Minnesota revenue notice number 02-10

Sales and Use Tax - Single-Member Limited Liability Companies

Background

Minnesota Statutes, section 322B.105 allows the formation of a limited liability company ("LLC"). A single-member LLC ("SMLLC") is expressly permitted by *Minnesota Statutes*, section 322B.11.

For income tax purposes, an LLC that is "formed under either the laws of this state or under similar laws of another state, will be treated as an entity similar to its treatment for federal income tax purposes." *Minnesota Statutes*, section 290.01 (3b) (1998). The department published further guidance in Revenue Notice # 97-03.

Issue

While it may be clear that a LLC or SMLLC is disregarded for state income tax purposes, questions have arisen as to whether the separate legal existence of the entity is recognized for sales tax purposes. The purpose of this revenue notice is to explain how an LLC or a SMLLC will be treated for sales tax purposes in the state of Minnesota.

Department Position

For purposes of the sales tax, Minnesota will treat a LLC or SMLLC as a separate legal entity. Thus, a SMLLC owned entirely by Corporation "A" is not treated as a branch or division of Corporation "A". Transfers of tangible personal property and taxable services for consideration between a person, as defined in *Minnesota Statutes*, section 297A.01, and an LLC or SMLLC are subject to the Minnesota sales and use tax law, unless exempted by statute. A SMLLC or a corporation owning a SMLLC may purchase items exempt for resale if the items are purchased exclusively for resale to either the other entity or a third party. Even though an SMLLC and a corporation that owns the SMLLC are treated as separate legal entities for purposes of the sales tax, if the Minnesota entity is acting as an agent or representative of a non-Minnesota entity, the non-Minnesota entity will be found to have nexus with Minnesota.

Example #1

Corporation "A" is in the business of owning and operating hotels. Corporation "A" forms a single member LLC, in which Corporation "A" is the only member. The SMLLC purchases personal property from a vendor to furnish the hotels. The SMLLC leases the personal property to Corporation "A". The lease of the tangible personal property by the SMLLC to Corporation "A" is a retail sale. Hence, the SMLLC is responsible for collecting the sales tax from Corporation "A" on this transaction.

Example #2

Corporation "B" establishes an SMLLC that provides cellular phone service. Corporation "B" then purchases cellular phone service from the SMLLC. Because cellular phone service is a taxable service in Minnesota, and because the SMLLC is considered a separate legal entity for purposes of the sales and use tax, Corporation "B" must pay sales tax on its purchase of cellular phone services from its wholly owned SMLLC.

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