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Report on All Minnesota Department of Revenue Rules

August 1, 2003

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**Made to the Governor and the Legislature
As required by Minnesota Statutes, section 14.3691**

**For more information, contact:
Minnesota Department of Revenue
600 North Robert Street
Mail Station 2220
St. Paul, MN 55146-2220**

Susan Barry, Rules Coordinator

**Phone: (651) 282-5581
Fax: (651) 296-8229
TTY users: TTY 711
E-Mail: susan.barry@state.mn.us**

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Cost of preparing this report. In compliance with Minnesota Statutes, section 3.197, the cost of preparing this report is approximately \$9,000.00, which includes staff attorney time to review the rules and prepare the summaries, a staff attorney's time to prepare the report, support staff time to reproduce copies, and photocopying costs.

Executive Summary

Requirement to report on all Department of Revenue rules. Minnesota Statutes, section 14.3961, states in pertinent part:

“An entity whose rules are scheduled for review under this section must report to the governor and the appropriate committees of the legislature by August 1

The report must:

- (1) list any rules that the entity recommends for repeal;
- (2) list and briefly describe the rationale for rules that the entity believes should remain in effect; and
- (3) suggest any changes in rules that would improve the agency's ability to meet the regulatory objectives prescribed by the legislature, while reducing any unnecessary burdens on regulated parties. ...”

Rules recommended for repeal. This is a list of rules recommended for repeal. The reasons for our recommendations are discussed in the body of this report:

- Part 8017.6000 — Apportionment of Net Income of Air Carriers
- Part 8092.0200 — Employees
- Part 8092.0300 — Employer
- Part 8092.1200 — Remuneration Other Than in Cash for Service Performed by Retail Commission Salesperson
- Part 8092.1300 — Filing and Payment of Withheld Tax
- Part 8093.2000 — Contents of Declaration of Estimated Tax
- Part 8093.3000 — Extension of Time for Filing Declarations By Corporations

- Part 8130.0110, subpart 4 — [Scope and Interpretation]
- Part 8130.0200, subparts 5 and 6 — [Sale by Transfer of Title]
- Part 8130.0400, subpart 9 — [Leases]
- Part 8130.0800 — Meals and Drinks
- Part 8130.1200, subparts 5 and 6 — [Sales of Building Materials, Supplies, or Equipment]
- Part 8130.1600 — Deductions Not Allowable in Computing Sales Price
- Part 8130.2900 — Presumption That Tax Must Be Paid
- Part 8130.3100, subpart 1 — [Content and Form of Exemption Certificate]
- Part 8130.4000, subparts 1 and 2 — [Collection of Tax at Time of Sale]
- Part 8130.4200— Registration
- Part 8130.4400, subpart 3 — [Credit Against Use Tax]
- Part 8130.4700, subparts 1 and 4 – [Food Products]
- Part 8130.5200 — Cartons and Containers Used by Moving and Transfer Companies
- Part 8130.5600, subpart 3 — [Publications]
- Part 8130.5800, subpart 5 — [Isolated or Occasional Sales]
- Part 8130.7300, subpart 5 — [When Tax Is Due]
- Part 8130.8800, subpart 4 — [Commercial Artists and Photographers]

Rules that should remain in effect. The Department recommends that the large majority of the Department of Revenue rules remain in effect. The rules, along with the rationale for our recommendations, are listed in the body of this report.

Suggested rule changes. The Department suggests a number of improvements to Department of Revenue rules. These changes are discussed in the body of this report.

Organization of this report. This report is organized topically and numerically, with a paragraph or two discussing each rules chapter, section, part, or subpart.

Report

Requirement to report on all Department of Revenue rules. Minnesota Statutes, section 14.3961, subdivisions 1 and 2, state in pertinent part:

“14.3961 RULE REVIEW AND LEGISLATIVE OVERSIGHT.

Subdivision 1. **Reports.** An entity whose rules are scheduled for review under this section must report to the governor and the appropriate committees of the legislature by August 1 of the year before the legislative session in which the entity's rules are scheduled for review. The speaker of the house of representatives and the senate committee on rules and administration shall designate the appropriate committees to receive these reports. The report must: (1) list any rules that the entity recommends for repeal; (2) list and briefly describe the rationale for rules that the entity believes should remain in effect; and (3) suggest any changes in rules that would improve the agency's ability to meet the regulatory objectives prescribed by the legislature, while reducing any unnecessary burdens on regulated parties. Any costs of preparing this report must be absorbed within funds otherwise appropriated to the entity.

Subdivision 2. **Schedule.** ... (c) Rules of the ... revenue Department will be reviewed before and during the legislative session in 2004. ...”

Income and Corporate Franchise Taxes

Parts 8001.0300, 8001.9000, 8002.0300, 8007.0300, 8009.0300, 8038.0100, 8043.0200, 8050.0100, and most of Chapter 8093 — Individual Income Tax Rules

Parts 8001.0300, 8001.9000, 8002.0300, 8007.0300, 8009.3000, 8038.0100, 8043.0200, 8050.0100, and most of chapter 8093 [Estimated Taxes], relate to the administration of the Minnesota individual income tax. With one exception, they have been reviewed extensively by the Department of Revenue throughout the past three years. Part of this review has resulted in the repeal of many obsolete income tax rules. Most of the other rules were amended through rulemaking procedures that became effective in 2001 and 2003. The exception is Rule 8009.3000, which deals with K-12 education expenses. The rule has been rendered partially obsolete, and partially incomplete as a result of changes to the K-12 education deduction and the enactment of the K-12 education credit. The Department hopes to conduct a review of this rule in the next two years. In the meantime, the Department recommends that these rules remain in effect. The Department has no recommendations for further changes to any of these income tax rules.

Part 8007.0200 — Change in Accounting Methods

Part 8007.0200 provides that taxpayers must secure the Commissioner's permission before changing their method of accounting or computing income. Minn. Stat. §290.07 particularly requires taxpayers to receive consent of the Commissioner prior to computing income under a new method. Obsolete references in the rules to “2009 (6)-5 and parts 8009.2100 to 8009.2700” should be deleted, but the rule should remain in effect.

Part 8007.0300 — Restoration of Amounts Received or Accrued Under Claim of Right

Part 8007.0300 provides taxpayers guidance when they have booked income, because it appeared that the taxpayer had an unrestricted right to the income, to an incorrect tax year, and the correct treatment of the income was established after the year in which the income was booked cannot be amended. The rule is necessary for the administration of Minn. Stat. §290.07, subdivision 4. The rule should remain in effect.

Part 8017.6000 — Apportionment of Net Income of Air Carriers

Part 8017.6000 is obsolete because it was promulgated under statutory language that has been repealed. The language of Minn. Stat. §290.191, subdivision 5(j) under which the rule was promulgated in 1992 was repealed in 1995 (Laws 1995, Ch. 264, Art. 10, §11). The Department recommends that the rule be repealed.

Part 8019.0100 — Unitary Business Taxation

Part 8019.0100 provides taxpayer's guidance regarding the definition of a unitary business. The part is necessary to determine what entities are included in a combined income report pursuant to Minn. Stat. §290.17, subdivision 4(j). The rule was rewritten following law changes in 1999 (Laws 1999, Ch. 243, Art. 2, §§21-23), and became effective September 29, 2001. The rule should remain in effect.

Part 8031.0100 — Partnership Income

Part 8031.0100 clarifies the income tax filing requirements for nonresident partners. Portions of the rule, and the statutory citations contained in the rule, have been rendered obsolete by statutory changes enacted since the rule was promulgated, and should be amended. In the meantime, the Department recommends that the rule remain in force.

Parts 8052.0300 and 8052.0400 — Practice Before the Commissioner

Chapter 8052 was promulgated pursuant to a specific grant of rulemaking authority to the commissioner of revenue under Minn. Stat. Section 270.06 (16). These rules proscribe the qualifications and practice of agents, attorneys or others representing taxpayers before the Department of Revenue. The Department recommends that these rules remain in effect.

Parts 8093.2000, 8093.2100, and 8093.3000 — Declaration of Estimated Taxes for Corporate Franchise Taxes; Content, Short Taxable Year, Extension of Time for Filing.

Parts 8093.2000, 8093.2100, and 8093.3000 relate to the administration of the Minnesota corporate franchise tax. The parts require declarations of estimated tax payments, limit the period of declaration, and permit extensions of those declarations. Declarations of estimated tax, however, are no longer required by the statute. Parts 8093.2000 and 8093.3000 are less particular than the statute regarding the amount of estimated taxes that are required from a taxpayer, and are not accurate regarding extensions of time for filing declarations of estimated tax. Form M-18 is still used, but electronic payments are required of larger taxpayers. The Department recommends repealing these parts because they are obsolete in regards to the

structure of estimated tax and statutory citations. Part 8093.2100 regarding the limitation on the period for making a declaration, including language concerning a short taxable year, is still valid and should remain with modifications to statutory cites.

Withholding

Chapter 8092 — Withholding

Most of the rules in Chapter 8092 are needed to provide guidance in the administration of the Withholding Tax, and the Department recommends that they remain in effect with the following amendments or repeals:

Part 8092.0200 — Employees

The Department recommends that Part 8092.0200 be repealed as it duplicates federal and common law.

Part 8092.0300 — Employer

The Department recommends that Part 8092.0300 be repealed as it adds nothing not already covered by statute.

Part 8092.0500 — Wage Bracket Withholding

The Department recommends that subpart 5 of Part 8092.0500 be amended to make explicit that rounding of the amount withheld is mandatory rather than optional.

Part 8092.0700 — Supplemental Wage Requirement

The Department recommends that subpart 1 of Part 8092.0700 be amended to require the employer to refer to the statute for withholding tax rate, since the income tax rate is often changed by the legislature.

Part 8092.1200 — Remuneration Other Than in Cash for Service Performed by Retail Commission Salesperson

The Department recommends that Part 8092.1200 be repealed as this area of law is already covered by elsewhere in Minnesota law to piggyback on the federal law.

Part 8092.1300 — Filing and Payment of Withheld Tax

The Department recommends that Part 8092.1300 be repealed as unnecessary as these provisions are completely covered by Minn. Stat. Chapters 289A & 270.

Property Equalization

Chapter 8100 — Property Equalization; Ad Valorem Taxes; Utilities

Chapter 8100 exists to provide instructions to the commissioner of revenue and notice to taxpayers concerning the practices, methods and data that the commissioner will use in determining the market

value of regulated electric generation, transmission and distribution companies and regulated gas distribution companies.

The Department conducts routine evaluations of the rules in this chapter to ensure that the object of the rules continues to be accomplished under the most modern practices and with use of the most appropriate data currently available in the context of a continuously evolving industry. The chapter was last amended in 2000. In 2002, the Department began meeting with affected parties to identify new areas for which changes are needed or appropriate. Pending the outcome of those meetings, further amendments may be proposed in 2003. The Department does not recommend any other changes at this time, and recommends these rules remain in effect.

Chapter 8106 — Railroad Valuation

Chapter 8106 specifies how railroad property is valued for purposes of the state ad valorem tax on railroad property. Railroad companies, which are required to calculate the correct amount of tax, need to have accurate and up to date directions on how various classes of railroad property should be valued. These rules provide detailed instructions for making the required calculations. The rules were last amended in 1986. During the 2003 legislative session, Parts 8106.0100, subparts 11, 15 and 16, and 8106.0200 were repealed because they were either obsolete or duplicative of existing statutes.

The Department recommends that many of the rules be amended to correct filing dates and to refer to currently used sources of railroad income, capitalization rates and other data. s also proposes to remove obsolete references to the Interstate Commerce Commission, the Pollution Control Exemption and Public Utilities Commission. The Department does not anticipate that any of these changes will be of a substantive nature, and recommends that these rules remain in effect.

Chapter 8110 — Certificates of Real Estate Value

Chapter 8110 specifies the financing information which must be included in the Certificate of Real Estate Value (CRV) which is required to be filed by Minnesota Statutes § 272.115. The information gathered by the CRV is essential to allow the Department of Revenue to conduct an accurate assessment/sales ratio study. The assessment/sales ratio study measures the level of estimated market value to real or true market value. Minnesota uses the assessment/sales ratio study to determine the amount of state school aids, local government aid distribution, county equalization administration aid and tax court litigation aid. Without accurate information, millions of dollars of state property tax relief and school aids could be misdirected. This could also result in unequal property tax burdens throughout the state.

These rules were amended within the last year to insure that the financing terms and conditions required by the form are the correct and most up to date information. The Department recommends that these rules remain in effect as amended.

Board of Assessors - Licensure

Chapter 1950 — Licensure, Education, and Conduct of Assessors

Chapter 1950 deals with the conduct, discipline and licensure of property tax assessors. It is important to specify the time period during which an assessor's license will be effective, the differing educational requirements for different levels of licensure and employment activities that constitute a conflict of interest for county assessors. These rules are also necessary to let assessors and the public

know which offenses could result in revocation or suspension of an assessor's license. These rules were last amended in 2002. Part 1950.1070, which imposed various license fees, was repealed during the 2003 legislative session because new law codified in Minnesota Statutes section 270.44 now deals with license fees and supersedes this rule. The Department has no suggestions for changes at this time and recommend that these rules remain in effect.

Cigarette and Tobacco Products Taxes

Chapter 8120

The rules in Chapter 8120 were recently updated. These rules are needed to provide guidance in the administration and collection of the cigarette and tobacco products taxes pursuant to Minn. Stat. Chapter 297F. The Department recommends that these rules remain in effect.

Metropolitan Solid Waste Landfill fee

Chapter 8121

The rules in Chapter 8121 are needed to provide guidance in the administration of the metropolitan solid waste landfill fee pursuant to Minn. Stat. §§ 473.842 and 473.843. The Department recommends that these rules remain in effect except for a few technical changes that need to be made to Minnesota Rules, Parts 8121.0300, 8121.0400, and 8121.0500.

Lawful Gambling

Chapter 8122

The rules in Chapter 8122 are needed to provide guidance in the administration of the lawful gambling taxes pursuant to Minn. Stat. Chapter 297E. The Department recommends that these rules remain in effect except that they should be updated to delete several obsolete references throughout the rules to LPA's or Licensed Public Accountants. Pursuant to Minn. Stat. Section 326A.06, "all licensed public accountants who were licensed by the state board on December 31, 2002, shall be issued a certified public accountant certificate." These changes need to be made to Minnesota Rules, parts 8122.0150, 8122.0200, 8122.0350, 8122.0400, 8122.0550, and 8122.0600.

Petroleum Tax

Chapter 8125

The rules in Chapter 8125 are needed to provide guidance in the administration of the petroleum taxes pursuant to Minn. Stat. Chapter 296A. The Department recommends that these rules remain in effect with needed technical changes to be made to Minnesota Rules, parts 8125.0400, 8125.0410, 8125.0700, and 8125.0900.

Sales and Use Tax

Part 8130.0110 — Scope and Interpretation

Part 8130.0110 provides that terms not defined in the sales tax law will be given their customary legal and business usage definitions. This part provides that the sales tax will be applied to gross receipts collected by retail sellers of tangible personal property unless specifically exempted and also defines when a use tax may be due. The Department recommends that the part remain in effect with the exception that subpart 4 should be repealed since the rules are not arranged in the order in which the subject matter occurs in the sales tax chapter.

Part 8130.0120 — Person Defined

Part 8130.0120 was promulgated to provide guidance as to how to apply the term “person” as defined in the sales tax law. The Department recommends that the part remain in effect but that the statutory reference to the definition of person be updated and that the part make reference to limited liability companies which have now been recognized as a separate form of business entity in Minnesota.

Part 8130.0200 — Sale by Transfer of Title

Part 8130.0200 was promulgated to provide guidance to taxpayers as to what actions of the buyer and seller would result in a transfer of title. This part explains how the terms of a contract would impact the transfer of title to goods. The Department recommends that the rule remain in effect but that statutory references be updated and that subparts 5 and 6 be repealed. Subpart 5 which deals with the transfer of title to special tooling is obsolete since there is now a statutory exemption for purchases of special tooling and subpart 6 should be repealed since it is unnecessary and provides no guidance to the taxpayer.

Part 8130.0300 — Sale by Transfer of Possession

Part 8130.0300 provides that transfer of possession of goods can be either actual or constructive. The Department recommends that the rule remain in effect but that the statutory reference be updated.

Part 8130.0400 — Leases

Part 8130.0400 specifies how the sales tax applies to leases of tangible personal property. This rule addresses the lease of drive-it-yourself vehicles and leases of property when an operator is furnished along with the leased property. It provides guidance as to when a contractor is making a taxable lease and as to what items are included in the lease amount when computing the sales tax. The Department recommends that the rule remain in effect but that statutory references be updated. The Department also recommends that subpart 1 be amended to reflect that leased trade or business property is subject to the Minnesota sales tax. Subpart 3 should be amended to reflect that generally there cannot be an isolated or occasional sales of property used in a trade or business. Subpart 5 should be amended to specify that the only deductions allowed to the sales price of a lease are those allowed in the statutory definition of sales price. Subpart 6 should be amended to provide that services bundled with the lease of tangible personal property must be separately stated in order to be exempted from the sales tax. Subpart 9 should be repealed since statutory changes have made the subpart obsolete.

Part 8130.0500 — License to Use

Part 8130.0500 provides guidance to taxpayers as to when a taxable license to use tangible personal property has occurred. The Department recommends that the rule remain in effect but that the statutory reference be updated.

Part 8130.0600 — Consideration

Part 8130.0600 was promulgated to give taxpayers guidance on how to treat different forms of consideration when computing the sales tax. The part specifically addresses trading stamps and coupons and explains whether they are included or excluded in arriving at the taxable sales price. The Department recommends that the rule remain in effect but that the statutory reference in subpart 1 be updated.

Part 8130.0700 — Producing, Fabricating, Printing, or Processing of Property Furnished by Consumer

Part 8130.0700 was promulgated to explain what activities would constitute taxable fabrication or processing labor under the sales tax law. The part provides that labor to restore tangible personal property to its normal working condition would constitute repair labor and would not be considered fabrication or processing labor. The Department recommends that the rule remain in effect but that subpart 2 be amended to reflect that clothing repairs and alterations are subject to the sales tax. The statutory references in subparts 1 and 3 need to be updated.

Part 8130.0800 — Meals and Drinks

Part 8130.0800 was adopted to explain which meals and drinks are subject to the sales tax, to provide guidance for taxpayers as to what constitutes taxable food versus exempt food and food ingredients, to explain that the types of persons selling the meals and drinks and the locations at which the meals and drinks are sold are factors in determining whether the sales tax applies, to explain how tips and cover or minimum charges are treated for sales tax purposes, and to provide guidance as to how meals by transportation companies are taxed.

The Department is in the midst of a rule project to propose repeal of part 8130.0800 [Meals and Drinks] and amendment of part 8130.4700 [Food Products]. The Department recommends taking much of the language from part 8130.0800, subparts 3, 4, 6, 7, 9, 10, and 13 and amending it into part 8130.4700. The Department also recommends that the language of subpart 5 be dealt with separately in part 8130.6200 [Charitable, Religious, and Educational Organizations]. Additionally, The Department is considering placing some of the obsolete language found in subparts 1, 2, in amended form, and that of subpart 8, with a new rule on prepared food. Subparts 11 and 12 are no longer needed as they are covered by the statutory definition of sales price.

The Department recommends that the language of the subparts from part 8130.0800, which we propose to repeal, be handled as stated in the previous paragraphs. Specifically, the Department needs to do the following: update statutory references in subparts 1, 2, 6, 8 and 13; amend subpart 1 to address the statutory changes relating to prepared food, fundraising sales, school meals and institutional meals; amend subpart 2 to reflect that foods containing food ingredients combined by the retailer, food items heated or sold hot by the retailer or food sold by the retailer with eating utensils are subject to the sales tax; amend subpart 3 to reflect that institutional meals are only exempt when sold to residents or patients; amend subparts 4 and 6 to reflect the statutory changes relating to meals

served at schools, as well as the 2003 legislative changes relating to what is a qualifying camp; amend subpart 7 to reflect statutory changes relating to prepared food; amend subparts 8 and 9 to reflect the statutory changes relating to food prepared by the retailer; and amend subpart 13 to reflect a court decision dealing with the tax treatment of paper products consumed in providing taxable meals and drinks.

Part 8130.0900 — Entertainment

Part 8130.0900 was promulgated to explain what constitutes taxable entertainment including admissions to places of amusement and the use of amusement devices and athletic equipment. This part also explains how club dues and entry fees are treated for sales tax purposes, and covers the taxation of tours and carnival rides. The Department recommends that the rule remain in effect but that the statutory references in subparts 1 and 4 be updated. Subpart 1 needs to be amended to reflect that admissions to athletic facilities are subject to the sales tax. Subpart 2 needs to be amended to reflect the exemption for school regular season ticket sales. Subpart 5 needs to be amended to reflect that membership dues and initiation fees to certain member-governed clubs are subject to the sales tax. Subpart 7 needs to be amended to reflect that admissions to parks and recreational areas are subject to the sales tax.

Part 8130.1000 — Lodging

Part 8130.1000 was promulgated to explain when transient lodging is subject to the sales tax. The rule provides the criteria that must be met under the lease in order to not subject lodging services to the sales tax. The Department recommends that the rule remain in effect but that that statutory reference in subpart 1 be updated. Subpart 1 must also be amended to reflect the non-taxability of a lease of a manufactured home to be used a residence for 30 days or more. Subpart 2 needs to be amended to reflect that the lease must be in the same facility but not the same room and that a written notice to terminate is needed to be exempt from the sales tax. The rule should be amended to address the taxation of telephone service provided with the lodging.

Part 8130.1100 — Utilities and Residential Heating Fuels

Part 8130.1100 was promulgated to explain when utility services are subject to the sales tax. This part specifies which charges for utility services are part of the sales price. This part sets forth the conditions that must apply before the residential heating fuel exemption can be claimed and set forth examples of residential use. The Department recommends that the rule remain in effect but that the statutory cites in subparts 1 and 3 be updated. Subpart 2 needs to be amended to reflect a court case extending the residential heating fuels exemption to fuels consumed by a contractor during the construction of a residence.

Part 8130.1200 — Sales of Building Materials, Supplies, or Equipment

Part 8130.1200 provides guidance to taxpayers as to when and who must pay sales tax on building materials and supplies. This part sets forth examples of activities that would be treated as improvements to realty. This part specifies the conditions that must be met in order for exempt entities to purchase building materials exempt from the sales tax. This part explains how the tax applies to contractor-retailers and specifies how they should report their sales. The Department

recommends that all of the rule, except for subparts 5 and 6, remain in effect but be amended. Subpart 1 needs to be amended to update statutory references, to reflect the statutory definition of what is excluded from the definition of tangible personal property, to reflect that any property subject to an ad valorem property tax is treated as realty for sales tax purposes, and to clarify that large and ponderous production equipment is treated as real property. Subpart 3 needs to be amended to reflect that there is no longer an exemption for purchases by the state. Subpart 4 needs to be amended to reflect the current sales tax rate. Subparts 5 and 6 should be repealed since they are obsolete as they only cover periods prior to 1971. This rule also should be amended to include a subpart dealing with the sales tax treatment of factory-built and manufactured homes.

Part 8130.1500 — Reduction in Sales Price for Property Taken in Trade

Part 8130.1500 was promulgated to give examples of property that may be taken in trade in order to reduce the sales price subject to the sales tax. The Department recommends that the rule remain in effect but that it be amended to reflect that trade-ins are now treated as an exemption rather than reduction to sales price, and to change the reference to the Motor Vehicle Excise Tax to the Sales Tax on Motor Vehicles.

Part 8130.1600 — Deductions Not Allowable in Computing Sales Price; and Part 8130.1700 — Deductions Allowable in Computing Sales Price

Part 8130.1600 was promulgated to provide guidance in determining which items cannot be deducted from the sales price. Part 8130.1700, was promulgated to advise taxpayers what deductions are allowable in computing the sales price, and explains how discounts given to purchasers impact the amount that is subject to the sales tax. The Department recommends that part 8130.1600 be repealed because the language is either obsolete or it duplicates statute. It is sufficient to have a rule on what deductions are allowed. Part 8130.1700 needs to be amended to update the examples, and to reflect the statutory changes to the definition of sales price.

Part 8130.1800 — Gross Receipts Defined; Method of Reporting

Part 8130.1800 was promulgated to provide guidance in computing the gross receipts for sales tax purposes. This part explains how gross receipts are arrived at when using either a cash or accrual basis accounting methods. The Department recommends that the rule remain in effect but that the statutory references be updated.

Part 8130.1900 — Retailer

Part 8130.1900 gives examples of types of activities that would make a person a retailer for sales tax purposes. The Department recommends that the rule remain in effect but that the statutory references be updated. Subpart 1 needs to be amended to reflect new statutory definitions of retail sale and retailer. Subpart 2 needs to be amended to change the examples relating to sellers of prepared food and telephone services as a result of statutory changes to the definitions of prepared foods and telecommunications services.

Part 8130.2300 — Imposition of Sales Tax

Part 8130.2300 explains the imposition of sales tax and should remain in effect with the following amendments: The first paragraph of this part is obsolete and should be stricken. There is no longer a 4 percent sales tax and a 3 percent sales tax on vending machine products. The second paragraph still has validity and should remain in effect. The amount due is based upon the sales tax the retailer is required to collect, which is 6.5 percent of gross receipts, not what the retailer actually collected. However, the phrase “as set forth in this part” should be changed to “as set forth in section 297A.62.”

Part 8130.2500 — Application for Permit to Make Retail Sales

Part 8130.2500 should remain in effect. It interprets and expands upon Minn. Stat. § 297A.83, and provides the authorization for Department of Revenue Form ABR, Application for Business Registration. (Revised January, 2002). However, the reference to Minn. Stat. § 297A.256 in subpart 2 should be changed to § 297A.70, subdivisions 13 and 15. The reference to Minn. Stat. § 297A.01, subdivision 3, paragraphs (i) and (j) should be changed to § 297A.61, subdivision 3, paragraph (g). The Department further recommends incorporating subpart 3 of part 8130.4200 [Registration], which should otherwise be repealed, into this rule.

Part 8130.2700 — Reinstatement of Revoked Permits

Part 8130.2700 interprets and expands upon Minn. Stat. § 297A.86. This part was revised in 1997 and should remain in effect.

Part 8130.2900 — Presumption That Tax Must Be Paid

Part 8130.2900 was promulgated to explain the presumption that tax must be paid. The Department recommends that this part be repealed, because its provisions merely restate what is in Minn. Stat. §§ 297A.665 and 297A.72, subdivision 1.

Part 8130.3100 — Content and Form of Exemption Certificate

Part 8130.3100 was promulgated to explain the required content and form of an exemption certificate and to provide procedures for applying for an exemption certificate. Part of this rule should remain in effect as follows: Subpart 1 is redundant and should be repealed. It merely restates Minn. Stat. § 297A.72, subdivision 1.

Subpart 2 is valid and should remain in effect. It supplements Minn. Stat. § 297A.72, subdivision 2, by providing a procedure for applying for an exemption certificate. It also provides authority for Department of Revenue Form ST-3, Certificate of Exemption (Revised November, 2001).

However, the statutory references in item B, subitems (3) to (8), (11) and (13) should be changed from Minn. Stat. § 297A.25, subdivisions 22, 29, 10, 15, 14, 5, and 25, to §§ 297A.68, subdivision 11, 297A.69, subdivision 3, 297A.68, subdivisions 10 and 4, 297A.82, subdivision 4, paragraph (d), 297A.68, subdivision 13, and 297A.70, subdivision 5, respectively, and the reference to § 297A.25, subdivision 9, should be changed to §§ 297A.68, subdivision 2, and 297A.69, subdivision 2.

Part 8130.3200 — Nonexempt Use of Purchase Obtained With Exemption Certificate

Part 8130.3200 clarifies and supplements Minn. Stat. § 297A.73 on the improper use of purchases obtained with exemption certificates. This part should remain in effect with amendments to the statutory references in subpart 1.

Part 8130.3300 — Fungible Goods for Which Exemption Certificate Given

Part 8130.3300 elaborates on the term “fungible items” as used in Minn. Stat. § 297A.74 in relationship to exemption certificates, and should remain effective, with an amendment to a statutory reference from Minn. Stat. § 297A.13 to § 297A.74.

Part 8130.3400 — Direct Pay Permit Procedures

Part 8130.3400 explains how the commissioner’s authority in Minn. Stat. § 297A.89 to issue direct pay permits is administered, and should remain in effect with a cite change. The reference in subpart 6, item E, to Minn. Stat. § 297A.01, subdivision 3, paragraphs (g) to (l) should be changed to § 297A.61, subdivision 3, paragraphs (f), (g) and (i).

Part 8130.3500 — Motor Carriers in Interstate Commerce

Part 8130.3500 explains the procedure for motor carriers in interstate commerce to elect to pay the commissioner by use of a direct pay permit for purchases of transportation equipment and parts and accessories. This part supplements Minn. Stat. § 297A.90, and should remain in effect. However, it needs to be updated. For example, the references to Minn. Stat. § 297A.211 in subparts 1, 2, and 4 should be changed to § 297A.90, and the reference to Form MB-A in subpart 4, item A, should be changed to Form ABR.

Part 8130.3600 — Flea Market Operators

Part 8130.3600 explains what the operators of special events such as flea markets, craft shows, antique shows, coin shows, etc., must do to ensure that the sellers at these events have sales tax permits if sales are taxable. This part supplements Minn. Stat. § 297A.87, and should remain in effect with modifications. The reference in subpart 1, first paragraph, to Minn. Stat. § 297A.041 should be changed to § 297A.87. Also, in subpart 2, the words “Flea Market” should be stricken, to reflect the name of the form that is now being used—“Operator Certificate of Compliance- ST19.”

Part 8130.3800 — Imposition of Use Tax

Part 8130.3800 explains the concept of a use tax and its imposition and should remain in effect.

Part 8130.3900 — Liability for Payment of Use Tax

Part 8130.3900 explains the imposition of the use tax liability on a purchaser, and the authorization of a seller to collect when the seller is not required to do so, and should remain in effect with amendments. The reference in subpart 1, and in subpart 2, paragraph A, to Minn. Stat. § 297A.16 should be changed to § 297A.77.

Part 8130.4000 — Collection of Tax at Time of Sale

Part 8130.4000 was promulgated to explain the duty to collect sales tax that is imposed on out-of-state retailers maintaining a place of business in Minnesota, an out-of-state retailer who has filed an application for a sales tax permit, manufacturer's representatives, and out-of-state businesses that deliver into Minnesota. This part should remain in effect, except that subparts 1 and 2 should be repealed as they restate what is in Minn. Stat. §§ 297A.66 and 297A.83 and include language now contrary to law.

Subparts 3 and 4 implement the jurisdictional requirements of Minn. Stat. § 297A.66. Subpart 5 clarifies who is subject to the criminal penalty under Minn. Stat. § 289A.63, subdivision 6.

Part 8130.4200— Registration

Part 8130.4000 was promulgated to explain who has the duty to register with the Department for a sales tax permit, what information the applicants must provide. This part should be repealed. Subpart 1 merely restates what is in Minn. Stat. §§ 297A.66 and 297A.83. As part of the repeal, subpart 3, since it is still valid, should be moved into and incorporated in part 8130.2500, which deals with applications for sales tax permits.

Part 8130.4300 — Property Brought Into Minnesota

Part 8130.4300 explains how the burden of proof of showing that property brought into Minnesota was not brought in for the purpose of storage, use, or consumption in Minnesota can be satisfied, and discusses what qualifies for the credit for tax paid to another state. This rule should remain in effect with amendments. The reference in subpart 1 to Minn. Stat. § 297A.25, subdivision 32, should be changed to § 297A.67, subdivision 22, and the reference to Minn. Stat. § 297A.23 should be changed to § 297A.665(c). To conform to the statute, subpart 2 should be updated to state that the credit is allowed for taxes paid to governmental subdivisions. Also, the reference to Minn. Stat. § 297A.24 should be changed to § 297A.80.

Part 8130.4400 — Credit Against Use Tax

Part 8130.4400 explains what qualifies for the credit for a use tax paid to another state, how a taxpayer who erroneously pays tax to another state is not entitled to a credit, and the limitations of the credit. With the exception of subpart 3, the Department recommends that this rule remain in effect with amendments. Subpart 1 is valid; however, since the subject matter is the same as what is in part 8130.4300, subpart 2, the Department will review whether to recommend that these two provisions be combined so that they are in the same place. Also, the reference in subpart 1 to Minn. Stat. § 297A.24 should be changed to § 297A.80, and the reference to § 297A.14 should be changed to § 297A.63. Subpart 3 repeats what is in part 8130.4300, subpart 2, and can be repealed.

Part 8130.4700 – Food Products

Part 8130.4700 explains the exemption for the sale of food, and should remain in effect with amendments. This part is mostly obsolete since the rule was drafted in 1974 and the law relating to food has changed a number of times since the rule was drafted. Also, as stated above under the review of part 8130.0800, the Department is in the midst of a rule project to amend this part, including

incorporating some of the language from part 8130.0800, with amendments. In addition to this incorporation, the following changes should be made to part 8130.4700:

Subpart 1, which deals with exemptions, is obsolete and should be repealed. It refers to the old exemption for food products for human consumption and the taxability of the furnishing of meals and drinks. Current law exempts food and food ingredients and taxes food that is prepared by the seller, soft drinks, candy, and food sold through vending machines. Current law also provides that food and food ingredients do not include alcoholic beverages, dietary supplements, and tobacco.

Subpart 2, which lists food products, should be modified to clarify that the food products listed in the subpart are exempt unless they are prepared by the seller, sold through a vending machine, or qualify as soft drinks or candy. Also, some of the foods listed are no longer exempt under current law.

Subpart 3, which gives examples of items that do not qualify as food products, is obsolete in part since water is generally exempt and some of the other items mentioned in this subpart are currently taxed as candy. The other examples can be incorporated in Subpart 2.

Subpart 4, which deals with mixed products, is obsolete and should be repealed. Under current law, if a product contains both nontaxable items as well as taxable items such as prepared food or other taxable items, the entire product is subject to tax.

Part 8130.4800 – Drugs, Therapeutic and Prosthetic Devices

Part 8130.4800 covers exempt drugs, and devices, cosmetics and toiletries, and should remain in effect with numerous amendments. This part is mostly obsolete. The rule was originally drafted in 1974 and was last amended in 1978. The rule interprets Minnesota Statutes, section 297A.25, subdivision 3. That section has been amended a number of times since the rule was last amended. Thus, the rule no longer reflects current law. The Department anticipates further statutory amendments in the upcoming legislative sessions. With that caveat, the following is an explanation of what needs to be done to conform to the law as of 2003:

Subpart 1 needs to be amended to include additional items that are exempt such as medical supplies purchased by health care professionals, analgesics and insulin.

Subpart 3 which deals with therapeutic and prosthetic devices, needs to be amended. Under current law, therapeutic devices include devices used in the diagnosis and treatment of diabetes.

Subpart 4, which deals with cosmetics and toiletries, is accurate.

Subpart 5, which deals with purchases by doctors of medicine and dentistry, is obsolete and should be amended. Current law exempts medical supplies (excluding medical equipment, laboratory and radiological supplies) purchased by health care professionals.

Subpart 6, which deals with sales and purchases by ophthalmologists, is accurate.

Subpart 7, which gives examples of exempt items, needs to be modified: only prescribed drugs are exempt under current law, whereas the exemption under the rule is broader and is extended to, products that are used for the preservation of health as well. Also, some of the listed items are exempt only when purchased by health care professionals. Thus, for example, bandages, antiseptics, and eye solutions are exempt only if purchased by health care professionals. Vitamins and minerals as well as dietary supplements are taxable under current law.

Subpart 8, which gives examples of taxable items, is accurate but needs to be amended to add other taxable items that are exempt under current law.

Part 8130.5100 — Gifts; Transfers Without Monetary Consideration

Part 8130.5100 explains the tax consequences when a person purchases property to be given away as a gift, and should remain in effect with modifications. Subpart 1, which deals with the general rule, needs to be modified. Under current law (Minnesota Statutes, §297A.668, subdivision 1(c)), if the vendor delivers the property directly to a donee at a point outside Minnesota, the sale is not subject to tax. Subpart 2 accurately reflect the law and subpart 3 should be amended.

Part 8130.5200 — Cartons and Containers Used by Moving and Transfer Companies

Part 8130.5200, which was promulgated to explain the taxability of packing materials used to pack and ship household goods, should be repealed.

Subpart 1, which deals with packing materials used to ship goods to a destination outside of Minnesota from May 22, 1973, is duplicative of Minnesota Statutes, §297A.68, subdivision 16. Subpart 2, which deals with materials used to ship goods to a destination outside of Minnesota prior to May 22, 1973, is no longer necessary and should be repealed as well.

Part 8130.5300 — Petroleum Products

Part 8130.5300 explains under what circumstances petroleum products are exempt from sales tax, and should remain in effect with modifications in accordance with Minnesota Statutes §297A.68, subdivision 19. That subdivision allows for an exemption for petroleum products subject to tax under chapter 296A, only if no refund is subsequently made. The Rule allows for an exemption, regardless of subsequent refunds. Also, the law now provides for an exemption for various petroleum products in addition to products that are subject to tax under chapter 296A. The Rule should be modified to reflect those additional exemptions.

Part 8130.5400 — Clothing and Wearing Apparel

Part 8130.5400 explains the exemption for clothing, and should remain in effect with modifications. Drafted in 1974, this rule should be modified in accordance with Minnesota Statutes §297A.67, subdivision 8. Under current law, fur clothing is no longer subject to sales tax while sewing equipment and sewing materials, such as scissors and fabric, are subject to tax. Some of the accessories and sporting articles that are exempt under the rule (e.g., hair accessories, ballet shoes), are also taxable under current law. Many of the examples in the rule are duplicative of the examples in the law and should be replaced with other examples.

Part 8130.5500 — Agricultural and Industrial Production

Part 8130.5500 clarifies the exemption for materials used in agricultural or industrial production. Published in 1993; it should remain in effect, with modifications. A number of legal citations need to be changed to reference Minnesota Statutes, §§297A.68, subdivision 2, and 297A.69, subdivision 2. Additionally, the portion dealing with the preparation of meals should be modified to reflect current law, as well as amending subpart 13 to reflect that silviculture is now included in the definition of agriculture. Subpart 9 has to be amended to reflect a tax court decision relating to direct effect requirement for separate detachable tools.

Part 8130.5550 — Special Tooling

Part 8130.5550 explains the exemption for special tooling, and should remain in effect with a modification to reflect current law, which no longer provides for a separate reduced rate for special tooling. These tools are now exempt from tax under Minnesota Statutes, §297A.68, subdivision 6.

Part 8130.5600 — Publications

Part 8130.5600, originally drafted in 1974, deals with the exemption for publications. Except for subpart 3, it should remain in effect with modifications.

The Department needs to amend the cites in subparts 1 and 4. Subpart 2 which defines publications, needs to be modified based on the outcome of a court case and subpart 3, which deals with taxability of paper and ink products used in producing publications, should be repealed because it has been declared unconstitutional.

Part 8130.5700 — Sales to Exempt Entities, Their Employees, or Agents

Part 8130.5700 deals with the exemption from sales tax for items sold to and by government and non-profit groups.

This rule, originally drafted in 1974, should remain in effect with modifications to reflect a change in the law. Under Minnesota Statutes, §297A.70, subdivision 2, generally, sales to a state and its political subdivisions are no longer exempt. The legal cites in the rule also need to be changed to reference §297A.70, subdivision 2.

Part 8130.5800 — Isolated or Occasional Sales

Part 8130.5800 deals with the exemption from sales tax for isolated and occasional sales that are not made in the normal course of business. Except for subpart 5, this rule should remain in effect with modifications. This rule, originally drafted in 1978, is outdated and needs to be amended. The law in this area has changed numerous times since the rule was published: the exemption is no longer available for the sale of tangible personal property that is primarily used in a trade or business (subject to certain exceptions). Subpart 5 should be repealed since it does not conform with the statute any longer. Subpart 6 needs to be modified to reflect the change in the law regarding prepared food.

Part 8130.5900 — Rolling Stock

Part 8130.5900 explains the exemption from sales tax for the sale of rolling stock, and should remain in effect with modifications. This rule needs to be amended to reconcile the Minnesota law with federal law that prohibits the taxation of railroad companies differently from other transportation companies. While the Minnesota exemption has been repealed, the 4-R Act provides an exemption. Additionally, the rule should address the taxation of repair and replacement parts.

Part 8130.6000 — Airflight Equipment

Part 8130.6000 explains the exemption provided to airflight equipment under Minnesota Statutes, §297A.82, subdivision 1. Drafted in 1994, this rule accurately reflects the law and should remain in effect with amendments to cites in subparts 1 and 3.

Part 8130.6200 — Charitable, Religious, and Educational Organizations

Part 8130.6200 explains the exemption for sales by non-profit groups, and should remain in effect with modifications. This rule, originally drafted in 1993, accurately reflects the law. However, it should be amended to include a subpart on fundraising sales by or for nonprofit groups as well as fundraising events sponsored by nonprofit groups, as provided in Minnesota Statutes, §297A.70, subdivisions 13 and 14. Some cites in subparts 1, 1a, 5, 9, and 11 should be amended.

Part 8130.6300 — Casket, Burial Vaults, Urns for Cremains, and Memorials

Part 8130.6300 explains the exemption for caskets, burial vaults, and urns. This rule accurately reflects the law under Minnesota Statutes, §297A.67, subdivision 10 and should remain in effect, with amendment to the cite in subpart 2, paragraph E.

Part 8130.6400 — Disabled Veterans; Purchases of Automobiles and Other Conveyances

Part 8130.6400 explains the exemption on purchases of cars and other conveyances by disabled veterans, and should remain in effect with modifications. In Subpart 1, the statutory reference should be changed from § 297A.25, subdivision 18 to 297A.67, subdivision 11. The Federal references should be updated.

Part 8130.6500 — Aircraft Commercial Use Permit

Part 8130.6500 explains the commercial use permit for aircraft and should remain in effect. Subpart 1 repeats the statute, but it provides the form number for application. Subpart 2 provides a definition of commercial use and notice of the prohibition of personal use. Subpart 3 provides notice that capitalized aircraft cannot qualify for use under the commercial use permit. Subparts 4 and 5 provide instruction for ending use of the commercial use permit either by expiration or sale of the aircraft.

Part 8130.6600 — Disabled Veterans; Purchase of Building Materials

Part 8130.6600 explains the exemption on the purchase of building materials by disabled veterans and should remain in effect with modifications. In subpart 1, the statutory reference should be changed from § 297A.25, subdivision 20 to § 297A.71, subdivision 11. The Federal references should be updated.

Part 8130.6700 — Textbooks

Part 8130.6700 explains the sales tax exemption of textbooks, and should remain in effect with modifications. Subpart 1 should be amended to update obsolete references. Subpart 2 should be amended as the definitions in subpart 2, items B, C and D are obsolete due to statutory changes replacing the defined terms. Subpart 3 should be amended to add references to instructional materials due to the addition of subdivision 13a to Minn. Stat. § 297A.67.

Part 8130.6900 — Senior Citizen Organizations

Part 8130.6900 explains the exemption for senior citizen organizations and is obsolete as currently written. The Department recommends that this rule remain in effect, but that it be amended to reconcile it with the current statute, Minn. Stat. § 297A.70, subdivision 4.

Part 8130.7300 — When Tax Is Due

Part 8130.7300 explains when tax is due, and except for subdivision 5, should remain in effect with modifications. The rule should be amended to modify obsolete provisions due to statutory changes, and to update references. Subpart 5 should be repealed as it is obsolete under Laws 1994, Ch. 510, Art. 3, § 8.

Part 8130.7400 — Uncollectible Debt Deduction

Part 8130.7400 explains how to claim the deduction for uncollectible debt and should remain in effect. However, the Department should update statutory cites and review it for other provisions for possible amendment.

Part 8130.7500 — Returns and Records

Part 8130.7500 gives guidance to taxpayers on filing returns and records, and should be retained with amendments to reflect current practice and returns, and to amend statutory cites.

Part 8130.7600 — Security: Notice from Commissioner

Part 8130.7600 explains the sale of security and notice of security given by the Commissioner when requiring a vendor to deposit sufficient security to assure payment of tax. This rule should remain in effect with updates to statutory references in subpart 6—from Minn. Stat. § 297A.07 to § 297A.86 and from Minn. Stat. § 297A.28 to § 297A.92.

Part 8130.7700 — Extension of Time to File Return.

Part 8130.7700 is instructive to taxpayers regarding extensions of time to file sales and use tax returns, and should remain in effect with an amendment to subpart 3, item D, to correct the obsolete address reference.

Part 8130.7900 — Return Filing; Failure To File

Part 8130.7900 explains the duty to file a return and what happens if the taxpayer fails to file a return or refuses to comply with the commissioner's demand to file. This rule should remain in effect with modifications. The statutory references in Subpart 1 should be changed from Minn. Stat. § 297A.21, subdivision 5 to § 207A.66; from § 297A.12 to § 297A.73; and from § 297A.14 to § 297A.63.

Part 8130.8100 — Claim for Refund

Part 8130.8100 serves as a guide to various criteria for filing claims for refunds, and should remain in effect with modifications. There are numerous statutory reference corrections needed. For example, from § 297A.01, subdivision 2 to § 297A.61, subdivision 2; § 297A.25, subdivision 9 to § 297A.68, subdivision 2; § 297A.25, subdivision 20 to § 297A.71, subdivision 11; § 297A.15, subdivision 5 to § 297A.75; § 297A.25, subdivision 43 to § 297A.71, subdivision 12; § 297A.211 to § 297A.90; § 297A.25, subdivision 43 to § 297A.68, subdivision 4; and § 297A.15, subdivision 5 and 6 to § 297A.68, subdivision 5. The words “common carrier” in A(5) should be changed to “interstate motor carrier.”

Part 8130.8400 — Limitations on Disclosure of Sales and Use Tax Information

Part 8130.8400 serves as a guide on the limitations on the disclosure of sales and use tax information, and should remain in effect with modifications. It should be amended for clarity and update statutory cites.

Part 8130.8700 — Veterinarians

Part 8130.8700 was promulgated on 1974 to explain when veterinarian services are subject to the sales tax, and should remain in effect with modifications. It should be amended to update the obsolete portions of the rule to current statutory provisions and to make technical changes. Since 1974, the law has changed so that sales to veterinarians of materials used or consumed in the care of agricultural production animals and horses are exempt; pet grooming services and boarding services for animals other than horses are taxable; the materials used in providing these services are exempt; and the sale or purchase of horses and the materials used or consumed in the breeding, raising, owning, boarding, and keeping of horses are exempt. The Department is in the midst of a project to possibly amend this rule.

Part 8130.8800 — Commercial Artists and Photographers

Part 8130.8800 explains how the work of commercial artists and photographers is taxed. The Department recommends that the rule remain in effect, but that it be amended to put it in line with the advertising rules found in Part 8130.9250, and that subpart 4 be repealed as there is no longer a good faith exemption.

Part 8130.8900 — Florists and Nurseries

Part 8130.8900 explains how sales by florists and nurseries are taxed. The Department recommends that the rule remain in effect with modifications. Statutory cites need to be updated, and the Department should review whether subpart 3 needs to be amended to be consistent with new sourcing rules of Streamlining.

Part 8130.9000 — Soft Water Equipment and Service Dealers

Part 8130.9000 explains how soft water equipment and service dealers are taxed. The Department recommends that the rule remain in effect, but that it be amended to reflect the law regarding treating the installation of this equipment as an improvement to realty upon purchase, but taxing the installation if the equipment is leased or rented.

Part 8130.9100— Sales and Rentals of Mobile Homes/Trailers

Part 8130.9100 explains how the sales and rentals of mobile homes/trailers are taxed. The Department recommends that the rule remain in effect with an amendment to reflect the new title of Minn. Stat. Chapter 297B.

Part 8130.9250 — Advertising

Part 8130.9250 explains how advertising is taxed. The Department recommends that the rule remain in effect, but that Subparts 4 and 11 be amended to correct cites.

Part 8130.9300 — Sales by Governmental Units; Taxable

Part 8130.9300 explains the taxability of sales by governmental units. The Department recommends that the rule remain in effect.

Part 8130.9400 — Advertising Signs and Billboards

Part 8130.9400 explains how advertising signs and billboards are taxed. The Department recommends that the rule remain in effect.

Part 8130.9500 — Aircraft Registration

Part 8130.9500 explains about furnishing proof to the Department of Transportation that sales or use tax has been paid on the purchase of an aircraft, or that it is exempt, as part of the registration of the aircraft. The Department recommends at this time that this rule remain in effect. The Office of Aeronautics administers this registration. It probably should be either repealed or amended and the Department of Revenue and the Department of Transportation will decide how to proceed. .

Part 8130.9600 — Iron Mining Industry Exemptions

Part 8130.9600 is needed to explain the sales tax exemptions provided to the iron mining industry. The Department recommends that the rule remain in effect, but that it be amended to update the lists of equipment parts and statutory cites.

Part 8130.9700 — Automatic Data Processing

Part 8130.9700 is needed to explain how automatic data processing is taxed. The Department recommends that the rule remain in effect, and be amended to correct cites, and to deal with a changing industry and changes from the Streamlined Sales Tax Project.

Part 8130.9910 — Computer Software

Part 8130.9910 is needed to explain how computer software is taxed. The Department recommends that the rule remain in effect, and be amended to correct cites, and to reflect the current statutory definition of "prewritten" computer software.

Tax Administration and Compliance

Minnesota Rules, Chapters 8160, 8165, and 8170, were promulgated to provide guidance as to tax administration and compliance, and should remain in effect with modifications as discussed below.

Part 8160.0300 — Amended Returns

Part 8160.0300 describes what the effect of an amended return is when the original return is being amended to claim a refund or when it is being amended to report additional tax. However, the second sentence in subpart 5 is obsolete and should be stricken, because of an amendment to the definition of “date of assessment” in Minn. Stat. § 270.65 in 2000.

Part 8160.0500 — Innocent Spouse Relief and Liability of Divorced, Legally Separated, and Widowed Spouses for Individual Income Tax

Part 8160.0500 explains how the calculation of the liability of divorced spouses is made, to what situations innocent spouse relief or divorced spouse liability apply, what the effect of a determination as to one spouse is on the other spouse, the notice requirements to the other spouse regarding the determination, and what the appeal rights are of both spouses. The rule was amended in 2000 to clarify the formula for dividing additional assessments, and for updating to include an amendment to Minn. Stat. § 289A.31, subdivision 2 in 1999.

Part 8160.0620 — Returns Made By Commissioner

Part 8160.0620 describes what the effect of a return filed by the Commissioner in behalf of a taxpayer is regarding assessment, collection, appeal rights, and the subsequent filing by the taxpayer of their own return. None of these issues are discussed in Minn. Stat. § 289A.35.

Part 8160.0630 — Orders of Assessment Issued When No Return Has Been Filed

Part 8160.0630 clarifies the consequences of issuing an order of assessment under Minn. Stat. § 289A.37, subdivision 1(a) when the taxpayer has not filed a return. Issues arise as to what the differences are between issuing an order instead of making a return for the taxpayer. For that purpose, this rule and the rule discussed immediately above complement each other. Also, this part was amended in 2001 to conform to changes made to Minn. Stat. §§ 270.10, subdivision 5, and 289A.37, subdivision 1(b) in 1997, correct a bad statutory citation, and clarify what is meant by a return.

Part 8165.0100 — Revenue Recapture; Identifying Information

This rule is specifically authorized by Minn. Stat. § 270A.04, subdivision 3, to ensure that revenue recapture claims are not filed against the wrong individuals.

8165.0200 Suspension of Claimant Agency Status

Part 8165.0200 is needed because of past violations of the Revenue Recapture Act by claimant agencies. Without the rule, the Department lacks the authority to properly enforce the act against agencies that ignore its requirements.

Part 8165.0300 — Debts to Claimant Agencies

Part 8165.0300 clarifies that debtors who are exempt from Revenue Recapture need to be notified of their right to claim the exemption, that only taxpayers of record with the Department at the time a claim is filed are subject to Revenue Recapture, and what the definition of income is for purposes of the low income threshold for claims for medical care.

Part 8165.0400 — Nonliable Spouse

Part 8165.0400 clarifies certain rights and obligations of the nonliable spouse; that is, the spouse who does not owe the debt in the case of a joint tax refund being recaptured where the debt to the claimant agency is the sole debt of the other spouse. This part and the two parts discussed immediately above are all newly adopted rules that became effective in 2001.

Part 8170.0100 — Disclosure in Investigation; Third Party Returns

Part 8170.0100 provides two definitions that are not in Minn. Stat. § 270B.06, subdivision 2, the statute that governs disclosure of third party return information. It also provides examples of when disclosure is permitted, thereby facilitating the free exchange of information so that cases involving two or more taxpayers can be more easily resolved.

Part 8175.0100 — Repeated Failures to Pay Taxes

Part 8175.0100 is mandated by Minn. Laws 1993, Ch. 375, Art. 10, § 51, which requires the Department to adopt rules prescribing what constitutes repeated failures to pay taxes before the 25 percent penalty, enacted in the same article, can be imposed. However, the statutory references in subpart 1 need to be updated. The references to Minn. Stat. §§ 60A.15, subdivision 9e, 60A.199, subdivision 6a, and 299F.23, subdivision 5 should be stricken. The references to §§ 297.43, subdivision 4a, 297C.14, subdivision 9, and 349.217, subdivision 5a, should be changed to §§ 297F.19, subdivision 6, 297G.18, subdivision 6, and 297E.12, subdivision 6, respectively.

