

MINNESOTA DEPARTMENT OF REVENUE

Revenue Notice # 06-03: Sales and Use Tax – Online Data Retrieval for Capital Equipment – Revocation of Revenue Notice # 98-03

This revenue notice revokes Revenue Notice # 98-03.

Minnesota Statutes, section 297A.68, subdivision 5, provides an exemption from sales and use tax for sales of capital equipment. Procedures for obtaining a refund of taxes paid on capital equipment and replacement capital equipment are found in *Minnesota Statutes*, section 297A.75. *Minnesota Statutes*, section 297A.68, subdivision 5(a), defines capital equipment as equipment and machinery used by the purchaser or lessee primarily for manufacturing, fabricating, mining, or refining tangible personal property to be sold ultimately at retail, and for electronically transmitting results retrieved by a customer of an online computerized data retrieval system. "Online data retrieval system" is defined in *Minnesota Statutes*, section 297A.68, subdivision 5(d)(8), as a system whose cumulation of information is equally available and accessible to all its customers.

Definitions

For purposes of the capital equipment refund for online data retrieval systems, the following definitions apply:

"Computerized system" or "system" means an electronic device or a group of hardware and software components that performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses. This definition includes all input, output, processing, storage, computer software, and communication facilities that are connected or related in some way and contribute to the performance of these operations.

"Customer" means a person who pays a direct consideration to another person for retrieval or access to information. In this case, "person" means a separate legal entity. Payments for services between divisions or units of a single legal entity do not constitute payments to another person.

"Customer group" means multiple customers who subscribe to receive the same level of service and receive the same capability to search the same databases for equivalent fees.

"Data retrieval" means electronic transmission of information, knowledge, facts, concepts, or instructions that have been compiled based on the request of the customer.

"Direct consideration" means that the customer pays a fee to the owner of the online data retrieval system for information requested. In situations where the information is provided both free of charge to some parties and sold to others, the system will qualify if 50 percent or more of its operating time is used to provide information to paying customers.

"Electronic transmission" means any one-way transmission or any two-way interactive transmission of sounds, signals, or other intelligence converted to like form, which effect or are intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves, or otherwise.

"Equally available and accessible" means all customers can access the same information on the database.

"Internet access service" means the offering or provision of the storage, computer processing, and transmission of information that enables the customer to make use of resources found via the Internet.

"Internet online services" means the offering or provision of information, information processing, and products or services to a customer as part of a package of services that are combined with Internet access service and offered to the customer for a single price.

"Online" means that a computerized system is capable of connecting with a communications network.

"Primarily" means that the software or hardware is used 50 percent or more of its operating time in a qualifying activity.

"Results" means data or information provided in a format intended to be usable by the customer.

General Requirements

To qualify for the capital equipment refund, the system must have a cumulation of information and this cumulation of information must be equally available and accessible to all customers or to each customer group within a fee structure. In addition, the hardware and software applications must be primarily used to support the online data retrieval system and the customers must pay a direct consideration for the specific information requested. To determine if a system qualifies, answer the following three questions:

1. Is there a cumulation of information? A system has a cumulation of information if information has been gathered or combined on the system. A system does not have a cumulation of information if customers can only access their own information or if information is only transported by the system.
2. Is all of the information in the system equally available and accessible to all customers or each customer group within a fee structure? Information is considered equally available and accessible to all customers if all customers have the ability to search the same information and if all customers that perform identical searches achieve identical results.
3. Do the customers pay a direct consideration for the specific information requested?

If the answer to any of the questions is "no," the equipment does *not* qualify for a capital equipment refund. If the answer to *all* of the questions above is "yes," the hardware and software components that are used primarily for supporting the online data retrieval system may qualify for a capital equipment refund if all other conditions are met.

Examples

The following are examples of equipment used for electronically transmitting results retrieved by a customer of an online computerized data retrieval system that may qualify for a capital equipment refund if all other conditions are met.

A research company offers its services online to subscribers. The database is created from information gathered from outside sources and is refined by the company through the addition of narrative comments, additional reference sources, and notations as to related topics. No other information is included on the hardware or software that supports this system. This system qualifies as capital equipment.

A provider offers varying levels of subscription services. While all information within the system is available for access, access to certain portions of the data is limited by the service level selected by the subscriber. However, each subscriber is able to participate at each service level they subscribe to without restriction. If the system meets all other criteria, this system qualifies as capital equipment.

An individual buys a computer, a modem, a computerized outdoor weather information system, and software to provide a temperature and time service to people who call in. If the customer is billed a direct fee for this use (e.g., on their telephone bill), the system will qualify for the capital equipment exemption. If there is no direct charge to the customer, then the system does not qualify.

An Internet online service charges customers a fee for access to the Internet and access to information that the service maintains. Equipment that is used primarily by the Internet online service to provide, maintain, and allow access to its own information service qualifies for the capital equipment exemption.

A business contracts with pharmacy benefit managers or health plans to provide patient data to health care providers. The business has an online system containing health plan benefit information, including eligibility, formulary, and medication history. Health care providers can access this information in their office or at hospitals prior to writing prescriptions. All the information in the system is available to a requesting health care provider if all provisions of the federal *Health Insurance Portability and Accountability Act* and privacy laws and regulations are followed. A transaction fee is charged to the pharmacy benefit manager or health plan each time information is accessed by a health care provider. The equipment used to provide this service is an online data retrieval system that qualifies for the capital equipment exemption.

The following are examples of equipment that does not qualify as equipment used primarily for electronically transmitting results retrieved by a customer of an online computerized data retrieval system.

A bank uses online systems to receive payroll and other payable information from its clients. The bank uses this information to debit the client's account, and generate and mail checks on behalf of the client. Each client is able to access his or her own bank account information through the incoming software systems, but is not able to access accounting information for other clients. Because the data privacy provisions prevent clients from accessing all information on the system, this system does not qualify for the capital equipment exemption.

An Internet access service provides customers with direct access to the Internet for a fee. Equipment used to provide the Internet access service does not qualify for the capital equipment exemption.

A business buys computers, modems, and software to provide e-mail and other online communications between the various divisions of the business. The divisions share the cost of the system through intracompany funds transfers to the administrative division. Equipment used to provide this service does not qualify for the capital equipment exemption because the information is being transported and not cumulated and because the service is limited to intracompany use.

A business maintains a database to store images and text files for various clients, including a magazine publisher. The publisher stores its finished stories on the database and uses the database to research, review, and select text and images for current stories. The publisher can only access its own material that is stored on the database. Equipment used to provide this service does not qualify as machinery and equipment used to electronically transmit results retrieved by a customer of an online data retrieval system as the business is storing the information of others and is not cumulating information since each client can only access its own information.

Revenue Notice # 98-03 is hereby revoked.

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for Tax Policy and External Relations

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