

Minnesota revenue notice

Revenue Notice # 92-13 Sales and Use Tax - Road-Building Materials

(Update: Revenue Notice #92-13 has been corrected by Revenue Notice #02-20.)

General Rules: The sale of building materials to owners, contractors, subcontractors, or builders for the alteration, repair or improvement of real property are retail sales and are taxable under the provisions of Minnesota Statutes § 297A.01, subd. 4. If sales tax is not paid by the contractor at the time of purchase, the contractor must pay a use tax for the privilege of using, storing, or consuming tangible personal property in Minnesota. No use tax is due if the contractor uses gravel from their own pit in a contract for the improvement of real property.

The following examples illustrate common situations that occur in this area. References to 'materials' in these examples include rock, gravel, and similar road building materials.

1. Example: A contractor uses rock or gravel from their own pit on a road contract.

Department position: The contractor does not have to pay sales or use tax on their own gravel or on their labor to mine or process this gravel.

2. Example: A contractor uses material from someone else's pit on a road contract. Payment is made to the pit owner as a royalty. The pit owner actively sells gravel to many customers.

Department position: The contractor should be charged sales tax on the purchase. If they purchase the material without tax, they should pay use tax on the gravel.

3. Example: A contractor purchases material from its subsidiary for use on a road contract.

Department position: Since each corporation is considered to be a separate legal entity or person, a taxable sale has occurred. The contractor should be charged sales tax on the materials. If the materials are purchased without tax, the contractor should pay use tax.

4. Example: A contractor uses rock or gravel from someone else's pit on a road contract. The pit owner is not in the trade or business of selling gravel.

Department position: In this situation, since the pit owner is not in the trade or business of selling gravel, we would recognize the isolated or occasional sale exemption found in Minn. Stat. § 297A.25, subd. 12. But note that with certain exceptions, this exemption does not apply to sales of tangible personal property primarily used in a trade or business. This means that even if the pit owner is not in the trade or business of selling gravel, if the pit owner used gravel in a trade or business the occasional sale exemption would not apply and the material would be subject to tax.

5. Example: A contractor uses rock or gravel from someone else's pit on a road contract. The pit owner is in the trade or business of selling gravel, but has not previously mined the rock or gravel in this pit. The contractor uses their own machinery to mine the pit. Payment is made to the pit owner as a royalty.

Department position: This is a taxable sale of tangible personal property and not a sale of real property. The contractor should be charged sales tax.

6. Example: The state owns material that they sell to a contractor to use on a road contract.

Department position: This material is subject to sales and use tax. The state is required to collect tax on sales of this material. If no tax is paid at the time of sale, the contractor must pay use tax on the material.

7. Example: The state owns material that is made available to a contractor at no charge for use on a road contract. The state has a contract with the contractor that includes labor and material. The state furnishes the material to the contractor for a credit against the contract price.

Department position: A taxable sale occurs when the state transfers the materials to the contractor. The state must collect tax on the amount of the credit.

8. Example: The state owns material that is made available to a contractor at no charge for use on a road contract. The contract is for labor only.

Department position: No taxable sale has occurred and no sales tax is due on this transaction. The state does not have to pay use tax on rock or gravel from its own pit.

9. Example: A contractor has a lease to buy material at a unit price.

Department position: This is a sale of tangible personal property and the material is subject to sales and use tax.

10. Example: A contractor purchases material from a pit owner who charges a separate fee for crushing, screening, sizing, or otherwise processing it.

Department position: This modification of the materials is the processing of tangible personal property and is fabrication labor that is subject to sales tax. Therefore, the entire amount charged for the material is taxable, including all processing charges.

11. Example: A contractor purchases material from a pit owner and hires another party to crush, screen, size, or otherwise process the material.

Department position: The pit owner must charge the contractor sales tax on the material. The party processing the material also must charge the contractor sales tax on their fabrication labor.

Michael E. Boekhaus
Director, Appeals and Legal Services

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