

Technical corrections were made to this notice on April 13, 2009 by Revenue Notice # 09-05. Please see Revenue Notice # 09-05 for the corrected language.

MINNESOTA DEPARTMENT OF REVENUE

Revenue Notice # 07-02: Sales and Use Tax – Exemptions – Interstate Commerce

Background

The United States Supreme Court in the landmark case of *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977), first announced the test used to uphold a state tax against a Commerce Clause challenge and, in doing so, firmly rejected the proposition that interstate commerce is immune from state taxation. The Court set forth the “four-prong” test used to determine the constitutional validity of state taxes. This test requires that, for purposes of the Commerce Clause, a state tax must:

- (1) Be applied to an activity that has sufficient contacts with the state;
- (2) Be fairly apportioned to the activity in the state;
- (3) Not discriminate against interstate commerce; and
- (4) Be fairly related to the services provided by the taxing state.

Minnesota Statutes, section 297A.68, subdivisions 13 and 14, provide sales tax exemptions for property that is shipped or transported outside Minnesota, that is not used in Minnesota, and that does not return to Minnesota except in the course of interstate commerce. Subdivision 13 provides an exemption for goods that are transported outside Minnesota by the purchaser (without intermediate use) for use in a trade or business outside Minnesota and that will not be returned to Minnesota except in the course of interstate commerce, provided that the goods are not taxable in the destination state or country or are used as part of a maintenance contract. Subdivision 14 provides an exemption for goods that are brought into Minnesota by a for-hire carrier and are stored in a public warehouse in Minnesota before being transported outside Minnesota, provided that after storage the goods are used solely outside Minnesota, except in the course of interstate commerce.

Minnesota Statutes, section 297A.61, subdivision 6, defines “use” to include the exercise of a right or power incident to the ownership of any interest in tangible personal property, other than resale of that property in the regular course of business. Minnesota Statutes, section 297A.61, subdivision 7, defines “storage” as the keeping or retaining of tangible personal property in Minnesota except for the purpose of resale in the regular course of business.

Issue

When does the Minnesota sales or use tax apply to purchases of goods by persons engaged in the interstate transportation of goods and services?

Department Position

Minnesota Statutes, section 297A.68, subdivisions 13 and 14, clearly provide that any tangible personal property purchased or put to a taxable use in Minnesota is subject to the Minnesota sales or use tax. Any purchases in Minnesota of vehicles, vessels or other instrumentalities used in interstate commerce and any items used, consumed, attached to or becoming part of those instrumentalities of interstate commerce are subject to the sales or use tax unless an exemption applies. Regardless of whether purchased in Minnesota or brought in from outside the state, regardless of how much the property is used in Minnesota, and regardless of whether it will subsequently also be used in another state, the property is subject to the Minnesota sales or use tax if it is put to any taxable use in Minnesota and there is a break in the stream of interstate commerce.

Examples

1. A for-hire interstate carrier loads fuel in Minnesota into vehicles, vessels, or other instrumentalities used in a mode of transportation. The taxpayer is exercising a right or power incident to ownership of the fuel. The fuel is used to power the mode of transportation in Minnesota and therefore a taxable use has occurred in Minnesota. The sales tax law does not provide for any prorating of the tax that depends upon the magnitude of use or consumption that occurs in the state. Minnesota has adopted what is commonly referred to as a dock sale law in that any item that a purchaser takes possession of in Minnesota is subject to tax if no exemption applies. The exemption for outstate transport specifically provides that it does not apply if the goods are put to use in Minnesota. The fuel put into the tank in Minnesota was put to a use in Minnesota, and therefore the Minnesota sales or use tax applies.

2. A company engaged in interstate transportation purchases fuel in Minnesota. Some of the fuel will be loaded into a tank that powers the vehicle, vessel or other instrumentality used in the mode of transportation and some fuel will be transported for storage and use solely outside Minnesota. Fuel that is purchased by the interstate transporter that is loaded into storage tanks would not be subject to the Minnesota sales or use tax if the fuel is transported outside the state for use in another state or country, provided that the destination state or country would not impose a tax on the purchase of the fuel.

3. An interstate transportation company located in Wisconsin purchases tires, antifreeze and oil in Wisconsin to be used in vehicles that deliver goods from Wisconsin, traveling through Minnesota, to South Dakota. Even though the items are used in Minnesota, no Minnesota use tax applies since the vehicles are in interstate commerce as they travel through Minnesota. Any of those items purchased in Minnesota as the vehicles pass through the state would be subject to the

Minnesota sales tax, since this would be a sale occurring in Minnesota and no statutory exemption would apply, even though the items would be used or consumed in the course of interstate commerce.

4. An interstate trucking firm purchases or removes from storage in Minnesota motor fuels on which the fuels tax under Minnesota Statutes, chapter 296A, has been paid. The exemption, under Minnesota Statutes, section 297A.68, subdivision 19, would apply and no Minnesota sales or use tax would apply to the purchase or use of the fuel, since it had been subjected to tax under chapter 296A. Any fuel purchased in, or removed from storage in, Minnesota and used to operate a power take off unit or for other non road use, on which the motor fuels tax was not paid, or for which a motor fuels tax refund claim was filed, would be subject to the Minnesota use tax.

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