

## MINNESOTA FARMERS' MARKET ASSOCIATION

9800 155<sup>th</sup> Street East, Nerstrand MN 55053 | <u>www.mfma.org</u> | <u>kzeman@mfma.org</u> | (507) 664-9446

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Chair Rest, Senator Putnam, and members of the Senate Taxes Committee -

I am Kathy Zeman, executive director of the Minnesota Farmers' Market Association. Thank you for letting me testify in support of SF3958, to exempt cottage foods from sales tax. MFMA supports all 375+ farmers' markets in MN and the Tribal Nations, and their 10,000+ vendors.

I'd like to thank Senator Putnam's leadership on this cottage foods issue, as he engaged his team to help research and surface a possible solution. Sales tax on certain foods that our food farmers and cottage food producers make and sell has been one of the most vexing issues for us to resolve. Part of the problem for us is that MN Dept. of Revenue defines the words "prepared foods" much differently than MN Dept. of Ag or MN Dept. of Health, who issue the food licenses.

Exempting all cottage foods from sales tax brings some equity to the cottage foods industry and to our food farmers, since baked "prepared foods" are already exempt from sales tax. But other "prepared foods" like jams and jellies sold by fruit & vegetable farmers who are cottage food producers do have to pay sales tax. Produce farmers who make and sell acidified cottage foods like salsa and spaghetti sauce — using the same ingredients in both products - face a unique conundrum: salsa is taxed but spaghetti sauce is not taxed, because if you heat it to eat it, there's no sale tax.

On the fiscal note, we're looking forward to getting more info from the Department of Revenue because we think it's high. While we know the total number of registered CFPs, and the number of CFPs in Tier 1 and Tier 2, we have no data on total sales of the CFPs in either category. And we have no data on how many CFPs make baked items – and baked items are already sales tax exempt. Nor do we have any data on the number of CFPs that make taxable and nontaxable foods – that data does not exist. We do provide a <u>guidance list of taxable and nontaxable foods</u>, approved by MDOR, and that list includes more nontaxable items than taxable items – but even that list provides no data on sales of taxable foods. Hoping we can connect with MDOR to see the numbers behind their analysis.

SF3958 is a good solution for Minnesota cottage food producers, food farmers and the thousands of Minnesotans who buy their foods directly from the makers and farmers.

Thanks for listening and I'm happy to answer any questions you have.

Kathy Zeman, Executive Director

Minnesota Farmers' Market Association

(507) 664-9446 | Kzeman@mfma.org

## **BACKGROUND**

Hathy Zeman

The definition of "prepared food" is governed by the <u>Streamlined Sales and Use Tax Agreement</u>, of which Minnesota is a part. Under the Agreement, if a state includes or excludes certain products from their sales tax base, that state has to use the definition in the Agreement. So, we cannot exempt certain foods or types of food from the definition of "prepared food." Minnesota Department of Revenue created a flowchart that explains how "prepared foods" are taxed, referencing the applicable statutes and rules. Page 2 includes the flowchart from MDOR that show how prepared foods are taxed FYI.



Prepared Food Flow Chart | September 2021

**Begin Here** Did the seller: Heat the food, or Mix or combine two or more food ingredients for sale as a single item?<sup>1</sup> No Is it the seller's practice to physically give or hand Are any of the following true?2 utensils to the customer along with the sale of The food is a bakery item food4 (I.e., provide place settings, hand utensils to The food requires cooking prior customers, or place utensils in the package with Yes to consumption the food (including food prepackaged with utensils, The food is ready-to-eat meat or unless they were packaged by a person classified as seafood sold unheated by weight a manufacturer)) The food contains raw eggs, fish, OR meat, or poultry and it requires Are eating utensils necessary to receive the food cooking by the consumer to (such as a plate, glass, cup, or bowl) provided by prevent food borne illnesses? the seller?5 The food is only sliced, repackaged, or pasteurized by the seller Yes No Νo The sale is taxable Does the seller make eating utensils available for customers?6 prepared food. The sale is taxable prepared food. Yes Is the seller's prepared food percentage greater than 75%?7 The sale is not taxable. The sale is not taxable. Yes <sup>1</sup> Minn. Stat. 297A.61 Subd. 31 (2) The sale is taxable prepared food. <sup>2</sup> Minn. Stat. 297A.61 Subd. 31 (2) [NOTE: Even if the seller's prepared food <sup>3</sup> Minn. Stat. 297A.61, Subd. 31 (2) and percentage is greater than 75%, the sale of FDA food code 3-401.11 bulk servings (four or more servings packaged <sup>4</sup> Minnesota Rule 8130.4705 Subp. 2 for sale as a single item for a single price) is <sup>5</sup> Minnesota Rule 8130.4705 Subp. 3(A) taxable as prepared food only if it is the <sup>6</sup> Minnesota Rule 8130.4705 Subp. 3 seller's practice to physically give or hand <sup>7</sup> Minnesota Rule 8130,4705 Subp. 5 utensils to the customer with the food.] <sup>8</sup> Minnesota Rule 8130.4705, Subp. 4

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