

MINNESOTA DEPARTMENT OF REVENUE

Revenue Notice # 06-09: Sales and Use Tax – Taxable Price – Natural Gas Used for Pipeline Compressor Operation

Background

In 1995, the Department of Revenue published Revenue Notice # 95-10, outlining the methodology for assessing sales and use tax on natural gas diverted from a pipeline to fuel the compressors used to maintain pipeline pressure. In *Great Lakes Gas Transmission, L.P. v. Commissioner of Revenue*, Case No. 7106-R, Nov. 16, 2000, the Minnesota Tax Court found that the compressor fuel thus used was a material consumed in production and thus exempt from sales and use tax pursuant to the industrial production exemption. The decision of the Minnesota Tax Court was upheld by the Minnesota Supreme Court on January 31, 2002, (638 N.W.2d 435). Revenue Notice # 95-10 was then revoked by Revenue Notice # 02-24, published on December 30, 2002. The relevant statute was amended in 2005, necessitating this Revenue Notice.

Statutory Provision

Minnesota Statutes, section 297A.68, subd. 2, was amended by 2005 Minnesota Laws, First Special Session, chapter 3, article 5, section 8, adding a clause to provide:

- (d) Industrial production does not include:
- (1) the furnishing of services listed in section 297A.61, subdivision 3, paragraph (g), clause (6), items (i) to (vi) and (viii); or
 - (2) *the transportation, transmission, or distribution of petroleum, liquefied gas, natural gas, water, or steam, in, by, or through pipes, lines, tanks, mains, or other means of transporting those products. For purposes of this paragraph, "transportation, transmission, or distribution" does not include blending of petroleum or biodiesel fuel as defined in section 239.77.*

Department Position

A. Taxable Transfer

In light of this statutory change, the department's position is that the natural gas purchased, used or consumed by a pipeline company in or during the course of its operations in Minnesota is subject to Minnesota sales or use tax. When gas is transferred to a pipeline company as reimbursement, either in-kind or as part of the consideration paid for pipeline transportation services, it is considered a taxable transfer of pipeline services for natural gas and is subject to sales or use tax. This Revenue Notice sets out the department's position on computation of the taxable price for sales and use tax purposes of the transferred gas used by natural gas pipeline companies.

B. Taxable Price

For sales and use tax purposes, the actual price paid for gas used in pipeline compressors is the taxable price.

1. If there is a record of the pipeline company's price paid by or credited to the shipper in an arms-length transaction, such price will be considered the sales price of the transferred natural gas for sales and use tax purposes.
2. If there is no record of an arms-length price paid by or credited to the shipper and the shipper can demonstrate that the natural gas was purchased by the shipper directly from the wellhead, the department will accept the wellhead price from any major natural gas publication publishing the price at the location of the wellhead on the date of purchase as the sales price of the transferred natural gas.
3. If the conditions of neither 1 nor 2 are met, the 30-Day Spot Price from any major natural gas price publication reflecting the date of transfer and the hub of origin from which the shipper purchased the natural gas will be accepted as the sales price of the transferred natural gas for sales and use tax purposes.
4. If the conditions of neither 1 nor 2 are met and the hub of origin cannot be determined, the department will accept a regional average price reflecting the regional hub of origin of the natural gas.
5. If the conditions of none of 1, 2 or 3 are met and the hub of origin cannot be determined regionally, the department will accept a national average price determined by reference to major natural gas price publications that compute averages based upon 30-Day Spot Prices.

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