

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

The Legislative Commission to
Review Administrative Rules

SEP 16 1992

In the matter of the proposed adoption of
Permanent Rules for the Sales and Use
Tax on Utilities and Residential Heating
Fuels

**STATEMENT OF NEED
AND REASONABLENESS**

GENERAL STATEMENT

This statement has been prepared and submitted as required by
Minnesota Statutes section 14.23.

A Notice of Intent to Solicit Outside Information or Opinions
Regarding Proposed Sales and Use Tax Rules Governing Utilities and
Residential Heating Fuels was published in the State Register on May
26, 1992. The notice requested that interested persons submit
comments or suggestions orally or in writing to the Department by
June 26, 1992. Several oral comments were received via telephone.
These comments were of two types: general procedural questions
and substantive comments. All substantive comments dealt with
various charges on a utility bill and whether they are included in the
sales price on which tax is charged. Specifically, the oral comments
involved reconnection fees, surcharges, and service charges. This
issue is covered in subpart 4 of the proposed rule. Four written
comments were received. These comments also dealt primarily with
charges included in sales price. The written comments addressed the

issues of reconnection fees, service charges, franchise fees, service connection charges, and late payment charges. There was also one written comment regarding the determination of whether a building is commercial or residential and what party is responsible for making that determination.

This rulemaking proceeding proposes to amend the rules relating to Utilities and Residential Heating Fuels. These rules were last amended in 1978. Since that time, there have been substantial changes in technology and in the utility industry. The Minnesota Legislature has also amended Minnesota Statutes chapter 297A significantly since 1978. Therefore, it is necessary to amend these rules so that they comply with the changes in the law and so that they address industry and technological changes that have occurred in this area.

The changes being proposed for this rule are of several types. (1) It is proposed that the organization of the current rules in this area be changed. Technological and law changes in the area of telephone service have been substantial since 1978. Incorporating these changes into the current utility rule along with other changes and clarifications would make this rule unmanageable and interfere with its clarity. Therefore, it is proposed that the parts of this rule that relate to telephone service be moved to a separate rule. The remaining parts of the rule will deal with the furnishing of electricity, gas, steam, and water. (2) It is proposed that Minnesota Rule Part 8130.7000 be consolidated with the utilities rule. Part

8130.7000 involves the exemption for residential heating fuels. It will be beneficial to have the information in these related rules consolidated in one place. (3) Some of the changes involve repeal of outdated information and grammatical and form changes. (4) Some of the changes to the proposed rule are the result of law changes. (5) The remainder of the changes and additions to the proposed rule are clarifications or explanations of problem areas or issues that have arisen as a result of audits, court cases, taxpayer inquiries, technological advancements, and industry changes.

IMPACT ON LOCAL GOVERNMENT

The impact of this rule on local government has been considered. The proposed rule is not expected to place any additional financial or administrative burden on local government.

IMPACT ON AGRICULTURAL LAND

The impact of this rule on agricultural land has been considered. The proposed rule is not expected to place any additional financial or administrative burden on agricultural land.

IMPACT ON SMALL BUSINESSES

The impact of this rule on small businesses has been considered. The proposed rule is not expected to place any additional financial or administrative burden on small businesses.

AUTHORITY TO ADOPT RULES

Minnesota Statutes section 270.06 grants the Commissioner of Revenue authority to make, publish, and distribute rules for the administration and enforcement of state tax laws.

SUBPART 1. This subpart generally explains the tax imposed by Minnesota Statutes, section 297A.01, subd. 3(f), and the exemption provided for in Minnesota Statutes, section 297A.25, subd. 23. The statutory change that excluded water for residential use from the definition of sale was incorporated into this rule. This was the only substantive change. The remaining changes to this subpart involved nonsubstantive changes of grammar, form, and organization. The subpart headnote was changed to more accurately describe the contents of the subpart. Language regarding telephone service was stricken from this subpart and moved to a new rule. Language from the current rule part 8130.7000 involving residential heating fuels was moved to this subpart as these two rules are being consolidated.

SUBPART 2. This subpart defines terms used in the statute and in this rule.

Item A. The definition of "billing month" in this item is generally the same definition used in the existing Minnesota Rule Part 8130.7000. No substantive changes were made to this definition, only minor grammatical changes or form changes.

Item B. The definition of "heating season" is given to avoid repeating the list of months residential heating fuels are exempt . It is reasonable because it follows Minnesota Statutes section 297A.25, subd. 23, which provides that natural gas or electricity that is used as the primary source of residential heat is exempt during these months.

Item C. The definition of "interruptible service credit" is a new definition. It was added to aid in understanding subpart 5 of this part.

Item D. The definition of "primary source of residential heat" in this item is generally the same definition used in existing Minnesota Rule Part 8130.7000. No substantive changes were made to this definition, only minor grammatical or form changes to improve clarity.

The examples used in this item are from the current rule part 8130.7000, subpart 3. No substantive changes were made to these examples, only minor grammatical or form changes.

Item E. The definition of "residential use" in this item is from the definition used in existing Minnesota Rule Part 8130.7000. No changes were made to this definition, except the last sentence of the existing definition is not used in this item. Instead, it is included in subpart 7 of the proposed rule.

Item F. The definition of "residential users" or "residential customers" in this item is generally the same definition used in existing Minnesota Rule Part 8130.7000. Minor grammatical and form changes were made. Also, seasonal cabins, group homes, city and county jails, and state operated correctional facilities and regional treatment centers were added to the definition. While these have always been considered by the department to be within the definition of "residential users" or "residential customers", they are not specifically mentioned in the existing rule. It is necessary to specifically mention these users to clear up confusion in this area and to clarify that the these users are included in the definition of residential user or residential customers.

SUBPART 3. This subpart involved telephone service. All existing language was stricken from this subpart and moved to a new rule on telephone service. This subpart will now cover utilities that are exempt from sales and use tax. It was added to assist the reader by having the exemptions related to utilities in the same place as the general information regarding utilities.

Item A. This item was added to cross-reference readers to the statute and rule relating to the industrial production exemption.

Item B. This item was moved from existing Minnesota Rule Part 8130.7000, subpart 1. Minor grammatical and form changes were made, with no substantive change. Obsolete transitional language was stricken.

Item C. This item was moved from Minnesota Rule Part 8130.7000, subpart 1. Grammatical and form changes were made, with no substantive change. Obsolete transitional language was stricken.

SUBPART 4. This subpart involved telephone service. All existing language was stricken from this subpart and moved to a new rule on telephone service. The example in this subpart was stricken, but was not moved to the new rule because it is obsolete due to statutory changes.

This subpart will now cover the issue of what charges are included in the sales price and are therefore subject to sales and use tax. This addition is necessary to clarify a confusing area for taxpayers. The department receives numerous and recurring questions on this issue. Also, the majority of the written and verbal comments received in response to the Notice of Intent to Solicit Outside Opinion concerned this issue, indicating that there is widespread inconsistency in the sales and use tax treatment of these charges. It is reasonable because it follows Minnesota Statutes section 297A.01, subd. 8, Minnesota Rule Part 8130.1600, longstanding department policy, and several court cases.

Items A through K. These items were added for clarification. They are reasonable because they follow Minnesota Statutes section 297A.01, subd. 8, Minnesota Rule Part 8130.1600, and the tax

court's decision in The City of Bloomington v. Commissioner of Revenue, Docket No. 2837, April 14, 1980.

SUBPART 5. This subpart involved transitional sales and is now obsolete. All existing language was stricken from this subpart. A new rule will be drafted that will deal generally with the subject of transitional sales. Therefore, it is not necessary to include updated transitional information in this subpart.

This subpart now deals with the issue of how to treat credits that are determined before the sale and how to treat those that are determined after the sale. It is necessary to clear up taxpayer confusion in this area. It is reasonable because it clarifies how these credits should be handled when sales and use tax is computed. Several examples were also added for clarification and to assist the reader's understanding of how these credits should be handled. This subpart incorporates the court decisions in Garden Valley Telephone Company v. Commissioner of Revenue, Minn. Tax Court Docket No. 5156, October 19, 1990 and Tyler Lumber Company v. Logan, 293 Minn. 1, 195 N.W.2d 818 (1972).

Item A. This example is reasonable because it is based on a common fact situation and illustrates what is meant by a credit that is contracted for before the sale and how this type of credit should be treated for sales and use tax purposes.

Item B. This example illustrates a situation where a credit is not determined until after a sale has occurred and how this type of credit should be treated for sales and use tax purposes.

Item C. This example is necessary to illustrate how patronage dividends and capital contribution credits are to be treated for sales and use tax purposes. It is reasonable because it is based on the court cases listed in subpart 5 of this statement.

SUBPART 6. This is a new subpart that addresses the issue of whether the exemption for residential heating fuels will apply when a building houses both residential quarters and commercial operations. Much of this subpart is taken from existing Minnesota Rule 8130.7000. Minor grammatical and form changes were made for improved clarity, with no substantive changes. Additional language was added for clarification.

Item A. This is a new item. It was added to clarify the situation where a commercial/residential building has only one meter. It is not a change in policy and is analogous to the situation in item B of this subpart, which is in the existing rule 8130.7000.

Item B. This is a new item. It is moved here from Minnesota Rule 8130.7000, subpart 2A. Minor changes in form and language were made, with no substantive change.

Item C. These are examples taken from the current rule part 8130.7000. No substantive changes were made, only minor grammatical, gender, and form changes.

SUBPART 7. This is a new subpart that generally covers the residential heating fuel exemption.

ITEM A. The first two sentences of this item are from the existing rule part 8130.7000, subpart 1. The last sentence of this item was added to reflect department policy. This policy is reasonable because only heating fuel sold for residential heating purposes is exempt. The retailer who sells heating fuels to a purchaser who picks them up has no way of knowing if the fuel will be used for an exempt or a nonexempt purpose. Requiring a customer to provide a written statement that the fuel will be used for an exempt purpose in order to purchase the fuel exempt is not burdensome. It is necessary to effectively administer this exemption. By having a presumption that the fuel is taxable unless the purchaser provides a written statement, it ensures that those who purchase heating fuels that qualify for the exemption can receive the benefit of the exemption, while those heating fuels that are not used for residential heating are taxed appropriately.

ITEM B. The first sentence of this item is from the existing rule part 8130.7000, subpart 1. The second sentence of this item was added to reflect the department's interpretation of the statutory requirement that only fuels used for residential heating are exempt.

It is reasonable to exclude recreational uses of fuel which were not expressly exempted by the legislature.

ITEM C. This item is from the existing rule part 8130.7000, subpart 1.

ITEM D. This item is from the existing rule part 8130.7000, subpart 2A.

ITEM E. This item is based on existing Minnesota Rule Part 8130.7000, subpart 3, example 7. It was changed from an example to an explanatory paragraph to better fit into the format of the proposed rule.

SUBPART 8. This is a new subpart. It is necessary because there have been questions in this area since local governments became taxable. It is reasonable because it follows Minnesota Statutes section 297A.01, subd. 3(a).