

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Amendments to Rules Relating to Administration of the Sales and Use Tax and Sales and Use Tax Payments, Returns, Assessments, and Collections (Minnesota Rules Part 8130.2350 to 8130.3400, 8130.3800 to 8130.4400, and 8130.7300 to 8130.8400.)

STATEMENT OF NEED
AND REASONABLENESS

General Statement

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed amended rules. It is submitted pursuant to Minnesota Statutes section 14.23 (1988) and Minnesota Rules Part 1400.0500 (1989) requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding Administration of the Sales and Use Tax and Sales and Use Tax Payments, Returns, Assessments, and Collections, was published in the State Register on June 19, 1989. The notice specifically mentioned these rules and invited interested persons to submit comments or suggestions in writing to the Department by June 30, 1989. No one submitted written comments.

This rulemaking proceeding proposes to amend the rules relating to Administration of the Sales and Use Tax and Sales and Use Tax Payments, Returns, Assessments, and Collections. These rules were last amended in 1978. Since that time, the Minnesota

Legislature has amended Minnesota Statutes chapter 297A significantly. As a general statement, it is obviously necessary to amend these rules so that they comply with the changes made in the law.

The majority of the changes being proposed for this set of rules involve repeal of outdated information, examples, and duplicative statutory language; grammatical changes; and some form clarifications involving nonsubstantive changes. Many changes result from the enactment of Minnesota Statutes chapter 289A which was a statutory consolidation of administrative provisions applicable to major tax types. For the most part, this involves merely cite changes. Where indicated, "form" changes were changes in writing style which clarified, modernized, or simplified the meaning of a rule but did not make a material change to the rules' substance or effect. Where possible, examples have been repealed because they were outdated, and because the legal effect of examples is not always clear. If necessary, the examples were replaced with text covering the same materials as were in the example.

IMPACT ON SMALL BUSINESS.

The impact of these rules on small businesses has been considered. The proposed rules do not impose new filing, or payment requirements on small businesses and therefore are not expected to place any additional financial or administrative

burden on small businesses.

Where possible, reporting and compliance requirements have been simplified, consolidated, made less stringent, or eliminated. In addition, all persons (including small businesses) currently possessing a sales tax permit were given direct notification of the Department's rulemaking activities, pursuant to Minnesota Statutes section 14.115, subd. 4 (1988). This notification was published in the Department's January 1990 quarterly newsletter which was sent to all permit holders (146,918) in late December 1989, and early January 1990 (see attached).

AUTHORITY TO ADOPT RULES.

Minnesota Statutes section 297A.29 (1988) grants the Commissioner of Revenue authority to promulgate rules concerning administration and enforcement of the sales and use tax laws. Minnesota Statutes section 297A.25, subdivision 20 (1988) grants the Commissioner of Revenue authority to promulgate a rule for refund of taxes paid on sales exempt in accordance with that subdivision. Minnesota Statutes section 297A.27 provides the Commissioner with authority to promulgate rules regarding consolidated returns and recordkeeping requirements.

RULE-BY-RULE ANALYSIS

RULE 8130.2350 COMPUTATION OF SALES TAX.

This rule sets out the method to calculate sales tax on a taxable transaction. It is necessary for both retailers and consumers to have a uniform method for calculating sales tax on transactions involving other than round dollar figures. The proposed rule is reasonable because it establishes a method which mathematically apportions the tax based on the sales price.

Item A. This item covers the computation of tax on transactions subject to a 4 percent rate. This item was previously found at Minnesota Rules 8130.2400, subpart 2. This item is necessary because special tooling is subject to sales tax at a 4 percent rate, rather than the general 6 percent rate. See Minnesota Statutes section 297A.02, subdivision 2.

Item B. This item covers the computation of tax on transactions subject to a 5 percent rate. This item is necessary because there are some leases or other contracts which are still subject to the 5 percent rate (5 percent in effect from July 1, 1981, to December 31, 1982).

Item C. This item covers the computation of tax on transactions subject to a 6 percent rate.

RULE 8130.2400.

Subpart 1. This subpart was repealed because of recent legislation which repealed the prohibition against advertising that tax will be absorbed or assumed by the retailer.

Subpart 2. This subpart was repealed and the information moved to Rule 8130.2350, Item "A."

RULE 8130.2500 APPLICATION FOR PERMIT TO MAKE RETAIL SALES.

This rule is amended to clarify who is required to obtain a sales tax permit. The amendment put the requirements into a more easily understandable format and incorporates recent legislation on this subject. They clarify what information the Department needs in order to issue a permit, and how a retailer should handle situations involving multiple locations, consolidated returns, vending machines, and changes in ownership. The amendments are necessary to remove examples, excess or repetitive language, outdated requirements, and to add several new requirements (due to legislative changes). The amendments are reasonable because they improve and simplify the rule language which makes it more understandable.

Subpart 1. The existing language is repealed and replaced with language which says essentially the same thing as the old language but in a clearer format. It incorporates a 1987 statutory change which expanded the scope of persons required to obtain a permit, see explanation to Rule 8130.3900, *infra*.

Subpart 2. There are grammatical, but not substantive, changes to the first sentence. A sentence was added to clarify that nonprofit organizations must obtain permits if they make or plan to make sales which are not exclusively nontaxable. This is necessary because the Department frequently receives questions from nonprofit organizations on this subject. This language should provide the necessary information to those taxpayers. A statutory cite is added to aid the taxpayer in understanding the rule. The examples are repealed, see explanation in the introductory paragraph to this statement.

Subpart 3. This subpart contains clarifying grammatical changes only.

Subpart 4. This subpart contains clarifying and grammatical amendments. Unnecessary language was eliminated. The language regarding permit fees was stricken because there is no longer a statutory fee requirement. See explanation to subpart 7 of this rule, *infra*. The language regarding the list included with the application is to inform taxpayers that they can comply with the statutory requirement (Minn. Stat. § 297A.04) of filing an application for each place of business by including such a list.

Subpart 5. Gender neutral language was inserted where appropriate. The existing language contains lists of items

which were repealed and replaced with more general terms which covers the previously listed items. A sentence was added to clarify that the term "vending machines" does not include certain coin-operated services described in section 297A.01(3)(i) and (j). An example was repealed, see explanation in the introductory paragraph to this statement.

Subpart 6.

Item A. This item was amended to require the permit applicant to provide the name of the organization applying for the permit. If the organization is a corporation, the state and date of incorporation is also required. This additional information is necessary for the Department's enforcement and compliance activities. It is also reasonable since it is information which should be easily obtained by the applicant.

Item D. This amendment changes an obsolete reference to the Minnesota Tax Department, and requires the applicants to provide a federal identification number if they possess one. This information is necessary for the Department's enforcement and compliance activities. This number is utilized when exchanging information with the federal government, for various recordkeeping purposes, and to assist the Commissioner in determining when new Minnesota Identification numbers are necessary, see explanation to subpart 7(B) of this rule, *infra*.

Item I. This item contains a technical change and repeal of an obsolete term. There are grammatical and clarifying changes to the last paragraph. If the applicant is a corporation or association, an owner, partner, or officer must sign the application. This is necessary to clarify who must sign the application and because of the fact that owners, partners, or officers can be held personally liable for the tax if there is an outstanding liability.

Subpart 7. The first two sentences were stricken because the \$1.00 statutory fee was repealed in 1983. See 1983 Minn. Laws chapter 301 section 235 and chapter 327 section 16.

Items A-B. References to the \$1.00 fee were stricken, see explanation in Subpart 7, *supra*.

Item B. This item was amended to provide that resignation, death, or expulsion of a partner only requires a new application when the partnership is required to obtain a new federal identification number because of death, resignation, or expulsion. This reduces the amount of administrative work for a partnership in cases where there has not been a major change in the partnership.

Item D. The last sentence was stricken, see explanation in Subpart 7, *supra*. Unnecessary language was stricken from the

second sentence, and the third sentence was stricken because the Department will no longer require the old permit to accompany the request. The first sentence has form changes to clarify that the permit holder must request a corrected permit in this situation.

RULE 8130.2600 PERMIT WHEN VALID AND HOW DISPLAYED.

Subpart 1. Two statutory references were stricken, the first because it was obsolete, the second because it did not assist the reader in understanding the rule. The language regarding when the commissioner will require security was changed from "deems" to "finds" to conform to the statutory language.

Subpart 2. This subpart was retitled to clarify its scope. The examples have been repealed, see explanation in the introductory paragraph to this statement. The first four sentences contain grammatical and form clarifying changes. The first sentence is also amended to reflect a 1989 statutory change which gave the commissioner the authority to cancel permits. The last two sentences of the first paragraph have been stricken because the information is found in Rule 8130.2500, subpart 7. These changes are necessary to clarify the existing language and to incorporate statutory changes. They are reasonable because they help permit holders to understand the procedures necessary to remain in compliance with the law.

Subpart 3. The examples have been repealed, see explanation in the introductory paragraph to this statement. The second sentence was stricken because the commissioner will no longer require permit holders to submit lists in these situations. The lists are not needed by the commissioner in administration or enforcement of the sales and use tax law. The other changes are form only and are meant to clarify and simplify this subpart.

Subpart 4. The title is amended to delete information covered in rule 8130.2700. A grammatical change is made in the first sentence. The next two sentences are stricken because the information is covered in rule 8130.2700 and in chapter 297A. A sentence was added to clarify that another subpart covers information on the issue also.

RULE 8130.2700 REVOCATION OF PERMITS.

Subpart 1. Unnecessary statutory references were deleted, and form changes were made.

Subpart 2. Form and grammatical changes were made to clarify and simplify existing language. Unnecessary statutory references were deleted, and others were updated. Language was added to provide that service by mail may be made to the last known address of the taxpayer. This will allow the Department to serve notices where the taxpayer has failed to give a forwarding address.

Subpart 3. The existing language in this subpart was stricken because it duplicates language found in Minnesota Statutes, chapter 14, and it refers to matters which are under the control of the Office of Administrative Hearings, not the Department of Revenue. A new title and new language was inserted which covers language previously found in Rule 8130.2600, subpart 4. This is a more appropriate place for the language, since this rule deals with revocation of permits.

Subpart 4. This subpart was repealed because it duplicates statutory language found in Minnesota Statutes section 14.61 and Minnesota Rules section 1400.8100.

Subpart 5. Existing language was stricken and the same information was reworded to clarify the requirements for obtaining a new permit once an existing one has been revoked. These requirements are necessary for the commissioner to ensure compliance with Minnesota law in revocation circumstances where the taxpayer has a history of noncompliance. The requirements are reasonable because they allow a mechanism for a person to resume making taxable sales after a revocation has occurred while assuring compliance with chapter 297A. Language was also added to clarify that interest will be paid when money is deposited as security and how that interest will be calculated. The language also notifies taxpayers that the security may be applied to outstanding tax liabilities.

Subpart 6. Nonsubstantive gender and form changes were made to this subpart.

Subpart 7. This subpart was added to inform taxpayers by calling attention to the fact that the commissioner has statutory authority to release certain information regarding a person whose permit has been revoked. This information is found in a chapter (Minnesota Statutes chapter 270B) other than the sales tax chapter and thus has the potential to be overlooked by a taxpayer if not covered in the sales tax rules.

RULE 8130.2800 RETAIL SALES WITHOUT PERMIT; VIOLATION.

This rule was repealed because it duplicated statutory language, and did not provide the reader with information which assisted in understanding the administration of the sales and use tax chapter.

RULE 8130.2900 PRESUMPTION THAT TAX MUST BE PAID.

Subpart 1. The first sentence was stricken because it duplicated obsolete statutory language. Other unnecessary language was stricken but no substantive changes were made.

Subpart 2.

Item A. A gender change was made.

Item B. The existing language was stricken and replaced with clarifying language which enables taxpayers to understand how to overcome the statutory presumption that all sales are subject to sales tax.

Item C. The existing language was stricken because it is already covered by the new language in Item "B." The information in the old Item "D" is now found in this item.

Item D. The existing language was clarified to provide that a seller may accept a copy of the buyer's direct pay permit, or a statement as prescribed in Rule 8130.3400.

RULE 8130.3000 GOOD FAITH ACCEPTANCE OF EXEMPTION CERTIFICATES.

The changes in this rule are necessary to clarify a confusing area for taxpayers, and to make the rule understandable and up-to-date. They are reasonable because they place no additional financial or administrative demands on taxpayers.

Subpart 2. A gender change was made and a statutory reference added. The examples were removed, see explanation in the introductory paragraph to this statement.

Subpart 3. The first sentence was changed to more general

language which covers all of the applicable exemptions in Minnesota Statutes section 297A.25, rather than specifying each exemption. There are some clarifying form and gender changes. The second paragraph was stricken because it refers to a specific statutory cite and uses it as an example to illustrate this subpart. Since the specific language referring to industrial production was stricken from the first paragraph and replaced with more general language, this language was also stricken. The example was removed, see explanation in the introductory paragraph to this statement.

Subpart 4.

Items A & C. Obsolete language was stricken. Both of the statutory exemptions covered by these items have been repealed.

Item E. This item was relettered to "C" because of earlier stricken language. Language was added here to incorporate recent legislative changes.

Item F. This item was relettered to Item "D" because of earlier stricken language.

Item G. This item was relettered to Item "E" because of earlier stricken language. Confusing language was stricken and clarifying language added. No substantive changes were made.

Items F, G, & L. These items were added because of recent legislative changes. They clarify that these exemption certificates may be accepted in good faith from a buyer.

Items H-K & M. These items were added because they are also exemption certificates which a vendor may accept in good faith.

Subpart 5. Gender changes were made, and also a change clarifying that the seller should know what the purchase is to be used for in addition to whether the purchaser is who it claims to be. For example, if a vendor sells bingo equipment to a church for the church to use on its bingo nights, that purchase would not be used for religious purposes and the vendor could not accept the certificate in good faith, even though the sale was made to a religious organization. This follows the statutory requirement that items are exempt only if they are used in the performance of charitable, religious, or educational functions.

Subpart 6. Two form number reference were deleted to prevent confusion if the Department should change the form numbers. The term "vendor" was inserted to clarify the scope of the last sentence.

Subpart 7.

Item A & B. Clarifying form and technical changes were

made. No substantive changes were made.

Item C & D. New language was added to clarify the tax treatment of meals, lodging, and admissions when purchased by exempt organizations. This is necessary because the sale of one of these taxable transactions may be exempt depending on who it is sold to, and these items will assist taxpayers in understanding the differences. This language is reasonable because it sets out in clear language exactly when one of these transactions is exempt and thus an exemption certificate may be used. A sentence was added to inform taxpayers that the sale of meals at schools is covered by a separate rule. This is necessary because there is a specific statutory exemption for those sales which does not extend to other educational organizations.

Item E & F. These items were added to incorporate recent legislative limitations.

Item G. This language was previously found at subpart 10 of this rule. It was moved to this subpart because it is an exception to the acceptance of exemption certificates and thus is more appropriate to include under this subpart

Subpart 8. Language listing specific items was stricken, and new broader language which covers all of the stricken language was added. A reference to sales of utilities (electricity,

telephone service, etc.) was added to clarify that these sales are also covered by subpart 8.

Subpart 9. Subpart 9 is repealed because those issues are now covered under subpart 7, Items "C and D," *supra*.

Subpart 10. Subpart 10 is stricken and moved to a more appropriate location, subpart 7 "G," as a reference or limitation to good faith acceptance.

RULE 8130.3100 CONTENT AND FORM OF EXEMPTION CERTIFICATE.

Subpart 1. Form changes were made to clarify the existing language, and a statutory cite was added for reference purposes.

Subpart 2. The first sentence was stricken because clearer language was inserted into Item "A."

Item A. The first sentence was stricken and replaced with clearer language that sets out which exemption certificates must be approved by the commissioner before being used. This is necessary because a seller may only accept these certificates in good faith if they have been previously approved by the commissioner. It is reasonable because these are exemptions which require review by the commissioner before they are effective.

Item B. Existing specific language was stricken and more general language covering the same exemption was added. The new language sets out which exemption certificates may be used without prior approval from the commissioner.

Item C - E. These items were stricken because they are not exemptions but refer to forms. The rule has been restructured in terms of exemptions, rather than which forms should be used.

The last part of the 3rd sentence in the paragraph following the old Item "E" was stricken because it refers to a form which is not provided by the Department, but is under the control of another entity.

The last paragraph was stricken because the forms will no longer be reprinted in the rules, and taxpayers are notified in the Minnesota Sales and Use tax instructions that they may photocopy the exemption certificates, and that the commissioner does not furnish bulk copies. This change is necessary because the Department needs to change forms periodically which then out-dates the form in the rule.

Subparts 3 and 4. These subparts were repealed because the information was moved to subpart 2, Items "A and B."

RULE 8130.3200 NONEXEMPT USE OF PURCHASE OBTAINED WITH EXEMPTION CERTIFICATE.

Subpart 1. There were grammatical changes made to this paragraph. Language was added to clarify what a taxpayer must do when that taxpayer does not have a sales tax permit. Language was also added to clarify that using the property for demonstration or display does not constitute a taxable use. The examples were stricken, see explanatory paragraph in the introduction to this statement.

Subpart 2. This subpart was added to clarify how tax should be calculated when the property is used while held for sale. This is necessary because of the decision in Town and Country Homes, Inc., v. Commissioner of Taxation, 269 N.W.2d 7 (Minn. 1978). In that case, the Minnesota Supreme Court held that use tax should be based on the reasonable rental value of the property.

RULE 8130.3300 FUNGIBLE GOODS FOR WHICH EXEMPTION CERTIFICATE GIVEN.

Subpart 1. A statutory cite was added to assist the reader in understanding when, and in what situation, this definition is used.

Subpart 2. This subpart was repealed because it duplicates statutory language and does not assist taxpayers in interpreting what fungible goods are.

RULE 8130.3400 DIRECT PAY PERMIT PROCEDURE.

Subpart 2. There was a grammatical but not substantive change to this subpart.

Subpart 4. The last sentence in this subpart was moved to the list of qualification requirements, see item D. Clarifying gender and grammatical changes were made to the last sentence. The first part of the first sentence in the last paragraph was stricken because it does not assist in implementing the law or govern its organization or procedure.

Subpart 5. Grammatical and gender changes were made to the first paragraph, with no substantive change.

Subpart 6.

Item D. This item was added because purchases of motor vehicles are taxed under Minnesota Statutes chapter 297B, and there is no statutory authority in chapter 297B for allowing a taxpayer to use a direct pay permit for payment of the motor vehicle excise tax.

Item E. This item was added because taxable services cannot be used outside of Minnesota. Thus there is no way for them to be purchased exempt for use out-of-state, which is the main reason for the issuance of a direct pay permit, see subpart 1,

Item "A" of this rule.

Subpart 7. Language was added to the first sentence to clarify that a permit holder may not assign the use of the permit to any other party. A direct pay permit is granted to a specific taxpayer in order to reduce administrative burdens of collecting the tax, due to the nature of that taxpayer's business.

Assigning it to another party for their use would defeat the qualification requirements of the rule, found in subpart 4. Only businesses which satisfactorily demonstrate the qualification requirements contained in subpart 4 to the commissioner, may be granted a direct pay permit. If a direct pay permit holder were to assign the use of the permit to another taxpayer, that assignment would circumvent the rule since the second taxpayer would have the use of the permit without first meeting the requirements of the rule. A direct pay permit is not a statutory right, but is a discretionary permit granted by the commissioner in the circumstances described in the rule. It is necessary to clarify this in the rule and it is reasonable because it implements the statutory language requiring the commissioner to authorize the use of a direct pay permit. The other changes to this subpart are grammatical, not substantive. The last line is stricken since forms will not be published in the rules.

RULE 8130.3600 FLEA MARKET OPERATORS.

This is a new rule which is being added to clarify compliance with the statute regarding flea markets and similar events. Some of the rule is duplicative of statutory language but is necessary for the taxpayer to understand the language which clarifies implementation of the statute.

Subpart 1. Most of this language duplicates the statute but is necessary to understand the rest of the rule. The last sentence clarifies that sellers at these events must obtain a permit unless there is an applicable exemption.

Subpart 2. This language is necessary to clarify that use of a form which is provided by the commissioner will constitute compliance with the statutory requirement of obtaining evidence of a permit or the fact that no taxable sales are being made, from a seller. It is reasonable since the commissioner provides the forms to anyone requesting them and reduces the administrative burden on the event operator by providing them with a form designed to obtain the evidence required under the statute.

RULE 8130.3800 IMPOSITION OF USE TAX.

The second sentence has been stricken because it is obsolete.

RULE 8130.3850 COMPUTATION OF USE TAX.

This rule sets out the method to calculate use tax on a taxable use. It is necessary for consumers to have a uniform method for calculating use tax on prices involving other than round dollar figures. It is reasonable because it establishes a method which mathematically apportions the tax based on the sales price.

Item A. This item covers the computation of tax on taxable transactions subject to a 4 percent rate. This item was formerly found at Minnesota Rules 8130.4100, subpart 2. The language is necessary because special tooling is subject to 4 percent tax rate, rather than the 6 percent general rate. See Minnesota Statutes section 297A.02, subdivision 2.

Item B. This item covers the computation of tax on taxable transactions subject to a 5 percent rate. The language is necessary because there are some leases or other contracts which are still subject to the 5 percent rate (5 percent rate in effect from July 1, 1981, to December 31, 1982).

Item C. This item covers the computation of tax on taxable transactions subject to a 6 percent rate.

RULE 8130.3900 LIABILITY FOR PAYMENT OF USE TAX.

Subpart 1. Clarifying changes were made to this subpart. The stricken language was obsolete due to changes to Minnesota

Statutes section 297A.21. The language which replaces the stricken language reflects the statutory change which broadened the use tax collection requirement to include retailers who do not maintain a place of business in Minnesota, as well as those who do maintain a place of business here.

Subpart 2. This language is stricken because it conflicts with the statutory language in Minnesota Statutes section 297A.21 which obligates retailers who do not maintain a place of business here, to collect the use tax if the retailer engages in regular or systematic solicitation of sales from potential customers within Minnesota. The changes to the second sentence clarify that sellers who do not come within the statutory collection requirements can register to collect the tax if they agree to the requirements in Items "A through C." There is also a gender change in this subpart, and a cite change due to the recent consolidation legislation.

Item B. This item was changed to reflect the statutory return due date change and to clarify the remittance language.

RULE 8130.4000 COLLECTION OF TAX AT TIME OF SALE.

Subpart 1. The language in this subpart was stricken and replaced with clarifying language which puts the same information in an easier to read list format. Item "C" was added because of the law change discussed in the explanation to

rule 8130.3900, subpart 1, *supra*.

Subpart 2. Gender changes were made to this subpart, and a statutory cite was added for clarification. Information in the second sentence was stricken and replaced with new language. The old language was one example of what constitutes "operating within this state," and was misleading because a reader might think that taking orders for merchandise was the only way to operate within Minnesota on someone else's behalf. The new language does not list all the specific ways to operate within the state, but uses the general term to avoid trying to list all the possibilities that may be covered by the word "operating." The new language puts the reader on notice that a permit is required anytime a person is acting on behalf of a retailer within Minnesota.

Subpart 4. A gender change was made.

Subpart 5. A statutory cite was added to this subpart to clarify the statutory authority for this penalty. Language was stricken due to the consolidation legislation which removed the specific penalty language from the statute and just labels the crime as a misdemeanor.

RULE 8130.4100.

Subpart 1. This subpart was repealed because of recent

legislation which repealed the prohibition against advertising that tax will be absorbed or assumed by the retailer.

Subpart 2. This subpart was repealed and the information moved to Rule 8130.3850.

RULE 8130.4200 REGISTRATION.

Subpart 1. The existing language was stricken and replaced with clearer language in a list format which is easier to read. Item "C" was added, see explanation for Rule 8130.3900, subpart 1.

Subpart 2. This subpart was repealed because the statutory authority for this subpart was repealed in 1988. A taxpayer not maintaining a place of business in Minnesota or not having the required nexus, is not required to register to collect the use tax.

Subpart 3. Grammatical, form, and gender changes were made, with no substantive change.

RULE 8130.4300 PROPERTY BROUGHT INTO MINNESOTA.

Subpart 1. A statutory cite was updated. Grammatical, technical, and form changes were made with no substantive change. The examples were repealed, see explanation in the introductory paragraph to this statement.

Subpart 2. This subpart was amended by adding language which clarifies that credit for tax will be given only when tax is legally imposed or owed to the other state. This language is necessary to prevent a person from evading payment of Minnesota tax by paying tax to another state when it is not owed to that state, getting credit for that payment in Minnesota, and then going back to the first state and filing a claim for refund. It is reasonable because it places persons buying items within Minnesota on the same footing as those buying out-of-state for use within Minnesota.

A sentence was also added to clarify that the credit can only be given to taxes paid to other states, not local governments or other countries. This clarifies the wording of the statute, which provides that credit will be given when items have been subjected to tax "by any other state." (emphasis added.)

RULE 8130.4400 CREDIT AGAINST USE TAX.

Subpart 1. There were some grammatical changes to this subpart. Language was added to clarify that credit will only be given when tax is legally imposed on an item in another state. See the explanation in Rule 8130.4300, subpart 2. Examples were also repealed, see explanation in the introductory paragraph to this statement.

A new paragraph was added to clarify how the statutory credit will be calculated. This is necessary because it replaces information previously found in the examples which have been repealed. It is reasonable because the new language clarifies how the other states' tax will be credited against Minnesota tax.

Subpart 2. Gender changes were made. The word "resident" was stricken and replaced with the word "taxpayer." The new term is a more accurate description because a person may not be a "resident" of Minnesota but this subpart could still apply to them. The statute governing imposition of the use tax is not limited to residents of Minnesota. An example was repealed, see explanation in the introductory paragraph to this statement.

RULE 8130.7300 WHEN TAX IS DUE.

Subpart 1. The due date reference was changed from the 25th to the 20th of each month, to conform to the statute. The language regarding the June liability was added to alert taxpayers, since it is an exception to the general rule being stated. The statutory cites were added to assist taxpayers in understanding the rule.

Subpart 2. A gender and form change was made to the first paragraph, with no substantive change. A cite was changed to reflect recent consolidation legislation.

Item A. The form reference was deleted, because the Department no longer requires the use of a specific form to apply for a different reporting period. This reduces the amount of administrative work for small businesses. The reference to the Sales and Use Tax Division was updated to its new name, Taxpayer Information.

In clause (2) of this item, the average tax liabilities were increased to account for inflation over the last 12 years since these rules were last changed. A formula was developed to automatically increase these amounts without going through a rule change. The formula is based on Minnesota Statutes section 290.06 which is used by the Commissioner to adjust income tax rate brackets for inflation. This formula is necessary because it allows a mechanism for the average liability amounts to increase without going through the rulemaking process. This positively impacts small businesses by increasing the amount of sales tax they can collect and still be able to get authorization to file on a quarterly or annual basis, instead of having to file each month, thus reducing their administrative paperwork. The Department's Research Division has estimated that with average inflation, the \$50 trigger amount will be reached every four or five years.

Item B. This item was stricken because the Department will no longer require the application within the specified time

period. This also reduces the administrative work for small businesses.

New Item C. The due date reference was changed, see explanation for subpart 1 of this rule. A grammatical change was also made.

Item D. This item was added to clarify that a person with no previous sales tax liability may also apply to file on a less-than-monthly basis. This allows a new business to estimate its liability and reduce potential administrative burdens.

Subpart 3.

Item A. Form and gender changes were made, with no substantive change.

Item B. Grammatical changes were made. The tax liability amounts were increased to account for inflation, see explanation under Subpart 2, Item "A" of this rule.

Item C. The last two paragraphs in this item were amended with form and gender changes and the due date change discussed earlier in this rule. A new paragraph was added which uses the formula found in Subpart 2, item "B" to adjust the Amounts in Subpart 3 for inflation. See explanation in Subpart 2, Item "A" of this rule.

Subpart 4. This subpart clarifies the statutory requirement of an accelerated June sales tax payment. This is necessary because it is a confusing area for taxpayers to deal with each June, and this rule sets out exactly who has to file and pay early, how to do it, and when it must be done. It is reasonable because it follows the statutory provisions which require the early June payment and sets out the information in a clear format.

Subpart 5. The first paragraph is duplicative of statutory language, but is necessary for taxpayers to understand the second paragraph. It is also an exception to the general rule set forth in subpart 1, so it is necessary to call taxpayers' attention to it. The second paragraph clarifies when the local tax must be remitted and that the entire amount should be remitted, not just the \$10 or the excess over \$10. It is necessary because it clarifies the provisions of the statute which allows retailers to delay remitting local taxes in this situation.

RULE 8130.7400 UNCOLLECTIBLE DEBT DEDUCTION.

Subpart 1. The term "bad" debt was changed to "uncollectible" in several places, to conform to the terminology used in the statute. A gender and a grammatical change was made. Language was added which requires the taxpayer to recognize the debt as

an uncollectible debt for federal income tax purposes or if the taxpayer is not required to file a return, in accordance with generally accepted accounting principles. This is necessary in order for the Department to be able to verify whether the amount being deducted is actually an uncollectible debt. It is reasonable because if it is a true uncollectible debt, the taxpayer will report it on a federal tax return, or charge it off using generally accepted accounting principles. It does not place any additional financial or administrative burdens on the taxpayer. A statutory cite was also added. The example was repealed, see explanation in the introductory paragraph to this statement.

Subpart 2. Grammatical and form changes were made, with no substantive change.

Items A-C. Grammatical changes were made with no substantive change. Examples were repealed, see explanation in the introductory paragraph to this statement.

Subpart 3. Grammatical, but not substantive, changes were made. The term "bad" was changed to "uncollectible," see explanation in subpart 1, *supra*. An example was repealed, see explanation in the introductory paragraph to this statement.

Subpart 4. The term "bad" was changed to "uncollectible," see explanation in subpart 1, *supra*. The language referring to

the value of repossessed articles (part of the first sentence and the entire second paragraph) was stricken. This is necessary because of the decision in Town and Country Homes, Inc., v. Commissioner of Taxation, 269 N.W.2d 7 (Minn., 1978). In that case, the Minnesota Supreme Court held that the sales tax credit on repossessed property is based on the amount of debt which is uncollectible, without regard to the value of the repossessed property.

Subpart 5. This is a new subpart which was added to provide for situations in which a taxpayer collects an uncollectible debt after it has been taken as a deduction. The new language requires the taxpayer to include the collected amount on the next return, and remit sales tax on that amount. This language is necessary because it follows the statutory provision which allows a debt to be deducted only to the extent to which it is uncollectible. If part of the debt is collected at some point, it is no longer uncollectible, and the statutory deduction does not apply. It is reasonable because it clarifies how a taxpayer should go about remitting the tax on the amount collected after the deduction, but does not add any additional reporting requirements since the tax will be included in the first return filed after collection.

RULE 8130.7500 RETURNS AND RECORDS.

Subpart 1. An obsolete statutory cite was stricken, and

grammatical and form changes were made. The references to Form ST-1 were stricken, see explanation to Rule 8130.3000, subpart 6, *supra*. Certain information was stricken from the second and third sentences because it did not aid taxpayers in understanding the sales and use tax rules, and did not aid the Department in administering the tax. The deletion of this language has no substantive effect on the interpretation of this rule or the applicable statute. It is necessary to delete this language in order to clarify this subpart and to remove excess, unneeded language.

The last sentence was amended to require the return to be signed by the permit holder or a person having control, supervision, or responsibility of filing the returns and paying the tax. If a person is not the permit holder and does not have control, supervision, or responsibility for filing the returns and paying the tax, they should not be signing the returns. The statute governing returns (Minnesota Statutes section 297A.27) provides that the return contain a confession of judgment for the amount of tax due. The definition of "person" in Minnesota Statutes section 297A.01, subd. 2 includes officers; directors; partners; or employees who have control, supervision, or responsibility as described in the rule. Because of the potential liability involved with filing a return, this language is necessary. It is reasonable because it makes it clear to taxpayers exactly who must file and sign a return.

Subpart 2. A grammatical change was made with no substantive change. The reference to the form was stricken, see explanation in Rule 8130.3000, subpart 6, *supra*. The due date reference was changed, see explanation in Rule 8130.7300, subpart 1, *supra*. The cite reference was also changed due to recent consolidation legislation.

Subpart 3. A statutory cite was added to assist readers in understanding the rule. Gender changes were made, and the form reference was stricken, see explanation in Rule 8130.3000, subpart 6, *supra*.

Items A and B. Gender changes were made.

Item C. Gender changes were made and the form reference was deleted, see explanation in Rule 8130.3000, subpart 6, *supra*.

Subpart 4. A statutory cite was added to assist readers in understanding the rule. Grammatical, but not substantive changes were made. The due date reference was changed, see explanation in Rule 8130.7300, subpart 1, *supra*.

Subpart 5.

Item A. This item lists exclusions from gross sales which do not need to be included on line one of the sales tax return. The new additions (numbers 7-9) are all items which are not

subject to sales tax and should not be included in the gross sales figure on line one. It is necessary to include these items because the Department frequently gets questions from taxpayers on whether they should be included on line one. It is reasonable since it saves taxpayers the time and inconvenience of having to contact the Department when preparing a return.

A sentence was stricken from the last paragraph since it is duplicative of information found in the first paragraph. Grammatical, but not substantive, changes were also made to the last paragraph.

Item B. Grammatical, but not substantive, changes were made to this item.

Item C. Grammatical, but not substantive changes were made to this item. The information in the first parenthesis was changed to reflect the actual wording on the return.

Item D. Grammatical, but not substantive, changes were made.

Item E. A grammatical, but not substantive, change was made. Language was added to clarify which line contains net or taxable sales. This information assists taxpayers in preparing their returns.

Item F. Some of the existing language was stricken and reworded in a clearer manner. The substance of the sentence remains the same, but it will now be easier for taxpayers to understand.

Items G-I. These are new items and were added to assist taxpayers in reporting taxable liquor sales on their returns. It is necessary to include these items because of a 1983 law change which imposed an 8.5 percent sales tax on liquor and beer sales. Because of the higher rate, liquor and beer sales must be put on a separate line on the return. It is reasonable because it provides an easy method for taxpayers to report liquor and beer sales, and makes it easy for the Department to verify the sales.

Item J. The first paragraph contains form changes, and changed a reference to a line number on the return which has been updated since the last time this rule was amended. Clause 3 of this item contains a form change, with no substantive change.

Language was added to clarify that an adjustment to a return can't exceed the amount of tax due on that return. In those situations, the taxpayer can either file a claim for refund or adjust a subsequent return.

The amount of overpayment which may be entered on a return

has been increased from \$500 to \$1,000 because of inflation. This means that when a taxpayer has overpaid sales tax of \$1,000 or less, the taxpayer can adjust a subsequent return instead of filing a claim for refund. This increase is necessary because of inflation. It benefits small businesses by allowing them to account for overpayments of \$1,000 or less on a return, rather than having to file a separate claim for refund. A form change was made and a reference to a line on the return was updated to reflect the return currently in use. A form reference was deleted, see explanation in Rule 8130.3000, subpart 6, *supra*.

Subpart 6. The first sentence contains a grammatical change, and clarifies that retailers of taxable services must maintain records as well as retailers of tangible personal property.

Item A. The term "rental" was stricken and replaced with the term "lease." This is not a substantive change, but is meant to conform to the statutory provisions which use the term "lease," rather than "rental."

Item C. The phrase "tangible personal property" was stricken and replaced with language which also includes taxable services. This is necessary because the sale of certain services is subject to sales tax, so the recordkeeping requirements should also apply to retailers of those services. A gender change was made in the last paragraph.

Subpart 8. There were grammatical and form changes to the first paragraph. The third sentence was stricken because it repeats information found in the preceding sentence. The last sentence in the first paragraph was stricken and new language was added which clarifies the information previously found in the stricken sentence.

The first sentence of the second paragraph was stricken and moved to a more appropriate place at the end of this subpart. The second sentence was stricken because the requirement of maintaining "machine-sensible" records is set out in the first paragraph.

Item A. The stricken language was vague and so was replaced with a clear requirement that the subsidiary ledgers must be maintained in certain circumstances.

Item B. The stricken language was not a record which was required to be maintained and did not fit into the rule at that point. The information was reworded to clarify that records which support summary accounting data must be maintained. This was not a substantive change.

Item C. This was a grammatical, but not substantive, change.

Item D. The stricken language was not a record which was

required to be maintained, and so did not fit into the rule at that point. The old Item "E" was relettered to Item "D," and technical, grammatical, and form changes were made. The last two sentences were added to replace information which was stricken from the first part of this subpart.

RULE 8130.7600 SECURITY: NOTICE FROM COMMISSIONER.

Subpart 1. There was a gender change to this subpart.

Subparts 3 and 4. These subparts were repealed because they duplicated statutory language and did not aid the taxpayers in understanding the rule or statute.

Subpart 2. This subpart was repealed because the form of security required by the commissioner is governed by Minnesota Statutes section 297A.28.

Subpart 5. A cite reference was changed due to recent consolidation legislation.

Subpart 6. The heading was changed to reflect what is being covered by this subpart. Two statutory cites were added to assist readers in understanding the rule. Grammatical changes were made. The last sentence was stricken because there is no statutory penalty for late deposit of security.

RULE 8130.7700 EXTENSION OF TIME TO FILE RETURN AND REMIT TAX.

Subpart 1. Grammatical and form changes were made. A statutory cite was added to assist readers in understanding the rule. Language was changed to reflect recent legislation which did away with extensions to pay sales tax.

Subpart 2. This subpart was repealed because it duplicated statutory language and did not assist readers in understanding the rule or the statutes.

Subpart 3.

Item A. This condition was amended to require an extension to be in writing, contain the taxpayer's name, the account number, and the reason for the request. These items are necessary for the commissioner to be able to consider extension requests in a timely fashion. If one or more of these items is missing from a request, there could be a delay in processing it which may result in the taxpayer not receiving the extension. It is reasonable to require these items because the commissioner needs the information in order to determine whether he believes good cause exists. These requirements will not impose additional financial or administrative burdens on a taxpayer, but will facilitate the processing of these requests.

Items C & D. The existing language was deleted since the

Department will no longer require an application to be filed in duplicate. The old Item "D" had some form and grammatical changes, and was relettered Item "C."

Item E. This item was relettered to "D," and technical and grammatical changes were made, with no substantive changes. The reference to a sales tax form was stricken, see explanation to Rule 8130.3000, subpart 6, *supra*.

RULE 8130.7900 RETURN FILING; FAILURE TO FILE.

Subpart 1. Existing language was stricken and replaced with language setting forth the same requirements in a clearer list format.

Item A. The existing language was stricken and replaced with clearer language. The definition in Minnesota Statutes, section 297A.01, subdivision 10 is still applicable, but was replaced with new language which is easier to understand.

New Items B-D. These items were added to make it clear that all of these retailers have a duty to file sales and use tax returns. Item "D" is due to a recent legislative change, see explanation to Rule 8130.3900, *supra*.

Old Items C and D. These items were stricken and replaced

with new clearer language, see explanation, *supra*.

Item E. This was previously labeled "B." Language was stricken because it was confusing and vague. The new language simplifies the item with no substantive change.

Item G. This language clarifies that direct pay permit holders must file returns. The language stricken from the old item "D" covered these permit holders.

Subpart 2. Grammatical and gender changes were made, with no substantive change.

Subpart 3. Form and grammatical changes were made to the first paragraph, with no substantive change. The last paragraph was stricken because it duplicated statutory language and did not assist the reader in understanding the rule or statutes.

RULE 8130.8000 TIME LIMITATION ON ASSESSMENT AND COLLECTION.

Subpart 1. Form and grammatical changes were made. A cite reference was changed to reflect recent consolidation legislation. The time limitation was also changed to reflect recent statutory changes.

Subparts 2 and 3. These subparts were repealed because they duplicated statutory language found in Minnesota Statutes

section 297A.34 and did not assist the reader in understanding the rule or statutes.

Subpart 4. A statutory cite was added to aid the reader in understanding this rule. The time limitation was changed to reflect recent statutory changes.

Item B. A grammatical change was made. The new language replaces what was previously found in the examples which were stricken, see explanation in the introductory paragraph to this statement.

Subpart 5. This subpart was repealed because it duplicated statutory language and did not assist the reader in understanding the rule or statutes.

Subpart 6. Form changes were made. The time limitations were changed to reflect recent statutory changes. A statutory cite was added to aid the reader in understanding the rule.

Subpart 7. Grammatical changes were made. Obsolete language was stricken or updated where it conflicted with current statutes. A statutory cite was added to aid the reader in understanding the rule. Language was added to inform the reader that the time period for tax collection proceedings may be affected by a statutory suspension in cases of bankruptcy.

RULE 8130.8100 CLAIM FOR REFUND.

Subpart 1. Form and grammatical changes were made, with no substantive change. Existing language was stricken and replaced with clarifying language. A form reference was deleted, see explanation to Rule 8130.3000, subpart 6., *supra*

Subpart 2.

Item A. Language was added which requires the person who is filing for a refund to be the same person who filed the return on which the claim is based. This is necessary for the commissioner to verify the accuracy and validity of the claim. This will prevent money from being refunded to more than one person on a single transaction, or to the wrong person. It helps ensure that money being refunded goes to the right person.

Clause (1). Form and grammatical changes were made. The language referring to income tax return credits was stricken because the reference is obsolete (statute was repealed in 1983, see 1983 Minn. Laws, chapter 399, article 1, section 5). The new language makes it clear that when tax is paid on electricity used in agricultural production to a retail rural electric co-op based in Aitkin county, the actual purchaser of the electricity can file for the refund, rather than the electric company who remitted it to the State. This language is necessary because the information is not found in the sales tax chapter, but in a

session law. The language informs taxpayers of this unique situation.

Clause (2). Gender changes were made, and a historic reference date was stricken. A form number was deleted, see explanation to Rule 8130.3000, subpart 6, *supra*. A statutory cite was added to assist taxpayers in understanding the rule. The examples were stricken, see explanation in the introductory paragraph to this statement.

Clause (3). This is a new clause which covers recent legislation providing for a capital equipment exemption. This is another situation in which the purchaser of the item can apply for a refund, rather than the retailer who remitted the tax. This clause describes the procedure a taxpayer must follow when filing for a refund. Since these claims must be filed with and approved by the commissioner, the taxpayer cannot take an adjustment on a sales and use tax return. A list of required documentation was added which specifies what information the taxpayer must provide before the claim will be considered filed and the commissioner can act on it. This information is necessary in order for the commissioner to establish the accuracy and validity of the claim. It is important for all of this information to be provided to prevent double refunds, refunds to the wrong person, and improper or fraudulent claims.

Clause (4). This clause covers recent legislation

which created an exemption for certain building materials and supplies. This is also a situation in which the purchaser can file for the refund directly, rather than the retailer who remitted the tax.

Clause (5). This clause covers the exception in Minnesota Statutes, section 297A.211 to the general rule that the retailer rather than the purchaser must file for the refund. It is necessary to put this information into the rule because it is an exception to the general rule stated earlier in this subpart. It informs taxpayers of this exception.

Item B. Grammatical and form changes were made. The time limitation was changed to reflect recent statutory changes. A statutory cite was added to aid the reader in understanding the rule, and another was changed to reflect recent consolidation legislation. The example was repealed, see explanation in the introductory paragraph to this statement.

Item C. The first sentence was stricken and moved to a more appropriate location, in subpart 2(A) of this rule. Other form and grammatical changes were made with no substantive change. A new paragraph was added which requires the vendor to submit written evidence that all tax and interest will be refunded to the purchaser. This is necessary to implement the provisions of Minnesota Statutes section 297A.35, subd. 5 which allows a refund only if a vendor returns any refunded money to the

purchaser. The written evidence provides a method for the commissioner to verify that the statutory provisions have been complied with.

Subpart 3.

Item A. Gender and grammatical, but no substantive, changes were made.

Item B. Grammatical changes were made and the exceptions to the general rule on interest computations were specified. Historic language on interest rates was stricken and replaced with general language which cites the statutory authorization, rather than specifying the interest rate. This will prevent the rule from becoming outdated each time the interest rate is changed.

Item C. Form, gender, and grammatical changes were made with no substantive change.

Subpart 4. This subpart was repealed because the commissioner will no longer accept amended returns in lieu of Claim for Refund forms. These cause administrative burdens for the Department and for taxpayers. There are no additional reporting or financial requirements being placed on taxpayers. The same documentation that is required to file a Claim for Refund is also required to be provided with an amended return. The

elimination of this option results in a simplified system for both taxpayers and the Department. There is no advantage or incentive for a taxpayer to use an amended return instead of a Claim for Refund, so this option is eliminated.

Subpart 5. A grammatical change was made.

RULE 8130.8200.

This rule was repealed because it duplicates statutory language and does not aid the reader in understanding the statutes.

RULE 8130.8300 ABATEMENT AND INTEREST ON UNPAID LIABILITIES.

Subpart 1. This subpart was changed from specific language which sets out the interest rates, to more general language which provides that the interest rate is governed by Minnesota Statutes section 270.75, subd. 5. This is necessary to prevent the rule from becoming outdated each time there is a rate change. It gives the taxpayer the information necessary to find the interest rate. The current rate is also available upon request, from the Department.

Items A-C. These items were stricken, see explanation to subpart 1, *supra*.

Subpart 2. The first paragraph was stricken because it

duplicates the statute. Clarifying form and grammatical changes were made to the second paragraph, and a statutory cite was added to assist the taxpayers in understanding the rule. The examples were repealed, see explanation in the introductory paragraph to this statement. The language regarding extension of time to pay tax was stricken to reflect recent legislation which did away with such extensions.

Subparts 3-5. These subparts were repealed because they duplicated statutory language and did not assist taxpayers in understanding the rule.

Subpart 6. The statutory cites were updated to reflect current cites of statutory provisions governing abatement. Grammatical and gender changes were made. The first sentence was changed to conform to the provisions of the governing statute. The statutory standard for abatement is whether the failure to timely pay or file is due to reasonable cause, not whether enforcement would be unjust and inequitable. The abatement amount requiring attorney general approval was stricken and replaced with general language informing the reader where to find the information in the statute. This will prevent the rule from becoming outdated each time the statutory amount is changed.

RULE 8130.8400 LIMITATIONS ON DISCLOSURE OF SALES AND USE TAX INFORMATION.

Subpart 1. The statutory cite was changed to reflect the new statutory chapter (270B) which governs confidentiality.

Subpart 2. The statutory cite was changed, see explanation in Subpart 1, *supra*.

Subpart 3. Grammatical and form changes were made to clarify this subpart. The language providing that information contained on the permit can be disclosed was stricken and replaced with the specific items that can be disclosed.

Subpart 4. Language was added to make it clear that information may also be given to the Multistate Tax Commission, pursuant to statutory authority. This is another exception to the general rule of confidentiality and thus is necessary to include in the rule regarding disclosure.

Subpart 5. Gender changes were made with no substantive change.

Subpart 5a-e. These subparts were added to inform readers of these exceptions to the general rule of confidentiality of return information. This is necessary because the information is not found in the sales tax chapter, but in a new chapter which governs classification and disclosure of Revenue Department data.

Subpart 6. This language regarding the commissioner's discretion was stricken. The language was unnecessary and did not aid the reader in understanding the rule.

Repealer. The reasons for the repeal of these rules are covered in order in the rule-by-rule analysis.

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