

## Minnesota revenue notice

### Revenue Notice # 91-15 Sales and Use Tax - Computer Software Maintenance Agreements

**(Update: Revenue Notice #91-15 has been revoked by Revenue Notice #98-22.)**

The Minnesota Tax Court, Small Claims Division, issued an order deciding the case of Liberty Diversified Industries, Inc. v. Commissioner of Revenue, T.C. #5510-S, on December 27, 1990. The issue in Liberty was whether charges for canned computer software maintenance contracts were subject to sales tax. The court found in favor of the taxpayer and reversed the commissioner's tax assessment. The court found that these contracts were not subject to sales tax because they were primarily for services in conjunction with the sale of tapes containing custom software.

This decision is contrary to the long-standing Department position that charges for canned computer software maintenance contracts are subject to sales or use tax. Since this is a small claims judgment, which is only binding on the parties involved in that particular case, the Department will continue to treat these charges as taxable sales. Minn. Stat. § 271.21, subd. 8 provides that small claims judgments cannot be considered judicial precedent and have no force or effect in any other case, hearing, or proceeding.

Thus, the Department will not consider Liberty as support for the theory that canned software maintenance contracts are exempt from sales tax. The Department will continue to assess tax on sales or use of these maintenance contracts.

Michael E. Boekhaus  
Director, Appeals and Legal Services

Dated: November 11, 1991

TKS