

# MINNESOTA DEPARTMENT OF REVENUE

## Revenue Notice # 06-02: Job Opportunity Building Zones – Definition of Qualified Business – Prohibition Against Retail

### Introduction

Under the Minnesota Job Opportunity Building Zone (“JOBZ”) laws, a variety of tax exemptions and credits are available to qualified businesses that are operating in a Zone. During the 2005 Special Session of the Minnesota Legislature, the definition of “qualified business” for purposes of the JOBZ program was amended to preclude retailers from qualifying for JOBZ benefits. In particular, Minnesota Statutes, section 469.310, subdivision 11, was amended by 2005 Minnesota Laws, 1st Special Session, Chapter 1, Article 4, Section 107 to read, in part:

- (f) A business is not a qualified business if, at its location or locations in the zone, the business is primarily engaged in making retail sales to purchasers who are physically present at the business's zone location.

The change is effective for businesses that sign business subsidy agreements after June 30, 2005.

This revenue notice (developed in consultation with the Department of Employment and Economic Development) provides guidance on the scope of this law change. It describes those businesses that are not eligible for JOBZ benefits because at their JOBZ location the business is engaged in making retail sales. Nothing in this notice is meant to imply that any other businesses are appropriate JOBZ businesses: all such businesses must meet all other JOBZ eligibility requirements before qualifying for JOBZ tax benefits.

### Department Position

#### 1. Definition of retail sale

- A. A business is engaged in making retail sales if it is selling any merchandise to the general public. Many, but not all of these businesses are classified under the North American Industry Classification System (NAICS) under “Retail Trade”. Businesses classified under this section include businesses such as grocery stores, gasoline stations, hardware stores, automobile dealerships, and department stores.
- B. A business is engaged in retail sales if it leases merchandise to the general public. This includes businesses such as video or furniture rental stores.
- C. Restaurants, bars and other businesses that sell food or beverages to consumers are also engaged in making retail sales.

#### 2. Zone activities must be retail operations

A business is only a retail operation if the business being conducted at the JOBZ location involves sales to purchasers who are physically present. The mere fact that a business is primarily engaged in retail sale activities (as described above) does not preclude it from being a qualified business for those activities that are not retail sale activities.

Example: Furniture Company X's primary business is the operation of 100 furniture stores throughout the United States. Besides stocking its stores with furniture purchased from independent manufacturers, X also has a plant at which the Company manufactures end tables that are sold to customers at stores throughout the United States. X also has centralized customer service offices that handle customer inquiries and debt collection.

Neither the manufacturing operation nor the customer service center involves any sales to purchasers who are physically present in the JOBZ. Therefore, X could locate either operation in a Zone and be eligible for JOBZ tax benefits.

#### 3. Customers physically present at the JOBZ location

The mere fact that the JOBZ location makes retail sales, as defined above, directly to consumers does not make a business ineligible for JOBZ benefits if the sales are not made to customers who are physically present at the JOBZ location.

Example: Furniture Company Y is the largest mail order retail seller of furniture in the United States. It has no stores in Minnesota or anywhere else. All of its sales are generated through mail order. Since customers are never physically present at the JOBZ location, Y can locate into a JOBZ and be eligible for JOBZ tax benefits.

#### 4. Providers of services

Businesses that are primarily engaged in providing services are generally not engaged in making retail sales, and therefore not precluded from being a qualified business under this revenue notice. This includes businesses such as dental, medical, legal or accounting services, or repair shops.

#### 5. Retail businesses that claim JOBZ benefits

Businesses whose JOBZ activities are primarily engaged in making retail sales as defined in this notice are not eligible for JOBZ benefits. This is true even if the business is operating within a JOBZ zone pursuant to a business subsidy agreement entered into with the appropriate local government entity.