

**Technical corrections were made to this notice on April 13, 2009 by Revenue Notice # 09-05. Please see Revenue Notice # 09-05 for the corrected language.**

## **Department of Revenue**

### **Revenue Notice # 04-04: Sales and Use Tax – Distinguishing Between Real Property and Tangible Personal Property**

Minnesota Statutes, section 297A.61, subdivision 10, provides that for sales and use tax purposes tangible personal property does not include property which is subject to an ad valorem property tax. This Revenue Notice sets forth the department's position as to how it distinguishes between real property and tangible personal property for sales tax purposes when the property is not subject to an ad valorem tax. This Revenue Notice only applies to the sales and use tax and cannot be used to classify property as real or personal for property tax purposes.

Building materials and other items that will be incorporated into real property are subject to Minnesota sales or use tax at the time of purchase by the person who purchases and intends to install the materials or items. The person who purchases and installs the materials or items into real property must pay the Minnesota sales or use tax when they purchase these items.

However, in certain instances, materials or items that are attached to real property retain their identity as tangible personal property. If an item that is installed retains its identity as tangible personal property, the installer is not required to pay Minnesota sales or use tax on these materials or items, but instead must charge their customer sales tax unless the customer provides a proper exemption certificate. After January 1, 2002, the installer of tangible personal property must also charge their customer sales tax on the installation charge unless the customer provides a proper exemption certificate.

All items will be classified as tangible personal property after being installed on land or in buildings or structures attached to land if the items are freestanding. Machinery and equipment that is attached to real property but that qualifies as capital equipment defined in Minnesota Statutes, section 297A.68, subdivision 5, and that are of no permanent benefit to the building will also be treated as tangible personal property.

"Freestanding" means the item is held in place only by the force of gravity and not constrained from moving. Plugging an item into an electrical outlet will not cause the item to lose its identity as tangible personal property, nor will attachment to a vent, water line, or to a power source such as a gas or electric line. Examples are a stove attached directly to a gas line, a refrigerator plugged into an electrical outlet, a washing machine or refrigerator ice maker connected to hoses or directly to a water line.

Attaching an item of tangible personal property to real property only for the purpose of preventing theft does not cause the item to lose its identity as tangible personal property. Examples are pictures screwed or bolted to the wall in a hotel, coffee pots bolted to a vanity in a hotel, and cash registers bolted to real property.

For sales tax purposes, the fact that an item is incorporated into a building or structure that is leased rather than owned, does not affect the determination as to whether the item is real or personal property after installation, except if the item is leased. Leased equipment and machinery which is attached to real property retains its character as tangible personal property unless it is subject to ad valorem tax. For purposes of this Revenue Notice, buildings and structures, whether owned or leased, are considered to be subject to ad valorem tax.

### **Real Property**

Real property, for sales and use tax purposes includes, but is not limited to, the following:

- 1) Buildings, structures, and bridges;
- 2) Exterior shells of a structure, which constitute walls, ceilings, or roofs if the shell of the

structure has structural, insulation, or temperature control functions or provides protection from the elements. Such an exterior shell is included in the definition of real property even if it also has special functions distinct from that of a building;

- 3) Parts of a sewer, electrical, or water system, such as junction boxes, switches, conduit, wiring, valves, pipes and tubing, that are incorporated into buildings, structures, or an integral part of an item classified as real property, including those that serve machinery;
- 4) Security systems that are not freestanding, including the wiring, cabling, and control equipment for these systems;
- 5) Property that is part of an electric distribution system or a pipeline system transporting or distributing water, sewage, gas, crude oil, or petroleum products or mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings and structures;
- 6) Electric power lines, poles and towers;
- 7) Poles, lines and towers used in providing telecommunications services;
- 8) Utility systems in a building such as heating, cooling, lighting and plumbing systems;
- 9) Cabinets, cupboards, counters, restaurant booths, back bar units, and bars that are not freestanding;
- 10) Built-in appliances such as dishwashers, cook tops, and ovens;
- 11) Pneumatic systems, such as those used in banks and credit unions;
- 12) Drive-up and walk-up windows, such as those used in banks, credit unions, fast food restaurants and photo shops;
- 13) Fuel dispensing systems including the fuel storage tanks, pipes and pumps;
- 14) Loading docks that are not freestanding;
- 15) Grain bins and silos;
- 16) Billboards and signs that are not freestanding. Examples are signs that identify a building or structure, marquees, and directional signs, that are attached to real property.
- 17) Theater or auditorium seating, basketball backboards, and scoreboards, that are not freestanding;
- 18) Docks, wharves, railroad tracks and ties, roadways, and fences;
- 19) Ponderous machinery and equipment used in a business or production activity that would be considered real property under common law. (Minnesota Statutes, section 297A.61, subdivision 10(b)(1)); and
- 20) ATM machines that are not freestanding.

### **Tangible Personal Property**

Minnesota Statutes, section 297A.61, subdivision 10a defines tangible personal property as personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, steam, prewritten computer software, and prepaid calling cards.

Tangible personal property for sales and use tax purposes includes, but is not limited to, the following:

- 1) Bleachers and lockers, even when bolted to real property. In *Hauenstein and Burmeister, Inc., vs. Commissioner of Revenue*, Minn. S. Ct. Nos. 81-484 and 81-614 (Dec. 17, 1981), the Court ruled that bleachers and lockers that are bolted in place retain their identity as tangible personal property. This ruling applies only to bleachers and lockers.
- 2) Freestanding security equipment such as computers and monitors;
- 3) Freestanding cabinets, cupboards, counters, restaurant booths, bars, and back bar units;
- 4) Freestanding appliances such as refrigerators, clothes dryers, and washing machines;
- 5) ATM machines that are freestanding.

Terese M. Mitchell, Director  
Appeals and Legal Services Division  
Publication Date: March 29, 2004