

# MINNESOTA · REVENUE

September 24, 2012

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 2012 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. All taxable health care categories within the Taxability Matrix did not include citations.**

**State response:** Nearly all of the health-care product categories and associated options included citations. Citations were provided for all options in the following categories: drugs for human use, drugs for animal use, mobility enhancing equipment and prosthetic devices.

Citations were provided for a number of durable medical equipment category options. However, they were inadvertently omitted for several options within this category:

- all options listed under durable medical equipment, not for home use;
- all options under oxygen delivery equipment, not for home use; and
- all options under enteral feeding systems, not for home use

The citations that should have been provided for these options are **Minnesota Statutes 297A.61 Definitions. Subd. 3. Sales and purchase.** and **Subd. 4. Retail sales.** and **Minnesota Statutes 297A.62 Sales Tax Imposed; Rates.** The Taxability Matrix has been updated accordingly, and the updated version is included with this letter.

**2. In Section 313 of the Certificate of Compliance, the provision for direct mail sourcing did not distinguish between advertising and promotional direct mail and other direct mail.**

**State response:** The statutory provisions provided in the Certificate of Compliance include various subdivisions of **Minnesota Statutes 297A.668 Sourcing of Sale; Situs in This State.** The provisions do distinguish between advertising and promotional direct mail and other direct mail. Subdivisions cited include **297A.668 Subd. 7(e), Subd. 7(d), Subd. 7(e), Subd. 7a (c) and Subd. 7a (b).**

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The statute has been updated and can be found on the Minnesota Office of the Revisor of Statutes web site at <https://www.revisor.mn.gov/statutes/?id=297A.668>.

- 3. The definition of “prepared food” 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:** 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 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.

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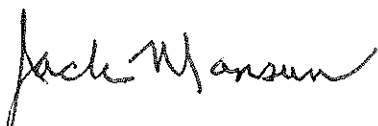
## **Minnesota Statutes 297A.61, Subd. 31. Prepared food.**

"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.

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

Sincerely,



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Minnesota Department of Revenue  
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