

This notice was modified on June 9, 2008.

Department of Revenue

Modification of Revenue Notice # 02-17: Sales and Use Tax – Taxable Sales – Delivery of Aggregate Materials and Concrete Block*

*With modifications shown (see “Key” below).

~~Effective January 1, 2002, charges for delivery of tangible personal property, including aggregate material and concrete block, became taxable when performed and/or billed by the seller of the tangible personal property. Effective July 1, 2008, all charges for the delivery of aggregate material by a third party, except deliveries of aggregate material used in road construction, are subject to the sales tax. Effective~~ Since July 1, 2002, delivery of aggregate material and concrete block, when performed by someone other than the seller, ~~became~~ has been taxable if the delivery would have been subject to the sales tax when performed by the seller. ~~The following guidelines will be used in applying sales tax to charges for the service of delivering aggregate materials and concrete block:~~

- ~~• The charge for delivery of aggregate materials and concrete block is taxable regardless of whether billed by the seller of the product or billed by a third party hauler.~~
- ~~• The delivery charge may be purchased exempt when:~~

The charge for delivery of aggregate materials and concrete block is taxable regardless of whether billed by the seller of the product or billed by a third party hauler. The delivery charge is exempt in the following circumstances:

- the customer provides an exemption certificate indicating that the product being delivered is exempt for use in industrial production.
- the customer provides an exemption certificate indicating that the product being delivered is exempt because it will be resold at retail.
- the sale is to an exempt entity.
- the charge is to deliver the product outside of Minnesota.
- ~~• the sale is to a township of gravel to be used for road maintenance.~~

1. Does the sales tax apply to the delivery of aggregate material that will be used to produce asphalt or ready mix concrete?

The delivery charges are exempt if the aggregate becomes an ingredient or component part of tangible personal property that will be sold at retail. The purchaser of the aggregate material must give the delivery firm an exemption certificate claiming that the material being delivered will be used or consumed in the production process. If the aggregate is used to produce asphalt or ready mix concrete that will not be sold at retail but which is used by the purchaser or owner of the aggregate to make an improvement to real property, the delivery charges are subject to the sales tax unless the asphalt or ready mix concrete is used for road construction.

2. Is the delivery by a third party hauler of aggregate and concrete block into

Minnesota from outside the state taxable? When do local sales taxes apply to taxable delivery charges?

The sales tax applies to charges to deliver aggregate materials to a Minnesota location. Charges to deliver aggregate materials from Minnesota to a location outside Minnesota are not subject to Minnesota sales tax ~~since the sale is not made until the delivery is completed~~. Local sales tax applies when the aggregate is delivered into a political subdivision that imposes a local sales tax. For example, a charge to deliver aggregate materials into Minneapolis is subject to the one-half percent Minneapolis local sales tax, the Hennepin County sales tax, and beginning July 1, 2008, the Transit Improvement sales tax.

3. Is delivery of aggregate material or concrete block taxable even though ~~the material or block being hauled is not taxable because there is no sale of the concrete block or aggregate material being delivered?~~

In order for the delivery charges to be taxable there must be a taxable sale of the aggregate material or concrete block. The charges for delivery of borrow would not be subject to the sales tax unless there was a taxable sale and purchase of the borrow material.

4. Does the sales tax apply to deliveries made by employees for their employer?

The sales tax only applies to services specifically enumerated under the Minnesota sales tax law. There is no sales tax on services performed by an employee for his or her employer. ~~The fact that MN/DOT considers third party truckers as employees of their contractor customers on prevailing wage projects does not make those truckers employees for sales tax purposes.~~ The sales tax can only be avoided when a true employer-employee relationship exists.

~~5. Does the sales tax apply to delivery contracts entered into prior to July 1, 2002?~~

~~The legislature did provide a transition period for sellers of aggregate materials in the 2002 tax bill. Sellers of aggregate materials or concrete block are not required to collect sales tax on the delivery charges if the aggregate or block is sold to contractors who have entered into a bona fide written lump sum or fixed price construction contract prior to January 1, 2002, and delivery is made prior to January 1, 2005. The provision making delivery of aggregate materials and concrete block a taxable service is effective for third party deliveries made on or after July 1, 2002. Third party deliveries of aggregate materials and concrete block are not subject to the sales tax if made pursuant to bona fide written contracts or lump sum or fixed price construction contracts which do not make provision of allocation of future taxes, provided the contracts were entered into prior to July 1, 2002, and delivery of the items are made on or before January 1, 2003.~~

6.5. Does the sales tax apply to delivery charges for the delivery of aggregate material if the party making the delivery is using the aggregate is used in making an improvement to realty?

With only one exception, the sales tax applies to the delivery charges regardless of whether the aggregate will be used in making an improvement to realty and regardless of how deposited at the delivery site. The only exception would be delivery of aggregate material to be used in road construction. ~~If the person delivering the aggregate uses the aggregate in making an improvement to realty, no sales tax is due on the delivery charges. If the party delivering aggregate materials has a~~

~~contract requiring both the delivery and the depositing substantially in place of the aggregate materials, the transaction will be treated as an improvement to realty and not a taxable delivery service. The aggregate material will be considered to be deposited substantially in place if the aggregate material is deposited on the project site directly or through spreaders where it can be spread from graded or compacted at the location where it was deposited. If the aggregate material is merely dumped in a pile, or if the contract does not require the hauler to deposit the aggregate substantially in place, the delivery charges are subject to sales tax.~~

7.6. What are the responsibilities of third party deliverers of aggregate material and concrete block after June 30, 2002?

~~Persons making delivery of aggregate material and concrete block on or after July 1, 2002 must be registered with the Department of Revenue to collect and remit the Minnesota sales tax. The hauler must start collecting and remitting sales tax on all their taxable sales after June 30. All deliveries of aggregate and block made on or after July 1, 2002 are subject to the sales tax unless the aggregate is used in road construction or another an exemption applies ~~or the construction deliverer is making an improvement to realty.~~~~

8.7. How is recycled aggregate material treated?

Charges to transport construction debris, such as broken chunks of concrete, from a construction site are not subject to the sales tax. However, sales tax does apply to the delivery of recycled aggregate materials that have been reclaimed or recovered through the processing of the construction debris.

8. What activities would constitute road construction?

Road construction is defined in *Minnesota Statutes*, section 297A.61, subdivision 3(g) and would include the establishment, improvement and maintenance of roads together with all bridges or other structures thereon which form part of the road. For purposes of the definition of road construction, a “cartway” means a strip of land two rods wide providing access to a property owner over lands of another or others to a public road.

Jennifer L. Engh, Assistant Commissioner

Publication Date: ~~October 21, 2002~~

John H. Mansun, Assistant Commissioner
for Tax Policy and External Relations

Publication Date: June 23, 2008

***Key:** Underlining indicates additions to existing Revenue Notice language. Strikeouts indicate deletions from existing Revenue Notice language.

Please see next page for a clean, printable copy of this notice as modified.

Department of Revenue

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**As modified.

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The charge for delivery of aggregate materials and concrete block is taxable regardless of whether billed by the seller of the product or billed by a third party hauler. The delivery charge is exempt in the following circumstances:

- the customer provides an exemption certificate indicating that the product being delivered is exempt for use in industrial production.
- the customer provides an exemption certificate indicating that the product being delivered is exempt because it will be resold at retail.
- the sale is to an exempt entity.
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2. Is the delivery by a third party hauler of aggregate and concrete block into Minnesota from outside the state taxable? When do local sales taxes apply to taxable delivery charges?

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5. Does the sales tax apply to charges for the delivery of aggregate material if the aggregate is used in making an improvement to realty?

With only one exception, the sales tax applies to the delivery charges regardless of whether the aggregate will be used in making an improvement to realty and regardless of how deposited at the delivery site. The only exception would be delivery of aggregate material to be used in road construction.

6. What are the responsibilities of third party deliverers of aggregate material and concrete block?

Persons making delivery of aggregate material and concrete block must be registered with the Department of Revenue to collect and remit the Minnesota sales tax. The hauler must collect and remit sales tax on all their taxable sales. All deliveries of aggregate and block are subject to the sales tax unless the aggregate is used in road construction or another exemption applies.

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Charges to transport construction debris, such as broken chunks of concrete, from a construction site are not subject to the sales tax. However, sales tax does apply to the delivery of recycled aggregate materials that have been reclaimed or recovered through the processing of the construction debris.

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John H. Mansun, Assistant Commissioner
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