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Department of Revenue

Revenue Notice # 12-11: Sales Tax – Exemptions – Qualified Data Centers

Introduction

Sales tax exemptions for certain purchases for use in a “qualified data center” were enacted during the 2011 Special Session, amending *Minnesota Statutes*, sections 297A.68 (new subdivision 42), and 297A.75, subdivisions 1 (new clause (16)), 2 and 3.

Purchases of “enterprise information technology equipment and computer software for use in a qualified data center,” including “enterprise information technology equipment and computer software that is purchased to replace or upgrade enterprise information technology equipment and computer software in a qualified data center,” are exempt. However, the purchaser must first pay the sales tax on the equipment and software and then, after June 30, 2013, the “owner of the business” may apply for a refund of the sales tax paid on the purchases. To be exempt, the sales and purchases of the equipment and software must be made after June 30, 2012. The exemption ends either 20 years from the date of the first purchase of “enterprise information technology equipment and computer software for use in a qualified data center” or by July 1, 2042, whichever is earlier.

Electricity used or consumed in the operation of the qualified data center also is exempt, but as an upfront exemption. To be exempt, the sales and purchases of the electricity must be made after June 30, 2012, and by July 1, 2042.

This Revenue Notice sets out the department’s positions on what is required by taxpayers to qualify for these exemptions.

Department Positions

I. Total cost and 24-month period.

Background: The definition of “qualified data center” in *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (c)(1), provides that the “total cost of construction or refurbishment, investment in enterprise information technology equipment, and computer software is at least \$50,000,000 within a 24-month period.”

Positions:

A. The 24-month period must begin on a date that is after June 30, 2012. In determining if the \$50,000,000 threshold has been met, only construction and refurbishment costs incurred after June 30, 2012, and purchases of enterprise information technology equipment and computer software made after June 30, 2012, will be included.

B. The months of the 24-month period must be consecutive months.

C. The cost of land acquisition, if any, is not included in the \$50,000,000.

D. A qualified data center may include one or more businesses using enterprise information technology equipment. If more than one such business is located at the facility, either as co-owners or tenants of the building or buildings that constitute the facility, the following applies:

1. Their combined total cost of construction or refurbishment, investment in enterprise information technology equipment, and computer software must be at least \$50,000,000 within a 24-month period.

2. The 24-month period for all co-owners or tenants begins when the initial purchase and investment is made by any of the co-owners or tenants.

II. Qualities and square footage.

Background: A requirement of a “qualified data center” is that the facility have the following qualities:

- The facility must be used to house “enterprise information technology equipment,” as that term is defined in *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (d); and must have the characteristics required by *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (c)(3), which are “(i) uninterruptible power supplies, generator backup power, or both; (ii) sophisticated fire suppression and prevention systems; and (iii) enhanced security...”
- The facility must be at least 30,000 square feet in the aggregate, as described in *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (c)(1); and, for purposes of meeting the square footage requirement, may include the following spaces or facilities in support of the operation of the enterprise information technology equipment: the supporting office or meeting space, and mechanical and other support facilities, pursuant to *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (c).

Positions:

A. The square footage must be documented and the computation of the square footage must follow industry standards.

B. The mechanical and other support facilities are “in support of the operation of the enterprise information technology equipment” if their function is to control, direct, maintain, manage, monitor, regulate or service the enterprise information technology equipment. If so, their square footage may be included to determine if the facility has at least 30,000 square feet.

C. The office or meeting spaces are “in support of the operation of the enterprise information technology equipment” if their function is to control, direct, maintain, manage, monitor, regulate, or service the enterprise information technology equipment, or to provide training, discussions, performance evaluation and enhancement, and other similar functions to better provide for the operation of the enterprise information technology equipment. If so, their square footage may be included to determine if the facility has at least 30,000 square feet.

III. Substantially refurbished.

Background: An additional requirement of a “qualified data center” is that the facility must be “constructed or substantially refurbished after June 30, 2012.” The term “substantially refurbished” is defined to mean “that at least 30,000 square feet has been rebuilt or modified,” as described in *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (c)(2).

Positions:

A. The terminology “refurbished” and “rebuilt or modified” both mean that the facility has been repaired, remodeled or altered. This refurbishment may include, but is not limited to, upgrading, expanding or retrofitting enterprise information technology equipment and its supporting infrastructure and systems, as well as significant interior or exterior structural modification.

B. Making cosmetic changes to the interior or exterior appearance of a building does not constitute a “substantially refurbished” facility. Space which has been changed cosmetically and

has not otherwise been repaired, remodeled or altered will not be included in the minimum 30,000 square feet for determining if the facility has been substantially refurbished.

C. The substantial refurbishment must encompass one or more of the descriptions provided in *Minnesota Statutes*, section 297A.68, subdivision 42, paragraphs (c) and (d), as noted above under “II. Qualities and square footage.”

D. The resulting facility must meet all of the statutory requirements of a qualified data center, as provided in *Minnesota Statutes*, section 297A.68, subdivision 42.

E. Example of what may be considered “substantial refurbishment”:

A business installs 15,000 square feet of a raised floor to meet the specifications of a data center in one building of a facility on one parcel of land in Minnesota. Additionally, on the facility’s current data center building located on a contiguous parcel, the business installs a new roof covering 20,000 square feet and an updated uninterruptible power supply covering 10,000 square feet. A total of 45,000 square footage of the facility has been rebuilt or modified, and is considered substantially refurbished.

F. Examples of what would not be considered “substantial refurbishment”:

Example 1: An existing facility paints or carpets 10,000 square feet of the floor to update its appearance, and this area is not otherwise rebuilt or modified. It also installs 20,000 square feet of a raised floor in another area to meet the specifications of the data center. No other modifications are made. The square footage of the area whose cosmetic appearance has been updated, whether the interior or exterior of a facility building, for example, by painting or carpeting, is not included in the definition of “substantial refurbishment.” In this example, only 20,000 square feet (the raised floor) has been rebuilt or modified, not enough square footage to meet the definition of “substantially refurbished.”

Example 2: The facility comprises two buildings that consist of 60,000 square feet in the aggregate, and that are located on a single parcel. The facility has office spaces and meeting spaces that have a combined 30,000 square feet, for which either the ceilings or the floors need to be rebuilt or modified to meet the specifications of the data center. The remaining 30,000 square feet will remain unaltered. Of the 30,000 square feet of office and meeting space, 2,000 square feet is not used by staff in support of the operation of the enterprise information technology equipment, but is made available for the training and meeting needs of entities other than the data center. In this example, only 28,000 square feet of what is being refurbished meets the requirement found above under “II. Qualities and square footage,” Position C, not enough square footage to meet the definition of “substantially refurbished.”

IV. Electricity exemption.

Background: *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (b), provides that “electricity used or consumed in the operation of a qualified data center is exempt.” Electricity is “used or consumed in the operation of a qualified data center” if the electricity is used in the operation of one or more of the required characteristics set forth in *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (c)(3), (i) through (iii); used to operate enterprise information technology equipment as defined in paragraph (d); or used in office and meeting spaces, and mechanical and other support facilities in the facility, in support of the operation of the enterprise information technology equipment.

Positions:

A. The business that pays for the electricity used or consumed in the operation of the data center may purchase it exempt.

B. While the use of separate meters that solely measure the electricity for qualifying uses and spaces is preferable, the Department will accept a valid energy audit conducted by a

qualified energy audit engineer or consultant, or other reasonable methods, to determine the portion of the total electricity that is used for qualifying uses and spaces at the facility.

C. When the business provides a fully completed exemption certificate, Form ST3, to its utility provider, it must indicate on the form the percentage of the total electricity that qualifies for the exemption.

V. Software.

Background: Purchases of “computer software for use in a qualified data center” are exempt under *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (a). This exemption includes computer software purchased to replace or upgrade computer software in a qualified data center.

Positions:

A. Prewritten computer software. The term “computer software” in *Minnesota Statutes*, section 297A.68, subdivision 42, refers to “prewritten computer software,” since customized computer software is already exempt. Only prewritten (also known as “canned”) computer software is otherwise subject to sales tax, pursuant to *Minnesota Statutes*, section 297A.61, subdivision 3, paragraph (f), which provides “A sale and a purchase includes the transfer for a consideration of prewritten computer software whether delivered electronically, by load and leave, or otherwise,” and subdivision 10, which includes prewritten computer software in the definition of “tangible personal property.” See *Minnesota Statutes*, section 297A.61, subdivisions 16a through 17b for relevant definitions. The exemption for computer software for use in a data center includes licenses to use the computer software.

B. Software maintenance contracts. The exemption for purchases of computer software, including software that replaces or upgrades computer software in a qualifying data center, does not include purchases of maintenance contracts sold in connection with the sale of prewritten computer software, even if the contract provides that the purchaser will be entitled to receive “upgrades or enhancements” as that term is defined in *Minnesota Rules*, Part 8130.9910, subpart 1, item G. Instead, the tax treatment of software maintenance contracts remains the same as described in *Minnesota Rules*, Part 8130.9910, subpart 2.

VI. Refunds.

Background: As provided in *Minnesota Statutes*, section 297A.68, subdivision 42, paragraph (a), sales tax on purchases of enterprise information technology equipment and computer software for use in a qualified data center must be paid as if the sales tax rate applied, and then be refunded after June 30, 2013.

- Processing claims. Pursuant to *Minnesota Statutes*, section 297A.75, subdivision 3, the statute of limitation and refund provisions of sections 289A.40 and 289A.50 apply to refund requests for qualifying purchases. The statute of limitations for filing a refund claim is generally three-and-one-half years from the due date of the return.
- Owner of qualified business. Under *Minnesota Statutes*, section 297A.75, subdivision 2, clause (7), and subdivision 3, paragraph (a), only “the owner of the qualifying business” may apply for a refund equal to the sales tax paid on the gross receipts of the enterprise information technology equipment and computer software for use in the qualified data center, and “if the tax was paid by a contractor, subcontractor, or builder,” then that person “must furnish to the refund applicant a statement including the cost of the exempt items and the taxes paid on the items.”

Positions:


A. For purposes of processing the refund claim, the department will presume the sales tax was reported on a sales tax return for the month of the invoice date.

B. The “owner of the qualifying business” is one of the following:

1. Where the qualified data center is used to house “enterprise information technology equipment” which is owned by one person, that person is the “owner of the qualifying business” and may apply for a refund of the tax paid on the enterprise information technology equipment and related software.

2. Where the qualified data center is used to house “enterprise information technology equipment,” where different enterprise information technology equipment is owned by different persons, each person is the “owner of the qualifying business” for purposes of applying for a refund of the tax paid on the enterprise information technology equipment and related software that are owned by that person.

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Susan Von Mosch, Assistant Commissioner
for Tax Policy and External Relations