

Technical corrections were made to this notice on December 2, 2002 by Revenue Notice # 02-20. Please see Revenue Notice # 02-20 for the corrected language.

Minnesota Revenue Notice # 00-10

Sales & Use Tax - Nexus Standards

Introduction

This revenue notice sets out the department's position on criteria for determining when an out-of-state retailer is required to register, collect and remit Minnesota sales or use tax on sales made into Minnesota.

Retail sales made in Minnesota of taxable goods and services are subject to Minnesota sales tax. *Minnesota Statutes*, section 297A.21, subdivision 3, provides that an out-of-state retailer who maintains a place of business in Minnesota must register to collect and remit sales or use tax on retail sales made from a location outside of Minnesota to a destination in Minnesota.

Minnesota Statutes, section 297A.21, subdivision 1, defines "retailer maintaining a place of business in this state" to mean any retailer who:

- has or maintains an office, place of distribution, sales or sample room or place, warehouse, or other place of business in Minnesota either directly or by a subsidiary.
- has a representative, agent, salesperson, canvasser, or solicitor (either permanent or temporary), who operates under the authority of the retailer or its subsidiary in Minnesota for any purpose, including repairing, selling, delivering, installing, or soliciting orders for the retailer's goods or services.
- leases tangible personal property located in Minnesota.
- delivers tangible personal property into Minnesota in their own vehicles.

Department Position

It is the department's position that an out-of-state business is maintaining a place of business in this state and has sufficient nexus to be required to collect Minnesota sales or use tax when it conducts business activity in Minnesota on at least four days during a 12-month period. The out-of-state business is required to register, collect and remit Minnesota sales or use tax on sales made from outside Minnesota to destinations in Minnesota starting on the fourth day of such activity and for all sales made that day through the following 11 calendar months. (See the examples below.)

Out-of-state businesses must collect and remit Minnesota sales or use tax on all taxable sales made while in the state, even if the business does not meet the guidelines above.

Business Activity in Minnesota

Following are examples of business activity in Minnesota. Each day, or part of a day, that an out-of-state business participates in or conducts any of the following or similar activities is counted as a day for purposes of determining nexus for sales and use tax purposes.

- Conducting business activity in Minnesota by owning, leasing or maintaining tangible personal property or real property located in Minnesota.
- Providing taxable services while in Minnesota.
- Engaging in convention or trade shows, or conducting seminars or similar events for the purpose of promoting or conducting business activity while in Minnesota.
- Soliciting orders while in Minnesota.
- Making repairs, doing warranty work, or providing or arranging for maintenance or service in Minnesota. (Also see Revenue Notice # 96-16, Corporate Franchise & Sales and Use Tax Nexus, In-state Repair Services by Computer Companies)
- Installing or assembling products in Minnesota.

- Investigating, handling or otherwise assisting in resolving customer issues or complaints while in Minnesota.
- Providing customers any kind of service or technical assistance while in Minnesota, including but not limited to, engineering assistance, consulting service, training, design service, quality control, product inspection, or similar services.
- Providing delivery into Minnesota in vehicles owned, leased, or maintained by the business.

The following activities are not considered when determining whether an out-of-state business has nexus with Minnesota unless they involve any of the above activities or activities similar to those described above.

- Meeting with Minnesota suppliers of goods and services.
- Meeting in Minnesota with government representatives in their official capacity.
- Attending board meetings, retreats, seminars, or conferences (not as a seller) in Minnesota.
- Holding recruiting or hiring events in Minnesota.
- Set up or tear down of displays before and after trade shows, seminars, and similar events.
- Advertising in Minnesota through various media. *Minnesota Statutes*, section 297A.21, subdivision 4, provides that under certain circumstances regular or systematic solicitation of sales through advertisements in Minnesota creates nexus. Minnesota will enforce these provisions to the extent allowed by the United States Constitution and the laws of the United States.

Examples

1. Representatives for an out-of-state company spend five days in Minnesota for a trade show. The trade show is a three-day event, but the representatives come a day early to set up their display booth and spend a day after the event to take down and pack the display. This is the company's only business activity in Minnesota during the past 12 months. They make several sales to customers at the show. The company must register and collect and remit Minnesota sales tax on the sales made at the show. However, they are not required to collect Minnesota tax on any other sales made into Minnesota from outside the state since they had less than four days of business activity in Minnesota during the past 12 months.

2. In September 1999 and October 1999, representatives for an out-of-state company come into Minnesota for two days each month to complete warranty repair work on equipment. Since the company has four days of business activity in Minnesota, they are required to collect and remit Minnesota tax on all sales made from outside Minnesota to destinations in Minnesota beginning with the fourth day of business activity in Minnesota and continuing through the following 11 calendar months. Assuming that this company discontinues all sales activity in Minnesota after October 1999, they must collect and remit Minnesota sales or use tax on all sales starting on the date of the fourth sales activity in October 1999 and continuing through September 2000.

3. Same as example two above, except the out-of-state company continues to send representatives into Minnesota to do warranty repair work after October 1999. The company will continue to have nexus with Minnesota. In the future, if the company discontinues its business activities in Minnesota, its nexus will continue for 11 months past the month of its last business activity in Minnesota.

Note: In the examples above, if the out-of-state company is not required to collect Minnesota sales or use tax, its customers are required to remit use tax directly to the state on their purchases. The out-of-state company may, as a convenience to its customers, register and collect and remit Minnesota tax on any sales made to them.

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