.

This document has been prepared as a verbation affirmative presentation of facts necessary to establish the statutory authority, need for and reasonableness of the proposed amendments to the existing rules and the proposed new rules. It is submitted pursuant to Minnesota Regulation HE 103 requiring both a Statement of Need and Summary of Evidence.

A Notice of Intent to Solicit input into the amendments was published in the State Register on June 13, 1977, at 1 S.R. 1800. The Minnesota Taxpayers Association responded; and on July 26, 1977 and again on August 9, 1977, representatives of the Department conducted open forum discussions with this Association. Suggestions and comments were received and duly considered.

AUTHORITY TO ADOPT RULES

Minnesota Statute S 297A.29 (1976) grants the Commissioner of Revenue statutory authority to adopt rules and regulations for administeration and enforcement of the Sales and Use Tax Law. This statute reads as follows:

"The Commissioner shall promulgate all needful rules and regulations for the administration and enforcement of sections

297A.01 to 297A.44 not inconsistent with its provisions and such regulations shall have the force and effect of law."

AMENDMENTS TO EXISTING RULES NEED AND REASONABLENESS

The need and reasonableness of the proposed amendments are as follows:

CHAPTER ONE

Definitions

Tax S&U 101 Person. The definition of the term "person" is amended to make it clear that the term applies to manufacturer's representatives, consignees, and brokers. This amendment is needed to eliminate present public confusion concerning the sales tax responsibility of these categories of retailers. It clarifies their responsibility to obtain a sales tax permit; and to charge, collect and remit sales tax when making retail sales of tangible personalty.

Tax S&U 104 Leases. This amendment corrects a technical deficiency in the first paragraph of the existing rule. The definiency is that the rule does not reflect the exemption granted under Minn. Stat. S 297A.25, Subd. 1(d). This statutory exemption makes leased or purchased property, which is used in a trade or business outside Minnesota without any intermediate use in Minnesota, non-taxable. The amendment is accomplished by deletion of the first paragraph and substitution of new language. It further clarifies taxpayer liability for leased property removed from the state for personal use; and minimizes taxpayer confusion by specifically providing that any item which is taxable if sold is also taxable if leased.

The amendment in example 2 of this rule is a technical language change correcting an error in labeling the nature of the tax being collected. The example is one relating to the imposition of a use tax.

The amendment properly labels the tax as a use tax rather than a sales tax as now stated.

The amendment, adding an additional example no. 3 to this rule, is needed to clarify public inquiry concerning the taxability in boarder-state situations of leased property used for personal purposes outside the state. It is offered for illustrative purposes; and emphasizes substantive material contained in this rule.

Tax S&U 107 Producing, Fabricating, Printing or Processing of Property Furnished by Consumer. A new provision is added to clarify the Department's position regarding the distinction between non-taxable services and taxable service provided for in Minn. Stat. S 297A.01, Subd. 3(b). This statute defines as taxable the producing, fabricating, printing or processing tangible personal property for a consideration, for consumers who directly or indirectly furnish the materials used. The additions are in example form.

The proposed example 11 illustrates the taxability of collating and assembly when done by stapling or similar process. It further illustrates the taxability of such mechanical processing of goods furnished by a customer punching, assembling, stamping, burning and electroplating.

The proposed example 12 illustrates the taxability of transactions conducted by a locksmith. It provides for the taxability of retail sales of keys and parts which are billed separately. It declares, as a non-taxable service, the changing of safe combinations and lock tumblers.

The amendments are offered to aid public awareness of the taxability of these transactions.

Tax S&U 108 Meals and Drinks. A new provision is added to the first paragraph of this rule. It reflects a legislative amendment to Minn. Stat. S 297A.01, Subd. 3 (Chapter 312, Laws of Minn. 1975) which became effective June 5, 1975. This amendment provided for an exemption from tax by excluding from the terms "sales and purchase" meals and drinks delivered or served to individuals who are 60 years of age or over, their spouses or handicapped by governmental or non-profit organizations.

108(b) is amended by adding a new provision (no. 14) to reflect the Department's position on the taxability of charges for opening and serving of customer furnished beverages.

108(e) is amended by deletion of a technical interpretation regarded as erroneous. Minn. Stat. S 297A.01, Subd. 3(c) provides meals and lunches served at public and private schools or colleges are exempt without qualification. The present regulation reflects a narrower exemption than that provided by statute.

108(h) is amended by new material designed to clarify the Department's position relating to the taxability of items furnished by a caterer such as tableware, tableclothes, tables and chairs.

108(j) is amended by adding additional language to clarify the Department's position concerning the taxability of meals furnished customers of transportation companies.

The amendments are needed because of changes in statutory law; and to aid the Department in technical application of rule previously adopted.

Tax S&U 109 Admissions and Use of Amusement Devices. This amendment clarifies the Department's position on museum's being places of amusement. It provides for the taxability of admissions to a museum.

The rule is also amended to provide for the non-taxability of golf club dues. This amenement conforms the rule and makes it consistent with the Minnesota Supreme Court's decision in Northland Country Club vs. Commissioner of Taxation (1976) 241 N.W. 2d. 806.

The amendment further clarifies the department's position regarding the non-taxability of sightseeing tours, the taxation of carnival rides, and the taxability of recreational area charges.

Tax S&U 112 Sales of Building Material, Supplies or Equipment. This amendment adds a basic definition of real property to aid and clarify the Department's position in this subject area of taxation. It further clarifies the essential elements of a construction contract. It is needed to eliminate certain confusion occasioned by the Minnesota Supreme Court decision in Abex Corp. vs. Commissioner of Taxation (1973) 207 N.W. 2d. 37. The amendments aid in understanding the various consequences of taxation as property is changed from the status of personal property to a fixture. It emphasizes the different tax consequences of a sale being classified as an improvement to real property rather than a sale of personal property.

Tax S&U 115 Reduction in Sales Price for Property Taken in Trade. This amendment clarifies the department's position on the reduction of the selling price by trade-in property. It is intended to elimiante vendor errors, when the property traded in has an outstanding indebtedness.

Tax S&U 116 Deductions Not Allowable in Computing Sales Price. A new provision is added to this rule. The substantive material is in example form. It reflects the Departments position on the taxability of freight charges when merchandise is shipped from a point out of state and is drop-shipped directly to the purchaser.

The amendment further reflects the taxability of assembly charges as fabricated labor charges rather than separately stated service charges.

These amendments are needed to aid in taxpayer understanding, and eliminate vendor error in charging and collecting correct tax.

Tax S&U 117 Deductions Allowable in Computing Sales Price. The amendments to this provision are designated to reflect the department's position on installation charges for labor or services. A replacement example eliminates confusion between improvements to real property and sales of tangible personal property.

The amendment further reflects a position taken on property refund adjustment charges and the taxability of U.S. custom duties. These amendments are needed to clarify public inquiry on these subject matters.

CHAPTER TWO

Administration of the Sales Tax

Tax S&U 202 Application for Permit to Make Retail Sales. A new provision, f.5, has been added in response to public inquiry whether or not the representative of a deceased permit holder's estate is required to get a new sales and use tax permit. This amendment reflects the department's position that a qualified estate representative can assume and use the decedent's sales and use tax account number during the period of probate administration.

Tax S&U 204 Revocation of Permits. This amendment clarifies the existing rule. The amendment adds language which reflects a legislative amendment (Chapter 380, Laws of Minn. 1975) to the Administrative Procedures Act. The amendment provides permit revocation hearings will be conducted by a hearing examiner from the Office of State Hearing Examiner.

The amendment also eliminates language from the prior rule which is obsolete and inconsistent with present statutes.

Tax S&U 207 Good Faith Acceptance of Exemption Certificates. Three new paragraphs reflecting legislative amendments on exemptions from tax, have been added to number (c) which detail the situations in which vendors may accept certificates of exemption in good faith.

Paragraph 207(c)(5) reflects a statute change (Chapter 452, Laws of Minn. 1973) which replaced the prior exemption for property used outside Minnesota (Minn. Stat. S 297A.25, Subd. 1(d)) with a new, more detailed exemption.

Paragraph 207(c)(6) reflects a statute change (Chapter 452, Laws of Minn. 1973) which added an exemption (Minn. Stat. 297A.25, Subd. 1(c)) for packing materials used to pack and ship household goods outside of Minnesota, and not returned to Minnesota except in the course of interstate commerce.

Paragraph 207(c)(7) reflects a statute change (Chapter 650, Laws of Minn. 1973) which amended Minn. Stat. 297A.25, Subd. 1, by adding a new exemption (w) for material designed to advertise and promote the sale of merchandise or services if the material is purchased and stored for purposes of transferring outside and used solely outside of Minnesota.

The amendment to 207(g) eliminates language from the prior rule which is obsolete and inconsistent with present statutes. The amendment reflects a legislative change to Minn. Stat. S 297A.25, Subd. 1(d) (Chapter 452, Laws of Minn. 1973) with a new, more detailed exemption.

Tax S&U 208 Content and Form of Exemption Certificate. New material has been added to this rule. Its purpose is to clarify what an exemption certificate must contain in order to be valid pursuant to Minn. Stat. S 297A.11. It further informs the vendors

that the Uniform Sales Tax Exemption Certificate designed by the Multi-state Tax Commission is acceptable; and advises the vendors of two special exemption certificates namely, ST-14 Direct Pay Permit, and ST-14mc Motor Carrier Direct Pay Certificate.

Tax S&U 211 Direct Pay Permit Procedure. This amendment proposes to eliminate the present alternate of furnishing either a Direct Pay number or a copy of the exemption certificate. As amended, the purchaser must furnish a copy of the exemption certificate. This amendment is needed to make direct pay permit procedure consistent with the general exemption practice procedure of furnishing the vendor with a signed exempt certificate. It is further intended to minimize a fradulent use of this exemption.

Tax S&U 212 Motor Carriers Direct Pay. Minn. Stat. S 297A.211 was amended by Chapter 15, Laws of Minnesota 1977, to provide that any person engaged in interstate for-hire transportation of tangible personal property by motor carrier (formerly only common carriers) may now elect to report as a retailer; and pay the tax on mobile transportation equipment and parts and accessories attached or to be attached to such equipment on a pro-rata basis of Minnesota miles to total miles. The rule has been amended to reflect these legislative changes.

CHAPTER THREE

Administration of the Use Tax

Tax S&U 302 Collection of Tax at Time of Sale. The rule has been amended to incorporate substantive material relating to the problem faced by out-of-state businessmen who sell across state lines. It is designed to be informative in nature; and as an aid for this type of businessman in deciding whether they must register with the state as a use tax collector, collect, account for, and

pay a use tax to the State of Minnesota. The material is in conformity with the decisions of the U.S. Supreme Court in General Trading Co. (1944) 322 U.S. 335, 64 S. Ct. 1028 and Scripto, Inc. (1960) 362 U.S. 207, 80 S. Ct. 619.

CHAPTER FOUR

Exemptions

Tax S&U 401 Drugs, Medicines, Therapeutic and Prosthetic Devices. This regulation is modified to expressly specify that teeth braces and retainers are within the scope of purchases which may be made by dentists exempt from the tax as therapeutic and prosthetic devices. These words have been added because a number of inquiries have indicated doubt as to the taxable status of these items. Section 297A.25, Subd. 1(c) of the law specifies exemption for therapeutic and prosthetic devices.

Tax S&U 404 Gifts - Transfers Without Monetary Consideration. The current regulation specifies that "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." In the examples enumerated, there is included "property given a prize in games of chance or skill." A decision by the Tax Court in Sally Distributors, Inc. vs. the Commissioner of Taxation (Docket No. 1824) (Order entered 5-22-75) held that the sale of carnival prizes to concessionaires are sales for resale and are not subject to the sales tax. No appeal was taken from the decision and the department's position has been modified accordingly. The proposed change in the regulation is made, therefore, to reflect the current position.

Tax S&U 407 Clothing and Wearing Apparel. Current regulation 407 was promulgated to clarify the scope of the exemption provided by Section 297A.25, Subd. 1(q) for clothing and wearing apparel. Use is made therein of lists of specific taxable and exempt items.

It is proposed to modify the list of exempt items by adding the word "baby" in parenthesis after the item rubber pants to make clear that the exemption applies only to baby rubber pants. Such exemption is allowed because the statute exempts articles intended to be used or applied only in the case of babies. The intention is to exclude other rubber pants which the department holds to be equipment rather than clothing or wearing apparel within the legislative intent.

A second proposed change is to include iron-on transfers or emblems in the list of examples of taxable items. It is so classified since such an item of itself is not clothing or wearing apparel. It is proposed to add this item because experience has indicated erroneous classification by retailers or uncertainty on the part of retailers as to how this item should be classified.

Tax S&U 408 Property Used in Agricultural and Industrial Production. The purpose of the proposed changes in this regulation is to further clarify and delineate the scope of the exemption provided in M.S. 297A.25, Subd. 1(h).

This clause authroizes exemption for all materials used or consumed in industrial production of tangible personal property intended to be sold ultimately at retail but excludes machinery, equipment, implements, tools, accessories, appliances or contrivances. Questions have regularly arisen as to whether specific items purchased for use in production might conceivably be regarded as implements, tools, accessories, etc. and therefore not within the exemption or as materials other than implements, tools, accessories, etc. and therefore taxable.

A guideline is established in clause (b) which provides that items used only once in production which will not be used again are within the exemption and therefore not regarded as coming within the exclusion from the exemption.

The second proposed change in the regulation is the addition of language in clause (d) that is intended to further clarify and delineate the scope of the amendment to the law (Chapter 650, Laws of Minnesota 1973) effective January 1, 1974 which provide exemption for accessory tools, equipment and other short lived items (less than 12 months) which are separate detachable units used in producing a direct effect upon the product. Further clarification is necessary because of the great variety of items used in production processes and the degree of uncertainty as to tax status of many of such items. Language added in clause (d)(2) is intended to, (1) espressly specify that a direct physical contact of an item with the product is not a requisite for exemption and, (2) to establish criteria for determining when an item which does not contact the product directly is considered to be "used in producing a direct effect."

Tax S&U 411 Isolated or Occasional Sales. This regulation concerns the exemptions for isolated or occasional sales.

The first proposed change in this regulation is that clause (c)(1) be modified to eliminate the first example illustrating non-isolated, and therefor taxable sales. The example concerns sales made by an auctioneer at premises either owned or leased by the auctioneer and states such sales are not isolated or occasional and thus taxable. This change is necessary because of the Minnesota Supreme Court decision in State vs. Tysdal (1975) 228 N.W. 2d 230. The circumstances in that case matched the circumstances in the example. The courts held that a sale of tangible personal property

consigned to an auctioneer was not subject to the Minnesota Sales Tax if the sale would have been exempted as "isolated or occasional" where it made by the consignor.

Clause (e) concerns sales made at events held by non-profit organizations. The regulation specifies several types of events and conditions under which sales at such events will be regarded as isolated or occasional. It is proposed to add "rummage sales" to the types of events already specified. This is done because of frequency of inquiries concerning the status of rummage sales. A second proposed change in this clause is to delete certain language which is confusing and misleading and to substantiate language which more clearly conveys the intended meaning. The language to be eliminated can be construed contrary to the intent of the regulations, that a non-profit organization sponsoring such an event and which holds a sales and use tax permit will be regarded as making sales in the regular course of business and thus taxable. The new language is intended to make it clear that reference to "a person holding a sales and use tax permit" does not include the non-profit organization which sponsors the event.

Tax S&U 415 Exempt Charitable, Religious, and Educational Organizations. The two changes which are proposed in this regulation are necessary to conform the regulation with the law as amended.

The first change adds a qualifying condition (specified in Laws 1974, Chapter 11, Section 1) as a requisite for exemption to the effect that property purchased by a qualifying charitable, religious or educational organization is to be used in the performance of the charitable, religious or educational function of the exempt organization. An illustrative example is included.

The second change states: "Effective July 1, 1977, an exempt organization will lose its status as an exempt organization under section 297A.25, Subd. 1(p) if the employer, who employs 10 or more individuals who are residents of this state, fails to provide qualified health insurance for its employees pursuant to laws of Minnesota 1976 Chapter 296." The pertinent provisions of Laws 1976, Chapter 296 are found in Article I, Section 2, Subd. 2 and Article I, Section 3, Subd. 2.

Tax S&U 421 Taconite Plant Construction and Expansion Exemptions. Heretofore there has been no regulation concerning the exemption for items used in connection with construction of a new taconite plant or expansion of an existing plant as provided by 1971 Extra Session Laws, Chapter 21 and amended by 1976 laws, Chapter 556. The statute is brief and general and many questions arose as to the scope and administration of the exemption. The purpose of the regulation is to state the conditions required for exemption, to establish a procedure by which qualified persons can effectively claim the exemption and to clarify the scope of the exemption. It establishes classes of property to which the exemption applies and describes exempt items includible in each class. The established classes are: (1) Tangible personal property physically incorporated into the construction; (2) materials and supplies not incorporated in the construction but consumed with construction, (3) equipment purchased for and used in the construction of the plant (includes apportioned exemption for equipment having a useful life beyond the date of completion of construction or expiration of the exemption period.)

Tax S&U 422 Senior Citizen Organizations. This is a new regulation which is proposed in order to include in the regulations the exemption for senior citizens groups (Chapter 155, Laws of Minnesota 1974) organized and operated exclusively for pleasure, recreation, and other non-profit purposes, to establish eligibility requirements and to establish a method of effectively evidencing exempt status. The established eligibility requirements are: (1) requirement of formal organization, and (2) limitation of membership to persons who have attained the age of 65 or over. These requirements are established to assure limiting eligibility status to organizations which can be reasonably deemed to be within the legislative intent.

CHAPTER FIVE

Returns, Assessments and Collections

Tax S&U 508 Claims for Refund. Minnesota Statute S 297A.35 was amended by Chapter 377, Laws of Minnesota 1975. The proposed rule amendment reflects this legislative change which increased the interest rate from 4% to 6% on overpayments. The effective dates of these changes are now provided in the regulation for purposes of clarity and taxpayer awareness.

Tax S&U 510 Penalties and Interest. Minnesota Statute S. 297A.39 was amended by Chapter 377, Laws of Minnesota 1975. This amendment deleted reference to a specific interest rate and substituted a reference to the interest rate as specified in Minnesota Statute S 270.75 which was also amended to increase the interest rate from 8% to 10% on unpaid liabilities. The rule change incorporates these legislative changes. It includes a new example for illustration. These changes are offered for purposes of clarity and taxpayer awareness.

Tax S&U 511 Limitations on Disclosure of Sales and Use Tax Information. The rule is amended to reflect the department's position on disclosure of taxpayer information. It deletes the furnishing of such information as name, address, business name, business location, and permit number. It permits disclosure of the sales and use tax account number, date permit was issued, and whether the permit is active.

The amendment also provides that the Commissioner of Revenue may furnish necessary information to the Minnesota Motor Vehicle Division to administer the Motor Vehicle Excise Tax (Chapter 297B). Minnesota Statute S 297B.11 authorizes the motor vehicle registrar to act as agent of the Commissioner of Revenue in administration of the motor vehicle excise tax.

CHAPTER SIX

Specific Businesses and Activities

Tax S&U 601 Commercial Artists and Photographers. The current regulation specifies that commercial artists 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. It specifies that sales by them of drawings, sketches, paintings, illustrations, etc. are subject to the sales and use tax. It also specifies that all preliminary or creative art service involved in a project which results in a sale of finished art is subject to tax whether separately stated or not. This treatment of preliminary art is not consistent with the treatment in Regulation Tax S&U 605 of preliminary art for which a charge is made by an advertising agency operating as an independent service business. In the latter case, tax does not apply to separate

charges for preliminary art except where the preliminary art becomes physically incorporated into the finished art. It is proposed to modify Regulation Tax S&U 601 so that the same treatment will be accorded such charges by commercial artists. There is no valid reason for treating the same type of transaction differently. The charge for such preliminary art can reasonably be construed as a charge for a service since the object sought by the customer is not the tangible personal property involved but the idea conveyed.

Tax S&U 604 Sales and Rentals of Mobile Homes and House Trailers. This regulation currently provides that a sale, rental, or use of a mobile home or house trailer which is not permanently affixed to realty is a sale or rental of tangible personal property and thus taxable. It also specifies the criteria which must be met for such property to be classified as realty in which case the sales or rental thereof would be exempt from tax. Included in such criteria is a requirement that the unit must be affixed to land, the title of which is in the same name as the owner of the unit.

Thus, where a lessor does not own the land on which a mobile home or house trailer is affixed, this particular criteria results in tax being imposed on rentals of such a unit when it is in fact the home of the renter.

It is proposed to change the regulation by eliminating the criteria which requires that the unit must be affixed to land, the title of which is in the same name as the owner of the unit. This would cause elimination of tax on units used as homes by the renters thereof if the other criteria specified in the regulation are met. This would create uniformity in treatment of rentals between rentals of conventional buildings and rentals of mobile homes and house trailers which would be accorded treatment as real estate under the proposed revision.

CHAPTER SIX

Specific Businesses and Activities

Tax S&U 607 Advertising Signs and Billboards. This is a new regulation which is proposed because of a need to clarify and provide an express statement as to proper application of the tax to various classes of transactions involving advertising services and signs and billboards. Such classification and statement is necessary because of the possibility of varying individual interpretations and to establish an official binding position with respect to obligations of parties to transactions. The regulation specifies which types of transactions constitute sales or rentals of tangible personal property, which types of transactions are contracts for the alteration of realty, which transactions constitute exempt services and the basis for applying sales and use taxes in the varying situations. The stated positions are consistant with standards and principles generally applied in interpretation and application of the sales and use tax law.

Tax S&U 608 Aircraft Registration. This is a new regulation which is proposed to explain the purpose and effect of Minnesota Statute S 297A.255 relating to payment of sales or use taxes due on aircraft prior to registration or licensing of the aircraft and to specify and formally establish the administrative means by which aircraft purchasers may accomplish compliance with Section 297A.255 so that registration of the aircraft may be effected.

The regulation describes procedures to be followed in the following circumstances: situations in which the Minnesota sales tax was paid to a dealer; situations in which no Minnesota sales tax was paid to the seller; registration of aircraft by dealers who are registered in

accordance with Minnesota Statutes, 360.63; and registration of aircraft by a lessor or a lessee.

Tax S&U 609 Iron Mining Industry Exemptions. This is a new regulation which is proposed to provide an express statement officially establishing the scope of the exemptions applicable to mining industry operations. It cites examples of items which qualify for exemptions under Minnesota Statute 297A.25, Subd. 1(h) as separate detachable units used in producing a direct effect upon the product where their ordinary useful life is less than 12 months. It also provides guidelines for determining, and examples of items, which qualify for exemption provided by Section 297A.25, Subd. 1(h) as grinding rods, grinding balls and mill liners used by taconite mining. In addition it cites specific examples of items which do not come within either of the foregoing exemptions.

Tax S&U 610 Automatic Data Processing. This is a new regulation which sets forth the department's position on applicable guidelines relating to the taxation of transfers of property and services rendered in the automatic data processing industry. It is a comprehensive discussion of a very technical subject matter designed to eliminate taxpayer error and confusion. It is similar in substantive content to the California rule (Reg. 1502) and the Wisconsin rule (Reg. S38.2).

The regulation does reflect one proposed change in department policy. Presently custom programs are not taxed. The regulation will eliminate, effective April 1, 1978, any distinction between canned or custom program. After that date, all programs would be taxable as the sale of tangible personal property.

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State Register

STATE OF MINNESOTA

HIGHLIGHTS:

Employee Exposure to Benzene
—Emergency Rule from the Department of Labor and Industry

Continuing Education for Accountants
—Public Opinion Sought by the State Board of Accountancy

Conventional Home Loan Assistance and Protection Act
—Public Opinion Sought by the Department of Commerce

Metropolitan Sports Facility
—Request for Proposals from the Metropolitan Sports Facilities Commission

EQC Monitor
Natural Resource Permit Application
Negative Declaration
Request for Proposals for EIS Preparation
Draft EIS Completion
Notice of Public Meeting

VOLUME 1, NUMBER 49

JUNE 13, 1977

OFFICIAL NOTICES

Department of Revenue

Notice of Intent to Solicit Outside Opinion on Rules Governing Sales and Use Tax

The Department of Revenue is drafting amendments to the rules relating to sales and use tax. The rules are authorized by Minn. Stat. § 297A.29 (1976). The rules for which amendments are being considered deal with the application and administration of the sales and use tax.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. Donald Mundahl, Director
Sales & Use Tax Division
Department of Revenue
9th Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-2896, and in person at the above address.

All statements of information and comment must be received by July 15, 1977. Any written materials received by the Agency shall become part of the hearing record.

George W. Winter
Deputy Commissioner

Teachers Retirement Association

Board of Trustees Meeting

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Wednesday, June 29, 1977, at 3 p.m. in the office of the Association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the Board.

State Board of Accountancy

Notice of Intent to Solicit Outside Opinion on Rules Regarding Continuing Education Requirement

Notice is hereby given that the State Board of Accountancy has begun consideration of proposed rules governing continuing education for certified public accountants in accordance with Minn. Stat. §§ 214.12 and 326.18 (1976). In order to adequately determine the nature and utility of such rules, the Board of Accountancy hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

The proposed rules, if adopted, would establish a continuing education requirement for licensed certified public accountants as a condition to the retention of their licenses.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be in writing. Written statements of information and comment may be addressed to:

Marian Flanagan
Executive Secretary
Board of Accountancy
500 Metro Square Building
Saint Paul, Minnesota 55101

All statements of information and comment must be received within fourteen (14) days of the publication of this notice.

Leonard A. Rapoport
Chairman, Board of Accountancy
500 Metro Square Building
Saint Paul, Minnesota 55101

Department of Commerce

Notice of Intent to Solicit Outside Opinion on Rules Regarding Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act

Notice is hereby given that the Banking Division is seeking information or opinions from sources outside the agency in preparing to propose the repeal or amendment of rules governing home loans made pursuant to the Conventional Home Loan Assistance and Protection Act, Minn. Stat. § 47.20, as amended. Any interested persons may submit data or views on this subject in writing or orally to:

James Miller
Banking Division
500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: 612-296-2132

Any written material received by the agency shall become

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE GOVERNING SALES AND USE TAX	)))	FINDINGS OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Peter Erickson, a hearing examiner appointed by the Chief Hearing Examiner, on the 7th and 8th day of February, 1978, at 9:30 A.M. in Room 300, 1745 University Avenue, St. Paul, Minnesota, after proper notice required by Minnesota Statutes, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that person.

Having now, therefore, reviewed the record of the hearing, including the verbatim transcript, the exhibits and written materials submitted before the close of the record, the report of the Hearing Examiner, and materials submitted directly to me following my receipt of the hearing record, I now adopt as my findings of fact in this matter, the Findings of Fact of the Hearing Examiner.

Now, Therefore, It Is Ordered that these rules identified as rules of the Department of Revenue governing sales and use tax as published at State Register, Volume 2, Number 26, pages 1289 through 1339, January 2, 1978 (2 S.R. 1289-1339) and as amended as shown in the attached Exhibit A are adopted this 13th day of July, 1978, pursuant to authority vested in me by Minnesota Statutes, Section 297A.29.

State of Minnesota

Arthur C. Roemer

Arthur C. Roemer
Commissioner of Revenue

DEPARTMENT OF REVENUE

Adopted Rules Governing the Administration
of the Sales and Use Tax Law

The following rules published at State Register, Vol. 2, No. 26, p. 1289 through p. 1339, January 2, 1978 (2 S.R. 1289-1339) are adopted and are identical in every respect to the proposed form: Tax S&U 101 Person; Tax S&U 107 Producing, fabricating, printing or processing of property furnished by consumer; Tax S&U 109 Admissions and use of amusement devices; Tax S&U 115 Reduction in sales price for property taken in trade; Tax S&U 117 Deductions allowable in computing sales price; Tax S&U 202 Application for permit to make retail sales; Tax S&U 204 Revocation of permits; Tax S&U 207 Good faith acceptance of exemption certificates; Tax S&U 208 Content and form of exemption certificate; Tax S&U 302 Collection of tax at time of sale; Tax S&U 404 Gifts - transfers without monetary consideration; Tax S&U 408 Property used in agricultural and industrial production; Tax S&U 411 Isolated or occasional sales; Tax S&U 415 Charitable, religious, and educational organizations; Tax S&U 421 Taconite plant construction and expansion exemptions; Tax S&U 422 Senior citizen organizations; Tax S&U 508 Claim for refund; Tax S&U 510 Penalties and interest; Tax S&U 511 Limitations on disclosure of sales and use tax information; Tax S&U 601 Commercial artists and photographers; Tax S&U 604 Sales and rentals of mobile homes and house trailers; Tax S&U 607 Advertising signs and billboards; Tax S&U 609 Iron mining industry exemptions;

The rule published at State Register, Vol. 2, No. 26, p. 1289 - 1293, January 2, 1978 (2 S.R. 1289 - 1293), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 104 Leases

B. Example 1. Rental Agency, located in Minnesota, leases an automobile to

"X". Thereafter, "X" drives the automobile to ~~Minnesota~~ California and returns the automobile 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.

G. Leases to electing ~~common~~ motor carrier. Effective July 1, 1971, ~~common~~ motor carriers may elect under provisions of Minnesota Stat. S 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~~ motor carrier direct pay certificate. See Tax S&U 212 for rules relating to the ~~common~~ motor carrier direct pay certificate and describing the property for which the payment of tax by the lessee may be deferred.

The rule published at State Register, Vol. 2, No. 26, p. 1294 - 1298, January 2, 1978 (2 S.R. 1294-1298), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 108 Meals and Drinks

H. 1. ~~Holes~~ Holds a Minnesota Sales and Use Tax Permit:

The rule published at State Register, Vol. 2, No. 26, p. 1299 - 1304, January 2, 1978 (2 S.R. 1299-1304), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 112 Sales of Building Material, Supplies or Equipment

C. 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.

~~If the~~ An 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~~ may appoint and designate the contractor as "purchasing agent" for such exempt entity in connection with the construction contract. In such situations the department will recognize the agency relationship asserted only if the written contract clearly sets forth: (1) that such appointment has been made; (2) that title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the owner or principal at point of delivery; (3) that the risk of loss with respect to such materials and supplies is that of the owner or principal; and (4) that the owner or principal, and not the agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner. In the event that the contract in question does not specify as to risk of loss, other competent evidence, such as insurance coverage, will suffice.

Any contractor who has been appointed agent for the purchase of materials and supplies, as specified above, shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the obligation for payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.

The rule published at State Register, Vol. 2, No. 26, p. 1304 - 1305, January 2, 1978 (2 S.R. 1304-1305) is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 116 Deductions not allowable in computing sales price.

A. Example 3. Lumber dealer sells a carload of lumber to a building contractor at an agreed upon price of $8,000 including the cost of transportation. The lumber is to be ordered ~~and shipped from a point out of state~~ and drop-shipped directly to

the purchaser. No exclusion or deduction for cost of transportation is allowed even if the purchaser pays the transporation charges directly to the common carrier and deducts the same from the amount due the seller. The delivered price is the "sales price." The "time of sale" reference in Minn. Stat. S 297A.01, subd. 8 is that point in time when the seller is able to complete performance of his contract by the physical tender of delivery of goods to the customer.

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, ~~including assembly of component parts or materials,~~ 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.

~~B.--Example-4.--Retailer-stocks-shelving-components-in-unassembled-form-and sells-such-property-unassembled-or-assembled.--Customer-purchases-shelving-components and-requests-that-retailer-also-assemble-such-components.--Retailer-bills-customer $150.00-for-the-components-and-$10.00-for-labor.--The-entire-charge-of-$160.00-is subject-to-tax.~~

The rule published at State Register, Vol. 2, No. 26, p. 1313 - 1314, January 2, 1978 (2 S.R. 1313-1314), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 211 Direct pay permit procedure

C. The holder of a Direct Pay Permit shall furnish a copy of this 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.

The rule published at State Register, Vol. 2, No. 26, p. 1314 - 1317, January 2, 1978 (2 S.R. 1314-1317), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 212 Motor ~~Vehicle-Common~~ carriers - direct pay

D. 6. Withdrawal of an election to come under the provisions of Minn. Stat. S 297A. 211 shall become effective only upon notice of such intent and return ~~to~~ of the ~~Common~~ Motor Carrier 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~~. If such election is withdrawn, subsequent re-election shall be effective only upon approval of the Commissioner of Revenue. Motor Carriers which do not elect to pay Minnesota Sales and Use Tax under the provisions of Minn. Stat. S 297A.211, shall be governed by the following:

a. Prior to January 1, 1972, carrier 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 tax directly to the Commissioner of Revenue.

b. Subsequent to December 31, 1971. "Mobile Transportation Equipment" subject to the motor vehicle excise tax under the provisions of Minn. Stat. ch. 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 purchase 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.

The rule published at State Register, Vol. 2, No. 26, p. 1317 - 1320, January 2, 1978 (2 S.R. 1317-1320), is adopted and is identical to its proposed form, with the following amendment:

Tax S&U 401 Drugs, theraupeutic and prosthetic devices.

E. Purchases by doctors of medicin 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, porcelain, gold, silver, alloy and synthetic filling material, teeth braces and retainers.

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

The rule published at State Register, Vol. 2, No. 26, p. 1320 - 1321, January 2, 1978 (2 S.R. 1320-1321), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 407 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 mittons, 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.

Minn. Stat. S 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

aprons (household and shop)
baby blankets (used as babies' clothing)
baby buntings
bathing suits and caps
belts
bibs
blankets, baby and receiving (used as babies' clothing)
boots (not more than knee high)
bridal wear
buntings
caps
corsets and corset laces
costumes (except masks)
diapers, diaper inserts, disposable diapers
footlets
formal wear
garters and garter belts
girdles
gloves (not designed for a specific sport)
hair bows and nets
handkerchiefs
hats
head scarves
hosiery
leotards
mittens
neck scarves
neckties
overshoes
receiving blankets (used as babies' clothing)
roller bonnets
rubber gloves
rubber pants (baby)
scarves, head and neck
sewing materials:
- buttons
- fabric
- lace
- thread
- yarn
- zipper

shoes and shoe laces
shower caps and clogs
slippers
sneakers
suspenders
suimsuits and caps
tennis shoes
tights
uniforms (Scout, Camp Fire Girls, policemen, firemen, etc.)

Examples of Taxable items

bags, overnight, beach, etc.
barrettes
billfolds
cosmetics, hair dyes, etc.
crib blankets, sheets, mattress pads, rubber sheets, etc.
furs on the hide or pelts
hair clips
handbags
iron-on transfers or emblems
jewelry:
- bracelets
- broaches
- cufflinks
- earrings
- necklaces
- pins
- rings
- tie clasps and tacks

lapel pins
money belts
money clips
perfume
pocketbooks
purses
sewing equipment:
- knitting needles
- patterns
- pins
- scissors
- sewing machine
- sewing needles
- tape measure
- thimbles

umbrellas
wallets
watchbands
watches
wigs

The rule published at State Register, Vol. 2, No. 26, p. 1334 - 1335, January 2, 1978 (2 S.R. 1334-1335), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 608 Aircraft Registration

A. In general. Minn. Stat. S 297A.255 require persons who wish to license or register an aircraft in Minnesota to furnish proof to the Department of ~~Aeronautics~~ Transportation, Aeronautics Division that the Minnesota Sales or Use Tax has been paid, or that the purchase of the aircraft was not subject to the Minnesota Sales or Use Tax. The effect of this law is to impose a use tax on occasional or isolated sales of aircraft in those cases involving sales to individuals not in the business of selling aircraft. The law is effective for registrations applied for after June 30, 1973.

The necessary forms (Form UT-1 and Form ST-24) for reporting and paying the use tax or for claiming exemption are available upon request from the Minnesota Department of Revenue and the Minnesota Department of ~~Aeronautics~~ Transportation, Aeronautics Division.

This statute does not affect the exemption provided for purchases of air flight equipment by airlines taxed under Minn. Stat. SS 270.071 through 270.079.

When the sales tax has not been paid to the dealer as set forth in B.1. below, the Department of Revenue will forward a completed certificate of tax payment or exemption, Form ST-21, to the Department of Transportation, Aeronautics Division.

B. Registration of aircraft by individuals.

1. Minnesota sales tax paid to dealer. When a purchaser pays the Minnesota sales tax to a Minnesota aircraft dealer who holds a Minnesota Sales and Use Tax Permit, the dealer shall furnish the purchaser with a statement showing that the sales tax has been paid. The aircraft dealer will report and pay the sales tax to the Minnesota Department of Revenue as in the past. It is not necessary for the purchaser of the aircraft to obtain a Certificate of Tax Payment or exemption, Form ST-24, from the Minnesota Department of Revenue. The purchaser should present the statement, which he received from the aircraft dealer, directly to the Department of ~~Aeronautics~~ Transportation, Aeronautics Division in order to license or register the aircraft.

C. Registration of aircraft by dealers who are licensed in accordance with Minn. Stat. S 360.63. When a licensed dealer purchases an aircraft for resale and places it in a withholding status, no Certificate of Tax Payment or Exemption is required. When a licensed dealer registers an aircraft for commerical use, he must present a Certificate of Tax Payment or Exemption to the Minnesota Department of Transporation Aeronautics Division. He will be required to pay a use tax on his purchase price of the aircraft unless he makes application to the Commissioner of Revenue for an Aircraft Commercial Use Permit, Form ST-23, and pays a $20 fee. By obtaining an Aircraft Commercial Use Permit, Form ST-23, a licensed dealer may purchase an aircraft for resale and put it to commerical use such as crop dusting, charter service, freight transportation and flight instruction, for up to one year without paying a sales or use tax on his purchase. When he sells the aircraft, he is required to collect a sales tax. If he keeps the aircraft for more than one year or makes personal use of such aircraft, a use tax is also due on his purchase price. A licensed aircraft dealer who obtains a Commercial Use Permit, Form ST-23, should check the box of Section B of Form ST-24 which indicates that the aircraft was purchased for resale or lease by the holder of a Minnesota Sales and Use Tax Permit.

The rule published at State Register, Vol. 2, No. 26, p. 1336 - 1339, January 2, 1978 (2 S.R. 1336-1339), is adopted and is identical to its proposed form, with the following amendments:

Tax S&U 610 Automatic data processing

C. Taxable transactions, unless otherwise exempt under Minn. Stat. ch. 297A.

1. Retail sales of new or used data processing equipment are taxable.

2. Leases of equipment are subject to tax. A lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be on his premises if the lessee or his employees operate the equipment, or if the equipment is operated under the direction and control of the lessee or his employees. Subleasing receipts are taxable without any deduction or credit for tax paid by the

original lessee to his lessor, if the original lessee uses the property in addition to subleasing it. Use of equipment on a time-sharing basis, where access to the equipment is only by means of remote access facilities, is not a taxable leasing of such equipment.

~~3.---Prewritten-(canned)-programs.--These-are-programs-prepared,-held-or existing-for-general-or-repeated-use,-including-programs-developed-for-in-house use-and-subsequently-held-or-offered-for-sale-or-lease.--The-programs-may-be-transferred-to-the-customer-in-the-form-of-punched-cards,-data-on-magnetic-tape-or-by listing-the-program-instructions-on-coding-sheets.--In-some-cases-they-are-usable as-written.--However,-in-most-cases-it-is-necessary-that-the-program-be-modified, adapted-and-tested-to-meet-the-customer's-particular-needs.--Tax-applies-to-the sale-of-all-tangible-personal-property,-including-coding-sheets,-cards-or-magnetic tape,-on-which-or-into-which-such-prewritten-(canned)-programs-have-been-coded, punched-or-otherwise-recorded.~~

~~The-tax-applies-whether-title-to-the-tape-or-other-property-upon-which-the program-is-coded,-punched-or-otherwise-recorded,-passes-to-the-customer,-or-the-program-is-recorded-on-tape-or-other-property-furnished-by-the-customer.--The-temporary transfer-of-possession-of-a-program,-for-a-consideration,-for-the-purpose-of direct-use-or-to-be-recorded-by-the-customer,-is-a-lease-of-tangible-personal property-and-the-tax-applies.--Where-the-consideration-consists-of-license-fees-or royalty-payments,-all-license-fees-or-royalty-payments,-present-or-future,-whether for-a-minimum-use-or-for-extended-periods,-are-includable-in-the-measure-of-tax.~~

~~Programming-changes-to-a-prewritten-program-to-adapt-it-to-a-customer's equipment,-including-translating-a-program-to-a-language-compatible-with-a-customer's equipment,-are-in-the-nature-of-fabrication-or-services-that-are-a-part-of-a-sale-and, as-such,-are-taxable.~~

~~Charges-for-assembler,-compiler,-utility-and-other-prewritten-programs provided-to-those-who-lease-or-purchase-automatic-processing-equipment-are-subject~~

~~to tax whether the charges are billed separately or are included in the lease or purchase price of the equipment.~~

~~4. Custom programs. These are programs prepared to the special order of a customer.~~

~~Effective April 1, 1978, tax applies to the sale of custom programs transferred to the customer in the form of punched cards or in tape, disc, drum or similar form, or in the form of typed or printed sheets to be used as input media in an optical character recognition system. However, tax does not apply to the transfer of these custom programs in the form of written procedures, such as program instructions listed on coding sheets.~~

~~5.~~ 3. Keypunching and keystroke verifying. This item covers situations where a service bureau's agreement provides only for keypunching, keystroke verifying and proof listing of data or any combination of these operations. It does not include contracts under which these services are performed as steps in processing a client's data as discussed in D.1.

Agreements providing (a) solely for keypunching; (b) keypunching and keystroke verification; or (c) keypunching, providing a proof list and/more verifying of data, are regarded as contracts for the fabrication of punched cards and sales of proof lists. Charges therefor are taxable, whether the cards are furnished by the customer or by the service bureau. Data from source documents may also be recorded directly on magnetic tape (off-line). This operation may include keystroke verifying and/or proof listing of data and is comparable to the punch card operation. Charges for this operation are taxable whether the magnetic tapes are furnished by the customer or by the service bureau. Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax applications would be the same even though paper tape or other media were used in the operation.

~~6.~~ 4. Training materials. Persons who sell or lease data processing equip-

ment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to the tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

~~7.~~ 5. Generally tax applies to the conversion of customer-furnished data from one physical form of recordance to another. For example, if all or some data in punched cards is duplicated into another set of cards, charges for this service are taxable.

~~8.~~ 6. When additional copies of records, reports, or tabulations are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. Charges for copies produced by means of photocopying, multi-lithing, or by other means are also subject to tax.

~~9.~~ 7. ~~Sales of mailing lists (including listings in the form of mailing labels produced as a result of a computer run) are taxable.~~ Sales of mailing lists in the form of cheshire tapes, gummed lables and heat transfers produced as a result of a computer run are taxable. However, where the service bureau, through the use of its automatic data processing equipment, addresses material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares labels to be affixed to material to be mailed, with names and addressed furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the lables, when the

service bureau itself affixes the labels to the material to be mailed.

F. Non-taxable Transactions

1. Prewritten (canned) programs. These are programs prepared, held or existing for general or repeated use, including programs developed for in-house use and subsequently held or offered for sale or lease. The programs may be transferred to the customer in the form of punched cards, data on magnetic tape or by listing the program instructions on coding sheets. In some cases they are usable as written. However, in most cases it is necessary that the program be modified, adapted and tested to meet the customer's particular needs. The sale of all property including coding sheets, cards or magnetic tape, on which or into which such prewritten (canned) programs have been coded, punched or otherwise recorded is not subject to tax. These items are classfied as intangible personal property.

The tax does not apply whether title to the tape or other property upon which the program is coded, punched or otherwise recorded, passes to the customer, or the program is recorded on tape or other property furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded by the customer, is not a lease of tangible personal property and the tax does not apply. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a minimum use or for extended periods, are not includable in the measure of tax.

Programming changes to a prewritten program to adapt it to a customer's equipment, including translating a program to a language compatible with a customer's equipment, are not in the nature of fabrication or services that are part of a sale, and are not taxable.

Charges for assembler, compiler, utility and other prewritten programs provided to those who lease or purchase automatic processing equipment are not subject to tax.

2. Custom Programs. These are programs prepared to the special order of a customer. This type of program is classifed as intangible personal property, and is not subject to tax.

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VOLUME 2, NUMBER 26

January 2, 1978

State Register

Notice of *State Register* Format Changes

Beginning with *State Register* Vol. 2, issue No. 26, dated January 2, 1978, the Office of the State Register will be making the following enhancements in the *State Register* format:

- Highlights on the front cover will be arranged under section headings, as they appear within the *State Register*, and will include page numbers. The Highlights section will also include a notation directing readers to a more complete table of contents within the issue.

- An introductory statement will be included for each section of the *State Register*. These statements will give a brief explanation of the kinds of material contained in the section; effective lead times for notices of hearing, rules, or executive orders; and cites to applicable statutes.

- A new key using ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules will indicate changes from original language to proposed new language. Strike outs and underlining in adopted rules will indicate changes from proposed to adopted language.

- Guide rule-numbers will be printed, when applicable, at the outside top of each page to indicate the beginning rule number on the left hand pages and the ending rule number on the right hand pages.

- Chapter and rule numbers that begin the text of an adopted or proposed rule will be printed in bold face.

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(1) The rule or order was duly adopted, issued or promulgated;

(2) The rule or order was duly filed with the Secretary of State and available for public inspection; and

(3) The copy of the rule or order published in the *State Register* is a true copy of the original.

Judicial notice shall be taken of material published in the *State Register*.

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The following is a cumulative listing of all proposed and adopted rules published in the *State Register* from Volume 2, Issue 1, to the present issue. The listing is arranged in the same order as is the table of contents to the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend and/or add to the rules contained in the MCAR set.

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Pursuant to the provisions of Minn. Stat. § 15.0411 to § 15.052, all rules, amendments to rules, or suspensions or repeals of rules become effective after all requirements described in Minn. Stat. § 15.0412, subd. 4 have been met and five working days after publication in the *State Register*, unless a later date is required or specified.

If the rule as adopted does not differ from the proposed rule as previously published in the *State Register*, a notice of adoption as proposed and a citation to the previous publication is considered sufficient as publication of the adopted rule, suspension or repeal.

If the rule as adopted differs from the proposed rule, the adopted rules or subdivisions thereof which differ from the proposed rule are published along with a citation to the *State Register* publication of the proposed rule.

Pursuant to Minn. Stat. § 15.0412, subd. 5, temporary rules take effect upon approval of the Attorney General. As soon as practicable, notice of the Attorney General's decision and the adopted temporary rule are published in the *State Register*, as provided for adopted rules. Temporary rules are effective for only 90 days and may be reissued for 90 days.

Department of Health

Adopted Rule Relating to Ionizing Radiation

The following rules were proposed before July 1, 1976, and are printed here as adopted.

MHD 181-186 contained in Chapter Twenty-One of the rules of the Minnesota State Department of Health is hereby transferred to Chapter Twelve.

MHD 181 (b), Definitions, is amended by adding the following definitions:

Commissioner — The Commissioner of the Minnesota Department of Health.

Screening — The testing with x-ray machines of human beings or human population groups for the detection or evaluation of health conditions when such x-ray tests are not specifically and individually ordered by a licensed healing arts practitioner, legally authorized to order such x-ray tests, 1) for the purpose of diagnosis or treatment or 2) as part of a physical examination conducted by a licensed practitioner. Screening does not include research protocols utilizing x-ray procedures when such protocols are part of research projects 1) sponsored or financed by agencies of the federal government, 2) conducted by educational institutions training pracitioners of the healing arts or, 3) conducted in hospitals, when such research is authorized by or under control of the governing body of that hospital.

MHD 181 (h) (1), Prohibitions, is amended by adding subparagraph d. as follows:

d. The use of x-ray machines for the purpose of screening is prohibited without prior written approval of the Commissioner.

MHD 181 (h) is amended by changing the present subparagraph designation of MHD 181 (h) (2), Violations, to MHD 181 H.5, and by adding subparagraphs MHD 181 H.2., 3. and 4. as follows:

2. Commissioner approval of screening. Any person desiring Commissioner approval for screening purposes as specified in MHD 181 (h)(1)d. shall submit an application to the Commissioner requesting his permission to perform screening. The burden of justifying the requested screening rests on the applicant. Approval will be granted if the Commissioner is satisfied that:

a. The proposed screening is a justified public health measure;

b. The benefit derived from the proposed screening will outweigh the detriment of x-ray exposure; and

c. The x-ray screening will be conducted properly, safely, and legally, i.e., in accordance with all applicable statutes and rules of the State of Minnesota or federal government.

3. Content of application for approval of screening. The application for approval of a screening program must contain the following information and data:

a. Name and Minnesota business address.

(1) If the applicant is a corporation or other business or nonbusiness association, the name of the person representing the association shall be given.

(2) If the applicant's principal location or home office is not in Minnesota, the principal location or home office address shall be given as well as the name of the person who may be contacted by the Commissioner with respect to the application.

(3) If the applicant is a foreign corporation subject to the provisions of Minn. Stat. ch. 303 it shall submit a certified copy of its Certificate of Authority issued by the Minnesota Secretary of State. The certification shall be dated no more than one month prior to the date of submission of the application to the Commissioner.

b. When and where the proposed screening is to be performed,

c. Description of the specific screening proposed.

d. Description of the age distribution of the population to be screened.

e. The amount of x-ray exposure to which individuals will be subjected by the proposed screening.

(1) Applications for screening for pulmonary (lung) conditions shall not be approved if the incident (skin entrance) x-ray exposure will exceed 50 milliroentgens per radiograph for the posterior-anterior (PA) view. Using normally accepted exposure techniques, a Victoreen R-chamber placed at a distance of 11 inches from the center of the film with a scatter phantom (Alderson "Rando" phantom or equivalent) positioned in front of the center of the film, or an equivalent method, shall be the method used for measuring the incident (skin entrance) exposure.

(2) Commonly accepted state-of-the-art techniques and equipment shall be the methods used for measuring x-ray exposure from other types of screening. A written description of the specific method used shall be submitted to the Commissioner. The amount of x-ray exposure shall be specified as skin entrance or film exposure and shall not exceed amounts normally given during such projections based on the studies "Population Exposure to X-Rays U.S. 1970" (DHEW Publication (FDA) 73-8047, November 1973)[1] and "National Evaluation of X-Ray Trends: Tabulation of Data for 'All States' for Period January 1, 1974 to December 31, 1974".[2]

f. Why the screening is being planned. A detailed statement shall specify the compelling health reasons, health benefits, or health emergency which justifies the radiation exposure to which individuals will be subjected by the proposed screening.

g. Who will interpret the x-ray film and to whom will the results, interpretation, or findings be sent.

h. Where the x-ray film will be filed.

i. Who will have access to the x-ray film.

j. If the persons screened will not be given the x-ray film or will not be personally informed by the applicant of the results, interpretation or findings.

(1) How will this information be communicated to those individuals who have been screened.

(2) What arrangements will be made to assure that those persons who have been screened will be informed as to the need for further medical and health care evaluation or treatment.

k. Why alternate screening methods, not requiring use of x-ray machines, are not acceptable.

l. Who will conduct the screening (operators) and their qualifications, with complete information pertaining to the operators including their formal training and specifically describing any licenses, registration or other authority held from Minnesota or other state or federal agencies or professional associations.

m. Who will supervise the operators conducting the screening, with complete information pertaining to the supervisor's qualifications and specifically describing any licenses, registration or other authority held from Minnesota or other state or federal agencies or professional associations. The method of supervision shall be specified.

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

n. What equipment will be used in connection with the screening, and whether it complies with Minnesota law and regulations and whether such equipment has been inspected, licensed or approved in any other way by a Minnesota agency, or by any other state or federal agency.

o. Any other information requested by the Commissioner which he deems necessary to enable him to determine whether or not the proposed x-ray exposure the subjects of the screening will receive is a justified public health measure, the benefit of which outweighs the potential detriment of x-ray exposure. The Commissioner may request the submission of additional information and data subsequent to the submission of the original application. The Commissioner may deny approval of any request to perform screening as specified in MHD 181 (h) (1)d. if the applicant fails to or refuses to submit all requested data.

4. Approval of changes in screening program. It is the responsibility of the applicant to inform the Commissioner of any changes in its screening program from that which is described in the application and receive Commissioner approval of such changes prior to commencement of the screening program.

MHD 181 H.5., Violations, is amended as follows:

5. Violations.

a. General.[3] If in the opinion of the Commissioner, it is necessary to do so to protect persons from hazards of radiation, an injunction or other court order may be obtained prohibiting any violation of any provision of any regulation or order issued thereunder. Any person who willfully violates any provision of any regulation or order issued thereunder may be guilty of a crime, and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

b. Commissioner approved screening.

(1) The Commissioner or his representative may inspect the screening program while in progress to assure that it is being carried out as described in the application and in compliance with Minnesota Rules MHD 181-186 relating to ionizing radiation.

(2) Approval may be withdrawn immediately if after an inspection the Commissioner finds the existence of conditions which would result in serious overexposure. All screening procedures shall be terminated immediately upon receipt of the written notice of existence of such overexposure. The applicant may request a contested case hearing within five days after receipt of the notice, provided, however, the request for hearing does not stay the Commissioner's order of immediate cessation of the screening program. The hearing shall be scheduled within ten days of receipt of the request for the hearing.

(3) Approval may be withdrawn if after an inspection the Commissioner finds discrepancies between the screening program as implemented and as described in the application or for violation of Minnesota Rules MHD 181-186 relating to ionizing radiation. A hearing shall be held if requested by the applicant within three days after the receipt of the notice of withdrawal of approval. The hearing may be held upon granting the applicant three days notice. If a hearing is requested, withdrawal of approval shall not take effect until a final order is issued by the Commissioner.

Appendix A
Population Exposure to X-Rays U.S. 1970
Estimated mean exposure per film by type of radiographic examination

Type of Examination	Milliroentgens (at skin entrance)
Head and Neck	300
skull	330
cervical spine	240
examinations of head and neck, n.e.c.	330
Thorax	(not given)
chest, photofluorographic	(not given)
chest, radiographic	44
shoulder	260
thoracic spine and cervical spine	980
exams of chest or thorax, n.e.c.	1,520
Abdomen	960
Upper abdomen	960
cholecystography or cholangiogram	620
lumbar spine or dorsolumbar spine	1,920
upper gastrointestinal series	710
gastrointestinal, n.e.c.	920
upper abdomen, n.e.c.	1,240
Lower abdomen	970
barium enema	1,320
abdomen, KUB, flat plate	670
intra or retrograde pyelogram	590
pelvis or lumbo-pelvic	610
lumbosacral or sacral spine	2,180
hip	560
lower abdomen, n.e.c.	850
Extremities	100
Upper extremities	90
hand and/or wrist	100
forearm or elbow	60
upper extremities, n.e.c.	90
Lower extremities	110
ankle	140
foot and toes or heel	120
knee	110
tibia and fibula	40
femur or entire leg	120
lower extremities, n.e.c.	140
More than one body area	500

Appendix B
Nationwide Evaluation of X-Ray Trends
Weighted mean indexes by type of exam/projection

Type of exam/projection	Exposure at skin entrance (mR)
Chest (P/A)	23.0
Skull (Lateral)	276.0
ABD. (KUB) (A/P)	652.9
Retr. Pyelo. (A/P)	847.9
Thor. Spine (A/P)	851.3
Cervical Spine (A/P)	302.9
Lum - Sac Spine (A/P)	888.6
Full Spine (A/P)	306.6
Feet (D/P)	202.5
Dental B.W. Post	506.8
Dental Periapical	698.3
Dental Ceph. (Lateral)	31.8

1. The estimated mean exposure per film by type of radiographic examination specified in this publication is reproduced in Appendix A.

2. The weighted mean indexes by type of exam/projection specified in this publication are reproduced in Appendix B.

MWCC 2

3. This subsection (i.e., MHD 181 H.5.a.) already existes in the rules and is not being amended except by being designated as subparagraph "a. General".

Metropolitan Waste Control Commission

Adopted Rule Establishing an Industrial Cost Recovery System

The rule published at *State Register* Vol. 2, No. 11, p. 518, September 19, 1977 (2 S.R. 518), is adopted and is identical in every respect to its proposed form, with the following amendment:

MWCC 2 Rules for industrial cost recovery system.

~~K. Effective date. The ICR system shall take effect on January 1, 1978.~~

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

PROPOSED RULES

Pursuant to the provisions of Minn. Stat. § 15.0411 to 15.052, the *State Register* publishes notices of hearing on proposed new or amended rules, including the full text of the new or amended rules, including the full text of the new or amended rule proposed for adoption, at least 30 days before the date set for the hearing.

Pursuant to Minn. Stat. § 15.0412, subd. 4, an agency may, with approval of the chief hearing examiner, incorporate by reference into the text of a rule, provisions of federal law, or rule, or other material which are 3000 words or more in length or would require five or more pages of print in the *State Register* and which are conveniently available to interested persons.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend, or repeal a rule does not allow for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Revenue

Proposed Amendments Governing Sales and Use Tax

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Hearing Room, Office of Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, on February 7 and 8, 1978, commencing at 9:30 a.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone (612) 296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would incorporate amendments to the sales and use tax statutes and court decisions since 1974. Generally, the amendments are proposed as clarification to existing rules with additional examples for illustrative purposes. New rules are being proposed in Chapter Four: Exemptions, covering taconite plants and senior citizen organizations. New rules are also being proposed for Chapter Six: Specific Business and Activities, covering advertising signs and billboards, aircraft registration, iron mining, and automatic data processing. The numbering of the rules has been conformed to the requirements of the State Register.

Amendments are proposed to clarify the definition of a "person;" leases subject to tax; producing, fabricating; printing or processing of property furnished by consumer; meals and drinks; admissions; building materials; property taken in trade; allowable and nonallowable deductions in computing sales price.

The rules pertaining to application for and revocation of sales tax permit are to be amended if the proposed rules are adopted. Clarification of exemption and direct pay certificates is also proposed.

Definitions and examples of the following are included: collection of use tax; exemptions for dental braces; gifts; clothing; property used in agriculture; isolated or occasional sales; and charitable, religious, and educational organizations. Amendments are proposed to update the procedures for claiming refunds and penalties, interest, and privacy procedures.

In the area of specific business activities, amendments are proposed to the rules dealing with commercial artists and photographers and persons selling or renting mobile homes or house trailers.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Don Mundahl, Director, Sales and Use Tax Division, 9th Floor, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes, Section 297A.29.

Notice: All persons have the right to be notified of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. All persons have the right to be informed of the date on which the hearing record has been submitted to the Attorney General by the agency. If you desire to be so notified, you may do so by so indicating at the hearing or by written request sent to the Hearing Examiner prior to the close of the record.

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual.

Arthur C. Roemer
Commissioner of Revenue

Rules as Proposed

Tax S&U 101 Person. The term ''person'', as defined in Minn. Stat. § 297A.01, subd. 2, includes the plural as well as the singular. The phrase ''any other group or combination, officers, directors and agents of a corporation or associ- project as well as those engaged in continuous or recurring activities. An example of such a group might be the faculty of a public school producing a play for the purpose of raising funds to be used for scholarships. Such a group of teachers is considered to be a person within the meaning of this 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 corportion or association are included in the definition, as well as agents of individuals.

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

The term ''trustee'', as used in Minn. Stat. § 297A.01, subd. 2, includes a trustee or receiver appointed by a Federal court exercising jurisdiction over the estate of a bankrupt.

Tax S&U 104 Leases.

A. In general. Any item which is taxable if sold is also taxable if leased. If an item is contracted for lease in Minnesota and physical possession of the item by the lessee occurs in Minnesota, a taxable transaction has occurred even if the lessee removes the property from the State for personal use. However, leased property which will be used in a trade or business outside Minnesota by the lessee without any intermediate use in Minnesota, and which will not be returned to Minnesota except in the course of interstate commerce, is exempt from tax.

~~(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 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

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to haul freight in interstate commerce to and from its Minnesota freight depot. The remaining three tractor-trailers are used to haul freight in interstate commerce to and from Motor Freight Line's depot in Illinois. From time to time, the three tractor-trailers enter Minnesota in the course of the normal interstate commerce activities of Motor Freight Line. The lease price attributable to the seven tractor-trailers used to haul freight to and from the Minnesota freight depot constitutes a Minnesota sale. The lease price of the remaining three tractor-trailers does not constitute a Minnesota sale.

Example 2. Amalgamated Contractors, a Minnesota company, leases a heavy-duty crane for a construction job in Iowa on a monthly basis. The payments are made by Amalgamated to the lessor in Iowa. Subsequently, Amalgamated secures a construction contract in Minnesota and transfers the crane to the Minnesota site on June 15, 1968. ~~Lease payments due while the crane is located in Minnesota represent Minnesota sales although such payments continue to be made in Iowa.~~ Lease payments due while the crane is located in Minnesota are subject to Minnesota Use Tax although such payments continue to be made in Iowa.

Example 3. Peter Smith, a resident of Fargo, North Dakota, leases a chain saw from XYZ Rental-All, an equipment leasing firm, with an office only in Moorhead, Minnesota. Mr. Smith intends to use the saw at his residence in Fargo, and takes possession of the saw from the rental firm in Minnesota. A Minnesota Sales Tax is due and payable on this transaction.

B. Leases of drive-it-yourself automobiles, trailers or other vehicles. ~~Notwithstanding the provisions of (a) above, all~~ 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 instates 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 Minnesota and returns the automobile 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 automobiel 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.

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 tansportation 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 Minn. Stat. § 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 Minn. Stat. § 297A.01, subd. 3(a).

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

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 nontaxable.

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 ⅓ 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 motor carrier. Effective July 1, 1971, common motor carriers may elect under provisions of Minn. Stat. § 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 motor carrier direct pay certificate. See Tax S&U 212 for rules relating to the common motor 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:

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

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

c. 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.

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d. 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.

e. 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.

f. 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:

a. 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.

b. 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.

c. 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.

d. 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.

e. Agreements similar to the arrangement in d. 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 2a. and b. 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 2c., 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 or 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 2d. and e., 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 effect at the time the obligation to pay becomes fixed under the agreement, and not at the time the payment must be or is in fact made. The initial obligation to pay becomes fixed upon the transfer of possession of the tangible personal property unless the agreement specifically sets forth another time. Subsequent obligations to pay become fixed either by the terms of the agreement, trade practices of the lessor, or practice in a course of dealing.

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.

Tax S&U 107 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 Minn. Stat. § 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 expediture 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 Minn. Stat. § 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 Minn. Stat. § 297A.01, subd. 3(b), since it results in the 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

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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 Tax S&U 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.

Example 11. Collating and assembling done by stapling or using a similar process affixing items together is taxable. The punching, assembly, stamping, burning, electroplating, etc. of goods supplied by a customer is taxable.

Example 12. A locksmith changes a combination on a safe or changes the tumblers in a lock so that a different key must be used. The transaction is considered to be a non-taxable service and the locksmith is required to pay the sales or use tax on his purchases of the parts and materials used to perform such service. However, retail sales of keys and parts which are billed separately are taxable.

~~Existing Tax S&U 9 is superseded by the following:~~

Tax S&U 108 Meals and drinks.

A. In general. Under Minn. Stat. § 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; or (4) meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to the handicapped and their spouses by governmental agencies, nonprofit organizations, agencies, or churches or pursuant to any program funded in whole or part through 42 USCA sections 3001 through 3045, wherever delivered, prepared or served.

B. Criteria for determining taxability. Whether a particular transaction constitutes the furnishing, preparing or serving of food, meals or drinks under Minn. Stat. § 297A.01, subd. 3(c), and thus is taxable, or whether it constitutes the sale of food products under Minn. Stat. § 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 Minn. Stat. § 297A.01, subd. 3(c) will be referred to as sales of "taxable food", and sales of food products exempted under Minn. Stat. § 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:

a. The vendor is in the business of selling "meals" or "drinks";

b. The food sold is ready for immediate consumption;

c. The food sold is usually consumed on the vendor's premises; or

d. 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:

a. The food is sold in an unheated state;

b. 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;

c. The food is sold in the same form, condition, quantities and packaging as commonly sold in food stores; and

d. 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.

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

C. Meals at hospitals, sanitariums, nursing homes or senior citizens' homes. Meals furnished, prepared or served

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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 nonprofit 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 nonprofit 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 (c) as occasional meals of charitable or church organizations.~~ Administrative Offices located off the school premises are not considered part of the school and therefore meals served at those offices are taxable.

A "public school" is one that furnishes courses of study, enrollment and staff that meet the standards of the State Board of Education.

A "private school" is one that provides an education substantially equivalent to that furnished at a public school, under the rules and standards of the State Board of Education.

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 Tax S&U 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 on the fair grounds at which it prepares and serves meals for a consideration for several consecutive days. The meals served at the fair grounds are not occasional meals and thus are taxable, but the monthly Sunday night suppers are not taxable.

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 Minn. Stat. §§ 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 pro-

vided 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 Minn. Stat. ch. 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 trans-action will be a taxable sale under Minn. Stat. § 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.~~ Catered meals served at schools do not constitute taxable transactions.

Any charges made by a caterer for such items as tableware, tablecloths, tables or chairs are taxable. If the customer has the option of having these items supplied by the caterer or otherwise arranging for them and the caterer's charge is adjustable accordingly, the furnishing of such items shall be considered to be the rental of tangible personal property and the caterer may rent or purchase such items exempt for resale.

If the customer does not have the option of arranging for the furnishing of such items himself for a reduction in the caterer's charge, the entire charge shall be considered to be for the furnishing, preparing or serving of meals for consideration. The caterer shall be regarded as using the items in rendering his services rather than as leasing them. The resale exemption would not be applicable to the caterer's purchase thereof when the caterer's operations are conducted in this manner.

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. Holes 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 therefore, ~~no taxable sale results.~~ no sale of a meal within the meaning of the sales and use tax law is deemed to have occurred. Thus, the transportation company may not purchase such prepared meals for resale and the sales of such meals in Minnesota to the transportation company are taxable retail sales.

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

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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 Tax S&U 108(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 Minn. Stat. § 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.

Tax S&U 109 A. Admissions and use of amusement devices. Under Minn. Stat. § 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 under Minn. Stat. § 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 Minn. Stat. § 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;

Admissions to golf courses and tennis courts;

Admissions to skating rinks and swimming pools;

Admissions to state, county or other fairs;

Admissions to carnival rides and hay and sleigh rides; ~~and~~

Admissions to bingo games and privilege of use of bingo cards; and

Admissions to a museum.

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.

B. Entry fees — Entry fees are payments required as a condition to participation in a competitive event. That portion of an entry fee assignable to admissions or the use of amusement devices is a sale under Minn. Stat. § 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.~~

C. Club dues — membership dues to clubs such as country clubs, tennis clubs and curling clubs are not taxable. This includes various forms of membership dues whether social and/or activity membership dues. However, payments to associations or organizations which only entitle the payee to attend concerts or events sponsored or held by the association each year are taxable as the granting of admissions to a place of amusement.

D. Tours — the charges made for aircraft, bus, boat, sightseeing rides or tours are considered non-taxable as being transportation services. They are not classified as the granting of the privilege of admission to places of amusement or the privilege of use of amusement devices.

E. Carnival rides — the gross receipts are fully taxable. If a carnival or amusement company charges a lump sum fee to a sponsor, and the sponsor allows its patrons, members, etc. to avail themselves of the carnival or amusement rides free of charge, such lump sum charges are subject to sales tax. In such a case, the sponsor is considered to have been granted the privilege of admission.

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

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

Tax S&U 112 Sales of building material, supplies or equipment.

A. In general. Under Minn. Stat. § 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, 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).

The term "real property" includes structures that are permanently affixed to real estate, such as buildings, fixtures, machinery, fences, railroad tracks, grain elevators, bridges, storage bins, silos, outdoor advertising signs, and billboards.

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

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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 resulting in an alteration, repair, or improvement of real property. Where machinery or equipment is attached to real property in such a manner and with the intent that it becomes a nontemporary accession to the real property, the contract pursuant to which it is attached shall be regarded as a "construction contract." Any attachment of property by or for a lessor thereof to realty not owned by the lessor where the lessor retains title and ownership of the property shall be considered a temporary accession to the real property and such property therefore retains its character as tangible personal property.

The term "construction contract" shall not include any contract for a sale of machinery or equipment which the seller, pursuant to the contract, will attach to or install upon real property if:

1. the machinery or equipment is of such size and installed in such a manner that it retains its character as personal property; or

2. the purchaser is not the owner of the real property to which the property will be attached, and the machinery or equipment can be removed without material injury to the realty; or

3. the title to the machinery or equipment passes from the seller to the purchaser prior to attachment to or installation on the real property.

Such construction activities do not include the sale and installation of an appliance, machinery, equipment or other item of tangible personal property in such a manner as not to become a permanent part of the real estate. Computers shall be considered to retain their classification and identification as personal property when installed because of such factors as industry standards, custom and practice, usage, and uniqueness. ~~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 swelling.~~ Where a fixed price or lump sum construction contract provides for the incidental transfer of certain tangible personal property and the contractor sells such items only as a part of the construction project, he is not regarded as a retailer provided that such personal property comprises an insubstantial portion of the total contract price.

Example 1. A dealer agrees to replace the old refrigerators with new models in a four-unit dwelling. The sale and installation of the refrigerators does not constitute a "construction contract". The transaction represents a "sale at retail" to the owner of the four-unit dwelling.

Example 2. A computer manufacturer sells and leases computers and also installs them on the customer's property. The sale or lease of a computer, regardless of size, is a sale or lease of tangible personal property and the installation does not constitute a "construction contract."

Example 3. A leasing company purchases a piece of equipment from Company A and leases it to Company B. Company A installs the equipment on the property of Company B. The sale and installation of the equipment does not constitute a "construction contract," since the owner of the equipment is not the same as the owner of the property to which the equipment was installed. The equipment is considered to be tangible personal property and the leasing company purchases the property exempt for resale and collects the sales tax on the lease payments from Company B.

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 Minn. Stat. § 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. These transactions constitute sales at retail and 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 un-

dertaken such construction with its own employees, the purchase of the materials by Village would not have been subject to tax.

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 Contrator 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,~~ If 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 exam-

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ple, 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 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, 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 him is $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, 1972:

Line 1	Gross sales	$675.00
Line 2	Deductions (see line ~~18~~ 19)*	$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	$ 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 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, 1972. (For purposes of this example, it is assumed that in March, 1972 no other sales were made at retail and no other material, etc., were used in contracting activities):

Line 1	Gross sales	$ 675.00
Line 2	Deductions	$ -0-
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	$ 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 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 virtue 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 nontaxable 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.

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

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.

Tax S&U 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 payoff of the old contract does not affect the amount allowed on the trade-in; even if this indebtedness is included in the new contract. The property so accepted will qualify for the exclusion from the sales price provided both the following conditions are met:

Such property is taxable under the Sales and Use Tax Law or the Motor Vehicle Excise 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 boat with a list price of $3,000.00 to Customer. Dealer accepts Customer's used boat in trade and gives Customer a credit of $1,000.00 therefor. As the conditions above are met, the credit qualified 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 cornpicker 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.

Example 5. Mobile home dealer sells customer a new mobile home with a list price of $12,000. The customer trades in his old mobile home which has an existing loan of $2,000 on it. The dealer agrees to include the payoff amount of the old contract in the new contract. The dealer allows $5,000 for the trade-in of the customer's mobile home. The following represents the amount of financing the customer arranges for and the "sales price" is $7,000:

List price	$12,000
Less: Trade In	5,000
Sales Price	7,000
Add: Payoff of old contract	2,000
New contract	$9,000

Tax S&U 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. Implement Dealer sells new farm tractor to Customer for $8,000.00. Included in the price is a charge of $150.00 repreenting 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 $8,000.00. See Tax S&U 117(c) regarding transportation expense incurred after sale is consummated.

Example 3. Lumber dealer sells a carload of lumber to a building contractor at an agreed upon price of $8,000 including the cost of transportation. The lumber is to be ordered and shipped from a point out of state and drop-shipped directly to the purchaser. No exclusion or deduction for cost of transportation is allowed even if the purchaser pays the transportation charges directly to the common carrier and deducts the same from the amount due the seller. The delivered price is the "sales price." The "time of sale" reference in Minn. Stat. § 297A.01, subd. 8 is that point in time when the seller is able to complete performance of his

contract by the physical tender of delivery of goods to the customer.

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, including assembly of component parts or materials, 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.

Example 4. Retailer stocks shelving components in unassembled form and sells such property unassembled or assembled. Customer purchases shelving components and requests that retailer also assemble such components. Retailer bills customer $150.00 for the components and $10.00 for labor. The entire charge of $160.00 is subject to tax.

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.

Tax S&U 117 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. 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 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 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 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. 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, respectively. 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 1. Retailer advertises a free-standing kitchen range for $250.00 without installation, and $266.00 installed. Customer orders the range installed. Retailer's bill reflects a sale of a kitchen range for $250.00 and installation charges of $16.00. Consequently, the "sales price" is $250.00.

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 adjustments. Where taxable property is returned, the retailer's gross receipts may be reduced in the month the property is returned by the amount of the sales price refunded, provided that the applicable sales tax has also been refunded. If the credit given for the returned merchandise is reduced by a handling charge, the entire amount of sales tax collected should be refunded and a reduction of gross sales for the full sales price should be taken on the sales and use tax return. Where a purchaser of taxable property makes a gift of such property, and subsequently the recipient of the gift returns the property to the vendor and requests a refund of the amount paid for the property, the recipient is entitled to a refund of the 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, 1972. Customer pays $100.00 plus $4.00 sales tax. As lawnmower was defective, it was returned to Hardware Dealer on May 10, 1972 and $104.00 was refunded to Customer. Gross receipts will be reduced by $100.00.

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

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

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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.

Example 4. Lumber Company sells 20 redwood posts to a customer for $100.00. A $4.00 sales tax is charged and collected. The customer decides not to use the posts and returns them to Lumber Company. Lumber Company has a policy of refunding all but $10.00 on all returned merchandise. This $10.00 represents a handling fee for placing the merchandise back into stock. Lumber Company is required to refund the customer the entire $4.00 sales tax and claim a reduction of $100.00 gross sales on its sales and use tax return.

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 retail sales, whether imposed upon retailers or consumers. This deduction does not apply to manufacturers' or importers' excise taxes.

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

Example 1. 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 4% of $5.70 (i.e. $.23) plus the federal tax, $.57, or a total of $6.50.

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

Example 3. Retailer purchases a camera for $500.00 in Europe and is required to pay a customs duty of $37.50 thereon at the time of entry in the United States. The use tax due is 4% of the $500.00 sales price of the retail sale, or $20.00.

Tax S&U 202 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 the Sales and Use Tax Law. Minn. Stat. § 297A.04 requires that any person, as defined in Minn. Stat. § 297A.01, subd. 2, who is engaged in making retail sales or is engaged in other activities taxable under the Sales and Use Tax Law, shall obtain a sales and use tax permit from the Commissioner. Such a person includes not only a seller located in Minnesota, but also a seller located outside Minnesota who is authorized to do business within Minnesota, or who is authorized under Minn. Stat § 297A.15 to collect the tax upon all transactions taxable under 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 farmhouse. He engages in no other retail activities. As such food products are exempt under Minn. Stat. § 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 the Sales and Use Tax Law, and he elects to file a separate return for each place of business, he is required to file a separate application for each such business location. He will thereafter receive a permit which may be used only at the address indicated therein. A separate permit will be assigned to each such place of business. Members of a group of corporations related by stock ownership, where such members are engaged in making sales at retail, are required to make individual applications.

In the event a person elects to file a consolidated return, he is required to submit to the Commissioner a list containing the business name and address of each separate place of business. In such event, the applicant need submit but one application to the Commissioner. (However, see 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 Tax S&U 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 soft drinks, coffee, tea, milk, candy bars,

sandwiches, soups, and items of tangible personal property such as combs, hair dressings, etc. Included in this definition are coin-operated devices providing amusement and diversion. These devices are commonly referred to as juke boxes, pinball machines, shuffleboards, etc.

Example. "V" operates 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 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.

5. In the event of the death of a permit holder who was operating a business as a sole proprietor, the duly appointed and qualified estate representative of the decedent's estate can assume and use the decedent's Minnesota Sales and the Use Tax Account Number during the period of probate administration. However, if the decedent's business is sold or ownership is assumed by a member of the decedent's family, a change of ownership occurs and a new Minnesota Sales and Use Tax Permit is required.

Tax S&U 204 Revocation of permits. The permit or permits issued to any person, hereinafter referred to as the Permit Holder, under § 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 the Sales and Use Tax Law.

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

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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, ch. 48, § 96, permits the Commissioner of Revenue to serve notice by regular mail in all cases if he deems the use of regular mail advisable.) ~~Such hearing shall be held at the office of the Commissioner of Revenue, Centennial Office Building, Saint Paul, Minnesota 55145, unless otherwise specified, and at the time stated in the notice of hearing.~~ Such hearing shall be conducted by a Hearing Examiner appointed by the Chief Hearing Examiner pursuant to the Administrative Procedures Act, Laws of 1975, ch. 380. The hearing shall be held at the time and place specified 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.~~

An official record of the testimony and exhibits presented at the hearing shall be prepared by the hearing examiner. If the Permit Holder wishes to secure a transcript of the procedures, such transcript will be available from the Office of the Hearing Examiner upon payment of the fee prescribed by the hearing examiner.

The hearing examiner will submit to the Commissioner his findings and conclusions. The final decision of the Commissioner will not be made until the report of the hearing examiner has been made available to parties to the proceeding for at least 10 days and an opportunity has been afforded to each party adversely affected to file exceptions and present arguments to the Commissioner.

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 Minn. Stat. §§ 297A.04, .05 and .06. Such application shall be accompanied by reasonable evidence that the Permit Holder intends to comply with the provisions of the sections of the law or the regulations which he had previously violated. Under Minn. Stat. § 297A.07, the Commissioner may request that the Permit Holder deposit any security in addition to that authorized by Minn. Stat. § 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.

Tax S&U 207 Good faith acceptance of exemption certificates. In general, Minn. Stat. § 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 acquring 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 Minn. Stat. § 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 consumer 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.

Minn. Stat. § 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 mainteannce of such equipment, where such certificates are taken from persons who state thereon that they are taxed under the provisions of Minn. Stat. §§ 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 Minn. Stat. ch. 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.

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

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

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

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 relived 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 psat 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 wellknown and, consequently, a seller would be "reasonably certain" that such a school or church making purchases of tangible personal property is entitled to exemption.

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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 TAX S&U 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 regardimg meals, admissions and lodging.

F. Although the furnishing of meals, admissions or lodging is defined as a taxable sale by Minn. Stat. § 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 Minn. Stat. § 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 TAX S&U 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~~ A seller ~~will be relieved from the duty of collecting~~ is not required to collect and remit~~ting~~ the tax ~~otherwise due~~ on sales of tangible personal property ~~provided~~ which he delivers ~~the property so sold~~ to a common carrier for delivery to ~~such~~ an outstate destination, or places the property in the United States mail or parcel post directed to ~~such~~ a purchaser outstate, or delivers the property to ~~such~~ a purchaser outstate by means of the seller's own delivery vehicles. No exemption certificate is required under these circumstances. However, adequate evidence of shipment or delivery to the out-of-state destination must be maintained by the seller.

Tax S&U 208 Content and form of exemption certificate.

A. In general.

Minn. Stat. § 297A.09 provides for the furnishing of exemption certificates with respect to exempt sales. Vendors accepting exemption certificates which do not include the following five elements of a valid certificate shall not be deemed to have accepted an exemption certificate in good faith. Exemption Certificates must contain the following information:

1. Name and address of the purchaser.

2. The account number of the permit issued to the purchaser, or, if no number, state reason.

3. The general character of the property sold by the purchaser in the regular course of business.

4. Description of the property purchased.

5. Signature of the purchaser.

The Commissioner has ~~prepared~~ approved use of the following certificates to assist purchasers in claiming exemption.

ST-3 is to be used for claiming exemption 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 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 or tangible personal property.

UNIFORM SALES TAX EXEMPTION CERTFICATE designed by the Multistate Tax Commission.

These certificates may be used for single purchases or for continuing future purchases. When used in this latter manner, the certificate is referred to as a blanket exemption certificate. Whether a certificate is a single purchase or blanket certificate is determined by marking the appropriate blank provided in the form except for the Uniform Sales Tax Exemption Certificate which does not contain such a blank but may be used as either a single purchase or a blanket certificate.

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

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 Tax S&U 415, pertinent to exemptions for charitable organizations for facsimile of Form ST-17, Certificate of Exempt Status to be used subsequent to June 30, 1969.

B. Special exemption certificates.

Special exemption certificates for claiming specific exemptions are, also, issued by the Commissioner to persons who qualify upon application. Special exemption certificates in current use are Form ST-14, Direct Pay Permit, and Form ST-14mc, Motor Carrier Direct Pay Certificate. See Tax S&U 211 and 212 for facsimiles of these special exemption certificates.

Tax S&U 211 Direct pay permit procedure.

A. The Commissioner of Revenue may issue a Direct Pay Permit to certain persons who:

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

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 sles 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;

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 Revenue.

Each request for a Direct Pay Permit will be carefully reviewed, and each person whose application is accepted will receive a Direct Pay Permit which will be numbered, dated and signed by the Commissioner of Revenue or his delegated representative. The Commissioner of Revenue shall issue a Direct Pay Permit only in those cases in which, in his judgment, it is in the best interests of the State of Minnesota to do so.

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.

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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

DIRECT PAY PERMIT

This permit is not transferable

Permit Number DP
Date Issued
Sales & Use Tax Account Number

This permit constitutes authority to make direct payment of sales and use tax to the Commissioner of Revenue in lieu of payment to the vendor.

The Commissioner may revoke a Direct Pay Permit at any time for failure to comply with the conditions under which such authority was granted or for any other reason constituting misuse of such authority, and in cases where the continued use of such permit is found by the Commissioner to be not in the best interests of the State of Minnesota.

ARTHUR C. ROEMER, Commissioner of Revenue
By

Sales and Use Tax Division

Tax S&U 212 Motor Vehicle Common carriers — direct pay.

A. Under Minn. Stat. § 297A.211 persons described in clause B. ~~common carriers~~ engaged in interstate for-hire ~~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 such as the file number issued by the Minnesota Public Service Commission to verify that it is a ~~common~~ carrier engaged in transporting tangible personal peroperty in interstate commerce.

B. For periods prior to April 7, 1977, "persons" referred to in clause A. include only common carriers of tangible personal property and does not include carriers which possess permits as "contract carriers" issued by the Interstate Commerce Commission. Subsequent to April 6, 1977, "persons" referred to in clause A. include (1) persons possessing a certificate or permit authorizing for-hire transportation of property from the Interstate Commerce Commission or the Minnesota public service commission; (2) persons transporting commodities defined as "exempt" in for-hire transportation in interstate commerce; and (3) persons who, pursuant to contracts with persons described in clauses (1) or (2) above, transport tangible personal property in interstate commerce. Persons engaged solely in the transportation of passengers and their baggage do not come within the provisions of Minn. Stat. § 297A.211.

C. A ~~Common~~ Motor Carrier Direct Pay Certificate will be issued to qualified electing carriers by the Commissioner of Revenue and will be effective as of the date shown on the certificate. A facsimile of the authorized ~~Common~~ Motor Carrier Direct Pay Certificate is reproduced as follows:

Form ST-14mc

State of Minnesota
Department of Revenue — Sales and Use Tax Division
Centennial Office Building — St. Paul, Minnesota 55145

MOTOR CARRIER DIRECT PAY CERTIFICATE

Certificate No. MCDP
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.

ARTHUR C. ROEMER, Commissioner of Revenue

By

Sales and Use Tax Division

D. Carriers which elect to pay the Minnesota Sales and Use Tax under the provisions of Minn. Stat. § 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 of 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 Motor Carrier Direct Pay Certificate.

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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 Motor Carrier Direct Pay Certificates to the seller.

a. "Mobile Transportation Equipment" includes trucks, tractors and trailers used in interstate transportation.

b. "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.

c. 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, Sale and Use Tax Return. On line 4 of such return there shall be shown the sum of:

a. The sales price of items puchased 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,

b. An amount determined by multiplying the total cost of mobile transportation equipment and parts and accessories attached or to be attached thereto purchased or leased during the month by a fraction, the numerator of which is the road mileage operated during the past calendar year within Minnesota and the denominator of which is the total road mileage operated during the past calendar year. Mileage figures shall be based on records required to be maintained by the Interstate Commerce Commission. Persosn qualifying for Motor Carrier Direct Pay Certificate who are not subject to I.C.C. regulations must, as a condition of qualification, maintain on a current basis the same type of mileage records that are required to be kept by persons subject to regulation by the I.C.C.

For purposes of the computation in b. 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 Minn. Stat. § 297A.211 shall become effective only upon notice of such intent and return to the Common Motor Carrier 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. If such election is withdrawn, subsequent re-election shall be effective only upon approval of the Commissioner of Revenue. ~~Common~~ Motor Carriers which do not elect to pay Minnesota Sales and Use Tax under the provisions of Minn. Stat. § 297A.211, shall be governed by the following:

a. Prior to January 1, 1972, carriers shall play 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.

b. Subsequent to December 31, 1971. "Mobile Transportation Equipment" subject to the motor vehicle excise tax under the provisions of Minn. Stat. ch. 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 purchase 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.

Tax S&U 302 Collection of tax at time of sale. Any corporation authorized to do business in Minnesota (see Minn. Stat. ch. 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 Minn. Stat. § 297A.15, upon making sales of taxable personal property for storage,

use or consumption in Minnesota, where such items are not exempt in respect of the purchaser under the Sales and Use Tax Law, shall collect the use tax from the purchaser and give to such purchaser a receipt or other written or printed memorandum evidencing payment of the tax.

"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, a manufacturer's representative, salesman, or any agent operating within this State under the authority of the retailer, whether such place of business or agent is located in Minnesota permanently or temporarily.

Thus when a manufacturer's representative, salesman or agent takes an order for merchandise and forwards the order to the out-of-state vendor who fills the order, ships the merchandise to the Minnesota purchaser and bills the customer for the merchandise, the out-of-state vendor is required to have a permit, collect the Minnesota use tax from the customer, and remit the tax to the State of Minnesota.

Outstate business making deliveries to Minnesota customers in its own trucks is responsible for the collection and remittance of the use tax imposed on Minnesota buyers.

When a manufacturer's representative takes the order and bills the purchaser and collects for the merchandise himself, he is then considered a vendor for purposes of administering the Minnesota Sales and Use Tax Law, and is required to have a permit and collect the sales tax from the customer.

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

Tax S&U 401 Drugs, therapeutic and prosthetic devices.

A. In general. Minn. Stat. § 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 pur-

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chase 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, porcelain, gold, silver, alloy and synthetic filling material, *teeth braces and retainers.*

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 glass es, 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 opththalmologists, 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:

a. 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 anti-inflammatory), such as antibiotic ointments; Boric acid; caladryl; calamine lotion; camphor ice; Kerodex Barrier Cream; lip ice; Lobana Loto-Creme; and Zinc-Oxide ointment. 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; surgi-

cal 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 theapeutic vitamins.

b. Therapeutic and prosthetic devices: First-aid, such as first-aid kits and infra-red lamps and bulbs. Hypodermic syringes and needles. Medica-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); bedwetting 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.

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

d. Miscellaneous: Pesticides, such as Cuprex.

2. Taxable toiletries, cosmetics,and equipment:

a. 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; fiilter masks; humidifiers; massage applicances 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 repellents such as 6-12; mothballs; rat poison; and D-Con.

b. Detailed listing:

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

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

Tax S&U 404 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 chance 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 Tax S&U 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.

Tax S&U 407 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.

Minn. Stat. § 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

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

Examples of Taxable items

bags, overnight, beach, etc.
barrettes
billfolds
cosmetics, hair dyes, etc.
crib blankets, sheets, mattress pads, rubber sheets, etc.
furs on the hide or pelts
hair clips
handbags

iron-on transfers or emblems
jewelry:
  bracelets
  broaches
  cufflinks
  earrings
  necklaces
  pins
  rings
  tie clasps and tacks
lapel pins
money belts
money clips
perfume
pocketbooks
purses
sewing equipment:
  knitting needles
  patterns
  pins
  scissors
  sewing machine
  sewing needles
  tape measure
  thimbles
umbrellas
wallets
watchbands
watches
wigs

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 waering 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.

1. 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 snowmobile and motorcycle helmets when attached and sold as an inseparable part of the helmet, and the price is not stated separately
name patches or emblems on suits and jackets when sold attached, and the price is not stated separately
bowling shirts
sweat shirts
sweat suits
bathing suits and caps
beach capes and coats
tennis shorts, shirts, sweaters, dresses and shoes
hunting jackets and trousers, canvas or leather front, insulated or uninsulated, lined or unlined
camouflage parkas and trousers
rain wear (ponchos, jackets, parkas, shirts and trousers)
ballet and tap shoes
dancing costumes
gym suits and shorts
leotards and tights

2. 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 purchased with or without the name patches or emblems)
uniforms, baseball, football, basketball, hockey, track, etc.
gloves, baseball, hockey, boxing, bowling, golf, etc.
shoes, bowling, baseball, football, track, golf, etc.
helmets, football, hockey, baseball, etc., baseball masks, chest protectors, or shin guards
shoulder pads and padding
athletic supporters
fishing boots (hip boots and waders)
skin-diving suits, goggles, fins, equipment, etc.
shell belts and vest
  fishermen's wading vests and jackets
hunting or game pouches and carriers
life preservers, vests, belts

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 § 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 and not includable in two of the above three categories, are considered to be within the exemption provided for ''clothing and wearing apparel'' and are exempt sales.

a. Examples of Exempt items

coveralls, uniforms
work clothes, etc.
overshoes
work shoes
cloth gloves
safety glasses and goggles (prescription)
hard hats and liners

b. Examples of Taxable items

breathing masks
ear and hearing protectors
face shields
reflective or asbestos vests, aprons, gloves, suits, etc.
welding helmets
safety glasses and goggles (non-prescription)
safety belts
finger guards

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Tax S&U 408 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 Minn. Stat. § 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 Minn. Stat. § 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 section (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. Minn. Stat. § 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. The phrase "used or consumed in agricultural or industrial production" also includes materials that are only used once in production and even though they have not been physically consumed they will not be used again. Examples of such exempt materials that could qualify for this exemption are keylines, typeset, paper pan and cake liners.

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

C. Taxable equipment. The exemption provided by Minn. Stat. § 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 § 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, and 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 denition if they are used or consumed in industrial or agricultural production in a manner which directly causes a physical or chemical change upon or within the materials being processed. Examples of items within this exemption include but are not limited to drill bits, cutting tools, grinding wheels, abrasive and polishing belts, sheets and discs, taps, reamers, printing plates, saw blades and certain dies, jigs, patterns and molds. Examples of items not exempt under this provision are conveyor belts, rollers, etc., that only serve to move the product from place to place.

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

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

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

Circuit Board Drill Tapes — These tapes coordinate where holes are to be drilled on the circuit board and electronically guides the drilling apparatus to the proper position. Without this tape being used in conjunction with the drilling apparatus the circuit board would not be able to be manufactured.

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

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

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

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.

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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 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 Minn. Stat. § 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 material consumed in the repair or reconditioning of taxable returnable containers are taxable unless the provisions of Tax S&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, clocking, 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 Minn. Stat. §§ 297A.01 to 297A.44.

5. 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 Minn. Stat. § 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.

Tax S&U 411 Isolated or occasional sales.

A. In general. As provided in Minn. Stat. § 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 sales of an entire business by the owner thereof except that the transfer of inventory or stock in trade constituting a part of such sale is not exempt as an isolated sale.

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.~~ Example 1. Leasing company sells a bulldozer to "X" which was previously used in its business by leasing to others. Inasmuch as leases constitute sales, leasing company is deemed to be in the business of selling this kind of property. The sale of the bulldozer to "X" is not an isolated or occasional sale.

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, waster, 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, rummage sales 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.~~ If tangible personal property is sold at such an event by a person, holding a sales and use tax permit, other than the non-profit organization, the sales by such person would be taxable.

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Tax S&U 411

A sale made by a non-profit organization at which only items exempt from tax under Minn. Stat. § 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 nonconsecutive days during the calendar year, the first on January 15, 1971, and the second on February 18, 1971. As no more than two such events of one day's duration each occurred during the calendar year, the sales made at such events are exempt as isolated or occasional sales.

Example 2. 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 constitutes 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 of meals or drinks for a consideration generally constitutes sales within the meaning of the Sales and Use Tax Law, such sales are not sales of tangible personal property and thus do not come under the exemption for "the isolated or occasional sale of tangible personal property" provided in Minn. Stat. § 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 Tax S&U 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. 3(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).

Tax S&U 415 Charitable, Religious, and Educational Organizations.

A. In general. Minn. Stat. § 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. if the property is to be used in the performance of charitable, religious or educational functions . . ." The property purchased must be used in the performance of the charitable, religious or educational function of the tax exempt organization. For example, furniture purchased by a church for use in its parsonage is exempt since it is purchased ~~with the congregations contributions to the church~~ for use by persons that administer religious activities to the congregation. These items are not purchased for the personal use of any one specific person but rather for the operation of a religious organization. However, purchases of bingo equipment such as bingo cards and accessory bingo equipment by churches for fund raising are taxable as being property purchased for use in non-religious functions.

Although the furnishing of meals, admissions and lodgings are defined in Minn. Stat. § 297A.01, subd. 3(c), (d) and (e) as sales, they are not sales of tangible personal property and cannot be exempted under Minn. Stat. § 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:

a. 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.

b. 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 non-profit 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 Minn. Stat. § 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 organizaton." Similarly, an organization that is organized exclusively for "exempt purposes" is not an "exempt organization" if 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

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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.

6. Effective July 1, 1977, an exempt organization will lose its status as an exempt organization under Minn. Stat. § 297A.25 subd. 1(p) if the employer, who employs 10 or more individuals who are residents of this state, fails to provide qualified health insurance for its employees pursuant to Laws of 1976, ch. 296.

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".

Tax S&U 421 Taconite Plant Construction and Expansion Exemptions.

A. General. Minn. Stat. § 297A.251 exempts from the sales and use tax materials, supplies and equipment used or consumed in constructing or incorporated into a new taconite plant or the expansion of an existing taconite plant, if such expansion results in an increase in production capacity of at least 10 percent. Included in this exemption is the lease of equipment used in construction. In order for the exemption to be applicable, the following criteria must be met:

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

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

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

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

5. The purchaser must be the owner, a construction contractor or construction sub-contractor.

B. Property exempt.

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

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

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

4. Equipment which is part of the operational facility but not incorporated into the construction. Examples of items included in this category are: drilling machinery, bulldozers, draglines, haul trucks, portable pit offices, dump shacks, office equipment, desks, portable lockers, warehouse shelving, fork lifts, vacuum cleaners, lunch room

tables and chairs, etc. In the case of a plant expansion such items shall be exempt only to the extent related to the expanded facility. Equipment purchased for replacement of equipment in or for the previously existing plant does not come within the exemption.

C. Motor vehicles. Motor Vehicles for which registration is required under the provisions of Minn. Stat. ch. 168 are not included within the exemption. Motor vehicles not subject to such registration may be exempt if qualified under preceding clauses (a) and (b).

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

Tax S&U 422 Senior Citizen Organizations

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

Tax S&U 423-499 Reserved for future use.

Tax S&U 508 Claim for Refund.

A. In general. A person, as defined in Minn. Stat. § 297A.01, subd. 2, who has overpaid sales or use tax for any period, may file a claim for refund with the Commissioner for the amount of the overpayment. The claim for refund shall be submitted on Form ST-11 and shall be completed in the manner prescribed therein. Every adjustment to total taxable amount, credits and tax computation shall be adequately supported. The claim shall set forth in detail each ground upon which it is made, and facts sufficient to indicate to the Commissioner the exact basis thereof.

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:

a. 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 Minn. Stat. § 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 Minn. Stat. § 290.501.

b. 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 Tax S&U 419.

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

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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 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 fo 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 this 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 Minn. Stat. § 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 fo 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.~~ Interest shall be allowed on the amounts refunded or credited from the date of overpayment to the date when such refund or credit is authorized by the Commissioner.

On overpayments made on returns due before July 2, 1975, interest shall be allowed at the rate of 4% per annum.

On overpayments made on returns due after July 1, 1975, interest shall be allowed at the rate of 6% per annum.

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 adjust-

ment 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.

Tax S&U 510 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. Interest. Interest on unpaid liabilities shall accure as follows:

1. On returns due prior to May 24, 1969 unpaid tax plus the late payment penalty shall bear interest at the rate of four percent per annum until May 24, 1969 and thereafter at the rate of eight percent per annum on the total of the tax plus all penalties.

2. On returns due after May 23, 1969 and prior to July 2, 1975 unpaid tax plus all penalties shall bear interest at the rate of 8% per annum.

3. On returns due after July 1, 1975 unpaid tax plus all penalties shall bear interest at the rate of 10% per annum.

B. Late payment. In accordance with Minn. Stat. § 297A.39, if a taxpayer fails to pay any tax imposed by the Sales and Use Tax Law or any portion of such tax when due, a penalty equal to ten percent of the tax unpaid shall be assessed unless the Commissioner has extended the time for filing the return and remitting the tax. (See Minn. Stat. § 297A.26, .27 and .30 regarding the due date for filing the return and remitting the tax.)

The amount of tax not timely paid together with the penalty imposed thereon shall bear ~~interest at the rate of eight percent per annum from~~ the applicable rate of interest from the time the tax should have been paid until paid. The phrase "timely paid" means the due date as provided by law or under an extension of time as granted by the Commissioner.

Example 1. On November 24, 1971, Retailer remits tax of $200.00 due on October 25, 1971, for the month of September. A ten percent penalty is assessed. The required amount to be paid on November 24, 1971, is calculated as follows:

Tax due and owing	$200.00
Ten percent penalty	20.00
Tax and penalty	$220.00
Interest for 30 days at 8%	1.45
Total amount due	$221.45

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

Tax due and owing	500.00
Ten percent penalty	50.00
Tax and penalty	$550.00
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	$556.91

Example 3. On November 24, 1975, Retailer remits tax of $200.00 due on October 25, 1975, for the month of September. A ten percent penalty is assessed. Since the return was due after July 1, 1975, the tax and penalty bear interest at the rate of 10%. The amount required to be paid is calculated as follows:

Tax due and owing	$200.00
Ten percent penalty	20.00
Tax and penalty	$220.00
Interest for 30 days at 10%	1.80
Total amount due	$221.80

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

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so is not by reason of wilful neglect, pursuant ot Minn. Stat. § 297A.39, subd. 2, the Commissioner shall add to the tax in lieu of the ten percent specific penalty provided in B. above, a 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 ten percent penalty imposed under clause B. above. Consequently, as in the case in respect of the ten percent penalty imposed under clause B., the tax plus penalty bears interest for the period during which failure to file continues. The following example is illustrative: The return for August, 1971, reflecting the tax of $300.00 is filed on December 24, 1971.

Tax due and owing	$300.00
Twenty percent penalty	60.00
Tax and penalty	$360.00
Interest for 90 days at 8%	7.10
Total amount due	$367.10

D. Failure to file with intent to evade tax — fraud. Where a person is required to file a return under the Sales and Use Tax Law, and with intent to evade the tax fails to do so, or files a fraudulent return, an amount equal to 50 percent of the amount found to be due shall be added thereto. This penalty shall be in addition to any other penalties and interest provided by Minn. Stat. § 297A.39, whether such penalties be civil or criminal.

E. Criminal punishment; persons to be charged. In addition to the penalties prescribed above, Minn. Stat. § 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 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.

F. Abatement of penalties and interest. Pursuant to Minn. Stat. § 297A.39, subd. 6, and Minn. Stat. § 270.07, subd. 1, the Commissioner shall have the power to abate penalties and interest when, in his opinion, their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the Attorney General if the abatement exceeds $500.00. All requests for abatement of penalties and/or interest shall be in writing and shall set forth the reasons for the failure to file the return and pay the tax timely.

Tax S&U 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 the Sales and Use Tax Law. Any person violating this provision shall be guilty of a gross misdemeanor.

The secrecy provision of Minn. Stat. § 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, and whether the permit is still active.

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 Minn. Stat. § 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.

The Commissioner may, at his discretion, furnish the Motor Vehicle Division, Department of Public Safety, all information necessary to administer the Motor Vehicle Excise Tax, Minn. Stat. ch. 297B.

Tax S&U 512-599 Reserved for future use.

Tax S&U 601 Commercial artists and photographers. Commerical 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 pasteups) 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., and to preliminary art which becomes physically incorporated into finished art as for example, when the finished art is made by inking directly over a pencil sketch or drawing. Separately stated charges for preliminary art, in the form of roughs, visualizations, comprehensives and layouts, where the preliminary art does not become physically incorporated into finished art shall be considered charges for services and not subject to tax. ~~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 Minn. Stat. § 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 his 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 Tax S&U 207 shall be sufficient to relieve responsibility to collect the tax.

Tax S&U 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 Minn. Stat. ch. 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.~~

1.~~(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.

2. ~~(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.

3. ~~(4)~~ The wheels must be removed.

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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.

Tax S&U 607 Advertising signs and billboards.

Sign Painters: The sales and use tax applies to retail sales of metal, wood, cardboard, paper or other type signs, showcards, posters, etc. which are not attached or affixed to real estate by the sellers thereof. Purchases by sign manufacturers or painters of paint and other materials entering into or becoming component parts of such signs, showcards and posters are exempt. Charges by sign painters for painting signs on buildings, outdoor boards, windows, or other real property, trucks and similar properties owned by others are exempt as charges for personal services. The sign painter is considered the user or consumer of all paint, etc. used for this purpose and must pay sales or use tax, whichever is applicable, upon all purchases thereof.

Sales of Realty: Contracts under which the sellers provide signs and attach them to buildings or to structures bolted to buildings or to structures anchored in the ground by means of wood or steel poles or other similar means, so that the signs become non-temporary accessions to such buildings or structures, are deemed to be contracts for the alteration of real property and are thus not transactions subject to the sales tax. Persons who provide and install such signs are the consumers of, and must therefore pay tax on, all purchases of, all component parts, materials and supplies used in the construction, repair and maintenance thereof.

Sign Rentals: The lease charges for rental of real property are not subject to tax. Charges for the lease of signs attached to real property are not taxable. The signs, when attached to buildings, are fixtures becoming real property upon being affixed.

Charges by tenants or owners of buildings, structures, or land for affixation thereon of signs are exempt as charges for the lease of license to use real property.

Outdoor Advertising Services: Persons engaged in the business of selling advertising space (''exposure time'') on signs, billboards and other outdoor advertising structures are deemed to be the consumers of all component parts, materials and supplies used in the construction, repair and maintenance of such signs and billboards. Sales to such persons of component parts, materials and supplies are subject to tax. Charges by such persons for advertising space on such signs, billboards and outdoor advertising structures are exempt as charges for personal services.

Tax S&U 608 Aircraft registration.

A. In general. Minn. Stat. § 297A.255 require persons who wish to license or register an aircraft in Minnesota to furnish proof to the Department of Aeronautics that the Minnesota Sales or Use Tax has been paid, or that the purchase of the aircraft was not subject to the Minnesota Sales or Use Tax. The effect of this law is to impose a use tax on occasional or isolated sales of aircraft in those cases involving sales to individuals not in the business of selling aircraft. The law is effective for registrations applied for after June 30, 1973.

The necessary forms (Form UT-1 and Form ST-24) for reporting and paying the use tax or for claiming exemption are available upon request from the Minnesota Department of Revenue and the Minnesota Department of Aeronautics.

This statute does not affect the exemption provided for purchases of air flight equipment by airlines taxed under Minn. Stat. § 270.071 through 270.079.

B. Registration of aircraft by individuals.

1. Minnesota sales tax paid to dealer. When a purchaser pays the Minnesota sales tax to a Minnesota aircraft dealer who holds a Minnesota Sales and Use Tax Permit, the dealer shall furnish the purchaser with a statement showing that the sales tax has been paid. The aircraft dealer will report and pay the sales tax to the Minnesota Department of Revenue as in the past. It is not necessary for the purchaser of the aircraft to obtain a Certificate of Tax Payment or exemption, Form ST-24, from the Minnesota Department of Revenue. The purchaser should present the statement, which he received from the aircraft dealer, directly to the Department of Aeronautics in order to license or register the aircraft.

2. No Minnesota sales tax paid to seller. When the purchaser does not pay a Minnesota sales tax to the seller on his purchase of an aircraft, he must obtain a Certificate of Tax Payment or Exemption, Form ST-24, from the Minnesota Department of Revenue. If a use tax is due, the purchaser must complete a Consumer's Use Tax Return, Form UT-1, and file it along with his tax payment when applying for the Certificate Form ST-24. If the purchaser claims exemption from the tax, he must furnish a copy of his purchase invoices or bill of sale along with necessary proof showing that he is entitled to the exemption when applying for the certificate. Exemptions are allowed for purchases by governmental units and by organizations that are organized and operated exclusively for charitable, reli-

gious or educational purposes; for aircraft purchased outside Minnesota by a non-resident and later brought into Minnesota for use; and for aircraft purchased for resale or lease.

C. Registration of aircraft by dealers who are licensed in accordance with Minn. Stat. § 360.63. When a licensed dealer purchases an aircraft for resale and places it in a withholding status, no Certificate of Tax Payment or Exemption is required. When a licensed dealer registers an aircraft for commercial use, he must present a Certificate of Tax Payment or Exemption to the Minnesota Department of Aeronautics. He will be required to pay a use tax on his purchase price of the aircraft unless he makes application to the Commissioner of Revenue for an Aircraft Commercial Use Permit, Form ST-23, and pays a $20 fee. By obtaining an Aircraft Commercial Use Permit, Form ST-23, a licensed dealer may purchase an aircraft for resale and put it to commercial use such as crop dusting, charter service, freight transportation and flight instruction, for up to one year without paying a sales or use tax on his purchase. When he sells the aircraft, he is required to collect a sales tax. If he keeps the aircraft for more than one year or makes personal use of such aircraft, a use tax is also due on his purchase price. A licensed aircraft dealer who obtains a Commercial Use Permit, Form ST-23, should check the box of Section B of Form ST-24 which indicates that the aircraft was purchased for resale or lease by the holder of a Minnesota Sales and Use Tax Permit.

D. Registration by dealers who are not licensed in accordance with Minn. Stat. § 360.63. This type of dealer is required to file Form ST-24, and should check the box of Section B which indicates the aircraft was purchased for resale or lease by the holder of a Minnesota Sales and Use Tax Permit. However, if the dealer purchases an aircraft for personal or commercial use, he is required to file Form ST-24 and Form UT-1 and pay the use tax on the purchase price.

E. Registration of aircraft by lessor or lessee. When a lessor registers an aircraft in his name, he may furnish his sales and use tax account number when applying for the Certificate of Tax Payment or Exemption, Form ST-24, and claim exemption for resale. He must continue to collect and remit sales tax on lease payments he receives, as in the past.

When a lessee registers an aircraft in his name, and the lessor does not hold a Minnesota Sales and Use Tax Permit, the lessee is required to obtain a permit. The lessee must pay the use tax on the amount of his lease payments in the same manner as all other Minnesota permit holders who are required to file sales and use tax returns.

F. A facsimile of the authorized aircraft certificate of tax payment or exemption (Form ST-24) is reproduced as follows:

Tax S&U 609 Iron mining industry exemptions.

A. General. The industrial production exemption provided in Minn. Stat. § 297A.25, subd. 1(h), as amended effective January 1, 1974 is applicable to taconite mining and production operations and to the mining and producing of other ores as well. The exemption applies generally to electricity and all materials other than tools, machinery and equipment which are used in the production process, and to separate detachable units meeting the criteria specified in regulation Tax S&U 408.

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.

Clause B. sets forth examples of items which are illustrative of the exemption allowable for separate detachable units.

In addition to the general industrial production exemption, Minn. Stat. § 297A.25, subd. 1(o) provides a specific exemption for items used in the production of taconite. See clause (c).

To further clarify and illustrate the scope of the exemption specified in the preceding paragraphs, examples of items not considered to be exempt thereunder are set forth in clause (d).

B. The exemption for separate detachable units used in producing a direct effect upon the product provided in Minn. Stat § 297A.25, Subd. 1(h) became effective January 1, 1974. It is applicable to taconite mining and production operations and to the mining and producing of other ores as well. The following items are considered as having a direct effect upon the product and qualify for exemption where they are separate detachable units and their ordinary useful life is less than 12 months:

bucket lip on front-end loader used in other than stockpil loading
chunk breaker used to break up pellets fused into chunks
crusher bowls, concaves, mantles

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dipper teeth but not dipper teeth adaptors
dozer blade cutting edges & end or corner bits plus blade bolts & nuts
drill bits and reamers used in drilling ore body for blasting
drop ball for breaking huge rock chunks
filter cloth or bags
grader blade cutting edges and end bits plus blade bolts and nuts
internal parts of an "Erie" type cyclone
magnetic separator covers on rough cobbers
ripper teeth for ground breaking
screen cloth or mesh or panels
splitter castings and grizzly castings used in crushers, loading and/or storage bins
stationary and movable jaws on jaw crusher
wear shoes on spiral classifiers

C. The exemption provided in Minn. Stat. § 297A.25, subd. 1(o) is applicable only to companies involved in the mining and production of taconite. It exempts grinding rods, grinding balls, and mill liners used in the reduction and processing of the taconite ore.

For purposes of this exemption, the term "mill" includes all of the facilities used to reduce and process the ore. It does not include shovels or mobile equipment.

Any item which is an integral part of the plant equipment as opposed to being a liner serving to protect the equipment is not included within this exemption. Examples of items exempt as liners are:

autogenous mill liners, feed and discharge liners
chute liners (this may be a bar or a plate.)
classifier wear plates and classifier shoes
conveyor skirt board rubber liners
crusher bowl liners (concaves), mantle liners, feed and discharge liners
crusher spider caps, rims, liners, shell liners, lower hub liners, pinion shaft liners, feed opening liners, wear rings, torch rings, and other crusher related liners
cyclone classifier wear plates
cyclone collector wear plates
dump pocket wall liners, wear bars
linatex materials used in pipes, pumps, chutes, hoppers, etc.
mill liner bolts
nordbak kits (other than that used instead of zinc for bowls and mantles)
refractory brick in rotary kiln only
rod and ball mill liners, feed and discharge liners
rubber or like materials used as liners in pumps
steel wear plate or alloys used to line hoppers, bins, chutes pockets or launders
urethane materials used to line filter sectors, separator covers, fan blades, vertical classifier internal surfaces, cyclone classifier and collector internal surfaces, pipe fittings, pipe liners, chutes, bins, launders and sumps
welding rods used to repair liners or wear plate

D. Examples of items of tangible personal property which do not come within the exemption provided under Minn. Stat. § 297A.25, subd. 1(h) or subd. 1(o) are:

all motor and engines (electrical or otherwise)
burner tips
chute liners (other than in taconite operation)
conveyor belts
conveyor belt wiper and idlers
drum separator lifter bar
filter arm
grate bars not used for sizing
grate side plates
kelly extension
materials and equipment including detachable tools used to maintain or repair plant or mining equipment
pan feeder plates
pump casing
pump impellers
pump side plate
replacement parts used to repair mine or plant equipment
truck filters
V belts and sheaves

Items found on mobile equipment such as:

adapters	rollers
cables	shovel bucket liners
drill bars	tires
drill cables	track pads
idlers and sprockets	truck box liners

Items found on traveling grate such as:

chain	sprockets
grate casting	tail casting
head casting	

All refractories other than refractory brick in rotary kiln, including those used in horizontal and vertical furnaces, preheaters and annular coolers:

coupling liners
garbage can liners
mobile equipment liners
pillow block liners

Tax S&U 610 Automatic data processing.

A. In general. A sales or use tax is imposed upon the gross receipts from selling, leasing, or granting a license

to use tangible personal property. The labor charges for repair, service and maintenance of tangible personal property is not subject to tax. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who directly or indirectly furnish the materials used in the producing, fabricating, processing, printing or imprinting is also subject to tax. The transfer of property produced, fabricated or printed to the special order of the customer is also subject to tax.

This regulation sets forth guidelines for the application of the foregoing general statutory provisions to transfers of property and service rendered in the automatic data processing industry.

"Automatic data processing services" are those rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel, and automatic data processing equipment. Automatic data processing services may be provided by manufacturers of data processing equipment, data processing centers, systems designers, consultants, software companies, etc. In addition, there are banks and other businesses which own or lease automatic data processing equipment and use it primarily for their own purposes but occasionally provide services to others. Businesses rendering automatic data processing services will be referred to herein as "service bureaus."

B. Description of terms.

Application: The specific job performance by an automatic data processing installation is called an "application". For example, data processing for a payroll may be called a payroll application.

Automatic Data Processing Equipment: The term includes computers and their peripheral equipment as well as punched card tabulating machines.

Coding: The list, in computer code, of the successive computer instructions representing successive computer operations for solving a specific problem.

Input: The information or data transferred, or to be transferred, from external storage media (e.g. punched cards, punched paper tape and magnetic tape) into the internal storage of the computer.

Keypunching: Recording information in cards, paper tapes, or magnetic tapes, disc or drum by punching holes in the cards, paper tapes or inserting magnetic bits on magnetic tape, discs or drums, to represent letters, digits, and special characters. Keypunching includes the necessary preliminary encoding or marking of the source documents.

Keystroke Verifying: Use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in a punch card or transcribed on magnetic tape during the keypunching operation has been punched properly. The machine signals when the punched hole on the card and the depressed key disagree, or when the data on magnetic tape differs from depressed keys.

Off-Line: Descriptive of a system and the devices in a system in which the operation of equipment is not under the control of a computer.

On-Line: Descriptive of a system and the devices in a system in which the operation of such system or devices are under control of a computer.

Output: The information transferred from the internal storage of the computer to an external storage media (e.g., punched cards, magnetic tape, and tabulated listing).

Program: The complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a problem. It includes both systems and application programs and subdivisions such as assemblers, compilers, routines, generators, and utility programs.

Proof Listing: A tabulated listing of input.

Source Document: From which basic data are extracted (e.g., sales invoice).

C. Taxable transactions, unless otherwise exempt under Minn. Stat. ch. 297A.

1. Retail sales of new or used data processing equipment are taxable.

2. Leases of equipment are subject to tax. A lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be on his premises if the lessee or his employees operate the equipment, or if the equipment is operated under the direction and control of the lessee or his employees. Subleasing receipts are taxable without any deduction or credit for tax paid by the original lessee ot his lessor, if the original lessee

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uses the property in addition to subleasing it. Use of equipment on a time-sharing basis, where access to the equipment is only by means of remote access facilities, is not a taxable leasing of such equipment.

3. Prewritten (canned) programs. These are programs prepared, held or existing for general or repeated use, including programs developed for in-house use and subsequently held or offered for sale or lease. The programs may be transferred to the customer in the form of punched cards, data on magnetic tape or by listing the program insturctions on coding sheets. In some cases they are usable as written. However, in most cases it is necessary that the program be modified, adapted and tested to meet the customer's particular needs. Tax applies to the sale of all tangible personal property, including coding sheets, cards or magnetic tape, on which or into which such prewritten (canned) programs have been coded, punched or otherwise recorded.

The tax applies whether title to the tape or other property upon which the program is coded, punched or otherwise recorded, passes to the customer, or the program is recorded on tape or other property furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded by the customer, is a lease of tangible personal property and the tax applies. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a minimum use or for extended periods, are includable in the measure of tax.

Programming changes to a prewritten program to adapt it to a customer's equipment, including translating a program to a language compatible with a customer's equipment, are in the nature of fabrication or services that are part of a sale and, as such, are taxable.

Charges for assembler, compiler, utility and other prewritten programs provided to those who lease or purchase automatic processing equipment are subject to tax whether the charges are billed separately or are included in the lease or purchase price of the equipment.

4. Custom programs. These are programs prepared to the special order of a customer.

Effective April 1, 1978, tax applies to the sale of custom programs transferred to the customer in the form of punched cards or in tape, disc, drum or similar form, or in the form of typed or printed sheets to be used as input media in an optical character recognition system. However, tax does not apply to the transfer of these custom programs in the form of written procedures, such as program instructions listed on coding sheets.

5. Keypunching and keystroke verifying. This item covers situations where a service bureau's agreement provides only for keypunching, keystroke verifying and proof listing of data or any combination of these operations. It does not include contracts under which these services are performed as steps in processing a client's data as discussed in D.1.

Agreements providing (a) solely for keypunching; (b) keypunching and keystroke verification; or (c) keypunching, providing a proof list and/more verifying of data, are regarded as contracts for the fabrication of punched cards and sales of proof lists. Charges therefor are taxable, whether the cards are furnished by the customer or by the service bureau. Data from source documents may also be recorded directly on magnetic tape (off-line). This operation may include keystroke verifying and/or proof listing of data and is comparable to the punch card operation. Charges for this operation are taxable whether the magnetic tapes are furnished by the customer or by the service bureau. Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax application would be the same even though paper tape or other media were used in the operation.

6. Training materials. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to the tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

7. Generally tax applies to the conversion of customer-furnished data from one physical form of recordation to another. For example, if all or some data in punched cards is duplicated into another set of cards, charges for this service are taxable.

8. When additional copies of records, reports, or tabulations are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. Charges for copies produced by means of photocopying, multi-lithing, or by other means are also subject to tax.

9. Sales of mailing lists (including listings in the form of mailing labels produced as a result of a computer run) are taxable. However, where the service bureau, through the use of its automatic data processing equipment, addresses

material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the labels, when the service bureau itself affixes the labels to the material to be mailed.

D. Non-taxable services.

1. Processing a client's data. "Processing a client's data" means the developing of original information from raw data furnished by the customer. Examples of automatic data processing operations which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such operations also include the updating of a continuous file of information maintained by the customer with the service bureau.

Generally, if a person enters into a contract to process a client's data by the use of a computer program, or through an electrical accounting machine programmed by a wired plugboard, the contracts are non-taxable (except if the contract is in the nature of a lease as outlined in C.2. Such contracts usually provide that the person will receive the client's source documents, record data in machine readable form, (such as in punch cards or on magnetic tape), make necessary corrections, rearrange or create new information as the result of the processing and then provide tabulated listings or record output on other media. This service is considered non-taxable even if the total charge is broken down into specific charges for each step. The furnishing of computer programs and data by the client for processing under direction and control of the person providing the service is non-taxable even though charges may be based on computer time. The true object of these contracts is considered to be a service, even though some tangible personal property is incidentally transferred to the client.

"Processing a client's data" does not include: (1) work performed under an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing; (2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters; or (3) the mere converting of data from one medium to another.

2. Designing of systems, converting of systems, consulting, training, and miscellaneous services. These services consist of the developing of ideas, concepts and designs. Common examples of such services are:

Designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized).

Designing storage and data retrieval systems (e.g., determining what data communications and high-speed input-output terminals are required).

Converting manual systems to automatic data processing systems and converting present automatic data processing systems to new systems (e.g., changing a second generation system to a third generation system).

Consulting services (e.g., a study of all or part of a data processing system).

Feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated).

Evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).

3. Persons engaged in providing non-taxable computer services are the consumers of all tangible personal property used in such activities and the tax must be paid on their acquisition of such property.

E. Microfilming and/or photorecording services.

1. Some electronic data processing systems accept signals directly from the computer (on-line) at high speeds and then record them on microfilm or on photorecording paper. The computer output medium is merely changed from the more common output media of magnetic tape and tabulated listings to microfilm or photorecording paper. When this end product is the result of a complete computer program as outlined in D.2. the tax will not apply.

2. In all situations where data is converted by means other than by the use of a complete computer program as outlined in D.2., the receipts for microfilming or photorecording are subject to sales tax. An example of this is where data on magnetic tape is converted into combinations of alphanumeric printing, curve plotting and/or line drawings and put on microfilm or photorecording paper.

Tax S&U 611-699 Reserved for Future Use.

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, when, in preparing to propose rules, an agency seeks to obtain information or opinion from sources outside of the agency, a notice of intent to solicit such information or opinion is published in the *State Register* and interested persons are afforded an opportunity to submit data and views on the subject.

The *State Register* also contains any other official notice requested to be published by an agency, pursuant to Laws of 1977, ch. 305 § 3.

Department of Agriculture

Notice of Intent to Solicit Outside Opinion on Prices and Costs of Certain Selected Dairy Products

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 32A.05, subd. 3, para. 1 (1976) that the Commissioner of Agriculture will conduct a meeting at 10:00 a.m. on February 14, 1978, in Room 420 of the State Office Building, Wabasha Street between Aurora and Fuller Streets, St. Paul, Minnesota, for the purpose of inquiring into trade practices prevailing in the dairy industry and soliciting opinion regarding whether the following wholesale prices of metropolitan Twin Cities wholesalers are equal to or above their individual costs:

Homogenized milk	$1.19 per gallon
2% milk	$1.09 per gallon
1% milk	$ .99 per gallon
Skim milk	$ .87 per gallon
Chocolate skim milk	$ .59 per ½ gallon
Whipping cream	$ .59 per ½ pint

Those persons who are unable to attend are encouraged to submit written comments. Any materials or testimony submitted orally or in writing pursuant to this notice will be placed in the record and shall be reviewed and considered by the Commissioner prior to making a decision determining the prevailing trade practices. Comments should be addressed to:

Robert F. Thimmesh, Director
Dairy Practices Division
560 State Office Building
Saint Paul, Minnesota 55155
(612) 296-2841

Under the provisions of Minn. Stat. § 10A.01 subd. 11 (1976), any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at Room 401, State Office Building, Saint Paul, Minnesota 55155.

Minnesota Department of Agriculture
Bill Walker
Commissioner

David G. Velde
Assistant Commissioner

Metropolitan Sports Facilities Commission

Notice of Public Meetings Regarding Proposed Stadium Sites and Designs

December 22, 1977

The Metropolitan Sports Facilities Commission, 402 Metro Square Building, St. Paul, Minnesota, 55101, will conduct public meetings throughout the State of Minnesota to solicit comments on the proposed stadium sites and stadium design. The public meetings will be held at the following locations, dates, and times:

Marshall, January 3, 1978, 7:30 P.M., SWSU Lecture Center, Room 217

Mankato, January 4, 1978, 7:30 P.M., Regional Law Enforcement Center Meeting Room, 710 South Front Street

Brainerd, January 10, 1978, 7:30 P.M., Social Service Center Meeting Room 2 (behind Court House at 5th and Laurel)

St. Cloud, January 11, 1978, 7:30 P.M., Cathedral High School, Room S-12

Rochester, January 17, 1978, 7:30 P.M., City Council Chambers

St. Paul, January 18, 1978, 11:00 A.M., Metropolitan Council Chambers

Fergus Falls, January 24, 1978, 7:30 P.M., Meeting Room in Fire Hall, 325 E. Washington

Bemidji, January 25, 1978, 7:30 P.M., City Council Chambers

Hibbing, January 31, 1978, 7:30 P.M., City Council Chambers

Duluth, February 1, 1978, County Board Room, 2nd Floor, St. Louis County Court House

For additional information, or to submit written comments, please contact the Metropolitan Sports Facilities Commission at the above address or telephone 612/291-6595.

Dan J. Brutger, Chairman
Metropolitan Sports Facilities Commission

Board of Private Detective and Protective Agent Services

Notice of Meetings

During Calendar Year 1978, the Board of Private Detective and Protective Agent Services will meet monthly, on the second Monday of the month, at 9 a.m. at 1246 University Avenue, St. Paul, Minnesota.

Paul J. Tschida
Chairman

Department of Transportation

Notice of Application and of Opportunity for Hearing in re Petitions of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track No. 68, ICC Track No. 438, and ICC Track No. 447, All Located within the City of Winona, Minnesota and of Opportunity for Hearing

Notice is hereby given that the Chicago and North Western Transportation Company with offices at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 has filed petitions with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 (1977 Supplement) and § 218.041, Subd. 3 (10) (1977 Supplement) to retire and remove ICC Track No. 68, ICC Track No. 438, and ICC Track No. 447, all located within the City of Winona. The petitions recite among other matters that: "The subject track(s) is (are) no longer needed for rail transportation service, and constitutes a continuing and burdensome maintenance expense. The subject track(s) is (are) not used at the present time, and there is no present prospect that the subject track(s) will be needed in the future."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before January 24, 1978. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter

down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to Minn. Reg. HE 210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

Jim Harrington
Commissioner of Transportation

Office of the Lieutenant Governor

White House Conference Delegates to Hold Public Hearings

The Minnesota delegation to the upcoming conference on *Balanced National Growth and Economic Development* will hold hearings on Wednesday, January 11, at 9:00 a.m. in Room 15 of the State Capitol. The forum will give interested Minnesotans an opportunity to respond to the discussion themes of the national conference. The six topics include "Strengthening Local Economies", "People and Jobs", "Government and Budgets: The Fiscal Dimensions of Growth and Change", "Geography of Growth", "Government and the Management of Growth", and "Streamlining Government".

The Minnesota delegation to the White House Conference includes Lieutenant Governor Alec Olson, Spicer; State Senator Emily Staples, Plymouth; State Representatives Bill Kelly, East Grand Forks, and Dave Beauchamp, Moorhead; Paul Goldberg, Area Director of the American Federation of State, County and Municipal Employees; Victor Reim, President of the Commercial State Bank of St. Paul; J. R. (Bob) Larson, a Milaca farm management instructor; and Otto Silha, President of the Minneapolis Star and Tribune Company.

The White House Conference was announced by President Carter on August 4, 1977, after being authorized by the Congress under the Public Works and Economic Development Act amendments of 1976. The legislation specified that the recommendations and findings developed by the Conference should be presented to the President for use in formulating administrative and legislative proposals.

Written statements may be submitted at any time prior to the January 29 White House Conference. Deadline for scheduling oral testimony for the January 11 hearing is 4:00 p.m. Friday, January 6, 1978. For further details, please contact Lieutenant Governor Olson's office.

Erratum

1. 2 S.R. 948: The following are corrections to the rules as published in *State Register,* Vol. 2, No. 18 (2 S.R. 948-949):

3 MCAR 1.0564 A.1. Financial statements and volume reports. Each new ~~application~~ applicant for a license to operate as a livestock market agency or a livestock dealer shall file with the application a current balance sheet and financial statement on forms provided by the commissioner. With each subsequent annual application, the livestock market or livestock dealer shall file a report of its business volume for the preceding calendar or fiscal year, as appropriate, for the purpose of determining the amount and adequacy of the applicant's surety bond.

E. 2. There shall be no refund or proration of a fee, in whole or in part, paid for a license surrendered for cancellation, after the effective date of the license. Where a license has not taken effect, the fee ~~may~~ shall be refunded to the applicant in full upon the applicant's written request.

3 MCAR 1.0565 B. 6. If the dealer is registered with the Packers and Stockyards Adminstration, a surety bond or its equivalent in the form of a trust fund agreement executed in accordance with the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), shall be accepted in lieu of a dealer's surety bond executed on a Packers and Stockyards Act form.

7. If, in the judgment of the commissioner, an adjustment in the amount of an individual surety bond is necessary to protect the public interest, the commissioner may, at any time, raise and lower individual surety bond requirements.

3 MCAR 1.0568 B. 1. Requirements regarding scale tickets evidencing weighing of livestock. The actual weight of the livestock as certified by the state weigher shall be imprinted on the Official Certificate of State Weight (scale ticket) before the livestock are removed from the scale platform.

These rules shall go into effect 5 days following this publication.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

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DR-78-004-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF REVENUE

In the Matter of the Proposed Amendments and Additions to the Rules of the Department of Revenue Governing the Administration of the Sales and Use Tax Law.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners on February 7 and 8, 1978, in Room 300, 1745 University Avenue, St. Paul, Minnesota.

Dorothy McClung, research attorney for the Department of Revenue, appeared as counsel representing the Commissioner of Revenue. John Streiff, division attorney, Sales and Use Tax Division; Don Mundahl, Director of the Sales and Use Tax Division; and John Majerle, Assistant Director, Sales and Use Tax Division, appeared and testified on behalf of the Department. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department of Revenue shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his Report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department of Revenue shall be responsible for filng the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On June 13, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On January 2, 1978, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1288.

3. On December 29, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On January 11, 1978, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Affidavit of Receipt of the Secretary of State's list;
(g) The Statement of Need and Summary of Evidence;
(h) The State Register, Vol. 2, Number 26, dated January 2, 1978, containing proposed amendments to existing sales and use tax rules.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through February 28, 1978, for the receipt of written comments and statements. Pursuant to Minn. Stat. § 15.0412, subd. 4, both the Hearing Examiner and the Department of Revenue requested that an extension through April 7, 1978 be granted to complete the Report on this matter. The Chief Hearing Examiner ordered that an extension be granted through April 7, 1978.

6. The Department of Revenue, hereinafter referred to as the Department, presented as Exhibit No. 8 a document entitled "Sales Tax Regulation Changes as printed in the State Register

1-2-78" consisting of the following typographical corrective amendments to the rules as printed:

Page	Reg. No.	
1290 104	104	B. Example #1, Third Line - Minnesota should be California. Error in printing Regs. as our old Regs. show.
1291	104	G. In four places, common before new word motor should be struck. Apparently error in printing.
1297	108	H. 1. The first word "Holes" is in error; it should be Holds. Printing error.
1301	112	C. 3. Second Paragraph - Strike "If the" and replace with an. Also third line after "real estate" add may and strike the "s" on both appoints and designates. This was our error in that sentence, as printed, is not a complete sentence. We are attempting to change from negative approach to positive approach only.
1314	212	Heading in error. "Vehicle Common" should be struck. Printing error.
1316	212	D. 6. Third Line. "to" should be "of" and strike common. These are both printing errors.
1318	401	E. Penultimate paragraph. "teeth braces and" should be underlined.
1320	407	In examples of Exempt, "rubber pants, baby," baby should be underlined, and in examples of Taxable, "iron-on transfers or emblems" should be underlined.
1334	608	Department of Aeronautics no longer exists; it should be changed to Department of Transportation, Aeronautics Division. Four changes to be made.

a. The Examiner recommends that the proposed rules be amended as set forth above.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 297A.29 (1976).

7. The amendment to Tax S&U 101, definition of the term "person", is proposed to make it clear that the term applies to manufacturers' representatives, consignees, and brokers. The Department contends that this amendment is needed to eliminate present public confusion concerning the sales tax responsibility of these categories of retailers. It clarifies their responsi-

bility to obtain a sales tax permit; and to charge, collect and remit sales tax when making retail sales of tangible personalty.

a. The Examiner concludes that proposed Tax S&U 101 is both needed and reasonable.

8. The amendment to Tax S&U 104 is necessary to correct a technical deficiency in the first paragraph of the existing rule. The deficiency is that the rule does not reflect the exemption granted under Minn. Stat. § 297A.25, subd. 1(d). This statutory exemption makes leased or purchased property, which is used in a trade or business outside Minnesota without any intermediate use in Minnesota, non-taxable. The amendment is accomplished by deletion of the first paragraph and substitution of new language. It further clarifies taxpayer liability for leased property removed from the state for personal use; and minimizes taxpayer confusion by specifically providing that any item which is taxable if sold is also taxable if leased.

The amendnent in example 2 of this rule is a technical language change correcting an error in labeling the nature of the tax being collected. The example is one relating to the imposition of a use tax. The amendment properly labels the tax as a use tax rather than a sales tax as now stated.

The amendment, adding an additional example No. 3. to this rule, is needed to clarify public inquiry concerning the taxability in border-state situations of leased property used for personal purposes outside the state. It is offered for illustrative purposes and emphasizes substantive material contained in this rule.

a. Abe Rosenthal, representing the Minnesota Transport Service Association, submitted written proposals for language amendments to proposed Tax S&U 104(G), Leases to electing common motor carrier. Mr. Rosenthal proposed substituting persons defined by Chapter 115L 1971 for the term "common motor carrier". He also proposed to substitute "every person who is engaged in interstate for-hire transportation of tangible personal property by motor vehicle" for the term "common motor carrier" in Tax S&U 104(G). Mr. Rosenthal testified that these

language changes would utilize both the statutory language of Minn. Stat. § 297A.211 and the technical jargon of the transportation field facilitating voluntary citizen compliance.

b. The Department responded that the correction set out in Finding No. 5 corrects this term to read "motor carrier" and reflects an application to all motor carriers. Furthermore, it is the position of the Department that the thrust of Mr. Rosenthal's proposed language amendments is to make the expanded exemption provided for in the 1977 amendment (Chapter 15, Laws 1977) to Minn. Stat. § 297A.211 apply retroactively to 1971.

c. The Examiner concludes that proposed Tax S&U 104, with the amendment proposed in Finding No. 5, is both needed and reasonable.

9. The proposed additions to Tax S&U 107 are included to clarify the Department's position regarding the distinction between non-taxable services and taxable service provided for in Minn. Stat. § 297A.01, subd. 3(b). This statute defines as taxable the producing, fabricating, printing or processing tangible personal property for a consideration for consumers who directly or indirectly furnish the materials used. The additions are in example form.

The proposed example 11 illustrates the taxability of collating and assembly when done by stapling or similar process. It further illustrates the taxability of such mechanical processing of goods furnished by a customer punching, assembling, stamping, burning and electroplating.

The proposed example 12 illustrates the taxability of transactions conducted by a locksmith. It provides for the taxability of retail sales of keys and parts which are billed separately. It declares, as a non-taxable service, the changing of safe combinations and lock tumblers. The amendments are offered to aid public awareness of the taxability of these transactions.

a. The Examiner concludes that proposed Tax S&U 107 is both needed and reasonable.

10. The Department maintains that the proposed amendments to Tax S&U 108 are needed because of changes in statutory law

and to aid the Department in technical application of rules previously adopted.

A new provision is added to the first paragraph of this rule. It reflects a legislative amendment to Minn. Stat. § 297A.01, subd. 3 (Ch. 312, Laws of Minn. 1975), which became effective June 5, 1975. This amendment provided for an exemption from tax by excluding from the terms "sales and purchase" meals and drinks delivered or served to individuals who are 60 years of age or over, their spouses, or handicapped, by governmental or non-profit organizations.

108(b) is amended by adding a new provision (No. 14) to reflect the Department's position on the taxability of charges for opening and serving of customer-furnished beverages.

108(e) is amended by deletion of a technical interpretation regarded as erroneous. Minn. Stat. § 297A.01, subd. 3(c), provides meals and lunches served at public and private schools or colleges are exempt without qualification. The present regulation reflects a narrower exemption than that provided by statute.

108(h) is amended by new material designed to clarify the Department's position relating to the taxability of items furnished by a caterer such as tableware, tablecloths, tables and chairs.

108(j) is amended by adding additional language to clarify the Department's position concerning the taxability of meals furnished customers of transportation companies.

a. W. F. Lewis, representing Braniff International, submitted written comments regarding the proposed amendment to Tax S&U 108(j). Mr. Lewis commented that:

> "(1) The supplier of food products to Braniff acts as a wholesaler, Braniff acts as a retailer preparing and serving meals to passengers in flight, and the passengers to whom the meals are served are the consumers. The supplier provides a service function of organizing the food products according to Braniff specifications with delivery in partially prepared state of a batch load to the aircraft. The sale by the supplier is not a retail sale and is not a taxable sale.
>
> (2) Preparation of the food products is completed aboard the aircraft and generally takes 20 to

35 minutes after which the meal is served to the passengers. The passengers are the beneficial users of the meals served, and to extent such service is outside the State of Minnesota, it would be exempt from sales/use tax under § 297A.25 as interpreted by several court decisions (Sellner, Deluxe Check Printers and Midwest Jobbers Terminal). The food products asprepared, furnished or served are the properties which under § 297A.25 are taxable not by situs of delivery to the airline, but instead where beneficial use occurs.

(3) Although a separate charge is not made to the passenger for the meal served, consideration has been paid as part of the ticket price. Under Minnesota Statutes, a taxable sale must have 'consideration' (§ 297A.01.3(c), but there is no requirement for a 'separate charge' -- accordingly, the transfers of meals to passengers aboard aircraft are statutory 'sales' under Minnesota law, and the purchase of food products by airlines from suppliers is valid as a purchase for resale.

(4) The food products purchased by the airline after preparation aboard the aircraft are in part served to company employees without consideration. The company employees so served may be passengers, flight attendants, or cockpit crew. Under (g), "Meals furnished to employees" (Regs. S&U 108), such service is not a taxable sale.

(5) Of the food products boarded on the aircraft, that not consumed must be destroyed due to Federal Health Regulations. Such excess cannot be returned to commissary for boarding on another flight. This circumstance occurs when quantities boarded exceed traffic requirements, or when turbulence restricts the meal service. Clearly, imposition of a tax on property destroyed and not put to a beneficial use is not equitable."

In any event, Mr. Lewis proposed that any revision be prospective, not retroactive because of previous reliance on Tax S&U 108(j) in its present wording.

b. The Department responded that the language of the original rule provided only that the retail sale of meals by a transportation company to its passengers was not taxable if no separate charges were made therefor. The rule made no statement as to the transportation companies tax liability for the initial purchase of the meal.

Minn. Stat. § 297A.01, subd. 3(c), defining "sale" and "purchase", states in part as follows:

The furnishing, preparing, or serving for a consideration of food, meals, or drinks, . . .

The Department maintains that it is clear under Minnesota law that the sale and delivery of prepared food to airline companies in Minnesota is a taxable "sale at retail". It has been such since the sales and use tax law was effective, August 1, 1967. In the case of all meals served by an airline, this is a commercial amenity and an operating expense of the airline. The prepared food is for the airline's use and consumption. It is not resold to the passengers for any negotiated consideration. The Department indicated that there is ample authority for taxation of catered prepared food to an airline, citing American Airlines, Inc. et al v. Department of Revenue (Ill. 1974).

c. 10. The Examiner concludes that proposed Tax S&U 108 is both needed and reasonable.

11. The proposed amendment to Tax S&U 109 is needed to clarify the Department's position on museums being places of amusement. It provides for the taxability of admissions to a museum.

The rule is also amended to provide for the non-taxability of golf club dues. This amendment conforms the rule and makes it consistent with the Minnesota Supreme Court's decision in Northland Country Club v. Commissioner of Taxation, 241 N.W. 2d 806 (1976).

The amendment further clarifies the Department's position regarding the non-taxability of sightseeing tours, the taxation of carnival rides, and the taxability of recreational area charges.

a. The Examiner concludes that proposed Tax S&U 109 is both needed and reasonable.

12. The proposed amendment to Tax S&U 112 adds a basic definition of real property to aid and clarify the Department's position in this subject area of taxation. It further clarifies the essential elements of a construction contract. The Department stated that it is needed to eliminate certain confusion occasioned by the Minnesota Supreme Court decision in Abex Corp. v. Commissioner of Taxation, 207 N.W. 2d 37 (1973). The amendments aid in understanding the various consequences of taxation as property is changed from the status of personal property to a fixture. It emphasizes the different tax consequences of a sale

classified as an improvement to real property rather than a sale of personal property.

a. John Gessert, representing Whirlpool Corporation, testified that under the proposed amendments to Tax S&U 112 regarding contractors and construction activities, the fact of who installs, as opposed to what is sold (e.g., the owner v. the vendor-contractor v. a third-party contractor) may produce different tax results. Mr. Gessert objected to the shifting of the tax impact and amount of tax based upon installation of identical items rather than the nature of the item sold. He suggested that a language change be inserted in the third paragraph of clause (b), Contractor and Construction Activities, e.g.:

> 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, except that in the case of machinery or equipment which requires substantial modification of the real property, the seller shall be considered the contractor, disregarding the fact that a third party will perform actual installation services provided that the seller shall have furnished detail instructions, drawings, designs or other and shall have supervised such installation.

Shld. use Pettis situa depn not amended under proposed rules

b. David Lawrence, representing Northern States Power Company, submitted written comments regarding the proposed amendments to Tax S&U 112(A) stating that on the whole they would:

> . . . properly clarify the application of the tax laws to construction activities. The definition of "construction contract" in § 112(B) recognizes the applicability of the common law definition of real property to the sales and use tax statutes as that common law term is defined in the decision Abex Corporation v. Commissioner of Taxation, 207 N.W. 2d 37 (Minn. 1973). The definition of "real property" in § 112(A), however, is somewhat inconsistent with Abex definition and the definition of "construction contract" in § 112(B), in that
>
> 1. The definition fails to recognize that an item of ponderous property can become constructively annexed by its great weight and become real property even though not tied or bolted down; and
>
> 2. The definition fails to recognize that an item of property can become real property when it is annexed in a non-temporary manner though not a permanent manner.

In order to remove these inconsistencies and to properly reflect the common-law definition of real property enumerated in Abex, NSP recommended that the § 112(a) definition of real property be amended to read as follows:

> "The term 'real property' includes structures that are actually or constructively annexed to real estate with the intent to make a non-temporary accession to the freehold, such as buildings, fixtures, machinery, fences, railroad tracks, grain elevators, bridges, storage bins, silos, outdoor advertising signs, and billboards."

c. Nick Hay, representing Envirotech Corporation, testified that the proposed amendments to Tax S&U 112 would create a duality of definitions with regard to a definition of real property for tax purposes; one definition for sales tax purposes; and a different definition of real property for property tax purposes. Mr. Hay maintains that by adopting the proposed definition of real property in Tax S&U 112, the Department would be acting outside its statutory authority insofar as the proposed definition is contrary to "the express" statutory language of Minn. Stat. § 272.03, subd. 1, defining real property "for the purposes of taxation" which includes sales taxation.

Mr. Hay maintained that, ". . . such a duality of definition is especially confusing in the

> instant situation because (1) the sales tax definition is based upon a property tax case which would normally lead on to conclude that the definitions should be the same; and (2) if one studies the Abex decision, it is clear that the rationale used by the Abex Court would lead to the conclusion that machinery and equipment are not to be included in the definition of real property for sales tax purposes. The rationale employed by the Court in Abex began with the observation that the statutory definition of real property in § 272.03 included fixtures. The Abex Court then defined fixtures for tax purposes, concluded that the machinery there in issue constituted fixtures within the newly announced definition, and therefore, the machinery was real property within the meaning of § 272.03.
>
> However, the definition of tangible personal property for sales tax purposes in § 297A.01, subd. 11, states that personal property includes items which are to become fixtures. Applying the Abex rationale to that definition would lead to the conclusion that machinery which constitutes a fixture is tangible personal property, not real property, for sales tax purposes. Thus, because of the difference in the relevant statutory definitions as they existed when Abex was decided (i.e., § 272.03 v. § 297A.01, subd. 11), the Commissioner is not applying the Abex rationale correctly, has proposed an improper definition

of real property for sales tax purposes by refusing to follow § 272.03 as it now exists, and has thereby created confusion in this area rather than eliminated it by his proposed regulation.

Mr. Hay objected to the proposed language regarding construction activities. He notes that under the proposed rule, the basis for taxation shifts from the nature of the item sold to installation of that item and who installs it creating different tax consequences for similar items sold. He submitted that:

> . . . adopting the statutorily mandated definition of real property set forth in § 272.03, subd. 1, would remedy the deficiencies which we and others have complained of and would conform Tax S&U 112 to the purposes and policies of the Sales Tax Act. By adopting the statutory definition of real property, the other clarifying language in the proposed amendment would not be necessary since that language is directed at circumventing and restricting the statutory definition which we propose be adopted.
>
> Finally, if the Commissioner deems it desirable to provide additional clarifying language in Tax S&U 112, we submitted that the language in the California sales and use tax regulation, Reg. 1521, is more consistent with the Minnesota Sales Tax Act than the Commissioner's proposed regulation. Specifically, we believe that the definition of "construction contract", "materials", "fixtures", and "machinery and equipment" found in Reg. 1521(a)(1), (2), (4), (5) and (6) be adopted. We would suggest that the clause (1) in Reg. 1521 (a)(1)(B) be modified to read, a construction contract does not include "a contract for the sale of or the sale and installation of tangible personal property such as machinery and equipment, including a contract under which the machinery and equipment is to be fabricated, erected, constructed or manufactured by the vendor thereof upon the premises of the purchaser or at the site where the machinery and equipment will be used."

d. The Department responded by noting that:

> . . . the exemption provided in Minn. Stat. § 272.03, subd. 1(c)(8) is applicable to Chapter 297A, the Minnesota Sales and Use Tax Law. Section 272.03, subd. 1(c)(i) provides:
>
> > The term real property shall not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment."
>
> This exemption was enacted to change the property tax law following the Minnesota Supreme Court decision in Abex Corp. v. Commissioner of Taxation, 295 Minn. 445, 207 N.W. 2d. 37 (1973). The effect of this amendment was to make equipment for property tax purposes not taxable even if the Minnesota Supreme Court, using the common law, would classify it as real property.

. It should be "not" here Mr. D. McCloy 8-23-78

It is the Department's position that the Abex decision clearly establishes the Minnesota Supreme Court will use common law standards in defining the meaning of the term "fixtures" in tax cases. The proposed amendments are in accord with the standards and guidelines established by the Minnesota Supreme Court in the Abex case.

In KDAL, Inc. v. County of St. Louis, 240 N.W. 2d 560 (1976), decided after Abex and the legislative law change enacted in § 272.03, subd. 1(c)(i), the Minnesota Supreme Court made it very clear that it will continue to follow common law standards unless a specific legislative intent to the contrary has been enacted by the legislature.

It is argued that the exemption provided in § 272.03, subd. 1(c)(i) is applicable to Chapter 297A. The difficulty with this argument is that tax statutes stand independently from one another, and that the exemptions and deductions of one tax law cannot be substituted or inter-changed with another. Chapter 272 is a property tax law. Chapter 297A is a sales and use tax law. These are two entirely separate statutes dealing with two entirely different and separate taxing concepts. See Victor v. Commissioner of Taxation, Minnesota Tax Court, October 7, 1963.

It has been suggested that Minnesota adopt a regulation similar to California Sales and Use Tax Regulation 1521. California stands as a minority of one in treating fixtures installed by contractors as retail sales. Illinois at one time had a regulation similar to the California rule which attempted to draw a line or distinction between contractors and sellers of fixtures. The Supreme Court of that state in Material Services Corporation v. McKibbin, 380 Ill. 226, 43 n.E. 2d 939 (1942), declared the administrative regulation invalid as being unreasonable. The California rule is contrary to common law, and with the Minnesota Supreme Court's commitment to common law standards to determine fixture classification, any attempt to follow the California rule in Minnesota would obviously be declared invalid.

e. The Examiner concludes that proposed Tax S&U 112 is both needed and reasonable. The Examiner takes judicial notice of County of Hennepin v. State of Minnesota, February 28, 1978 Finance and Commerce, in which the Supreme Court defined the relationship between a contractor and subcontractor with accompanying sales tax consequences. The opinion was directly applicable to Finding 12.a. and consistent with the proposed rules.

The Examiner concludes that the definition of real property contained in Chapter 272 pertains to property taxation and does not overlap into Sales and Use Taxation. Therefore, the exemption provided in Minn. Stat. § 272.03, subd. 1(c)(i) is not applicable to Chapter 297A., Sales and Use Tax.

13. The proposed amendment to Tax S&U 115 clarifies the Department's position on the reduction of the selling price by trade-in property. It is intended to eliminate vendor errors when the property traded in has an outstanding indebtedness.

a. The Examiner concludes that proposed Tax S&U 115 is both needed and reasonable.

14. The proposed amendments to Tax S&U 116 and 117 reflect the Department's position on the taxability of freight charges when merchandise is shipped from a point out of state and is drop-shipped directly to the purchaser.

These amendments further reflect the taxability of assembly charges as fabricated labor charges rather than separately stated service charges, and the Department's position on installation charges for labor or services. A replacement sample eliminates confusion between improvements to real property and sales of tangible personal property.

The amendment further reflects a position taken on property refund adjustment charges and the taxability of U. S. custom duties. The Department contends that these amendments are needed to clarify public inquiry on these subject matters and to aid in taxpayer understanding and eliminates vendor error in charging and collecting the correct tax.

a. David Lawrence, representing Northern States Power Company, commented in opposition to proposed Example 3 under § 116(a). He stated that the example is inconsistent with § 117(e), violative of the commerce clause of the United States Constitution, and contrary to the sales and use tax statutes.

Mr. Lawrence proposes that the "time of sale" as defined in proposed Example 3

> is the time when the vendor completes the performance of a sales contract by physical delivery of the goods to the buyer. The application of such a definition would result in the taxation of all transportation charges when the vendor has agreed to deliver the goods, even if the buyer pays extra for delivery and the transportation charges are separately stated. An entirely different definition of "time of sale" is clearly present in § 117 (c), Example 2. There the vendor agreed to deliver the goods, but the transportation is deemed to occur after the sale. The same time of sale

definition must apply to both situations. NSP submits that the § 117(c) view of time of sale is the correct one.

Mr. Lawrence maintains that it is not clear what the answer to proposed Example 3 would be if the lumber was ordered and shipped to a purchaser from a point within the state.

> Whether an in-state sale is made subject to the sales tax with direct shipment to purchaser from an out-of-state source or an out-of-state sale is made subject to the use tax with the same direct shipment to purchaser, the treatment of the transportation charges must be the same as in the case of an in-state sale with direct shipment to purchaser from an in-state source. In other words, if the words "from a point out of state" in proposed Example 3 are intended to have significance and to imply that a different standard applies to intrastate transportation, then proposed example makes an unconstitutional discrimination against interstate commerce. If no distinction is intended, then the words "from a point out of state" should be deleted from the proposed example. The statutory defintions of "sale" and "use" do not depend upon whether or not the vendor agrees to deliver or whether or not the shipment originates outside the state.

Mr. Lawrence also commented that the proposed amendment to Paragraph 1 of § 116(B) and proposed Example 4 thereunder attempt to tax separately stated charges for labor occurring after sale for the assembly of component parts and materials sold. These amendments, he indicated, represent a departure from, not an incorporation of, established precedent.

b. R. F. Teichert, representing Minnesota Mining and Manufacturing Co., submitted written comments regarding Tax S&U 116, paragraph B, Example 4. He stated that the Commissioner of Revenue lost this issue in the Minnesota Tax Court in Borroughs of Minnesota, Inc. v. The Commissioner of Revenue. Mr. Teichert also indicated that the Tax Court decision made no reference as to where the service had to be performed in order to be exempt.

c. Alan J. MacPhail, representing Borroughs of Minnesota, Inc., testified and submitted written comments in opposition to the proposed rule changes regarding Tax S&U 116, paragraph B and Example 4. He states that the:

> Department of Revenue, in proposing the rule changes in question, is simply reaffirming its position that charges for assembly, installation or set-up of shelving and like components are subject to Minnesota sales tax as "production" or

"fabrication" of tangible personal property under Minn. Stat. § 297A.01, subd. 3. The Tax Court's decision specifically reversed the Commissioner's Order assessing a sales tax on this type of labor because it did not constitute "production" or "fabrication". Rather, these services clearly come within the language of the exception contained in Minn. Stat. § 297A.01, subd. 8:

> A deduction may also be made for . . ., charges for labor or services used in installing or applying the property sold. . . .

The Court concluded its memorandum by stating:

> "We conclude that the charges for labor performed by appellant in setting up products for use by the customer, if separately stated, are properly deductible from the 'sales price' under Minn. Stat. § 297A.01, subd. 8."

I am in complete agreement with the Commissioner that a new example is necessary for taxpayer clarification and to prevent vendor error. I propose that under Tax S&U 116, in paragraph B, all proposed new wording be deleted and that the entire proposed example number 4 be deleted.

Under Tax S&U 117, the following changes should be made. Delete the entire paragraph B and substitute the following in its place:

> Tax S&U 117.
>
> B. Labor charges for installation, set-up, or assembly. Certain tangible personal property purchased at retail may require installation, set-up, or assembly of component parts or materials in order to be suitable for the purpose for which purchased, or because of a special request made by a customer. The labor or service charge for such labor 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.

Add the following example under Tax S&U 117, paragraph B:

Tax S&U 117, B.

> Example 3. Retailer stocks shelving components in unassembled form and sells such property unassembled or assembled. Customer purchases shelving components and requests that retailer also assemble such components. Retailer bills customer $150.00 for the components and $10.00 for labor. The labor charges are stated separately and therefore not included in the "sale price", consequently the sales price is $150.00.

I believe the above changes would properly and adequately clarify the law regarding the type of labor in question and will be entirely consistent with recent case law in the State of Minnesota.

d. The Department responded that:

Installation labor and assembly labor are two different distinct concepts. In the Borroughs case, the retailer sold exclusively unassembled products and also installed the products at the purchaser's premises. Example 4 involves neither of these two factual elements present in the Borroughs case.

Example 4 graphically illustrates that a retailer who sells both assembled and unassembled products must include in the taxable gross receipts, separately stated assembling charges, as labor and services that are a part of a taxable sale, since these charges are within the meaning of Minn. Stat. § 297A.01, subd. 3(b).

It is further supported by Minn. Stat. § 297A.01, subd. 8, as amended by Laws 1975, Chapter 397. Minn. Stat. § 297A.01, subd. 8, defines "sales price" as

> . . . means the total consideration valued in money, for a retail sale whether paid in money or otherwise, excluding therefrom any amount allowed as credit for tangible personal property taken in trade for resale, without deduction for the cost of the property sold, cost of materials used, labor or service cost, interest, or discount allowed after the sale is consummated, the cost of transportation incurred prior to the time of sale, any amount for which credit is given to the purchaser by the seller, or any other expense whatsoever. A deduction may be made for charges for services that are part of the sale ~~and for~~, including charges up to 15 percent in lieu of tips, if the consideration for such charges is separately stated, but no deduction shall be allowed for charges for services that are part of the sale as defined in subdivision 3, clauses (b) to (f). A deduction may also be made for interest, financing, or carrying charges, charges for labor or services used in installing or applying the property sold or transportation charges if the transportation occurs after the retail sale of the property only if the consideration for such charges is separately stated. There shall not be included in "sales price" cash discounts allowed and taken on sales, the amount refunded either in cash or in credit for property returned by purchasers or the amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer." (1975 amendment additions indicated by underline, deletions by ~~strike out~~).

The Borroughs case involves a tax period in part prior to the 1975 amendment which was effective June 5, 1975. The tax court was not advised of this amendment and did not consider its effect and application.

e. The Examiner questions the legality of the "from a point out of state" language in 116A. Example 3, and recommends

that it be deleted from the rule. The Examiner concludes that Example 3 is not inconsistent with 117C., but rather refines it to the point that the only time transportation charges are deductible is when the buyer "could take possession" at the moment of sale.

The Examiner concludes that 116B and new Example 4 are in conflict with the holding in Borroughs of Minnesota, Inc. v. Commissioner of Revenue, Docket no. 2351, dated June 20, 1977. The 1975 amendment to Minn. Stat. § 297A.01, subd. 8, does not qualify the holding as suggested by the Department. Because the proposed rule is contrary to the law, i.e., Borroughs, the Examiner concludes that statutory authority to promulgate the proposed rule is lacking. Only the Legislature has the inherent capability to change the status of the law by statute. The Examiner recommends that the proposed changes to Tax S&U 116B. and Example 4 not be adopted.

15. The proposed new provision to Tax S&U 202 has been added in response to public inquiry whether or not the representative of a deceased permit holder's estate is required to get a new sales and use tax permit. This amendment reflects the Department's position that a qualified estate representative can assume and use the decedent's sales and use tax account number during the period of probate administration.

a. The Examiner concludes that proposed Tax S&U 202 is both needed and reasonable.

16. The proposed amendment to Tax S&U 204 adds language which reflects a legislative amendment (Ch. 380, Laws of Minnesota 1975) to the Administrative Procedures Act. The amendment provides permit revocation hearings will be conducted by a hearing examiner from the Office of State Hearing Examiners. The amendment also eliminates language from the prior rule which is obsolete and inconsistent with present statutes.

a. The Examiner concludes that proposed Tax S&U 204 is both needed and reasonable.

17. The proposed amendments to Tax S&U 207 are reflective of legislative amendments on exemptions from tax and detail the

situations in which vendors may accept certificates of exemption in good faith.

Paragraph 207(c)(5) reflects a statute change (Ch. 452, Laws of Minn. 1973) which replaced the prior exemption for property used outside Minnesota (Minn. Stat. § 297A.25, subd. 1(d)) with a new, more detailed exemption.

Paragraph 207(c)(6) reflects a statute change (Ch. 452, Laws of Minn. 1973) which added an exemption (Minn. Stat. § 297A.25, subd. 1(c)) for packing materials used to pack and ship household goods outside of Minnesota and not returned to Minnesota except in the course of interstate commerce.

Paragraph 207(c)(7) reflects a statute change (Ch. 650, Laws of Minn. 1973) which amended Minn. Stat. 297A.25, subd. 1, by adding a new exemption (w) for material designed to advertise and promote the sale of merchandise or services if the material is purchased and stored for purposes of transferring outside and used solely outside of Minnesota.

The amendment to 207(g) eliminates language from the prior rule which is obsolete and inconsistent with present statutes. The amendment reflects a legislative change to Minn. Stat. § 297A.25, subd. 1(d) (Ch. 452, Laws of Minn. 1973) with a new, more detailed exemption.

a. Abe Rosenthal, in comments provided to the Department prior to the hearing, indicates that Paragraph C.6. does not lend itself to the current practices of the Household Goods Moving Industry and proposed that, if necessary, a provision allowing for an estimated percentage of use in Minnesota be allowed.

b. The Examiner concludes that proposed Tax S&U 207 is both needed and reasonable.

18. The amendments to Tax S&U 208 are proposed to clarify what an exemption certificate must contain in order to be valid pursuant to Minn. Stat. § 297A.11. It further informs the vendors that the Uniform Sales Tax Exemption Certificate designed by the Multi-state Tax Commission is acceptable and advises the vendors of two special exemption certificates, namely, ST-14,

Direct Pay Permit, and ST-14mc Motor Carrier Direct Pay Certificate.

a. The Examiner concludes that proposed Tax S&U 208 is both needed and reasonable.

19. The amendment to Tax S&U 211 proposes to eliminate the present alternative of furnishing either a Direct Pay number or a copy of the exemption certificate. As amended, the purchaser must furnish a copy of the exemption certificate. The Department contends that this amendment is needed to make the direct pay permit procedure consistent with the general exemption practice procedure of furnishing the vendor with a signed exempt certificate. It is further intended to minimize a fraudulent use of this exemption.

a. R. W. Laurens, representing Sperry Univac, commented to the Department prior to the hearing that because of the volume of purchase orders that Sperry Univac issues, and because of the variety of circumstances involved, it would be extremely costly to interrupt the flow of outgoing orders (computer prepared) to attach an actual copy of the Minnesota direct pay permit to each copy of the set. Additionally, if this practice was followed, it would be desirable to attach the permit only to those purchase orders covering tangible goods being delivered into Minnesota.

Based on the above, he urged that the proposed amendment to § 211 be deleted.

b. The Examiner concludes that, in light of current industry practices, the proposed changes to Tax S&U 211 have not been shown to be needed or reasonable. The Department did not offer evidence to substantiate the benefit of the added requirement as compared to the burden placed on computer-run invoicing. The Examiner recommends that the proposed amendment to § 211 not be adopted.

20. The amendment to Tax S&U 212 is proposed to reflect the fact that Minn. Stat. § 297A.211 was amended by Ch. 15, Laws of Minnesota 1977, to provide that any person engaged in interstate for-hire transportation of tangible personal property by motor

carrier (formerly only common carriers) may now elect to report as a retailer, and pay the tax on mobile transportation equipment and parts and accessories attached or to be attached to such equipment on a pro-rata basis of Minnesota miles to total miles.

a. The Examiner concludes that proposed Tax S&U 212 is both needed and reasonable.

21. The proposed amendment to Tax S&U 302 is designed to incorporate substantive material relating to the problem faced by out-of-state businessmen who sell across state lines. It is designed to be informative in nature and as an aid for this type of businessman in deciding whether they must register with the state as a use tax collector, collect, account for, and pay a use tax to the State of Minnesota. The material is in conformity with the decisions of the U. S. Supreme Court in General Trading Co.(1944), 322 U.S. 335, 64 S.Ct. 1028, and Scripto, Inc. (1960))362 U.S. 207, 80 S.Ct. 619.

a. R. F. Teichert, representing the 3M Company, submitted written comments in opposition to the proposed new language, arguing that a manufacturer's representative cannot force out-of-state manufacturers or sellers to register and collect Minnesota tax and are thereby put in a position of possible imprisonment or jail or both. The Examiner points out, however, that Minn. Stat. § 297A.15, subd. 3, directs this method of enforcement.

b. The Examiner concludes that proposed Tax S&U 302 is both needed and reasonable.

22. The proposed amendment to Tax S&U 401 modifies the regulation to expressly specify that teeth braces and retainers are within the scope of purchases which may be made by dentists and are exempt from the tax as therapeutic and prosthetic devices. These words have been added because a number of inquiries to the Department have indicated doubt as to the taxable status of these items. Section 297A.25, subd. 1(c) of the law specifies exemption for therapeutic and prosthetic devices.

a. The Examiner concludes that proposed Tax S&U 401 is both needed and reasonable.

23. The proposed amendment to Tax S&U 404 is needed because the current regulation specifies that "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." In the examples enumerated, there is included "property given as a prize in games of chance or skill." A decision by the Tax Court in Sally Distributors, Inc. v. the Commissioner of Taxation, (Docket No. 1824) (Order entered 5-22-75), held that the sale of carnival prizes to concessionaires are sales for resale and are not subject to the sales tax. No appeal was taken from the decision and the Department's position has been modified accordingly.

a. The Examiner concludes that proposed Tax S&U 404 is both needed and reasonable.

24. The proposed amendments to Tax S&U 407 is intended to modify the list of exempt items by adding the word baby in parentheses after the item "rubber pants" to make clear that the exemption applies only to rubber baby pants. Such exemption is allowed because the statute exempts articles intended to be used or applied only in the case of babies. The intention is to exclude other rubber pants which the Department holds to be equipment rather than clothing or wearing apparel within the legislative intent.

A second proposed change is to include iron-on transfers or emblems in the list of examples of taxable items. It is so classified since such an item, of itself, is not clothing or wearing apparel. The Department proposes to add this item because experience has indicated erroneous classification by retailers or uncertainty on the part of retailers as to how this item should be classified.

a. The Examiner concludes that proposed Tax S&U 407 is both needed and reasonable.

25. The Department proposes to change rule Tax S&U 408 to clarify and delineate the scope of the exemption provided in Minn. Stat. § 297A.25, subd. 1(h).

This clause authorizes exemption for all materials used or

consumed in industrial production of tangible personal property intended to be sold ultimately at retail but excludes machinery, equipment, implements, tools, accessories, appliances or contrivances. A guideline is established in clause (b) which provides that items used only once in production which will not be used again are within the exemption and therefore not regarded as coming within the exclusion from the exemption.

The second proposed change in the regulation is the addition of language in clause (d) that is intended to further clarify and delineate the scope of the amendment to the law (Ch. 650, Laws of Minnesota 1973), effective January 1, 1974, which provides exemption for accessory tools, equipment and other short-lived items (less than 12 months) which are separate detachable units used in producing a direct effect upon the product. Further clarification is necessary because of the great variety of items used in production processes and the degree of uncertainty as to tax status of many of such items. Language added in clause (d)(2) is intended to, (1) expressly specify that a direct physical contact of an item with the product is not a requisite for exemption; and (2) to establish criteria for determining when an item which does not contact the product directly is considered to be "used in producing a direct effect."

a. The Examiner concludes that proposed Tax S&U 408 is both needed and reasonable.

26. The first proposed amendment to Tax S&U 411 is that clause (c)(1) be modified to eliminate the first example illustrating non-isolated, and therefore taxable, sales. The example concerns sales made by an auctioneer at premises either owned or leased by the auctioneer and states such sales are not isolated or occasional and thus taxable. This change is necessary because of the Minnesota Supreme Court decision in State v. Tysdal, 228 N.W. 2d 230 (1975). The circumstances in that case matched the circumstances in the example. The courts held that a sale of tangible personal property consigned to an auctioneer was not subject to the Minnesota Sales Tax if the sale would have been exempted as "isolated or occasional" where it was made by the consignor.

Clause (e) concerns sales made at events held by non-profit organizations. The regulation specifies several types of events and conditons under which sales at such events will be regarded as isolated or occasional. It is proposed to add "rummage sales" to the types of events already specified. A second proposed change in this clause is to delete certain language which is confusing and misleading and to substantiate language which more clearly conveys the intended meaning. The language to be eliminated can be construed contrary to the intent of the regulations; that a non-profit organization sponsoring such an event, and which holds a sales and use tax permit, will be regarded as making sales in the regular course of business and is thus taxable. The new language is intended to make it clear that reference to "a person holding a sales and use tax permit" does not include the non-profit organization which sponsors the event.

a. The Examiner concludes that proposed Tax S&U 411 is both needed and reasonable.

27. The two proposed amendments to Tax S&U 415 are necessary to make the rule conform to the law as amended.

The first change adds a qualifying condition (specified in Laws 1974, Ch. 11, § 1) as a requisite for exemption to the effect that property purchased by a qualifying charitable, religious or educational organization is to be used in the performance of the charitable, religious or educational function of the exempt organization. An illustrative example is included.

The second change states: "Effective July 1, 1977, an exempt organization will lose its status as an exempt organization under § 297A.25, subd. 1(p), if the employer, who employs 10 or more individuals who are residents of this state, fails to provide qualified health insurance for its employees pursuant to Laws of Minnesota 1976, Ch. 296." The pertinent provisions of Laws 1976, Ch. 296, are found in Article I, § 2, subd. 2, and Article I, § 3, subd. 2.

a. The Examiner concludes that proposed Tax S&U 415 is both needed and reasonable.

28. Tax S&U 421 is a new regulation proposed by the Depart-

ment as heretofore there has been no rule concerning the exemption for items used in connection with construction of a new taconite plant or expansion of an existing plant as provided by 1971 Extra Session Laws, Ch. 21, and amended by 1976 Laws, Ch. 556. The purpose of the rule is to state the conditions required for exemption, to establish a procedure by which qualified persons can effectively claim the exemption, and to clarify the scope of the exemption. It establishes classes of property to which the exemption applies and describes exempt items includible in each class. The established classes are: (1) Tangible personal property physically incorporated into the construction; (2) materials and supplies not incorporated in the construction but consumed with construction; (3) equipment purchased for and used in the construction of the plant (includes apportioned exemption for equipment having a useful life beyond the date of completion of construction or expiration of the exemption period.)

a. The Examiner concludes that proposed Tax S&U 421 is both needed and reasonable.

29. Tax S&U 422 is a new rule proposed in order to include an exemption for senior citizens groups (Ch. 155, Laws of Minnesota 1974) organized and operated exclusively for pleasure, recreation, and other non-profit purposes, to establish eligiblity requirements, and to establish a method of effectively evidencing exempt status. The established eligibility requirements are: (1) requirement of formal organization; and (2) limitation of membership to persons who have attained the age of 65 or over. These requirements are established to assure limiting eligiblity status to organizations which can be reasonably deemed to be within the legislative intent.

a. The Examiner concludes that proposed Tax S&U 422 is both needed and reasonable.

30. The amendment to Tax S&U 508 is proposed because Minn. Stat. § 297A.35 was amended by Ch. 377, Laws of Minnesota 1975. The proposed rule amendment reflects this legislative change which increased the interest rate from 4% to 6% on overpayments. The effective dates of these changes are now provided in the rule

for purposes of clarity and taxpayer awareness.

a. The Examiner concludes that proposed Tax S&U 508 is both needed and reasonable.

31. The proposed amendment to Tax S&U 510 incorporates the fact that Minn. Stat. § 297A.39 was amended by Ch. 377, Laws of Minnesota 1975. This amendment deleted reference to a specific interest rate and substituted a reference to the interest rate as specified in Minn. Stat. § 270.75 which was also amended to increase the interest rate from 8% to 10% on unpaid liabilities. It includes a new example for illustration. These changes are offered for purposes of clarity and taxpayer awareness.

a. The Examiner concludes that proposed Tax S&U 510 is both needed and reasonable.

32. The amendment to Tax S&U 511 is proposed to reflect the Department's position on disclosure of taxpayer information. It deletes the furnishing of such information as name, address, business name, business location, and permit number. It permits disclosure of the sales and use tax account number, date permit was issued, and whether the permit is active.

The amendment also provides that the Commissioner of Revenue may furnish necessary information to the Minnesota Motor Vehicle Division to administer the Motor Vehicle Excise Tax (Ch. 297B). Minn. Stat. § 297B.11 authorizes the motor vehicle registrar to act as agent of the Commissioner of Revenue in administration of the motor vehicle excise tax.

a. The Examiner concludes that proposed Tax S&U 511 is both needed and reasonable.

33. The Department proposed an amendment to Tax S&U 601 because the current regulation specifies that commercial artists 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. It specifies that sales by them of drawings, sketches, paintings, illustrations, etc. are subject to the sales and use tax. It also specifies that all preliminary or creative

art service involved in a project which results in a sale of finished art is subject to tax whether separately stated or not. This treatment of preliminary art is not consistent with the treatment in Rule Tax S&U 605 of preliminary art for which a charge is made by an advertising agency operating as an independent service business. In the latter case, tax does not apply to separate charges for preliminary art except where the preliminary art becomes physically incorporated into the finished art. It is proposed to modify Rule Tax S&U 601 so that the same treatment will be accorded such charges by commercial artists.

a. The Examiner concludes that proposed Tax S&U 601 is both needed and reasonable.

34. The amendment to Tax S&U 604 changes the rule as it currently provides that a sale, rental, or use of a mobile home or house trailer which is not permanently affixed to realty is a sale or rental of tangible personal property and thus taxable. It also specifies the criteria which must be met for such property to be classified as realty in which case the sales or rental thereof would be exempt from tax. Included in such criteria is a requirement that the unit must be affixed to land, the title of which is in the same name as the owner of the unit.

Thus, where a lessor does not own the land on which a mobile home or house trailer is affixed, this particular criteria results in tax being imposed on rentals of such a unit when it is, in fact, the home of the renter.

It is proposed to change the regulation by eliminating the criteria which requires that the unit must be affixed to land, the title of which is in the same name as the owner of the unit. This would cause elimination of tax on units used as homes by the renters thereof if the other criteria specified in the regulation are met. This would create uniformity in treatment of rentals between rentals of conventional buildings and rentals of mobile homes and house trailers which would be accorded treatment as real estate under the proposed revision.

a. The Examiner concludes that proposed Tax S&U 604 is both needed and reasonable.

35. Tax S&U 607 is a new rule which is proposed because of a need to clarify and provide an express statement as to proper application of the tax to various classes of transactions involving advertising services, signs and billboards. The regulation specifies which types of transactions constitute sales or rentals of tangible personal property; which types of transactions are contracts for the alteration of realty; which transactions constitute exempt services; and the basis for applying sales and use taxes in the varying situations.

a. The Examiner concludes that proposed Tax S&U 607 is both needed and reasonable.

36. Tax S&U 608 is a new regulation which is proposed to explain the purpose and effect of Minn. Stat. § 297A.255 relating to payment of sales or use taxes due on aircraft prior to registration or licensing of the aircraft and to specify and formally establish the administrative means by which aircraft purchasers may accomplish compliance with § 297A.255 so that registration of the aircraft may be effected.

The regulation describes procedures to be followed in the following circumstances: situations in which the Minnesota sales tax was paid to a dealer; situations in which no Minnesota sales tax was paid to the seller; registration of aircraft by dealers who are registered in accordance with Minn. Stat. § 360.63; and registration of aircraft by a lessor or a lessee.

a. Lawrence McCabe, representing the Department of Transportation, Aeronautics Division, submitted written comments concerning the terminology used, namely, that found in the last item of the proposed rule amendments set out in Finding No. 5.

In addition, Mr. McCabe proposed to amend the proposed rule to include a specified certificate, Form ST-24, and procedures to be followed for registration.

b. The Department responded by agreeing to propose an additional paragraph under Section A:

> When the sales tax has not been paid to the dealer as set forth in B.1. below, the Department of Revenue will forward a completed certificate of tax payment or exemption, Form ST-24, to the Department of Transportation, Aeronautics Division.

Rule says "21"

c. The Examiner concludes that proposed Tax S&U 608 is both needed and reasonable. However, the Examiner recommends that the rule be amended as set out in paragraph B. above.

37. Tax S&U 609 is a new regulation proposed by the Department to provide an express statement officially establishing the scope of the exemptions applicable to mining industry operations. It cites examples of items which qualify for exemptions under Minn. Stat. 297A.25, subd. 1(h), as separate detachable units used in producing a direct effect upon the product where their ordinary useful life is less than 12 months. It also provides guidelines for determining, and examples of items, which qualify for exemption provided by § 297A.25, subd. 1(h). In addition, it cites specific examples of items which do not come within either of the foregoing exemptions.

a. The Examiner concludes that proposed Tax S&U 609 is both needed and reasonable.

38. Tax S&U is a proposed new rule which sets forth the Department's position on applicable guidelines relating to the taxation of transfers of property and services rendered in the automatic data processing industry. It is a comprehensive discussion of a very technical subject matter designed to eliminate taxpayer error and confusion. It is similar in substantive content to the California rule (Reg. 1502) and the Wisconsin rule (Reg. S38.2).

The rule does reflect one proposed change in Department policy. Presently, custom programs are not taxed. The rule will eliminate, effective April 1, 1978, any distinction between canned or custom programs. After that date, all programs would be taxable as the sale of tangible personal property.

a. R. F. Teichert, representing the 3M Company, submitted written comments opposing the change in the taxability of custom programs. He states that this is considered a non-taxable service in numerous jurisdictions across the country, the most recent case being in Alabama where the Alabama Supreme Court ruled custom programs as being exempt services.

b. James Keller, representing Control Data Corporation, expressed his opposition to proposed Tax 610 C.3., 4., and 9. Mr. Keller testified that the Minnesota Supreme Court had addressed the question of sales tax application to mailings lists in Fingerhut Products Co. v. Commissioner of Revenue, 258 N.W. 2d 606 (1977), and that the Court found that these transactions involved intangible property and only incidentally used a tangible medium to transfer the information.

Mr. Keller testified that in deciding Fingerhut, the Supreme Court relied on Commerce Union Bank v. Tidwell, 538 S. W. 2d 405 (Tenn. 1976), where the Tennessee Supreme Court ruled that the sale of computer software does not constitute a taxable sale of tangible personal property. Furthermore, in the Fingerhut opinion, the Minnesota Supreme Court said:

> "Like the transfer of computer programs through the use of punch cards, the use of the tangible medium of typed mailing lists is merely incidental to the use of the incorporeal information contained in those lists. The typed lists themselves were not used within the contemplation of the statute; what was used was the information contained in the lists. Such use, in our opinion, is not taxable under the current statute."

Mr. Keller urged that the proposed rules be amended to reflect the non-taxability of computer software and mailing lists.

In addition, Mr. Keller testified that the California rule, Regulation 1502, on which a great deal of the substantive content is based, is under current substantial litigation and that the state tax commission has agreed to rehear and rewrite that rule.

c. John Jantschik, representing Honeywell, submitted written comments in opposition to Tax S&U 610 C.3. and 4.

Basing his argument on the language of the Fingerhut and Tidwell cases, Mr. Jantschik maintains that these proposed rules are not supported by statute and should be deleted or shown as examples of non-taxable services.

d. R. W. Laurens submitted written comments to the Department prior to the hearing in opposition to Tax S&U 610. He stated that the proposed new rule does not reflect current computer technology but rather the state of the art as it existed

about five to ten years ago. Mr. Laurens suggested that this rule be removed from the group of revisions to the existing rules.

e. The Department responded that the sale of a computer program involves the acquisition of a tangible commodity which is fully taxable under Chapter 297A, Minnesota Statutes. The Department's position is that this issue has not been specifically addressed by the Minnesota Supreme Court.

The Department agreed that the first sentence in C.9., pertaining to the subject matter of mailing lists, is not totally in accord with the decision of Fingerhut Products Co. The sentence should be stricken and the following inserted:

> "Sales of mailing lists in the form of cheshire tapes, gummed labels and heat transfers, produced as a result of a computer run, are taxable. Computer generated mailing lists alone, involving no transferable product, are not taxable."

f. Although Fingerhut did not specifically deal with the taxability of all computer run "products", the Court did set parameters to determine whether or not a sales tax should be imposed. The Examiner concludes that proposed Tax S&U 610 C.3., 4. and 9. fall outside of those parameters. (See especially the language of the opinion set out in paragraph b. above) The Examiner recommends that Tax S&U 610 C.9. be amended as suggested by the Department in paragraph e. above. Because proposed C.3. and 4. are contrary to the law, the Examiner concludes that the Department lacks statutory authority to promulgate those sections. The Examiner recommends that 610 C.3. and 4. not be adopted unless rewritten to conform to Fingerhut. The Examiner concludes that the remaining sections of the proposed rule are both needed and reasonable.

Based on the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Revenue. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule; and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Department of Revenue has documented its statutory authority to promulgate the proposed rules with the exceptions noted in Findings 14.e. and 38.f.

4. The Examiner concludes that the Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts with the exception noted in Finding 19.b.

5. The Hearing Examiner suggests that the proposed rules be amended as recommended in Findings 5.a., 14.e., 19.b. 36.c. and 38.f. The Department should further examine the entire record in this matter before final action is taken.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Department of Revenue adopt the proposed rules as recommended to be amended in this Report and on the basis of the record made herein.

Dated this 6 day of April, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

M E M O R A N D U M

The Report herein contains conclusions made by the Examiner which state that the Department of Revenue has no statutory authority to promulgate rules which are contra to existing case law which interprets statutory implementation if those statutes have

not subsequently been amended by the Legislature (see Findings 14.e. and 38.f.). There is little case law directly on point. In Wallace v. Commissioner of Taxation, 184 N.W. 2d 588 (1971), the Minnesota Supreme Court stated:

> While it is true, as the commissioner argues, that he has been given authority to enact regulations with reference to the administration of income tax laws (Minn. Stat. § 15.0412 and 15.0413), he is mistaken in his assumption that the substance of Regulation 2008(5) is within the scope of his power to regulate. It is well established that the legislature may confer discretion on the commissioner in the execution or administration of the law. It may not give him authority to determine what the law shall be or to supply a substantive provision of the law which he thinks the legislature should have included in the first place. (Wallace at 594)

The Examiner has concluded that the Department of Revenue cannot change existing law by rule. See also Gillen v. Commissioner of Taxation, 232 N.W. 2d 894 (1975); Masland v. Bachman, 361 A.2d 473 (Pa. 1976); and Commonwealth v. DiMeglio, 122 A.2d (Pa. 1956).

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Eileen A. Gaiovnik, being first duly sworn, hereby deposes and says:

That at the City of St. Paul, county and state aforementioned, on the 7th day of April, 1978, she did serve the Report of Hearing Examiner, DR-78-004-PE

upon the Commissioner of Taxation by personally handing to Dorothy McClung, Research Attorney,

said Report of Hearing Examiner.

Eileen A. Gaiovnik

Subscribed and sworn to before me this 5th day of April, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED AMENDMENTS AND ADDITIONS TO THE RULES OF THE DEPARTMENT OF REVENUE GOVERNING THE ADMINISTRATION OF THE SALES AND USE TAX LAW.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, hearings were held on February 7 and 8, 1978, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Revenue on April 6, 1978; and

WHEREAS, the Department of Revenue has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Revenue has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearings and that the Department of Revenue has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Revenue has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 14th day
of July, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Revenue

TO : J. Michael Miles
Asst. Attorney General
Administration

DATE: July 17, 1978

FROM : Dorothy A. McClung
Research Attorney

PHONE: 1022

SUBJECT: Proposed Rules for Sales and Use Tax

Attached is the complete hearing record, Order Adopting Rules, and a copy of the notification sent July 17, 1978, to the following persons:

1. John E. Gessert, Whirlpool Corp.
   Administration Center
   Benton Harbor, MI 49022

2. Alan J. MacPhail
   Borroughs of Minnesota
   8850 Wentworth Avenue
   Bloomington, MN 55420

3. Abe Rosenthal
   Minnesota Transport Services Assn.
   1821 University Avenue
   Suite 310N
   St. Paul, MN 55104

4. Nick Hay, Attorney at Law
   1601 Soo Line Building
   Minneapolis, MN 55402

DAM:klc

Enclosure

DEPARTMENT OF REVENUE

In the Matter of the Proposed Rules Governing the Administration of The Sales and Use Tax	NOTIFICATION OF SUBMISSION OF THE HEARING RECORD TO THE ATTORNEY GENERAL

Pursuant to Minn. Stat. Sec. 15.0412, Subd. 4, you are hereby notified that the hearing record and the Order Adopting Rules in the above captioned matter is being transmitted to the Attorney General of the State of Minnesota on this seventeenth day of July, 1978.

State of Minnesota

Dorothy A. McClung
Research Attorney
Department of Revenue

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE GOVERNING SALES AND USE TAX	)))	STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Deputy Attorney General C. Hamilton Luther, 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.

C. H. Luther
Deputy Attorney General

Dated: August 4, 1978

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT REVENUE

TO : Lee Sheehy
Special Assistant Attorney General

DATE: August 10, 1978

FROM : Dorothy A. McClung
Research Attorney

PHONE: -1022

SUBJECT: Sales Tax Rules

Returned to you are the proposed rules governing sales and use tax. The Certificate of Compliance is enclosed and the requisite number of copies of pertinent documents.

DAM:lmj

Attachment

RECEIVED
AUG 11 19..
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Dorothy A. McClung
Research Attorney
Department of Revenue

DATE: August 3, 1978

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Proposed Rules For Sales and Use Tax

I am returning the above-captioned rules. These rules were not submitted to this office in compliance with the rules of the Attorney General relating to such submittals. See particularly AttyGen 302. As we discussed, you may wish to call me to discuss the requisite numbers of copies which meet the practical requirements of AttyGen 302. When resubmitted, these rules must also be accompanied by a Certificate of Compliance. See Exhibit H-3 of the Attorney General's Rules cited above for a sample of a Compliance Certificate.

If you have any questions, do not hesitate to call me.

LES/dw