

Minnesota Department of Revenue

Revenue Notice # 17-12: Corporate Franchise Tax – Sales Factor – Transactional Taxes on Gross Receipts

Introduction

This Revenue Notice sets out the Department’s position regarding the exclusion of transactional taxes imposed on the gross receipts from taxable goods or taxable services in the calculation of the Minnesota sales factor denominator under *Minnesota Statutes* section 290.191.

The terms used to describe these types of taxes vary from state to state. Common examples are “business privilege tax,” “consumer tax,” “gross receipts tax,” “seller privilege tax,” and “transaction tax.” These taxes are calculated in a manner similar to sales taxes and local option sales taxes in that they are measured by the sales price or consideration received by a seller from a purchaser on a per transaction basis.

Several of the states that impose these types of taxes require the seller to collect the tax from the purchaser to be held in trust for the state until it is remitted by the seller. Other states allow the seller to either absorb the tax or pass it on to the purchaser as a reimbursement for the tax paid to the taxing authority by the seller.

Department Position

The computation of the apportionment factor is to provide an approximation for fairly allocating income to Minnesota. It is the Department’s position that transactional taxes imposed on gross receipts measured by the sales price or consideration received by a seller from a purchaser are not income to the seller. Therefore, these taxes are not included in the sales factor when calculating the Minnesota apportionment percentage, regardless of whether the seller collected and remitted the tax, absorbed the tax, or passed the tax on to the purchaser as a reimbursement of the tax imposed by the taxing authority.

This Revenue Notice applies to all transactional taxes imposed on the gross receipts from taxable goods or taxable services regardless of whether the seller is required to collect and remit the tax, allowed to absorb the tax, or allowed to pass the tax on to the purchaser. Such taxes are different from the federal and state gasoline excise taxes at issue in *Amoco Oil Company and Affiliates v. Commissioner of Revenue*, 2001 WL 1539620 (Minn.Tax), because those taxes become part of the cost of goods sold and the imposition of the tax is not dependent on a subsequent sale to the customer.

The transactional taxes that are the focus of this Notice are not a part of the consideration given in exchange for taxable goods or taxable services as they are not a part of the cost of goods sold and, thus, are not income to the seller. Accordingly, these types of taxes are excluded in calculating the Minnesota apportionment percentage in the same manner as sales taxes and local option sales taxes are excluded from the calculation.

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