

**Technical corrections were made to this notice on December 20, 2010 by Revenue Notice # 10-06. Please see Revenue Notice # 10-06 for the corrected language.**

## **MINNESOTA DEPARTMENT OF REVENUE**

### **Revenue Notice # 05-09: Sales and Use Tax – Low Income Housing Exemption - Owner**

#### **Background**

Minnesota Statutes, section 297A.71, subdivision 23, provides a sales tax exemption for purchases of construction materials and supplies to be used for qualified low-income housing projects. The exemption applies if (1) the project is a qualified low-income housing project as defined in subdivision 23 and (2) the owner is one of the entities identified in the subdivision. Clause (a)(5) of subdivision 23 provides that the exemption may apply if the owner of the project is an owner entity as defined in the Code of Federal Regulations, title 24, section 941.604.

Section 941.604 of title 24 of the Code of Federal Regulations contains a definition of a Public Housing Agency (“PHA”) and defines the term “owner entity” as “The entity that will own the public housing units, if the PHA holds less than one hundred percent of the ownership interest; or the lessee under a ground lease from the PHA. The owner entity may be a partnership that includes the PHA.” Section 941.604 further defines “Public housing unit” under the United States Housing Act of 1937 as “A unit that is eligible to receive operating subsidy pursuant to section 9 of the Act (42 U.S.C. 1437g).”

#### **Issue**

Can a developer, who isn't in a partnership with a PHA or doesn't have a ground lease with a PHA, qualify for the exemption under Minnesota Statutes, 297A.71, subdivision 23 as an owner entity, when the PHA has no ownership interest in the low-income housing units?

#### **Department Position**

Section 9 of the United States Housing Act of 1937, entitled “Public Housing Capital and Operating Funds” provides that the operating fund can make assistance available to public housing agencies for the operation and management of public housing, including the costs associated with the operation and management of mixed finance projects. Under certain circumstances, a developer who is not in a partnership with a PHA, who doesn't have a ground lease with a PHA, and who has a 100 percent ownership interest in the low-income housing units can meet the definition of being an owner entity under section 941.604. To qualify as an owner entity, a private developer who is the sole owner of the project and a PHA must have entered into a Development Agreement, which sets the business terms and performance standards for the transaction, and a Regulatory and a Operating Agreement, which outlines the steps required to ensure that the public housing will be operated in accordance with all legal and contractual requirements. Copies of the two agreements must be provided to the department in order for sales tax refunds to be issued under this exemption when the taxpayer is claiming to be an owner entity under the Code of Federal Regulations.

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