

## Isolated and Occasional Sales

*Sales Tax Fact Sheet 132*

### What's new in 2018

We clarified when sellers are required to collect local sales taxes. See Local Sales and Use Taxes on page 6.

Most sales of business equipment and goods are taxable. Only certain sales are exempt if they are considered “isolated and occasional”. An “isolated” sale happens once. An “occasional sale” is infrequent and does not reoccur with some degree of regularity.

This fact sheet covers this exemption and the following areas:

- Trade or business
- Nonprofit organizations
- Sale of property used in a trade or business
- Business inventory
- Sales of all assets
- Garage sales and personal sales
- Estate sales
- Auctions
- Consignment sales and consignment auctions
- Brokered sales
- Internal Revenue Code
- Miscellaneous sales
- Reporting taxes
- Filing sales and use taxes

The isolated and occasional sales exemption only applies in specific circumstances such as:

- Personal property
- Irregular sales
- Certain transfers under Internal Revenue Codes

It does not apply to:

- Sales of inventory
- Sales happening in the normal course of business
- Sales of goods or equipment that are primarily used in your trade or business
- Leases of tangible personal property

The information in this fact sheet is based on the assumption that the sales are not transactions exempted by one of the Internal Revenue Codes (page 5) or Minnesota sales tax law. It also applies only to sales of tangible personal property by a trade or business that could be expensed or depreciated for income tax purposes.

### Trade or business

Taxable goods and services sold in the normal course of a trade or business do not qualify as isolated or occasional sale. **Examples:**

- A construction company frequently leases its unused excavating and hauling equipment (without an operator) to another business. These leases are taxable because they are a regular practice that produces income for the company.
- A luxury boat dealer sells one or two boats a year. While infrequent, the sales are taxable because they are made in the normal course of business.

### Nonprofit organizations

Nonprofit organizations that are exempt from federal income tax are not a trade or business. (e.g., organizations exempt under Section 501(c)(3)). Examples include:

- American Red Cross
- Churches

- Girl/Boy Scouts
- Nonprofit hospitals
- United Way agencies

Some nonprofit organizations operate a trade or business that does not relate to their exempt purposes. If equipment primarily used in the trade or business portion of a nonprofit organization is sold, it is taxable.

**Example**

- A nonprofit hospital has a gift shop that sells taxable items to the general public. The gift shop is a trade or business. Sales of items used by the gift shop, such as shelves or computer used in the store are taxable, since these activities are not related to the hospital’s exempt purpose.

**Government organizations**

Government organizations, including public schools, are not a trade or business. Their activities are performed for public purpose. If a government agency makes sales of surplus equipment or other tangible personal property on a regular basis the sales are taxable.

**Sale of property used in a trade or business**

Sales of tangible personal property that are primarily used in a trade or business are exempt if the sale is not made in the normal course of business of selling that kind of property and one of the following conditions are met:

- The sale is a sale of substantially all of the assets of a trade or business (page 3);
- The total amount of gross receipts from the sale of trade or business property made during the calendar month of the sale and preceding 11 calendar months does not exceed \$1,000;
- The sale is the sale of farm machinery;
- The sale is a farm auction sale (page 4);
- The sale occurs in a transaction subject to or described in one of the Internal Revenue Code sections explained on page 5; or
- The sale is between members of a controlled group as defined in section 1563(a) of the Internal Revenue Code.

The sale of tangible personal property primarily used in a trade or business is taxable. See the chart below to determine if the tangible personal property is primarily used in a trade or business.

Percent of operating time in a trade or business	Does it qualify for the isolated or occasional sale rule?
The seller used the item 50 percent or more	No
The seller used the item less than 50 percent	Maybe

**Business Inventory**

Sales of business inventory do not qualify for the isolated or occasional sale exemption. Business inventory is sold in the regular course of business. To sell inventory exempt from sales tax, the seller must obtain a completed Form ST3, *Certificate of Exemption* from the buyer.

**Sales of All Assets**

Sales of substantially all of the assets of a trade or business includes the assets of a separate division, branch, or identifiable segment of a business, if, before the sale takes place, the income and expenses for each separate division, branch, or segment can be easily identified from the books or records. If the separate division, branch, or segment is leased or rented, rather than sold, the assets are taxable.

Sales of *substantially* all of the assets of a trade or business qualify for the isolated/occasional sales rule if both the following are met:

- 90 percent or more of the total fair market value of tangible personal property of the trade or business is sold
- All of the assets are sold within a 12-month period beginning on the date of the first sale of assets

The sale of substantially all of the assets can be a single transaction or a series of related transactions taking place within the 12-month period. Sales of assets after the 12-month period are subject to sales or use tax.

**Example**

- A company has a retail hardware store and does construction work. The records of the businesses are kept separately. The retail hardware store closes, but the construction work continues. The sale of all the assets of the hardware store is exempt from tax. Inventory sales are taxable unless purchased for resale.

**Garage Sales and Personal Sales**

Sales of personal items between individuals are usually exempt as isolated or occasional sales. Sales of personal belongings are not taxable if the seller is not in the business of making retail sales, and if no business assets or inventory are sold. For details, see the table.

In this situation	Does tax apply?
A person sells personal belongings at a garage sale, through word of mouth, bulletin board notices, newspaper ads, etc.	No
A person sells items regularly and purchases the items with intentions to resell them. They are considered a retail seller.	Yes, on all taxable items.
Someone sells trade or business assets or inventory at a garage sale.	Yes, on all taxable items.

**Estate Sales**

An estate sale is a sale or auction of someone’s household goods. The property is usually a collection of household goods such as furniture, jewelry, clothing, etc.

When household goods are sold at an estate sale, the sale is a nontaxable isolated or occasional sale, if no business assets or inventory are sold, and if the following conditions are met:

- (1) the title is exchanged directly between the owner and the buyer;
- (2) the seller does not carry insurance on the property; and
- (3) the seller and the owner of the property to be sold have entered a written agreement.

If a seller consigns household goods or makes estate sales at a selling event, the sale of taxable items is taxable. See Consignment sales (page 4) and Sales at selling events (page 6).

**Auctions**

An auction is conducted by an auctioneer and items are sold in a public forum with open and competitive bidding. An auction does not include a consignment auction or consignment sale.

If the item being sold would be exempt as an isolated or occasional sale when sold by the owner of the property, it is exempt as an isolated or occasional sale at an auction. All of the following conditions must also be met:

- title is exchanged directly between the owner and the buyer;
- the auctioneer does not carry insurance on the property
- the auctioneer and the owner of the property entered into a written agreement as described in Minnesota Statutes 330.10.

If the sale is taxable, the person collecting the payment is responsible for charging the tax on the sales price of the property. This may be the auctioneer, bank, owner of the property, or any other person collecting payment from buyers.

If business property is consigned to an auctioneer for sale; such as, equipment primarily used in the business or business inventory, the sale is subject to tax.

**Examples**

- An auctioneer sells personal belongings at an estate sale. No tax is due if the conditions are met.

- An auctioneer purchases tires from an individual. The tires are auctioned to the general public. The sale is subject to tax. The auctioneer took title of the tires and is selling the tires in the normal course of business.
- An excavating company contracts with an auctioneer to sell a bobcat and skid steer. The items are primarily used in the excavating business. The sale is subject to tax.

### **Farm auctions**

Farm auction sales are exempt from tax. A farm auction is a public auction conducted by a licensed auctioneer. Substantially all of the property sold consists of property used in the trade or business of farming and non-business property such as household goods.

## **Consignment sales and consignment auctions**

A consignment sale takes place when a retailer sells items owned by others in the retailer's normal course of business. The retailer may also sell their own property.

Consignment auctions are regularly scheduled events that are open to the public to sell their items. These auctions are held at the same location. Consignment auctions are not auctions as previously described.

Consignment sales and consignment auctions are not taxable if all of the following conditions are met:

- title to the property passes directly from the owner to the buyer;
- payment does not pass through any accounts of the retailer or auctioneer;
- the retailer or auctioneer does not carry insurance on the property; and
- the rights to accept or reject any offer are retained by the owner.

If the sale is taxable, the person collecting the payment is responsible for charging the tax on the sales price of the property.

### **Examples**

- A person sells used books on consignment at a retail store. Under the contract, the store determines the selling price of the books. The sale is taxable.
- A person sells a lawn mower at a consignment auction. Title passes from the owner directly to the buyer. Payment is deposited in the auction company's books. The company deducts its fee and pays the owner the remaining amount. The sale is subject to tax.

## **Brokered Sales**

Retailers must charge tax on all sales of new and used taxable items. Sales of personal items (not used in a trade or business) between individuals may be exempt as an isolated or occasional sale.

If a retailer – acting as a broker – sells property for an individual and receives a fee or commission for doing so, sales tax does not apply if all of the following conditions are met:

- The property is not business equipment.
- The buyer and owner of the property directly exchange money and (if applicable) title for the sale. (The money does not pass through any of the broker's accounts.)
- The broker does not take title to the property, does not carry insurance on the property, and does not have control over the property, except for leasing or storage arrangements.
- The broker's only function is to advertise the property for sale, obtain offers to purchase, and inform the owner of potential buyers. The owner must have rights to accept or reject any offer.

## Examples

- A boat marina sells a boat on the behalf of an individual who is not in the business of selling boats. The marina advertises the boat for sale and obtains purchase offers on the boat. The marina informs the individual of the offers. The individual retains the right to accept or reject the offers. Title to the boat passes directly from the individual to the buyer. Payment is made directly to the individual. Upon the sale of the boat, the marina receives a commission from the seller. The sale is exempt from tax.
- A boat marina sells a boat on the behalf of an individual. The boat owner has no involvement in the sale. Payment for the boat is deposited in the marina's account. The sale is subject to sales tax.

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## Internal Revenue Code

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Occasional sales of items used in a trade or business are exempt when reported under certain sections of the Internal Revenue Code (IRC). These IRC sections only apply to transfers between partnerships and their partners, and corporations and their shareholders.

Limited liability companies (LLCs) are treated as either corporations or partnerships for federal income tax purposes. Transfers between LLCs and their members are covered by one of the IRC sections.

If an LLC is owned by one individual and does not elect to be a corporation for federal income tax purposes, the LLC is not a partnership or a corporation. The transfers between the LLC and its one member are not exempt from sales tax under this section.

For the sale to be exempt it must qualify and be reported as a transaction under one of the IRC sections listed below. (For section details, see the federal tax code.)

- IRC Section 118. Contributions to the capital of a corporation.
- IRC Section 331. Gain or loss to shareholders in corporate liquidations.
- IRC Section 332. Complete liquidations of subsidiaries
- IRC Section 336. Gain or loss recognized on property distributed in complete liquidation.
- IRC Section 337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary.
- IRC Section 338. Certain stock purchases treated as asset acquisitions.
- IRC Section 351. Transfer to corporation controlled by transferor.
- IRC Section 355. Distribution of stock and securities of a controlled corporation.
- IRC Section 368. Definitions relating to corporate reorganizations.
- IRC Section 721. Nonrecognition of gain or loss on contribution (partnerships).
- IRC Section 731. Extent of recognition of gain or loss on distribution (partnerships.)
- IRC Section 1031. Exchange of property held for productive use or investment.
- IRC Section 1033. Involuntary conversions.
- IRC Section 1563(a). Controlled group of corporations. *Continued*

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## Miscellaneous Sales

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### Aircraft

Aircraft are not included in the occasional sales exemption. For more information, see the Aircraft Industry Guide.

### Bankruptcy sales

Bankruptcy sales are taxable. The bankruptcy trustee must collect and remit the sales tax. If the debtor has a sales tax permit, the tax must be reported under that permit. If the debtor does not have a permit, the bankruptcy trustee must report the tax. The trustee can obtain forms for reporting the tax from the Department of Revenue.

### **Motor vehicles**

Motor vehicles are subject to the motor vehicle sales tax. The occasional sales exemption does not apply to motor vehicle sales. For more information, see the Motor Vehicle Industry Guide.

### **Real Property**

Items considered improvements to real property are not subject to sales tax. If these items are removed from real property and sold, they are taxable.

### **Sale of repossessed items**

Sales of repossessed items by a bank or financial institution are taxable, unless the customer provides Form ST3, *Certificate of Exemption*. Selling repossessed items is considered a regular business activity of a bank or financial institution.

### **Sales at selling events**

Sales at selling events are taxable. Examples include:

- Antique shows
- Craft fairs
- Coin shows
- Comic book shows
- Convention exhibit area
- Fairs
- Flea markets
- Stamp shows

Any person who pays consideration of any kind to sell at such an event is considered to be in the business and must collect sales tax on all retail sales of taxable items. For more information, see Fact Sheet 148, *Selling Event Exhibitors and Operators*.

### **Stock purchases**

Purchases of stock in a corporation are not subject to sales tax. Stock is not tangible personal property. If a stock sale is structured as an asset sale, sales tax is due on the price of the tangible personal property.

### **Taxable items in a lump-sum sale**

When a sale of business assets is in a contract that combines both tangible personal property and real property; and the price of the tangible personal property is not separately stated, sales tax applies to the fair market value of the tangible personal property.

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## **Reporting taxes**

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### **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*.

### **Deed Tax**

When personal property is sold with real property, it may be subject to the state deed tax. Sales tax may also apply to the sales price or fair market value of the tangible personal property. Do not include deed tax in the base price subject to sales tax.

### **Installment Payments**

If installment payments are made, sales tax is due as follows:

- If you use the accrual accounting basis, the tax must be reported when the sale is made.
- If you use the cash accounting basis, the tax must be reported when you receive payment.
- If the sale is a lease, tax is due on each lease payment

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## Filing Sales and Use Tax

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When filing your sales and use tax return, you must report all:

- sales tax collected
- sales of business assets
- use tax you owe

If you are not registered for sales and use tax, you must register to collect and report taxes.

### Legal References

Minnesota Statutes 297A.61

subd. 12, Farm machinery

subd. 21, Normal course of business

Minnesota Statutes 297A.67, subd. 23, Occasional sales

Minnesota Statutes 297A.68, subd. 25, Sales of property used in a trade or business

Minnesota Statutes 297A.87, Flea markets, shows, and other selling events

Minnesota Rule 8130.5800, Isolated or occasional sales of personal property used in a trade or business

### Revenue Notices

98-04, No Occasional Sales at Selling Events

### Other Fact Sheets

106, *Farm Machinery*

142, *Sales to Governments*

146, *Use Tax for Businesses*

148, *Selling Event Exhibitors and Operators*

164, *Local Sales and Use Taxes*

### Industry Guides

Aircraft

Motor Vehicle