

MINNESOTA REVENUE

May 19, 2010

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 Agricultural and Industrial Production; Sales and Use Tax on Packaging Materials; Amending *Minnesota Rules*, part 8130.550, subpart 6.

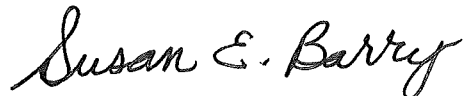
Dear Librarian:

The Minnesota Department of Revenue intends to adopt rules governing the application of Minnesota sales and use tax laws to sales of packaging materials which may be a part of industrial or agricultural production. We plan to publish a Dual Notice of Intent to Adopt Rules in the June 1, 2010, 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

Enclosure: Statement of Need and Reasonableness

Department of Revenue

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Agricultural and Industrial Production; Sales and Use Tax on Packaging Materials; Minnesota Rules, part 8130.5500, Subpart 6.
OAH Docket No. 70-2700-20054-1; Governor's Tracking No. AR421.

INTRODUCTION

The proposed amendment to *Minnesota Rules, Part 8130.5500*, governing agricultural and industrial production, *subpart 6*, concerning packaging materials clarifies that the terms "skids and pallets" are not included in the term "container"; deletes obsolete statutory references and replaces them with current statutory references; and deletes references to the term "vendor," because returnable containers and internal packaging materials are sometimes returned to third parties rather than to the original seller.

The process that was used to draft the amendment to the rules was internal consultation within the Department of Revenue. Advisory committees were not used, and there were no public hearings. An Additional Notice Plan for the Request for Comments was approved by the Minnesota Office of Administrative Hearings on November 13, 2008, and The Request for Comments was published in the *State Register* on Monday, November 24, 2008 (33 S.R. 946). 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, Patrick J. Finnegan, Attorney, at Minnesota Department of Revenue, Appeals and Legal Services Division, 600 North Robert Street, St. Paul, Minnesota 55146-2220; by phone at (651) 556-4066; by fax at (651) 296-8229; or by e-mail at pat.finnegan@state.mn.us. TDD users may call the Department of Revenue at (651) 297-2196.

STATUTORY AUTHORITY

The Department's statutory authority to adopt these rules is set forth in *Minnesota Statutes*, section 270C.03, which provides that the Commissioner of Revenue has the authority to "administer and enforce the assessment and collection of taxes," and *Minnesota Statutes*, section 270C.06, provides that "the commissioner shall from time to time, make publish, and distribute rules for the administration and enforcement of state tax laws. The rules have the force of law." Under these statutes, the Department has the necessary statutory authority to adopt the proposed amendment to rules.

REGULATORY ANALYSIS

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 fewer than 50 full time employees or for any one statutory or home rule charter city that has fewer than 10 full time employees.

Minnesota Statutes, section 14.131, sets out the following seven factors for a regulatory analysis that must be included in the SONAR:

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

The classes of affected persons are those owners and lessors of skids and pallets used in transporting goods.

“(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 for the implementation and enforcement of the proposed rule, and there is no effect on state revenues.

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

There are no less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

“(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”

The Department of Revenue issued revenue notice # 07-03 on March 19, 2007, which deals with the taxability of returnable skids and pallets. Revenue notices, however, do not bind taxpayers. Moreover, as there have been law changes which make some of the statutory references in the current rule obsolete, an amended rule is needed.

“(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”

There are no probable costs to parties affected by this rule.

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

If this proposed rule is not adopted, the current rule dealing with this topic will reflect obsolete law because of law changes that have taken place since the rule was promulgated.

“(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 applicable federal laws in this area.

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

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

LOCAL IMPLEMENTATION

As required by *Minnesota Statutes*, section 14.128, the Department has reviewed whether a local government will be required to adopt or amend an ordinance or other regulation to comply with the rule changes, and has determined that local government is not impacted. The rule would not require any local government to adopt or amend an ordinance or regulation to comply with the rule changes.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

This proposed rule supports the Department's strategic plan. The Department's main objective in this rule is to clarify how the rule relates to skids and pallets and to repeal outdated information. By providing additional clarity and certainty in this area of the law, the proposed rule will promote the principle that everyone is paying the right amount of tax, no more and no less. The additional clarity and certainty provided by the proposed rule will also help improve the degree to which these particular tax laws are easy to understand and easy to administer.

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:
 - Minnesota pallet companies identified through internet and yellow pages searches
 - Tax Section for the Minnesota Bar Association
 - 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.

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, amending *Minnesota Rules, Part 8130.5500, Subpart 6* is here explained.

Subpart 6, the third paragraph, and items K and L, are amended to update the application of the subpart as it relates to skids and pallets. The change to the third paragraph and item L is needed to clarify that skids and pallets are not containers. They are used to facilitate loading, unloading, handling, transportation, or storage of goods and their taxability depends in part upon whether they are returnable or not. The change is reasonable because it treats skids and pallets like other commercial

products. If they are returnable, they are considered to be the seller's equipment and are taxable. If they are not returnable, they are considered to be sold as part of the sale of the goods and the taxability depends on whether the products sold are taxable or exempt from tax. The change to item K is needed to clarify that skids and pallets are not external packaging materials, for the same reason articulated for the amendment to item L.

Subpart 6 items C, J, and M, contain obsolete statutory references. The amending language is needed to reflect the current statutory authority. *Minnesota Statutes*, sections 297A.01 to 297A.45 were repealed in 2000 and recodified into sections 297A.61 to 297A.995. Specifically, *Minnesota Statutes*, section 297A.25, subd. 9, was repealed in 2000 and replaced by *Minnesota Statutes*, section 297A.68, subd. 2. (See Minnesota Laws 2000, Chapter 418, Article 1.) It is reasonable that the rule contain the current statutory references. The language in item J referring to external packaging materials is deleted because it is unnecessary and duplicates language in the paragraph. This change is needed to simplify the wording in the rule. It is reasonable because it makes the rule easier to read and understand.

Subpart 6 items D & I are amended to delete references to the term "vendor." It is reasonable to do this because containers and internal packaging materials are not always returned to the original vendor. They may be required to be returned but sometimes will be returned to third parties for cleaning or refurbishing.

LIST OF WITNESSES

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

CONCLUSION

Based upon the foregoing, the proposed rules are both needed and reasonable.

5-13-2010
Date

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Commissioner of Revenue