

## Revenue Notice # 92-27

### Sales and Use Tax - Place of Sale

**This Notice has been revoked by Revenue Notice # 02-07.**

**General Rule:** Minnesota imposes a sales tax on the gross receipts from sales at retail made by any person in this state. For a sale to be subject to the Minnesota sales tax laws there must be:

- 1.) a sale in Minnesota; and
- 2.) this sale must be made by a 'person in this state.'

**1. When does a sale occur in Minnesota?** For a sale of tangible personal property to occur in Minnesota, there must be a transfer of title or possession, or both, of tangible personal property in Minnesota.<sup>2</sup> Thus, under the statute, a sale does not depend solely on transfer of title nor does it depend solely on transfer of possession. Instead, the statute requires only a transfer of title or possession. If either title or possession of tangible personal property is transferred in Minnesota, the transfer is subject to the Minnesota sales tax laws. If title and possession are not transferred at the same time, you must look to whichever transfer happened first to determine the place of sale. For example, if the title has passed outside the state, the sale did not occur here even if possession later transfers inside the state. (Note, however, that the purchase may be subject to use tax).

- **How do you determine when and where title transfers?** Title to goods passes from the seller to the buyer in any manner and on any condition explicitly agreed upon by the parties. For example, if the contract terms are F.O.B.<sup>3</sup> the place of shipment,<sup>4</sup> title passes to the buyer at the time and place of shipment. If the contract terms are F.O.B. the place of destination,<sup>5</sup> title passes to the buyer on tender at the place of destination. If not explicitly agreed, title passes to the buyer at the time and place at which the seller completes performance of the physical delivery of the goods. For example, a buyer in Minnesota enters into a contract to purchase goods from a seller in Iowa. No provisions are made relating to transfer of title. The seller in Iowa mails the goods from a post office in Iowa. In this situation, title passes when the seller completed performance of the physical delivery of the goods by placing the goods in the mail in Iowa. Since title to the goods passed in Iowa, the sale would not be subject to the Minnesota sales tax laws. (Note, however, that the purchase may be subject to use tax and that the retailer may be required to collect the use tax under the provisions of Minn. Stat. § 297A.21.)
- **How do you determine when and where title transfers when delivery is made without moving the goods?** If the seller is to deliver a document of title, title passes at the time and the place where the seller delivers such documents. If the goods, at the time of contracting, are already identified and no documents are to be delivered, title passes at the time and place of contracting.
- **What if title passes in Minnesota but the goods are not in Minnesota?** Since Minnesota sales tax law requires only a transfer of title or possession, this would be a Minnesota sale.
- **What if the contract is signed in Minnesota but the goods are not in Minnesota?** The sale would occur in the state where title or possession passed despite where the contract was signed. However, if title passed at the contract signing, the sale would be a sale in the state where the contract was signed. For example, assume title passes at a contract signing in Minnesota. The goods are located in Wisconsin. Since title was transferred in Minnesota, the sale would be subject to Minnesota sales tax. If, on the other hand, title was transferred at a contract signing in Wisconsin, the sale would be a Wisconsin sale and would not be subject to the Minnesota sales tax. (Note, however, that the purchase may be subject to Minnesota use tax at a rate measured by the difference between the Minnesota use tax rate and the sales tax rate of Wisconsin).

**2. Is the seller a 'person in this state?'** The definitions in Minn. Stat. § 297A.21, subd. 1, and the definition of 'person'<sup>6</sup> should be used to analyze this issue. For example, if a company has a sales representative in Minnesota or delivers goods into Minnesota in their own vehicle, that company will be considered a person in this state.

If the answer to both of these questions is yes, then the transfer is subject to sales tax rather than use tax.

### **Temporary Storage and Use**

**Does it make a difference whether the transfer is subject to sales tax or use tax, as long as tax is paid?** Yes. As stated above, a sales tax is imposed on sales at retail made by any person in this state. A use tax is imposed on every person in this state for the privilege of using, storing or consuming in Minnesota tangible personal property or taxable services purchased for use, storage, or consumption in this state. Use tax does not apply if the sales tax imposed by section 297A.02 was paid on the sales price.<sup>7</sup>

Generally, sales taxes and use taxes are imposed on the same types of transactions. A deviation from this similar treatment is found in Minn. Stat. § 297A.01, subd. 7, which provides that the definition of 'storage' and 'use' does not include the temporary storage or use of tangible personal property shipped or brought into Minnesota for the purpose of subsequently being transported outside Minnesota and thereafter used solely outside Minnesota, except in the course of interstate commerce. There is no similar exclusion for temporary storage or use in the definition of sale.

Thus, if a retail sale is made in Minnesota, sales tax is due on the sales price of taxable items or services. This is true even if the items are stored only temporarily in Minnesota, since no provision is made for excluding these items from the definition of sale. If the transaction is subject to use tax, and the item is being sold to a buyer who is bringing or shipping it into Minnesota only for temporary storage, no use tax is due.

### **City taxes**

A sale is subject to the city sales and use tax laws of the city in which title or possession passes. The same principles used in determining where title passes for Minnesota sales tax purposes apply when determining where title passes for city sales tax purposes. The following are commonly asked questions relating to the imposition of city taxes.

**Question 1:** How should city sales tax be imposed on delivery outside of a city that has a city sales tax?

**Answer:** If title or possession passes within a city that has a city sales tax, the sale would be a retail sale in that city. The city tax must be collected unless an exemption applies. The following example illustrates this situation.

- A seller in Minneapolis (city sales tax) sells goods to a buyer from St. Paul (no city sales tax). The St. Paul buyer picks up the goods at the seller's warehouse in Minneapolis. The parties have not explicitly agreed when title transfers. In this situation, title transfers in Minneapolis since title transfers to the buyer at the time and place at which the seller completes performance of the physical delivery of the goods. The seller completed performance when the goods were made available to the St. Paul buyer at the seller's warehouse in Minneapolis. The sale would be a Minneapolis sale subject to the Minneapolis sales tax.

**Question 2:** What is the city sales tax consequence of a delivery from one city with a city tax to another city with a city tax?

**Answer:** The sale would occur in the city in which title or possession transferred and would be subject to

that city's sales tax and the corresponding exemptions. For example, a seller in Mankato (city sales tax) ships goods by common carrier to a buyer in Minneapolis (city sales tax). There is no explicit agreement as to when title passes. Title would pass when the seller completes performance of the physical delivery of the goods by delivering them to the common carrier, and the sale would be subject to Mankato tax and the corresponding exemptions.

If a seller in Minneapolis delivers goods in their own truck to a buyer in Mankato and no provision for transfer of title was made, the Mankato sales tax would have to be collected by the Minneapolis seller unless an exemption applies. The tax would have to be collected by the Minneapolis seller since title was transferred in Mankato and the seller is considered a 'person in the city' since they make deliveries into Mankato.

A seller in a city that does not have a city sales tax delivers goods in their own truck to a buyer in Mankato. No provision for transfer of title is made. The Mankato sales tax would have to be collected by the seller unless an exemption applies. The tax would have to be collected by the seller since title was transferred in Mankato and the seller is a 'person in the city' since they make deliveries into Mankato.

**Question 3:** What is the city sales tax consequence of a sale where the contract is signed in a city with a city sales tax but the goods remain in a city that does not have a city sales tax?

**Answer:** The sale would occur in the city in which title or possession passed despite where the contract was signed. However, if title passed at the contract signing, the city sales tax would be due. For example, a contract specifies that title passes at a contract signing in Minneapolis. The goods are located in St. Paul. Since title was transferred in Minneapolis, the sale would be subject to the Minneapolis sales tax. If, on the other hand, the contract specified that title was transferred at a contract signing in St. Paul, the sale would be a St. Paul sale and would not be subject to the Minneapolis sales tax. (Note, however, that the purchase may be subject to Minneapolis use tax).

**Question 4:** A seller in a city that does not have a city sales tax delivers goods in their own vehicle to a buyer in a city that does have a city sales tax. The buyer has made full payment at the seller's store prior to delivery. Does the seller have to collect the city sales tax of the buyer's city? What if the buyer pays extra for delivery?

**Answer:** Again, in this situation you would look to where title or possession is transferred to determine the location of the sale. If the contract specifies that title is transferred at the seller's location, the seller would not be required to collect the city sales tax. Since title passes at the seller's location, the buyer must have the risk of loss or insurance coverage if the item is damaged in transit or prior to delivery to the buyer. The fact that the buyer pays extra for delivery is not a factor that determines where title or possession is transferred.

1. The issue of when there is a Minnesota sale of a service is not covered by this revenue notice. See Minn. Stat. § 297A.01, subd. 3(j) for provisions relating to services subject to Minnesota tax.

2. Minn. Stat. § 297A.01, subd. 3(a).

3. F.O.B. means 'free on board'.

4. When the term is F.O.B. place of shipment, the seller must at that place ship the goods in the manner provided in Minn. Stat. § 336.2-504 and bear the expense and risk of putting them into the possession of the carrier.

5. When the term is F.O.B. place of destination, the seller must pay for, and stand the risk of, the transportation of the goods to that place and there tender delivery of them in the manner provided in Minn. Stat. § 336.2-504.

6. Minn. Stat. § 297A.01, subd. 2.

7. Minn. Stat. § 297A.14.

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