2010 SALES AND USE TAX LEGISLATIVE BULLETIN
(2010 Regular and First Special Session)

MINNESOTA • REVENUE

Appeals and Legal Services Division
600 North Robert Street
Saint Paul, Minnesota 55146-2220

Bulletin Date: June 7, 2010

Unless otherwise noted, the provisions discussed in this bulletin can be found in 2010 Minn. Laws, Chapter 389.

Claims for refunds on behalf of purchasers. Minn. Stat. § 289A.50, subd. 2, was amended to provide that a seller claiming a refund on behalf of a purchaser must return to the commissioner within 60 days of the issuance of the refund, any amount that has not been credited or refunded to the purchaser. Within 3-1/2 years after the commissioner refunds the tax and interest to the vendor (for indefinite period if the refund was induced by fraud or misrepresentation), the commissioner may assess the vendor for underpayment of sales tax and interest, equal to that portion of the refund claim that was not refunded or credited to the purchaser. Effective for refunds issued after June 30, 2010.

Motor vehicle dealer service contract definition. Minn. Stat. § 297A.61, subd. 3, was amended to replace an obsolete reference in paragraph (k) to Minn. Stat. § 65B.29, which was repealed during the 2008 legislative session. As amended, for purposes of determining when the rental of a motor vehicle to a customer is a sale and a purchase, the statute provides either that the vehicle is rented by the customer for a consideration, or that the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section Minn. Stat. § 59B.02, subd. 11. Effective August 1, 2010. 2010 Minn. Laws, Chapter 382, section 61.

Combined sales tax rate. Minn. Stat. § 297A.62 was amended to add a subdivision 4, to clarify that the combined sales tax rate of 6.875 percent applies throughout Minn. Stat. ch. 297A, not including Section 297A.65 [calculation of in-lieu lottery tax]. Section 297A.62, subd. 3 [calculation of tax on manufactured homes and park trailers], was amended so that the combined rate applies. During the 2009 legislative session, section 297A.62, subd. 1a, was added, temporarily imposing a 0.375 percent tax rate in addition to the 6.5 percent tax rate of subd. 1, as mandated by our State's Constitution. Currently, statutory exemption provisions in ch. 297A refer only to the tax rate of 297A.62, subd. 1. Effective retroactively for sales and purchases made after June 30, 2009, except that sales and purchases subject to subdivision 3 are effective for sales and purchase made after June 30, 2010.

120 days to obtain exemption certificates. Minn. Stat. § 297A.665 was amended to clarify that if a seller does not provide substantiation within 120 days after the date the commissioner requests substantiation, the exemptions claimed by the seller must be disallowed. The current law relieves the seller of liability if the seller provides the substantiation within 120 days. Effective May 28, 2010.

Transitional period for pre-existing contracts or bids. Minn. Stat. § 297A.68, subd. 39, was amended to delete the requirement that for each qualifying contract or bid the contractor must give the seller documentation of the contract or bid, since the seller need only receive a fully completed exemption certificate, and to specifically require the contractor to keep the documentation. Effective May 28, 2010.

Fund-raising exemption. Minn. Stat. § 297A.70, subd. 13, was amended to make it explicit that organizations that exist solely for the purpose of providing educational or social activities to young people must be nonprofit in order for their sales for fund-raising purposes to be exempt. When Minn. Stat. ch. 297A was recodified in the year 2000, the “nonprofit” designation was inadvertently omitted. Effective May 28, 2010.

Construction materials for qualified low-income housing projects. Minn. Stat. §297A.71, subd. 23, was amended to expand the existing sales tax exemption for low-income housing to include housing provide by a limited liability company that consists of a sole member that is a nonprofit corporation. Effective for sales and purchases made after June 30, 2010.

Hydroelectric generating facility. Minn. Stat. §297A.71, subd. 39, was amended to extend an expired sales tax exemption until December 31, 2010, for materials and supplies in the construction of a hydroelectric generating facility on the Mississippi River near St. Anthony Falls. The project, which was supposed to be completed by December 31, 2009, was delayed because of the 35W bridge collapse. The extension until the end of 2010 is effective retroactively for sales and purchases made after December 31, 2009.

Aerospace defense manufacturing facilities. Minn. Stat. §297A.71, was amended by adding a subdivision to provide an exemption of materials and supplies used in the construction or expansion of a facility that manufactures aerospace or defense related sensors and produces micro-electrical mechanical systems. The tax is paid up front and the company must apply for a refund. To apply for the refund the entity must first show that it employs at least 1,653 full-time equivalent workers within Minnesota; made a capital investment of at least $59 million, and must initially apply to the Department of Employment and Economic Development (DEED) for certification no later than one year from the final completion date of construction of the expansion of the facility. Effective for sales and purchases made after July 1, 2010, and before December 31, 2015.

Minn. Stat. §297A.75, subds. 1, 2, and 3, were amended to provide that the company must pay the tax up front and apply for a refund; that the owner of the qualifying business must apply for the refund; and that any contractor, subcontractor, or builder must provide the owner of the exempt facility with the information necessary to apply for the refund. Effective May 28, 2010.

Motor vehicle lease sales tax revenue. Minn. Stat. § 297A.815, subd.3, was amended so that for purposes of determining the amount of the motor vehicle sales tax revenue to be transferred to the greater Minnesota transit account and the county state-aid highway fund, the calculation of “net revenue” will equal the revenues, including interest and penalties, collected under § 297A.815 (sales tax on a lease of a motor vehicle) during the fiscal year, minus $30,100,000 in fiscal year 2011, $31,100,000 in fiscal year 2012, and $32,000,000 in fiscal year 2013 and the following fiscal years. Effective July 1, 2010, beginning with estimates to be made by the commissioner of revenue on or before June 30, 2011, and transfers by the commissioner of management and budget on or after July 1, 2011. 2010 Minn. Laws, Chapter 216, Section 16.

Seller and purchaser relief from liability. Minn. Stat. § 297A.995, subd. 10, was amended to provide that if there are not at least 30 days between the enactment of a new tax rate and the effective date of the new rate, then for up to thirty days sellers and certified service providers shall be relieved from liability to the state for failing to collect tax at the new rate; provided the seller or certified service provider continues to impose and collect the tax at the immediately preceding tax rate, does not solicit purchasers at the old rate, and no fraud is involved. Minn. Stat. § 297A.995, subd. 11, was amended to provide similar relief to purchasers. These amendments are made to conform with the Streamlined Sales Tax Agreement. Effective May 28, 2010.

Create Automotive Recovery Zone. Minn. Stat. §§ 469.310 and .314 were amended to allow a business engaged in the assembly of motor vehicles at a create automotive recovery (CAR) zone to take advantage of certain JOBZ tax incentives and credits. Section 469.310, subd. 6, was amended to expand the meaning of "job opportunity building zone" or "zone" to include a CAR zone. Section 469.310, subd 11, was amended to expand the meaning of "qualified business" in a zone to include a business in a CAR zone that engaged in the assembly of motor vehicles at the zone location, and new subdivisions 14 and 15 define "motor vehicle assembly facility" and "create automotive recovery zone."

Section 469.314, subd. 1, is amended to allow a designation of not more than one CAR zone. Section 469.314, subd. 4, is amended to provide a designation schedule for a CAR zone. References to Minn. Stat. §§ 469.310 and .314 are found in Minn. Stat. § 297A.68, subd. 37, exempting certain products in job opportunity building zones . [See the CAR zone summary in the 2010 Corporate Franchise and Individual Income Tax Legislative Bulletin for more details.]

Effective April 2, 2010. 2010 Minn. Laws, Chapter 216, Sections 33, 34, 35, 36, 40, and 41.

Special local taxes. Minn. Stat. ch. 645, was amended by adding section 645.025, to provide that for special laws enacted or amended after 2009, that grant a local government unit or group authority to impose a local tax other than a sales tax, if the Department of Revenue will be administering the tax, then the local government unit or group, in defining terms found in the special law, must adopt definitions found in Minn. Stat. ch. 297A, or in Minn. Rules, ch. 8130, with terms consistent with the department's position as to the extent of their tax base. The purpose behind this legislation is to lessen administrative compliance burdens and complexity. Effective May 28, 2010.

Vehicle crimes unit appropriation. 2009 Minn. Laws, ch. 36, art. 1, sec. 5, subds. 3 and 4, were amended to provide appropriations to the Department of Public Safety for Capitol Security's Vehicle Crimes Unit to investigate and for the Driver and Vehicle Services division to assist in that unit's investigation of registration tax and motor vehicle sales tax liabilities from individuals and businesses that currently do not pay all taxes owed and illegal or improper activity related to sale, transfer, titling, and registration of motor vehicles. Effective July 1, 2010. 2010 Minn. Laws, Chapter 388, Article 3, Sections 3 and 4.

Exemption from 5% motor vehicle rental fee; effective date change. 2009 Minn. Laws, Chapter 88, Article 4, Section 5, was amended to correct the effective date so that it applies to leases or rentals made or renewed on or after July 1, 2009, rather than to registrations made or renewed on or after that date. Effective retroactively for leases or rentals made or renewed after June 30, 2009.

Budget Provisions

Monthly accelerated sales and use tax payments. Minn. Stat. § 289A.20, subd. 4, was amended so that retailers that are required to file June accelerated payments of sales and use tax (having a liability of $120,000 or more during a fiscal year ending June 30, 2009, and fiscal years thereafter) must accelerate the payment of a portion of each month's liability. The payment of all the liabilities on the return must be accelerated whenever the liability is $120,000 or more separately for the tax imposed under chapter 297A, a fee that is to be reported on the same return as and paid with the chapter 297A taxes, or any other tax that is to be reported on the same return as and paid with the chapter 297A taxes. Except for the June accelerated payment, which did not change, retailers must elect one of two of the following payment methods:

Method 1: on or before the 14th day of the month following the month in which the taxable event occurred, the vendor must remit to the commissioner 90 percent of the estimated liability for the month in which the taxable event occurred.

Method 2: on or before the 20th day of the month in which the taxable event occurs, the vendor must remit to the commissioner a prepayment for the month in which the taxable event occurs, equal to 67 percent of the liability for the previous month. If the retailer fails to elect a method, then the retailer is deemed to have elected method 2 (pay 67 percent on the 20^{th} of month in which the taxable event occurs). The retailer's election is permanent as long as the retailer is required to make June accelerated payments.

When the cash flow account and the budget reserve account reach the amounts listed in Minn. Stat. § 16A.152, the commissioner of management and budget shall notify the commissioner of revenue. At least 90 days after these accounts reach the listed amounts, at the start of the first calendar quarter, the vendors must suspend remittance of the required monthly accelerated payments, and the taxes imposed by chapter 297A become due and payable to the commissioner on the 20th day of the month following the month in which the taxable event occurred. Payments of tax liabilities for taxable events occurring in June are not changed.

Effective for taxes due and payable after September 1, 2010. 2010 Minn. Laws, First Special Session, Chapter 1, Article 2, Section 4.

Penalty for underpayment of accelerated payment of monthly sales tax liability; safe harbors. Minn. Stat. § 289A.60, was amended by adding a new subdivision that provides a ten percent penalty for underpayment of the accelerated payment of the monthly sales tax liability as follows:

(a) For those vendors that must remit a 90 percent payment by the 14th day of the month following the month in which the taxable event occurred, the vendor shall pay a penalty equal to ten percent of the amount of liability that was required to be paid by the 14th day of the month, less the amount remitted by the 14th day of the month. *Safe harbor*—there is no underpayment penalty if the amount remitted by the 14th day of the month equals the least of (1) 90 percent of the liability for the month preceding the month in which the taxable event occurred, (2) 90 percent of the liability for the same month in the previous calendar year as the month in which the taxable event occurred, or (3) 90 percent of the average monthly liability for the previous calendar year.

(b) For those vendors that, on or before the 20th day of the month in which the taxable event occurs, must remit to the commissioner a prepayment of sales tax liabilities for the month in which the taxable event occurs equal to 67 percent of the liabilities for the previous month, the vendor shall pay a penalty equal to ten percent of the amount of liability that was required to be paid by the 20th of the month, less the amount remitted by the 20th of the month. *Safe harbor*—there is no underpayment penalty if the amount remitted by the 20th of the month equals the lesser of 67 percent of the liability for the month preceding the month in which the taxable event occurred or 67 percent of the liability of the same month in the previous calendar year as the month in which the taxable event occurred.

Effective for taxes due and payable after September 1, 2010. 2010 Minn. Laws, First Special Session, Chapter 1, Article 2, Section 5.

Delayed payment of sales and corporate franchise tax refunds. The commissioner of revenue is directed to delay the payment of a sufficient number of sales and use tax refunds and corporate franchise tax refunds so that $152,000,000 that would otherwise be paid during fiscal year 2011 is not paid until fiscal year 2012. This amount is in addition to $63 million in capital equipment refunds and $42 million of corporate franchise tax refunds, payment of which is being delayed until July 1, 2012, pursuant to the June 2009 unallotment announcements. The commissioner is also directed to minimize the amount of interest payable, where possible and administer this section to create the least adverse effect on tax administration and taxpayer compliance. Effective July 1, 2010. 2010 Minn. Laws, First Special Session, Chapter 1, Article 13, Section 6.

Local Taxes

Bloomington special taxing authority; sales tax imposition. 2008 Minn. Laws, Chapter 366, Article 5, Section 28, Subdivision 2, regarding the city of Bloomington's charter of a special taxing authority, was amended to lift the restriction concerning the amount of sales tax the authority may impose so that it may be less than one half of one percent. Effective upon local approval and compliance with Minn. Stat. § 645.021 by the city of Bloomington. 2010 Minn. Laws, Chapter 216, Section 49.

Proctor local sales tax proceeds and bonding authority. Removes the limit of $3.6 million of capital expenditures on the street and community center to be funded from the city of Proctor's existing sales tax and increases to $10 million the city's bonding authority to pay for these projects. Effective when approved by the voters at a general or special election held within two years after enactment and upon local compliance.

Rochester lodging tax and food and beverage tax; bonding and expiration of taxing authority. Allows the city of Rochester to issue up to $43.5 million in general obligation bonds to pay for the Mayo Civic Center Complex project to be funded by the city's lodging tax and food and beverage tax. The city does not have to hold an election to issue the bonds. The bonds are excluded from any city debt limits and any property tax needed to pay for the bonds are exempted from levy limits. Also clarifies that revenues may be used for payments of refund bonds for the project and adds standard language allowing extra revenue due to timing of expiration dates to be placed in the city general fund. Effective upon local compliance.

Detroit Lakes food and beverage tax. Allows the city of Detroit Lakes to impose up to a one percent food and beverage tax on sales at restaurants and places of refreshment. Requires the tax to be approved at a general or special election held within two years of enactment in order for the tax to be imposed. The tax would apply to on-sale intoxicating liquor and fermented malt beverage sales as well. The proceeds of the taxes may fund four projects: (1) control of flowering rush infestation; (2) construction and improvement of bike trails; (3) parking improvements for public facilities; and (4) redevelopment of the area returned to the city as part of the Highway 10 realignment. The taxes expire when the city determines sufficient revenues have been raised to fund the listed projects, including any associated bond costs. Provides that the city may enter into an agreement with the Department of Revenue to collect the authorized taxes. Requires that if the tax is collected by the state the standard collection, administration, and enforcement provisions of Minn. Stat. § 297A.99 apply. Effective upon local compliance.

Marshall lodging tax and food and beverage tax; bonding authority. Allows the city to issue $17.29 million in bonds without a separate referendum to pay for costs of new and existing facilities of the Minnesota Emergency Response and Industry Training Center and the Southwest Minnesota Regional Amateur Sports Center, including, but not limited to, acquiring property, predesign, design, and paying construction, furnishing, and equipment costs related to these facilities. The bonds are not included in any debt levy on the city and any property taxes needed to pay the bonds are exempt from levy limits.

Allows the city to impose up to a 1.5 percent local lodging tax without a referendum within a city-defined tax district. Allows the city to impose up to a 1.5 percent food and beverage tax in the city provided it is approved at a general or special election within two years. The general statutory provisions of Minn. Stat. § 297A.99 regarding administration, collection, and enforcement by the commissioner of revenue apply to the food and beverage tax.

Both the lodging tax and the food and beverage tax revenues must be used for operating costs of the Minnesota Emergency Response and Industry Training Center and the Southwest Minnesota Regional Amateur Sports Center, and may also be used to help pay for the $17.29 million in bonds. For any of these taxes to imposed, must be initially be imposed within two years of enactment. These taxes expire at the earlier of (1) 30 years after the tax is first imposed, or (2) when revenues are sufficient to meet the capital operating and administrative costs of the facilities funded under this bill.
Effective upon local compliance.

Giants Ridge recreation area lodging, admissions and recreation, and food and beverage taxes. Allows the city of Biwabik, with the approval of the Iron Range Resources and Rehabilitation Board (IRRRB), to impose up to a five percent lodging tax, up to a five percent tax on admissions to entertainment and recreational facilities and on receipts from the rental of recreation equipment, and up to one percent on restaurant food and beverage sales, all in the Giants Ridge Recreation Area. Any of these taxes may be imposed upon approval of the city council and a vote of at least seven members of the IRRRB. The revenues from these taxes must be deposited in the IRRRB account enterprise fund, and the IRRRB by a vote of at least seven members shall spend the money for construction, improvement, and maintenance of public facilities located in the Giants Ridge Recreation area.

The general statutory provisions of Minn. Stat. § 297A.99 regarding imposition, administration, collection, and enforcement by the commissioner of revenue apply to the food and beverage tax and to the admissions and recreation tax. If the admissions and recreation tax is imposed, the city ordinance must exempt the purchase of season tickets or season passes.

Effective upon local approval, which must occur before January 1, 2012.