

MINNESOTA • REVENUE

September 19, 2011

Scott Peterson, Executive Director
Streamlined Sales Tax Governing Board
4219 Hillsboro Pike, #234
Nashville, TN 37215

Dear Mr. Peterson:

The letter is to address the concerns raised in the "Preliminary Report on 2011 Annual Recertification" concerning Minnesota's compliance with the Streamlined Sales and Use Tax Agreement.

Issues were raised concerning Minnesota's compliance in the following areas:

- 1. The definition of "prepared food" does not include "two or more food ingredients mixed or combined by the seller for sale as a single item." Also, the definition includes food sold without eating utensils in an unheated state by weight or volume as a single item, but exempts ready-to-eat meat and seafood in an unheated state sold by weight.**

State response: The phrase, "two or more food ingredients mixed or combined by the seller for sale as a single item" has been included in Minnesota's definition of prepared food since that definition was adopted effective January 1, 2002. A copy of Minnesota Statutes, section 297A.61, Subd. 3, is provided below for your review.

It is true that Minnesota did not adopt the option to exempt food sold without eating utensils in an unheated state by weight or volume as a single item. Rather, we have a more limited exemption that applies to ready-to-eat meat and seafood in an unheated state and sold by weight when sold without eating utensils. Minnesota adopted the Uniform Sales and Use Tax Administration Act in 2001, effective January 1, 2002, prior to the formal adoption of the SSUTA in November 2002. At the time the definition of prepared food was adopted in Minnesota, the options for a state to treat sales of food by food manufacturers, food sold in an unheated state by weight or volume as a single item, and bakery items different than prepared food had not been considered by the Streamlined Sales and Use Tax Project. Adopting the prepared food definition as it was originally drafted created serious controversy in Minnesota since many bakery and meat products sold in grocery stores and meat markets which were previously exempt from Minnesota sales tax became taxable as prepared food.

Minnesota brought these issues to the attention of the SSTP so that when the SSUTA was finally adopted in November of 2002, options for exempting certain items were included as part of the definition of prepared food. In the meantime, legislation was passed in

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Minnesota effective July 1, 2002 to exclude bakery items and meat and seafood sold in an unheated state by weight from the definition of prepared food. The meat and seafood exemption was intended to be a temporary exclusion and was scheduled to expire on December 31, 2005. However, rather than allowing the exclusion to expire, the legislature made it permanent since repealing the exemption would be viewed as a tax increase and adopting the more expansive language provided in the SSUTA would result in a significant revenue loss to the state.

The difference in the prepared food definition has been noted in Minnesota's Certificate of Compliance and/or Minnesota's Taxability Matrix every year and has never been cited as an issue for substantial compliance with the SSUTA. Further, we have heard from no business that feels they are burdened in any way by the difference in Minnesota's definition and that of the SSUTA. For those reasons Minnesota does not feel we are substantially out of compliance with the SSUTA.

Minnesota Statutes 297A.61, Subd. 31. Prepared food.

"Prepared food" means food that meets either of the following conditions:

- (1) the food is sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws; or
- (2) the food is sold in a heated state or heated by the seller or two or more food ingredients are mixed or combined by the seller for sale as a single item, except for:
 - (i) bakery items, including, but not limited to, bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas;
 - (ii) ready-to-eat meat and seafood in an unheated state sold by weight;
 - (iii) eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its food code so as to prevent food borne illnesses; or
 - (iv) food that is only sliced, repackaged, or pasteurized by the seller.

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2. In Section 331, the statute cited could not be found.

State response. Following are copies of the statutes cited in response to the items in Section 331, Relief from certain liability for purchaser:

Minnesota Statute 297A.995, Uniform Sales and Use Tax Administration Act Subd. 11. Purchaser relief from certain liability.

(a) Notwithstanding other provisions in the law, a purchaser is relieved from liability resulting from having paid the incorrect amount of sales or use tax if a purchaser, whether or not the commissioner gave the purchaser direct pay authorization, or a purchaser's seller or certified service provider relied on erroneous data provided by this state in the database files on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix. After providing an address-based database for assigning taxing jurisdictions and their associated rates, no relief for errors resulting from the purchaser's reliance on a database using zip codes is allowed.

(b) With respect to reliance on the taxability matrix provided by this state in paragraph (a), relief is limited to erroneous classifications in the taxability matrix for items included within the classifications as "taxable," "exempt," "included in sales price," "excluded from sales price," "included in the definition," and "excluded from the definition."

(c) Notwithstanding other provisions in the law, if there are not at least 30 days between the enactment of a new tax rate and the effective date of the new rate, a purchaser shall be relieved from liability resulting from failing to pay the tax at the new rate during the first 30 days of the rate change, beginning on the day after the date of enactment of the rate change, whether or not the purchaser has been given direct pay authorization by the commissioner. Relief from liability provided by this paragraph shall not apply if the failure to pay at the newly effective rate extends beyond 30 days after the enactment of the new rate, and shall not apply to a purchaser that did not continue to pay the tax at the immediately preceding tax rate during the 30-day period. The relief provided by this paragraph shall not apply if the commissioner determines that the purchaser fraudulently failed to pay at the new rate.

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**Minnesota Statute 289A.55 Interest Payable to Commissioner
Subd. 10. Relief for purchasers.**

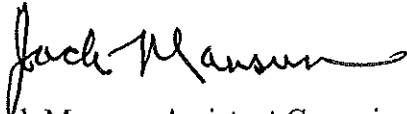
A purchaser that meets the requirements of section 297A.995, subdivision 11, is relieved from the imposition of interest on tax and penalty.

**Minnesota Statute 289A.60 Civil Penalties
Subd. 30. Relief for purchasers.**

A purchaser that meets the requirements of section 297A.995, subdivision 11, is relieved from the imposition of penalty.

If you have questions or require additional information, please contact me directly.

Sincerely,



Jack Mansun, Assistant Commissioner
Minnesota Department of Revenue
E-mail: jack.mansun@state.mn.us
Phone: 651-556-6009