

Direct Selling Companies

*Sales Tax Fact Sheet 168***What's New in 2018**

We clarified when sellers are required to collect local sales taxes. See Local Sales and Use Taxes on page 5.

For sales tax purposes, a direct selling company is a business that sells products to direct sellers who resell the products to retail customers, or a company that has direct sellers who take orders for their products. They are sometimes called multi-level marketing companies.

Direct sellers

Direct sellers are people who make retail sales or take orders for products, often working out of their homes. They sell at sales parties or by appointment in someone's home. Their customers are often co-workers, friends, relatives, or neighbors. Selling items as a company employee does not make someone a direct seller. Direct sellers must be in the business for themselves.

A direct seller signs up with a direct selling company to sell its product line. The company may use one of many titles for its direct sellers, including:

- Consultant
- Coordinator
- Dealer
- Demonstrator
- Designer
- Distributor
- Director
- Instructor
- Manager
- Representative
- Sales representative
- Supervisor

We will refer to them as direct sellers in this fact sheet.

Who must register for sales tax?

Every person or company making taxable retail sales in Minnesota must collect and remit sales tax on those sales. Usually, each direct seller must register to collect and remit the sales tax to the Minnesota Department of Revenue.

However, in certain cases, the Department of Revenue authorizes company headquarters to remit sales tax for the sales made by their direct sellers. In these cases, individual direct sellers do not need to register to collect and remit sales tax. Company headquarters must be authorized by the Department of Revenue before they begin to collect and remit sales tax for their direct sellers' sales.

Requirements

Requirements for direct selling companies to collect, report, and remit Minnesota Sales Tax for their direct sellers.

1. The company headquarters must be registered for Minnesota Sales and Use Tax and assume responsibility for the sales tax due from the direct sellers.
2. The sales tax remitted must be based on the actual selling price paid by the final purchaser of the items, or on the suggested retail selling price if the actual selling price is not known. See the Adjustments to sales price section on page 3.

3. All state and local sales taxes must be collected, reported, and remitted on time.
4. Direct sellers who prefer to handle their own sales tax must be allowed to do so.

To request authorization to collect and remit sales tax on behalf of direct sellers, use Form ST80, *Direct Selling Company Affidavit*. You can find Form ST80 on our website. Go to www.revenue.state.mn.us and type **ST80** in the Search box. We will notify you with a confirmation letter if your approval is granted.

Direct seller responsibilities

If you become a direct seller for a company with a direct selling agreement, you need to decide if you want to handle the Sales and Use Tax yourself or let the direct selling company to handle it. An advantage of allowing the company to handle the tax for you is that you will not need to file Minnesota Sales and Use Tax returns. However, you might end up paying more tax than would be due if you handle it yourself.

If you want the direct selling company to handle the tax for you:

- Contact us to find see if the company has a direct selling agreement to collect and remit sales tax. If they do not, you must handle the sales tax yourself.
- Pay sales tax to the company as they instruct you (on the suggested retail-selling price or the actual price of the items you buy for resale).
- Collect sales tax from your customers based on the actual selling price of the products. See the How to compute Minnesota state and local sales taxes section below.
- Report adjustments to the company as necessary. See Adjustments to sales price section on page 3.

If you handle the tax yourself:

- Register with the Minnesota Department of Revenue for a Sales and Use Tax account. Call 651-282-5225 or 1-800-657-605 to register by phone. We'll assign you a Sales and Use Tax number and provide you with information and instructions.
- Give a completed Form ST3, *Certificate of Exemption*, to the direct selling company to buy products exempt for resale.
- Collect and remit sales tax from customers based on the actual selling price of the items, and the proper rate. See How to compute Minnesota state and local sales taxes section below.
- For items, you use yourself, report and remit use tax based on your cost. This includes items you give away as free samples, prizes, or gifts. See Prizes, free samples, and gifts section on page 4.

How to compute Minnesota state and local taxes

Minnesota Sales Tax and any applicable local sales tax must be charged on the retail price of taxable items sold in Minnesota.

Taxable price

Sales tax is due on the actual retail price including shipping and handling charges. This is the total amount (including money and the value of any credits) paid by the purchaser. If the company has a direct selling agreement to handle sales tax for their direct sellers, they must remit sales tax based on the suggested retail-selling price if the actual selling price is not known.

The sales tax rate due is the rate at the location where the taxable items are shipped. This is the state general rate sales tax of 6.875 percent, plus any applicable local taxes. Local taxes are listed and explained in Fact Sheet 164, *Local Sales and Use Taxes*.

Charge sales tax based on the sales tax rate at the location where the entity who remits the tax delivers the items. This is usually the direct seller's home or the host's home, but may also be the customer's homes.

When the items are delivered to purchasers out of state, Minnesota Sales Tax does not apply.

When the direct selling company remits the tax on behalf of the direct seller, the company must collect sales tax based on the sales tax rate at the location where they deliver the products.

When the direct seller handles the sales tax, it is based on the sales tax rate in effect at the location where the direct seller delivers the products. When the company ships the products directly to the host or to each customer, the direct seller must charge sales tax at the sales tax rate where the company ships the products.

Example A: A candle party is held at the host's home in St. Paul. The company ships the candles to the direct seller in Eagan. The host picks them up from the direct seller in Eagan and delivers them to the customers.

The location of the sale is Eagan. Eagan has a local tax, so the tax rate is 7.125 percent (6.875 percent state general rate sales tax and 0.25 percent Dakota County Transit tax). The location of the party nor the host's delivery locations determine the rate charged by the company or direct seller.

Example B: A candle party is held at the host's home in St. Paul. The company ships the candles to the direct seller in Eagan. The direct seller delivers the candles to the host in St. Paul and the host delivers the candles to customers at various locations.

If the company remits the sales tax, the location of the sale is Eagan, since the company shipped the candles to Eagan. Eagan does have a local tax, the 0.25 Dakota County Transit tax, the tax rate is 7.125 percent (6.875 percent state general rate sales tax and 0.25 percent Dakota County Transit tax).

If the direct seller remits the sales tax, the location of the sale is St. Paul, since that is where the direct seller delivered the candles. The tax rate is 7.625 percent (6.875 state general rate sales tax, 0.5 percent St. Paul tax, and 0.25 percent Dakota County Transit tax).

Example C: The direct selling company ships the products to the direct seller in Bloomington. The direct seller delivers the products to customers in various cities, including Minneapolis, St. Paul, and several suburbs.

If the company remits the tax, the location of the sale is Bloomington, where the company shipped the products. The sales tax rate is 7.525 percent (6.875 percent state general rate sales tax, 0.15 percent Hennepin County tax, and 0.5 Hennepin County Transit tax).

If the direct seller remits the tax, the location of each sale is the location where the direct seller delivers the goods. The direct seller must charge the sales tax based on the sales tax rate at the location where they deliver the items.

Adjustments to sales price

This section only applies if the direct selling company is collecting and remitting tax on behalf of their direct sellers. Adjustments are only needed when the actual price paid is different from the suggested retail price.

Difference in price

Example 1: You are a direct seller and order an item with a suggested retail-selling price of \$40 and pay the 6.875 percent state sales tax of \$2.75 to the direct selling company. You resell the item for \$45, plus the correct amount of sales tax, \$3.09. Report and pay the additional \$0.34 in tax to the direct selling company. The direct selling company must remit sales tax on the actual selling price.

Example 2: You are a direct seller and buy an item with a suggested retail price of \$40 and pay the 6.875 percent state sales tax of \$2.75 to the direct selling company. You resell the item for \$36, plus the correct amount of sales tax \$2.48 (not \$2.75).

You can notify the direct selling company of the actual selling price. They may allow an adjustment, and will provide you with their requirements for obtaining an adjustment. However, they are not required to make an adjustment, since the actual selling price paid by the final purchaser was not known to them.

Purchases for personal use

Example 3: You are a direct seller and buy products from a direct selling company for your own use. This is not a direct selling situation. For these purchases, you are considered to be a customer of the direct selling company rather than a direct seller, since you are not reselling the items.

You can notify the company that the products are for personal use, so that the company charges you sales tax on the actual price you paid for the products. In this example, if tax is charged on an amount other than the price you pay, direct selling companies are not required to give refunds or make adjustments. The company must reduce the amount they report and remit on their return if they allow the adjustments to the direct seller.

Delivery charges

Delivery charges include transportation, shipping, postage, handling, crating, packing, and similar charges. Delivery charges are taxable unless the item purchased is not taxable. If the delivery charge is one lump sum for both taxable and nontaxable items, tax applies to the entire delivery charge. If delivery charges are separately stated for each item, only delivery charges for the taxable items are taxable. For more information, see Fact Sheet 155, *Delivery Charges*.

Sales aids

Sales of advertising display cases, demo kits, sample cases, brochures, sales catalogs (unless they're issued at least four times per year), order forms, and similar items, are taxable. If a direct selling company provides these items free to Minnesota direct sellers or customers, the direct selling company must pay Minnesota Sales or Use Tax on their cost of the items. If the direct selling company sells these items, it must collect sales tax on the selling price.

Prizes, free samples, and gifts

Sales or use tax must be paid on taxable items given away as prizes, free samples, or gifts. The giver of the prize, free sample, or gift (the direct seller, the direct selling company, or host) must pay sales or use tax, including applicable local tax, on their cost of the item.

Bundled sales

A bundled sale occurs when an item is given free with the purchase of another item, or when taxable and nontaxable items are combined for a single price.

Examples

- As a monthly special, the customer receives a free spoon with the purchase of a mixing bowl.
- A demo kit for a food company contains taxable items such as order forms, pencils, carrying cases, and nontaxable food items.

The seller may buy the items included in the bundled sale exempt for resale. The seller must charge sales tax on the total amount charged for the bundled sale, unless all items included in the sale are nontaxable items. When the bundled sale includes both taxable and nontaxable items, the sale is taxable.

Host credits and discounts

Credits

Some direct selling companies or direct sellers offer credits to a person who hosts a party, based on purchases at the party, number of guests at the party, or other reasons. The credits are treated as a scrip (a form of payment). Sales tax is due on the full sales price of taxable items purchased with credits, regardless of the amount of cash paid for the merchandise.

Example

- A host earns \$45 in merchandise credits for receiving orders of \$250 from guests. The host selects taxable items totaling \$52 and pays the \$7 difference. The host owes sales tax on her entire \$52 order. Although the host paid only \$7 in cash, the \$45 credit is part of the selling price and is taxable.

Discounts

When a host is offered items at half price (or other reduced price) for party bookings or for reaching certain sales levels, tax is due on the amount paid for the item.

Example

- For obtaining two bookings from their guests, a host is able to purchase one item at half price. They select a \$50 taxable item, and pays \$25 for it. They owe sales tax on \$25.

Sales to nonprofit organizations

Qualifying nonprofit organizations must give you a completed Form ST3, *Certificate of Exemption*, to claim exemption on purchases. You must keep exemption certificates in your records; do not send them to our office.

Use tax

When you buy business equipment and supplies, such as computer hardware or software, office supplies, or furniture, you must pay sales or use tax. Sales tax is generally charged by the seller at the time of sale. However, if the seller does not charge Minnesota Sales Tax, you must pay use tax. Use tax is due on the cost of the item.

You must also pay use tax when you take items out of inventory for business or personal use (your own use or to give as a gift, prize, or sample).

Report state and local use tax when you electronically file your Minnesota Sales and Use Tax return. For more information, see Fact Sheet 146, *Use Tax for Businesses*.

Use tax is also due by individuals. For more information, see Fact Sheet 156, *Use Tax for Individuals*.

Local Sales and Use Taxes

If you are located in or make sales into an area with a local tax, you may owe local sales or use tax. For more information, see Fact Sheet 164, *Local Sales and Use Taxes*.

Legal References

Minnesota Statute 297A.83, Application for permit

Minnesota Rule 8130.4000, Collection of tax at time of sale

Other Fact Sheets

146, *Use Tax for Businesses*

155, *Delivery Charges*

156, *Use Tax for Individuals*

164, *Local Sales and Use Taxes*