

**This Revenue Notice was revoked and replaced on December 4, 2017
by publication of Revenue Notice # 17-10.**

Minnesota revenue notice

Revenue Notice #95-05: Sales and Use Tax - Construction Contracts - Purchasing Agent Exemption

Introduction

A contractor or subcontractor may make otherwise taxable purchases exempt from sales or use tax for use on a construction contract with an exempt entity when the exempt entity appoints the contractor or subcontractor as its purchasing agent in accordance with Minnesota Rules, part 8130.1200, subpart 3D. The Minnesota Supreme Court applied that rule in Stretar Masonry Company, Inc. v. Commissioner of Revenue, 518 N.W. 2d 29 (Minn. 1994), CCH Minnesota Tax Reports Par. 202-560, reversing Dkt. No. 5876 (Minn. Tax Ct. May 26, 1993), CCH Minnesota Tax Reports Par. 202-501.

The Minnesota Statutes and Rules have established very strict requirements that taxpayers must meet in order to qualify for the purchasing agent exemption. Either all of the General Requirements discussed in Part A below, or all of the Alternative Requirements discussed in Part B below, must be met in order to qualify for the exemption.

Taxable purchases include purchases of tangible personal property (e.g., building materials) and taxable services (e.g., final construction cleaning). Although most construction contracts are for improvements to real estate as the result of the installation of tangible personal property, some construction contracts include taxable services. In the discussion below, taxable services should be treated as materials provided pursuant to a construction contract.

A. General Requirements

1. Threshold Requirements. Minnesota Statutes, section 297A.25, subdivisions 11 and 16 provide that in addition to the requirements discussed below, the following two requirements must be met before a contractor may make otherwise taxable purchases exempt from sales or use tax for use on a construction contract with an exempt entity:

1. The construction contract pursuant to which the purchases were made must not be a lump-sum contract or similar type of contract with a guaranteed maximum price covering both materials and labor; and
2. If the purchases are used to construct buildings or facilities, the buildings or facilities must be used principally by the exempt entity.

The Department's position is that the first requirement applies to not only the prime contractor, but also every subcontractor who supplies both materials and labor. Thus, in order for an otherwise taxable purchase (for use on a construction project contracted for by an exempt entity) to be exempt from sales or use tax, contracts or subcontracts involving building materials cannot be lump-sum contracts including both materials and labor.

2. Eligibility to Appoint Purchasing Agent. Contractors who do work for exempt entities such as churches, schools, and federal agencies normally must pay sales or use tax on all taxable purchases used in performing the construction contract, the same as with any other construction contract. As indicated above, the only time a contractor may purchase otherwise taxable items exempt from sales or use tax for use on a construction contract with an exempt entity is when the entity appoints the contractor as its purchasing agent (see Minnesota Rules are 8130.1200, subpart 3D). An exempt entity may appoint a contractor as its purchasing agent only if:

1. The exempt entity initially advertises for separate bids for materials and labor;

2. The exempt entity may accept one bid without accepting both bids; and
3. Separate contracts are issued for the accepted bids for materials and labor.

The Department's position is that these requirements apply to the prime contractor and every subcontractor who supplies both materials and labor.

3. Appointment of Purchasing Agent. If all of the above requirements are met and the contractor is awarded both the contract for materials and the contract for labor, Minnesota Rules, part 8130.1200, subpart 3D provides that the exempt entity may appoint the contractor as its purchasing agent for materials, provided that the contract for materials clearly shows that:

1. The contractor has been appointed the purchasing agent;
2. The exempt entity takes title to all materials and supplies at the point of delivery;
3. The exempt entity has the risk of loss for all materials and supplies; and
4. The exempt entity (not the purchasing agent) has responsibility for all defective materials and supplies, including those incorporated into realty.

The Department's position is that these requirements apply to the prime contractor and every subcontractor who supplies both materials and labor.

4. Notification to Vendors. Minnesota Rules, part 8130.1200, subpart 3D provides that '[a]ny contractor who has been appointed agent for the purchase of materials and supplies . . . shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the obligation for payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.' Simply noting the appointment of a purchasing agent in the exempt entity's management meeting minutes is not sufficient. All subcontractors who provide materials to the purchasing agent must receive written notice of the appointment.

B. Alternative Requirements

As discussed in Part A, the requirements of the Minnesota Statutes and Rules with respect to the purchasing agent exemption are very strict. The Department recognizes that certain subcontractors may have difficulty obtaining all of the information necessary to determine whether the exempt entity, the prime contractor and other subcontractors have all complied with the requirements of the purchasing agent exemption. A subcontractor will therefore be deemed to qualify for the purchasing agent exemption if, *at the time of the sale*, the subcontractor:

1. Obtains a copy of the Form ST-17 (Certificate of Exempt Status - Exempt Organization) which shows that the purchasing entity is exempt from sales and use tax; or if the exempt entity is not required to have a Form ST-17, a statement to that effect may be accepted in lieu of a Form ST-17;
2. Obtains a letter or other notice which appoints the subcontractor and all other subcontractors who will use the materials and the prime contractor as purchasing agents for the exempt entity for the project;
3. Submits separate bids for materials and labor (each of which can be separately accepted or rejected), or submits only a bid for materials;
4. Obtains separate contracts for materials and labor (i.e., not a lump-sum contract or similar type of contract with a guaranteed maximum price covering both materials and labor), or only obtains a materials contract; and

5. Has a good faith belief that the documents identified above are valid and that the sale is exempt from sales or use tax.

If these Alternative Requirements are not all met *at the time of the sale*, then the General Requirements listed in Part A of this Notice must be met in order to qualify for the purchasing agent exemption.

Effective Date

The purpose of Part A is to confirm and clarify the long-standing position of the Department with respect to construction contracts and the purchasing agent exemption. The purpose of Part B is to announce less rigorous alternative requirements applicable to subcontractors who claim that exemption. Parts A and B are effective for all open taxable periods for which the purchasing agent exemption may be claimed.

Dated: July 17, 1995

Patricia A. Lien
Assistant Commissioner for Tax Policy

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Dated: July 17, 1995

Steve Dzurak