

Minnesota revenue notice

Revenue Notice # 91-03 Application of Sales and Use Tax to Contractor-Retailer Purchases

Facts: Contractors are required to pay Minnesota sales or use tax on purchases of materials, supplies and equipment used to complete construction contracts for the improvement, alteration or repair of real property. Retailers may purchase items that will be resold at retail exempt from the Minnesota sales and use tax. A contractor-retailer is one that contracts for the improvement of real property and also makes retail sales of tangible personal property. Minnesota Rules, part 8130.1200 provides that if a contractor-retailer does not know whether a purchase will be used in a construction contract or sold at retail, a 50 percent test must be used. The rule provides that when a contractor-retailer's business activities during the prior calendar year reflect that 50 percent or less of the purchases were sold at retail, the contractor-retailer must pay sales tax on all purchases and take a deduction if an item is subsequently sold at retail. If the prior year shows that more than 50 percent of the purchases were sold at retail, the contractor-retailer may purchase all of the items exempt for resale, and pay use tax if any are used for a construction contract.

Issue: How does the Minnesota sales and use tax apply to purchases by contractor-retailers whose business activity is at or near the 50 percent cut-off point with approximately 50 percent contract sales and 50 percent retail sales? The actual sales may vary from year to year making the contractor-retailer principally a contractor one year and then principally a retailer the next year.

Conclusion: If the business activity of a contractor-retailer is approximately 50 percent contract and 50 percent retail, the contractor-retailer should make a choice as to which of the methods of taxation described in Minnesota Rules, part 8130.1200 to use. The method chosen should be used consistently unless the activity of the business changes substantially in the future.

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