

MINNESOTA • REVENUE

May 18, 2006

Legislative Reference Library
645 State Office Building
100 Reverend Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Amendment of Rules of the Minnesota Department of Revenue Governing Minnesota Sales and Use Tax—Deductions From Sales Price, *Minnesota Rules* Part 8130.1700, subpart 6; Repeal of *Minnesota Rules*, Part 8130.1600 and Part 8130.1700, subparts 1, 2, 5, and 7.

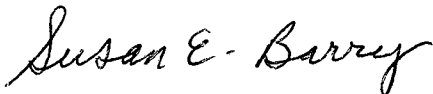
Dear Librarian:

The Minnesota Department of Revenue intends to adopt rules governing Minnesota sales and use tax regarding deductions from sales price. We plan to publish a Dual Notice of Intent To Adopt Rules in the May 15, 2006, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time it is available to the public.

If you have any questions, please contact me at (651) 556-4062.

Yours very truly,



Susan E. Barry
Attorney/ Rules Coordinator
Appeals & Legal Services Division
Minnesota Department of Revenue

Enclosures: Statement of Need and Reasonableness

Minnesota Department of Revenue

STATEMENT OF NEED AND REASONABLENESS

Proposed Rules Governing Minnesota Sales and Use Tax—Deductions From Sales Price; Repeal of *Minnesota Rules*, part 8130.1600 and part 8130.1700, subparts 1, 2, 5, and 7, and Amendments to *Minnesota Rules* part 8130.1700, subpart 6.

INTRODUCTION

The Minnesota Department of Revenue proposes to repeal *Minnesota Rules*, part 8130.1600, and part 8130.1700, subparts 1, 2, 5 and 7, since these provisions have become redundant, dated and obsolete. The Department is proposing to amend part 8130.1700, subpart 6, where terminology has changed, a clarification is needed, or to update citations. Parts 8130.1600 and 8130.1700 were promulgated in the 1960's and there have been several changes in the relevant statutory language.

This document, the Statement of Need and Reasonableness (SONAR), has been prepared to establish the statutory authority for, need for, and reasonableness of the proposed amendments to these rules. It is submitted pursuant to *Minnesota Statutes*, section 14.23, and *Minnesota Rules*, part 1400.2070, requiring a Statement of Need and Reasonableness.

The process that was used to draft the proposed rule and amendments to the rules was internal consultation within the Department of Revenue.

A Request for Comments was published in the *State Register* on August 11, 2003. No comments were received.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact:

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Appeals and Legal Services Division
600 North Robert Street
St. Paul Minnesota 55146
(651) 556-4082
Fax # (651) 296-8229

TTY users may call the Department of Revenue at Minnesota Relay 711.

DEPARTMENT'S STATUTORY AUTHORITY

The Department's general statutory authority to adopt rules is set forth in *Minnesota Statutes*, section 270C.06. It provides that the Commissioner of Revenue shall "from time to time, make, publish, and distribute rules for the administration and enforcement of state revenue laws. The rules have the force of law." As provided in this statute, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

As required by *Minnesota Statutes*, section 14.131, the Department consulted with the Commissioner of Finance “to help evaluate the fiscal impact and fiscal benefits of the proposed rule changes on units of local government.”

As required by *Minnesota Statutes*, section 14.127, the Department looked at the cost of compliance within the first year after the rule changes take effect and determined that the cost will not exceed \$ 25,000 for any business that has less than 50 full time employees or for any one statutory or home rule charter city that has less than 10 full time employees.

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. The Department’s response to these seven factors follows:

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.”

The classes of persons who will be affected by this rule are businesses and taxpayers subject to sales and use tax and tax preparers. The Department expects there will be no costs involved. The affected parties will benefit from the elimination of obsolete or unnecessary rules and the increased clarity and understandability of the remaining rules through the proposed amendments.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.”

There are no anticipated costs to the Department of Revenue or to any other agency of the implementation and enforcement of the proposed rule amendments, and there is no anticipated effect on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.”

The Department is not aware of any less costly methods or less intrusive methods for achieving the purpose of the proposed rule amendments. There are no expected costs involved, and the Department believes that a rule would be the most effective method to explain the modifications.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.”

No alternative methods were seriously considered by the Department of Revenue. For repeal and amendment of rules, there is no alternative method.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.”

The Department of Revenue does not anticipate additional costs of complying.

“(6) the probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.”

If the proposed rules are not adopted, the rules currently in force will continue to reflect obsolete law because of the numerous law changes, including the changes to the sales and use tax rates, which have occurred since promulgation of the original rules.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”

There are no directly applicable federal laws or regulations in the sales tax area.

PERFORMANCE-BASED RULES

In drafting the proposed rule amendments, the Department was cognizant of the statutory mandate, where feasible, that agencies develop rules that balance the needs of the agency in meeting its objectives, while maintaining some flexibility for the affected parties. The Department’s primary objective is to repeal outdated information and duplicative statutory language, and to amend both for clarification and also for conformity with statutory changes and case-law. The proposed changes meet the goals of the Department and will benefit the affected parties and the agency.

ADDITIONAL NOTICE

To provide notice to all persons who may be affected by the proposed rule, the Additional Notice Plan consists of:

- (1) posting the Request for Comments, Notice of Intent to Adopt Rules, and SONAR to the Department website at <http://www.taxes.state.mn.us>;
- (2) mailing a copy of the Request for Comments to the regular rulemaking list, and to chairs and minority leads of the House and Senate tax committees; and
- (3) mailing a copy of the Notice of Intent to Adopt Rules, and a copy of the proposed rules and SONAR to the following:
 - the Tax section and the Business Law section of the Minnesota State Bar Association, and
 - the Minnesota Society of CPAs,
 - as well as any individual requesting notice who is not already on the agency’s regular rulemaking mailing list.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department’s rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a. We will give notice to the Legislature per *Minnesota Statutes*, section 14.116.

LIST OF WITNESSES

If these rules go to a public hearing, the Department does not anticipate calling any witnesses. Department of Revenue employees may be called to testify in support of the rules.

RULE ANALYSIS

Minnesota Statutes, chapter 14, requires the Department to explain the facts establishing the need for and reasonableness of the rules as proposed. "Need" means that a problem exists which requires administrative attention. "Reasonableness" means that there is a rational basis for the Department's proposed action. The need for and reasonableness of the proposed rules is explained in this section. It is necessary and reasonable to amend the rules so that they comply with the changes made in the law and in the Department of Revenue's administration of the law. Many of the changes involve the repeal of outdated information and duplicative statutory language.

The following is an analysis of the planned repeal of Minnesota Rules, part 8130.1600 and part 8130.1700, subparts 1, 2, 5, and 7, and amendment of *Minnesota Rules*, part 8130.1700, subpart 6.

Repeal of part 8130.1600

The following is an explanation of the need for and reasonableness of the repealer of Minnesota Rules, part 8130.1600. This rule covers the deductions that are not allowable in computing the sales price for sales subject to sales and use tax. Its provisions are obsolete due to statutory amendments and dated language, or are repetitious of statutory language.

Subpart 1. Subpart 1 provides a general introduction to the remaining subparts of part 8130.1600. With the repeal of the entire part, it is reasonable and necessary to repeal the introduction.

Subpart 2. It is reasonable and necessary to repeal Subpart 2 since the subpart is essentially repetitive of the statute (*Minnesota Statutes* § 297A.61, subdivision 7 (a) clauses 1, 2, and 4) and the examples are self evident. In addition example 2 has been rendered obsolete by statutory changes exempting farm equipment from sales tax (Laws 2000, chapter 418, article 1, section 13.), and also contains an obsolete reference to part 8130.1700, subpart 4 which was repealed in 2003.

Subpart 3. Subpart 3 is repetitive of the statute (*Minnesota Statutes* § 297A.61, subdivision 7 (a) clauses 1 and 2).

Subpart 4. The subpart is repetitive of the statute (*Minnesota Statutes* § 297A.61, subdivision 7 (a) clause 2) and the example has an obsolete date reference.

Part 8130.1700 - Amendments and Repealers

This rule covers the deductions that are allowable in computing the sales price for sales subject to sales and use tax. The amendments reflect law changes and sales tax rate changes. Sentence syntax is necessarily and reasonably modified as is word usage for ease in reading and parallel construction. The repealed subparts are obsolete due to statutory amendments and dated language, are repetitious of statutory language, or are either confusing or not helpful.

Subpart 1-repealed. Subpart 1 provides a general introduction to the rule part. It is repetitive of the statute and is not necessary. Thus it is reasonable and necessary to repeal the subpart.

Subpart 2-repealed. It is reasonable and necessary to repeal this subpart because it neither clarifies nor explains the statute. In addition, the examples are dated and/or obsolete.

Subpart 5-repealed.. It is reasonable and necessary to repeal subpart 5 because it neither clarifies nor explains the statute. The definitions it contains are vague and hard to distinguish. Publication of such a limited number of definitions also may create an impression that only the defined discounts qualify for deduction pursuant to the statute when in fact all discounts are deductible in calculating taxable sales price.

Subpart 6. The amendment to subpart 6 is necessary to improve syntax and to remove a reference to an obsolete date. In the first paragraph, "reported" is added before "gross receipts" to make clear that the reduction referred to in the sentence is a reduction to the amount reported and not to the actual gross receipts. The phrase "or the cash refunded" is necessary to clarify that the sentence applies to cash refunds as well as other methods of credit. Amendments in Examples 1, 2, 3 and 4 are necessary to remove references to an obsolete 4% sales tax rate. The amendment does not replace the obsolete rate with the current rate, since to do so would necessitate amending the rule again were the rate to change. Examples 1 and 2 are also amended to remove references to unnecessary and obsolete dates (in 1972) which do not affect the rule.

Subpart 7-repealed. It is reasonable and necessary to repeal subpart 7 since it has been rendered obsolete through subsequent case law and statutory changes. The statute was amended by Laws 1987 chapter 268, article 4, section 3, which struck language which had excluded taxes imposed by the United States from the sales price. In the case *U.S. Sprint Communications Company, Ltd. v. Commissioner of Revenue*, 578 N.W.2d 752 (Minn. 1998), the Minnesota Supreme Court held that Federal excise taxes were not part of the sales price for long distance telephone service and were not includable in the base amount for calculating the sales tax. The examples refer to an obsolete sales tax rate and make reference to an obsolete federal excise tax on automobile tires since 26 U.S.C. § 4071 was amended in 1984 to change imposition of this tax from the consumer to the manufacturer.

CONCLUSION

Based on the foregoing, the proposed rule changes are both necessary and reasonable.

4-28-06

Date



Daniel A. Salomone

Commissioner of Revenue