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STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the matter of the proposed amendment
of permanent sales and use tax rules: Sale
by transfer of title.

STATEMENT OF NEED
AND REASONABLENESS

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 amendments to the rule. It is submitted pursuant to Minnesota Statutes, section 14.23, and Minnesota Rule part 1400.0500 requiring a Statement of Need and Reasonableness.

A notice of Intent to Solicit Outside Opinion regarding Sales and Use Tax Rule: Sale by transfer of title was published in the State Register on February 22, 1993 (17 S.R. 2070). The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions orally or in writing to the Department by March 31, 1993. No one has commented either in writing or orally.

This rule sets forth the general rule for determining when transfer of title has taken place such that Minnesota sales and use tax can be imposed. Minnesota Statutes, section 297A.01, subdivision 3 provides that a transfer of title constitutes a sale. The amendments delete material that is not within the subject matter of the rule and make technical corrections to the rule. The proposed amendments to the rule do not, nor are they intended to, give a new structure or incorporate new language regarding the definition of passage of title. Before and after amendment, the rule's definition of transfer of title is largely comprised of language similar to the language found in the Uniform Commercial Code (Minn. Stat. Sections 336.1-101 et seq.; see Minn. Stat. section 336.2-401 for the definition of passage of title). Even after a sale by transfer of title occurs, Minnesota sales and use tax may not be imposed if a statutory or constitutional exemption applies. No change in the Department's interpretation of sale by transfer of title will result from the proposed amendments.

IMPACT ON SMALL BUSINESS.

The Department has considered the impact on small business of the proposed amendments. The proposed amendments do not impose any additional record keeping requirements, so there should not be any additional administrative burden on small business. In addition, there are no additional filing or similar requirements imposed by the proposed amendments on small business.

IMPACT ON LOCAL PUBLIC BODIES AND AGRICULTURAL LAND

The impact of this rule on local public bodies and agricultural land has been considered by the Department. The proposed amendments to the rule and the rule itself define sale by transfer of title for the purposes of sales and use tax. The rule has general application and is not expected to adversely affect local public bodies or agricultural land because it imposes no new interpretation of the statutes or filing requirements.

AUTHORITY TO ADOPT RULES

Minnesota Statutes, section 270.06, clause 13 grants the commissioner of revenue the authority to promulgate rules concerning sales and use tax laws.

ANALYSIS OF THE PROPOSED AMENDMENTS

Rule 8130.0200, Subpart 1

No amendment

Rule 8130.0200, Subpart 2 (Repealed)

This subpart is deleted in its entirety. The subpart's subject matter is accounting methods and remedies for improper accounting not sale by transfer of title. The subpart pertains to the same subject matter as portions of Rule 8130.1800, Gross Receipts Defined; Method of Reporting, a but it is a less complete than that rule and conflicts with it. Rule 8130.1800 requires that a person report gross receipts under the method of accounting on the basis of which the person filing the return regularly computes his income for tax purposes, unless the person makes an application to the commissioner to change the accounting method. Rule 8130.0200, subpart 2, allows the Commissioner to require a method or reporting sales by transfer of title other than in accordance with the accounting methods consistently applied by the vendor. There is no record of the Commissioner ever requiring another accounting method under this section of the rules.

Further the subpart requires the commissioner to determine when there is an intent to postpone, evade or avoid payment of the tax before changing the accounting method. No standards are set forth in Rule 8130.0200 for determining when an attempt to postpone, evade, or avoid payment of tax has occurred by transfer of title provisions of this rule. Because transfer of possession and license to use tangible personal property are also defined as sales for the purposes of the sales tax, there is little ability to use the transfer of title rule to postpone, evade, or avoid tax. Even in instances where a taxpayer could use transfer of title provisions in an attempt to postpone, evade or avoid the

payment of tax, civil penalties are imposed by Minnesota Statutes, section 289A.60, subdivisions 5 and 6 on taxpayers for negligence or intentional disregard of the law or rules, and for filing a false or fraudulent return, or attempting to evade or defeat a tax or payment of tax. The commissioner has presently and will continue to have the power to prevent attempts to postpone, evade or avoid payment of the tax, but that power is contained in another chapter of the statutes

It is reasonable and necessary to delete this subpart for the reasons stated above.

Rule 8130.0200, Subpart 2

No amendment

Rule 8130.0200, Subpart 3

No amendment.

Rule 8130.0200, subpart 4

No amendment

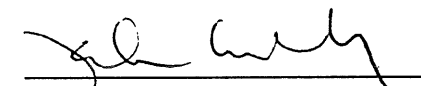
Rule 8130.0200

The amendments to subpart 5 are necessary because they include an omitted statutory citation, and delete a qualification which is imposed contrary to the statute or court cases. The rule has added the qualification that special tooling must be used "to produce a product for his customer". Special tooling includes gauges which by their very nature do not produce a product for a customer. (M.S. 297A.01, subd. 17) To leave this language in the rule would disqualify a class of special tooling which is included in the statutory definition. Because of the conflict between the rule and statute it is reasonable to amend the rule. There are other grammatical, technical and gender neutral changes in the subpart.

Rule 8130.0200, subpart 6

No amendment.

Dated: July 6, 1993


Deputy Commissioner of Revenue

