

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the matter of the proposed amendment
of permanent sales and use tax rules:
Aircraft Registration

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: Aircraft Registration was published in the State Register on May 18, 1992. (16 S.R. 2486) The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions orally or in writing to the Department by June 15, 1992. No one has commented either in writing or orally.

This rule and the amendments set forth the requirements and procedures for payment of the sales and use tax prior to aircraft registration as required by Minnesota statutes, section 297A.255. This rule sets forth the duties imposed on sellers and purchasers of aircraft before an aircraft can be registered or licensed in this state. It is important to note that the isolated and occasional sales exemption contained in Minn. Stat. sec. 297A.25, subd. 12.(1992) does not apply to sales of aircraft, so the isolated and occasional sales of aircraft are subject to sales and use tax imposed by Minnesota chapter 297A, although isolated and occasional sales of other tangible personal property are exempt. The rule also clarifies that the sale of an interest in an aircraft is subject to the payment of tax prior to registration. The tax is due upon the sale of a cotenancy in an aircraft, not an intangible interest, such as a partnership interest.

IMPACT ON SMALL BUSINESS.

The impact on small business has been considered. The proposed amendments do not impose any additional record keeping requirements, so there should not be any additional administrative burden on small business. 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 the proposed amendments on local public bodies and agricultural land has been considered. The proposed amendments to the rule and the rule itself set forth sales and use tax filing and payment requirements prior to registration and licensing of aircraft. Although the rule has general application, its scope is limited to the sales of aircraft or an interest in aircraft. The tax is imposed by statute, and the proposed amendments do not require any additional reporting or recordkeeping beyond requirements contained in the statute. For these reasons the proposed amendment is not expected to adversely affect local public bodies or agricultural lands.

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 8130.9500, Subpart 1

This subpart has been amended to conform the rule to the present name of the state agency which licenses and registers aircraft. This amendment, from "Department of Transportation, Aeronautics Division" to "Minnesota Department of Transportation, Office of Aeronautics" is made throughout the rule. This amendment is reasonable and necessary because it uses the present name of the other state agency identified in the rule.

The proposed rule also makes clear that proof of sales or use tax payment, which is necessary to license or register an aircraft, may be made by an agent of the applicant. This amendment is reasonable because the usage follows Minnesota Statutes, chapter 297A, which includes as a "person" the agent of any individual or organization listed as a person. It is necessary because the language of the existing rule had caused confusion among taxpayers by its failure to explicitly include other parties who are included in the definition of person.

The amendment, "or an interest in aircraft" is necessary because it clarifies that the statutory imposition of the sales or use tax is on an applicant for licensing and registration of an aircraft unless the transaction is exempt. Two factors make this necessary. The first is that tenancy in common is often used when purchasing aircraft. Second, there is no isolated or occasional sales exemption available when aircraft are transferred. Thus, the sales and use tax is imposed on transactions which would be exempted as isolated or occasional if the tangible personal property were not an aircraft. The amendment is necessary to provide clarity for those persons who do not normally file sales and use tax returns. When a transfer of an ownership interest triggers the requirement of licensing and registration, tax is due on the consideration paid for the interest transferred. The transfer of a partnership interest is not taxed under Minn.

Stat., sec. 297A.255 prior to or after the amendments to this rule. The statute has not changed, and this amendment does not change the Department of Revenue's position or administration of the statute.

The amendment defining the term "commercial use" is necessary to clarify that term. Commercial use was previously used in one subpart of the rule and now it is used in more than one subpart of the rule so a definition is properly included in the general provisions. The amendment is reasonable because it follows the ordinary usage of the term and the definition of the term as set forth in rule 8800.3100, Commercial Operations. That rule, promulgated by the Minnesota Department of Transportation, defines commercial operations for the purpose of licensure. Rule 8800.3200, Subd. 9 The statutory section authorizing the issuance of an aircraft dealer's commercial use permit, Minnesota statutes, section 360.654, also requires the commissioner of revenue to issue commercial use permits. The subpart sets forth only activities which are not commercial use.

Rule 8130.9500, Subpart 2

"If a dealer licensed by the Office of Aeronautics states to the Office of Aeronautics that sales tax was collected" and "or the purchaser's agent (for example the licensed dealer) These amendments of this subpart are necessary so that it will be clear that the dealer from whom a person purchases an aircraft can act as that persons agent in licensing and registering an aircraft. It is common for the dealer, who must file a sales tax return and who is familiar with the licensing and registration procedures, present a sales tax clearance certificate so the purchaser can license and register an aircraft. The amendments are reasonable because the statutory definition of person allows the dealer to act as the purchaser's agent for these functions.

~~"a copy of his purchase invoices or bill of sale along with necessary"~~ The amendment deletes the requirement that the purchaser who claims an exemption from tax furnish a copy of his purchase invoices or bill of sale along with necessary proof of the exemption. This amendment is reasonable because if the person furnishes the proof of exemption, there is no need for the department to inspect invoices or bills of sale

Deletion of governmental units from the list of exemptions allowed is reasonable and necessary because governmental units are no longer generally exempt.

Rule 8130.9500, Subpart 3

~~"places it in withholding status"~~ This deletion is reasonable and necessary, because the withholding status has no import to Department of Revenue. The fact that an aircraft is held for resale exempts it's purchase from the sales or use tax.

~~"he must present a certificate of tax payment of exemption to the Minnesota Department of Transportation, Aeronautics Division."~~ This deletion is reasonable and necessary because a licensed dealer is not required to present a certificate of tax payment or exemption to the Department of Transportation, Aeronautics Division. The dealer must obtain a aircraft commercial use permit from the Department of Revenue.

"While the aircraft commercial use permit is in effect, use tax is imposed on the fair market value of the commercial use." This amendment is reasonable and necessary because Minnesota statutes, section 360.654, requires "The dealer shall pay tax imposed by section 297A.14 on all consideration received for use of the aircraft for commercial purposes during the period the dealer holds the commercial use permit in effect." There is no similar imposition language in Minnesota statutes, section 297A.255, so it is appropriate that the rule include the imposition language from the statutory sections regarding aircraft registration and taxation.

"If the sole use of the purchaser of the aircraft that is exempt from use tax is leasing the aircraft while holding it for sale, sales tax is due on the amount of rent charged." This amendment is reasonable and necessary because it restates, for the particular circumstances of this subpart, the general principle propounded in Minnesota statutes, section 297A.01, subdivision 3. That subdivision defines the term "sale" as used in the statute to include leasing of property, and subjects that leasing to sales and use tax.

~~"A licensed aircraft dealer who obtains a commercial use permit, form ST-23, would check the box of section B of form ST-24 which indicated that the aircraft was purchased for resale or lease by the holder of a Minnesota sales and use tax permit."~~ It is reasonable and necessary to delete this sentence from the rule because it is properly an instruction for filling out a form. It should be included in those instructions, not in the rule.

Rule 8130.9500, Subpart 4

~~"and should check the box of section B"~~ It is reasonable and necessary to delete this clause because it is properly instruction not rule.

"The dealer is further required to provide evidence that the dealer conducts business regularly selling or leasing aircraft." This amendment is reasonable and necessary because it sets forth, for this rule particularly, and general rule and burden of proof for a party claiming an exemption from tax. The general rule is that the party claiming an exemption must show that the exemption clearly applies to them. Language relating to ...exclusions has always been strictly construed..."Northern Natural Gas Co. v. Commissioner, 251 N.W.2d 125, (1977). Minnesota statutes, section 289A.09 places the burden of proof on

the person making the sale that all or any portion of its gross receipts are not subject to tax.

"or puts the aircraft to" The amendment is necessary, because beyond the original intent of the unlicensed dealer when the unlicensed dealer purchases the aircraft which would subject that purchase to tax, if the subsequent actions of the unlicensed dealer are not in conformance with the declaration that the aircraft was purchased for resale or lease, tax is due. There is no exemption from use tax for items withdrawn from inventory for personal use. The exemption for commercial use is contained in Minnesota statutes, section 360.654, and is limited by that section to dealers licensed in accordance with section 360.653. This subpart of the rule is limited in scope to dealers who are not licensed in accordance with Minnesota statutes, 360.363. The exemption cannot be extended to those dealers which are clearly beyond its scope.

Rule 8130.9500, subpart 5

"~~may~~ must" The amendment of the rule to delete a precatory word and insert a mandatory word is reasonable because it follows the requirements of Rule 8130.0400, which states in part as follows, "Any item which is taxable if sold is also taxable if leased." A seller of aircraft must file a return and pay sales and use tax. The lessor of aircraft is in the same position regarding the requirements to file a return and pay sales or use tax. It is necessary therefore that the language of this subpart be mandatory.

"(Leases are defined as resales)" This amendment is reasonable because it follows the definition of sales contained in Minnesota statutes, section 297A.01. It is necessary because lessors of aircraft may not be familiar with the statutory definition of a sale

"~~continue to~~" and "~~as in the past~~" These deletions are reasonable and necessary to remove language which does not add meaning to the rule.

"The lessor must report all lease payments received as gross sales and collect and remit tax on all sales, net of exempt sales. (an example of an exempt sale is the lease of an aircraft of a fixed base operator who rents the aircraft to others at retail.)" This amendment is reasonable and necessary because it restates the general rule on leases set forth in Rule 8130.0400, Leases, subpart 1, example 1, and reporting set forth in Rule 8130.7500, Returns and Records, Subpart 5, Reporting requirements, which requires reporting of gross sales with the subtraction of sales not subject to tax. This language was moved, without substantial amendment within the subpart.

The lessee must ~~If the lessee is leasing the same aircraft to others, the lessee must obtain a permit, file returns, and pay the sales and use tax on the amount of his lease payments~~ in the same manner as all other Minnesota permit

holders ~~who are required to file sales and use tax returns.~~ This amendment is reasonable and necessary because it clarifies the statutory position that persons in the business of leasing property are making retail sales and are not only required to pay use tax, but also to comply with the permit and filing requirements imposed by Minnesota statutes, chapters 297A and 289A. The amendment does not change the administration of the law by the department, or any position of the department regarding imposition of the tax.

Rule 8130.9500, subpart 6

The deletion of this subpart is reasonable and necessary because forms are not properly rules, and the reference should be to the form itself. There is no need to reference the form in a separate subpart however, because it is referenced throughout the rule.

Statutory authority. The statutory authority of the commissioner to promulgate rules for the interpretation and administration of the sales and use tax statutes is now contained in Minnesota statutes, section 270.06, subdivision 13. Minnesota statutes section 297A 29 was repealed, so it is necessary and reasonable to delete the reference to that section.