

# Revenue Notice #02-01 was repealed on April 12, 2010 by Revenue Notice #10-01.

## Minnesota revenue notice number 02-01

### Sales and Use Tax - Alcoholic Beverages, Dietary Supplements, and Tobacco

#### Introduction

*Minnesota Statutes*, section 297A.61, subdivision 3, defines "sale and purchase" to include the preparation of food for consideration. *Minnesota Statutes*, section 297A.67, subdivision 2, defines "food and food ingredients" to mean substances in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Subdivision 2 provides that food and food ingredients are exempt from Minnesota Sales Tax.

Under *Minnesota Statutes*, section 297A.67, subdivision 2, the following items are not considered food or food ingredients and are thus taxable: candy, soft drinks, food sold through vending machines, prepared foods, alcoholic beverages, dietary supplements, and tobacco. These definitions are effective for sales and purchases made after December 31, 2001.

Following are explanations of the following terms: alcoholic beverages, dietary supplements, and tobacco. These explanations must be read in conjunction with the statute to determine the final taxability of specific food items. Items that are not taxable under one of the provisions may still be subject to tax if they do not qualify as food or food ingredients.

#### Alcoholic Beverages

"Alcoholic beverages" as defined in *Minnesota Statutes*, section 297A.67, subdivision 2, means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume. Food and food ingredients do not include alcoholic beverages. Thus, alcoholic beverages are subject to tax.

Alcoholic beverages include all alcoholic and malt beverages, including beer, ale, wine, and ice cream drinks, if they contain over one-half of one percent or more of alcohol. They are taxed whether sold for consumption on or off the premises.

#### Tobacco

"Tobacco" means cigarettes, or any other tobacco products as defined in *Minnesota Statutes*, section 297F.01. Food and food ingredients do not include tobacco. Thus, tobacco is subject to tax.

#### Dietary Supplements

"Dietary supplements" as defined in *Minnesota Statutes*, section 297A.67, subdivision 2, means a product that is intended to supplement the diet. These products

(a) contain one or more of the following dietary ingredients (including concentrates, metabolites, constituents, extracts, or combinations of these ingredients): Vitamins; minerals; herbs and other botanicals; amino acids; or dietary substances used by humans to supplement the diet by increasing the total dietary intake;

(b) are intended for ingestion in the form of a tablet, capsule, powder, softgel, gelcap, or liquid. If these products are not ingested in such form, they may still be considered dietary supplements as long as they are not offered as conventional food and are not meant to be used as a total meal or total diet; and

(c) are required to be labeled as a dietary supplement as provided under the Code of Federal Regulations, title 21, section 101.36 and as identified on the box label.

Food and food ingredients do not include dietary supplements. Thus, dietary supplements are subject to tax.

Dietary supplements include powdered mixes specially designed for weight gain, weight loss or weight

control programs irrespective of the fact that the products may substitute for some meals over a determinable period of time.

Dietary supplements do not include meal substitutes which are labeled with "Nutrition Facts". These non-taxable items include: special dietary meals made by weight loss companies, vitamin-enriched milk, high protein flour, or breakfast bars.

Dated: 28 December, 2001

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