Revenue Notice 91-06 was modified on December 20, 2004. Pages 1-4 show the modifications made to the notice, pages 5-8 show the notice as modified.

Department of Revenue

Modification of Revenue Notice #1991-06

Revenue Notice # 1991-06: Sales/Use Tax - Isolated or Occasional Sales

Facts: Effective July 1, 1991, sales of tangible personal property primarily used in a trade or business do not qualify for the isolated or occasional sales tax exemption found in *Minnesota Statutes*, section 297A.6825, subd. 2512. However, the following sales of assets used in a trade or business may qualify for the exemption: (1) if the sale occurs in a transaction subject to or described in *Internal Revenue Code*, (IRC) §§ 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033; , or 1504(a), (2) the sale is between members of a controlled group as defined in § 1563(a) of the IRC; (3) the sale is a sale of farm machinery; (4) the sale is a farm auction sale; (5) the sale is a sale of substantially all of the assets of a trade or business; or (6) the sales of trade or business property made during the month of the sale and the previous 11 calendar months does not exceed $1,000 the sale may still be eligible for the exemption. The conclusions reached in this revenue notice are based on the assumption that the sales described in each issue are not within one of the ~~listed~~ exceptions listed aboveIRC sections. For further examples, please refer to the Department Fact Sheet regarding isolated or occasional sales.

Issues and Conclusions: 1) What constitutes is the definition of a "trade or business"?

For purposes of this statute, "trade or business" includes means any activity carried on for the production of income from selling goods or performing services. However, organizations exempt from federal taxation under *Internal Revenue Code*, subchapter F, are only considered to be engaged in a trade or business to the extent the activity is unrelated to their exempt purposes. Examples of trades or businesses include home day care centers, farms, and apartment buildings or rental property. Government entities are not considered to be engaged in a trade or business since all of their activities are conducted to further a public purpose.

2) What does the term “primarily used" mean?

When an item is used for purposes other than trade or business use, the owner must determine what the primary use is when deciding whether or not to charge tax on the sale of the item. "Primarily used" means that the item is used at least 50 percent or more of its operating time, in the trade or business. If it is used less than 50 percent of the time in the trade or business, it will be considered not to be primarily used in the trade or business, and the sale of the item is eligible for the isolated or occasional sale exemption.

3) Who has to use the item primarily in a trade or business; the seller, the buyer, or both?

The seller's use of the equipment is the determining factor. It does not matter how the buyer will use the item.

4) Will business inventory sales now be subject to tax?

The sale of business inventory was never subject to the isolated/occasional sale exemption since the inventory was sold in the regular course of business. The seller must either charge sales tax, or accept an exemption certificate from the buyer.

5) When business assets, including both tangible personal property and other property (real property, intangibles, etc.), are sold for a lump-sum price, how will the seller determine the purchase price of the tangible personal property in order to charge sales tax?

If the seller has not separately stated the purchase price of the tangible personal property, the sales tax must be collected on the fair market value of the tangible personal property. The tax will only apply to those items which are considered tangible personal property. Items subject to ad valorem property tax, large and ponderous equipment, or items considered a permanent improvement to real property, are not subject to sales tax. However, these items are taxable if they are sold separately and removed from the underlying real property.

6) Does a sale actually have to be reported to the Internal Revenue Service under one of the listed IRC sections in order to be eligible for isolated/occasional sale exemption?

Yes, the sale must qualify and be reported as a transaction occurring under one of the listed Internal Revenue Code sections, in order to qualify for the isolated/occasional sale exemption.

7) If a trade or business closes and sells off its assets over a period of time (for example, a manufacturer closes down operations and over the next three years sells off the business assets), are these sales still eligible for isolated/occasional sale status?

No, these sales are not eligible for isolated/occasional sale status. Since the assets were primarily used in a trade or business, their sale is taxable even though the trade or business is no longer in operation when the assets are finally sold.To qualify for the exemption, the trade or business must sell substantially all of its assets in a single transaction or in a series of related transactions that occur within the 12-month period beginning on the date of the first sale of assets. Any sales occurring after the end of the 12-month period are subject to the sales or use tax.

For purposes of this exemption, "trade or business" includes the assets of a separate division, branch or identifiable segment of a business if, before the sale, the income and expenses attributable to the separate division, branch, or segment could be separately ascertained from the books of account or record.

8) Are auctions of business property still eligible for the isolated/occasional sale exemption?

No, auctions (including farm auctions) of tangible personal property primarily used in a trade or business are no longer eligible for this exemption. The person at the auction who is responsible for collecting the sale money is also responsible for collecting and remitting the sales tax. This may be the auctioneer, the bank, the owner of the property, or any other person who collects the purchase price from the buyers. Farm auction sales are exempt as isolated/occasional sales. For purposes of this exemption, farm auctions mean a public auction conducted by a licensed auctioneer if substantially all of the property sold consists of property used in the trade or business of farming and other property not used primarily in a trade or business such as household goods. If the equipment being sold is farm machinery, the 2.5 percent rate applies. The person responsible for remitting the tax must charge this rate only on farm machinery. If an auction includes farm machinery, nonfarm equipment, and nonbusiness items (such as tools, household goods, etc.), the 2.5 percent rate only applies to the farm machinery. The other items used in the trade or business (e.g., tools) would be subject to the 6.5 percent rate, and the nontrade or nonbusiness items (e.g., household goods) would be exempt.

9) Are sales of business assets on an Indian reservation subject to sales tax?

Sales of business assets occurring on an Indian reservation are taxable if the sale is made to a nontribal member or non-Indian. The taxability of sSales of business assets occurring on a reservation to a tribal member depends on whether that tribe band has a tax ~~r~~efund agreement with the state which specifically provides that tribal members pay sales tax for purchases made on the reservation. If the tribe band has a tax ~~r~~efund agreement with such a provision, then these sales are taxable. If the tribe band does not have a tax ~~r~~efund agreement, the sales are not taxable. Sales to the tribal government are not taxable, regardless of whether the tribe has a tax agreement.

10) Are garage sales still eligible for the isolated/occasional sale exemption?

Yes, sales at a garage sale are still eligible for this exemption if ~~the garage sale does not occur regularly,~~ the person is not in the business of conducting garage sales~~, and no trade or business assets are sold at the sale~~. If any trade or business assets are sold at the garage sale, sales tax is due only on those items.

11) What are the sales tax consequences when a bank or similar lender repossesses secured property primarily used in a trade or business?

The transfer to the bank is treated as a sale for resale as long as the bank will be reselling the item. The bank or other lender must collect and remit tax when it resells the items, since repossessed items are considered to be inventory in the possession of the financial institution. Sales of repossessed property by banks or other lenders were never subject to the isolated or occasional sale exemption.

12) Who is responsible for collecting and remitting the tax when a bankruptcy trustee sells off business property?

The bankruptcy trustee is responsible for collecting and remitting the sales tax. If the debtor possessed a sales tax permit, the tax must be reported under that permit. If the debtor did not possess a permit prepetition, the trustee must use the special occasional sale return provided by the Department. (See reporting procedure section following question #16.)

13) How will installment sales of business assets be treated?

The sale occurs when there is a transfer of title or possession. If the seller uses an accrual accounting basis, the tax must be reported when the sale is made. If the seller uses a cash accounting basis, the tax must be reported when the seller actually receives the payment. If the sale is a lease, tax is due on each lease payment as it becomes due. If the seller is leasing out the business property, the seller must obtain a sales tax permit and report the tax under the permit until the lease has ended.

14) When personal property is sold along with real property, it is subject to the state deed tax. Is the sales tax in addition to that state deed tax?

Yes, the sales tax on the personal property is in addition to any state deed tax which may be due on the transaction.

15) Are items of tangible personal property, such as washers, dryers and other appliances, sold incidental to the sale of an owner occupied residence (a homestead) or an owner occupied seasonal residence (a "cabin") subject to the sales tax as a sale of tangible personal property primarily used in a trade or business?

No, these items are not "used primarily in a trade or business" and thus are not subject to sales tax regardless of whether the owner sold the residence him or herself, through the services of a real estate broker, or by a bank or other financial institution that repossessed the residence and then sold it without any intermediary business use.

16) If a purchaser makes a purchase of stock in a corporation, is the purchaser considered to be purchasing the business assets of that corporation and thus subject to sales tax on the tangible personal property owned by that corporation?

This transaction is not subject to sales tax. The purchaser is considered to be buying innontangible property (stock) and thus this is not a sale of tangible personal property. If the sale were structured as an asset sale rather than a stock sale, then the sales tax would be due on the price of the tangible personal property.

Reporting Procedures: If the seller already has a sales/use tax permit, the sale of the business assets must be reported on the return along with the seller's regular sales. If the seller does not have a permit, the seller must report the sales on a special occasional sale return available from the Department. This special return is due on or before the 20th day of the month following the month in which the sale is made. If the seller is making sales of business assets on a regular basis, the seller must apply for a sales tax permit and report sales on a monthly, quarterly, or annual basis until all of the assets are sold.

~~/S/~~
~~Michael E. Boekhaus~~
~~Director, Appeals and Legal Services~~

~~Dated : August 12, 1991~~

Department of Revenue

Modification of Revenue Notice #1991-06

Revenue Notice # 1991-06: Sales and Use Tax – Isolated or Occasional Sales

Facts: Effective July 1, 1991, sales of tangible personal property primarily used in a trade or business do not qualify for the isolated or occasional sales tax exemption found in Minnesota Statutes, section 297A.68, subd. 25. However, the following sales of assets used in a trade or business may qualify for the exemption: (1) the sale occurs in a transaction subject to or described in Internal Revenue Code, (IRC) §§ 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033; (2) the sale is between members of a controlled group as defined in § 1563(a) of the IRC; (3) the sale is a sale of farm machinery; (4) the sale is a farm auction sale; (5) the sale is a sale of substantially all of the assets of a trade or business; or (6) the sales of trade or business property made during the month of the sale and the previous 11 calendar months does not exceed $1,000. The conclusions reached in this revenue notice are based on the assumption that the sales are not within one of the exceptions listed above. For further examples, please refer to the Department Fact Sheet regarding isolated or occasional sales.

Issues and Conclusions: 1) What constitutes a "trade or business"?

For purposes of this statute, "trade or business" includes any activity carried on for the production of income from selling goods or performing services. However, organizations exempt from federal taxation under Internal Revenue Code, subchapter F, are only considered to be engaged in a trade or business to the extent the activity is unrelated to their exempt purposes. Examples of trades or businesses include home day care centers, farms, and apartment buildings or rental property. Government entities are not considered to be engaged in a trade or business since all of their activities are conducted to further a public purpose.

2) What does the term "primarily used" mean?

When an item is used for purposes other than trade or business use, the owner must determine what the primary use is when deciding whether or not to charge tax on the sale of the item. "Primarily used" means that the item is used at least 50 percent or more of its operating time, in the trade or business. If it is used less than 50 percent of the time in the trade or business, it will be considered not to be primarily used in the trade or business, and the sale of the item is eligible for the isolated or occasional sale exemption.

3) Who has to use the item primarily in a trade or business; the seller, the buyer, or both?

The seller's use of the equipment is the determining factor. It does not matter how the buyer will use the item.

4) Will business inventory sales now be subject to tax?

The sale of business inventory was never subject to the isolated/occasional sale exemption since the inventory was sold in the regular course of business. The seller must either charge sales tax, or accept an exemption certificate from the buyer.

5) When business assets, including both tangible personal property and other property (real property, intangibles, etc.), are sold for a lump-sum price, how will the seller determine the purchase price of the tangible personal property in order to charge sales tax?

If the seller has not separately stated the purchase price of the tangible personal property, the sales tax must be collected on the fair market value of the tangible personal property. The tax will only apply to those items which are considered tangible personal property. Items subject to ad valorem property tax, large and ponderous equipment, or items considered a permanent improvement to real property, are not subject to sales tax. However, these items are taxable if they are sold separately and removed from the underlying real property.

6) Does a sale actually have to be reported to the Internal Revenue Service under one of the listed IRC sections in order to be eligible for isolated/occasional sale exemption?

Yes, the sale must qualify and be reported as a transaction occurring under one of the listed Internal Revenue Code sections, in order to qualify for the isolated/occasional sale exemption.

7) If a trade or business closes and sells off its assets over a period of time (for example, a manufacturer closes down operations and over the next three years sells off the business assets), are these sales still eligible for isolated/occasional sale status?

No, these sales are not eligible for isolated/occasional sale status. To qualify for the exemption, the trade or business must sell substantially all of its assets in a single transaction or in a series of related transactions that occur within the 12-month period beginning on the date of the first sale of assets. Any sales occurring after the end of the 12-month period are subject to the sales or use tax.

For purposes of this exemption, "trade or business" includes the assets of a separate division, branch or identifiable segment of a business if, before the sale, the income and expenses attributable to the separate division, branch, or segment could be separately ascertained from the books of account or record.

8) Are auctions of business property still eligible for the isolated/occasional sale exemption?

No, auctions of tangible personal property primarily used in a trade or business are no longer eligible for this exemption. The person at the auction who is responsible for collecting the sale money, is also responsible for collecting and remitting the sales tax. This may be the auctioneer, the bank, the owner of the property, or any other person who collects the purchase price from the buyers. Farm auction sales are exempt as isolated/occasional sales. For purposes of this exemption, farm auctions mean a public auction conducted by a licensed auctioneer if substantially all of the property sold consists of property used in the trade or business of farming and other property not used primarily in a trade or business such as household goods.

9) Are sales of business assets on an Indian reservation subject to sales tax?

Sales of business assets occurring on an Indian reservation are taxable if the sale is made to a nontribal member or non-Indian. The taxability of sales of business assets occurring on a reservation to a tribal member depends on whether that tribe has a tax agreement with the state which specifically provides that tribal members pay sales tax for purchases made on the reservation. If the tribe has a tax agreement with such a provision, then these sales are taxable. If the tribe does not have a tax agreement, the sales are not taxable. Sales to the tribal government are not taxable, regardless of whether the tribe has a tax agreement.

10) Are garage sales still eligible for the isolated/occasional sale exemption?

Yes, sales at a garage sale are still eligible for this exemption if the person is not in the business of conducting garage sales. If any trade or business assets are sold at the garage sale, sales tax is due only on those items.

11) What are the sales tax consequences when a bank or similar lender repossesses secured property primarily used in a trade or business?

The transfer to the bank is treated as a sale for resale as long as the bank will be reselling the item. The bank or other lender must collect and remit tax when it resells the items, since repossessed items are considered to be inventory in the possession of the financial institution. Sales of repossessed property by banks or other lenders were never subject to the isolated or occasional sale exemption.

12) Who is responsible for collecting and remitting the tax when a bankruptcy trustee sells off business property?

The bankruptcy trustee is responsible for collecting and remitting the sales tax. If the debtor possessed a sales tax permit, the tax must be reported under that permit. If the debtor did not possess a permit prepetition, the trustee must use the special occasional sale return provided by the Department. (See reporting procedure section following question #16.)

13) How will installment sales of business assets be treated?

The sale occurs when there is a transfer of title or possession. If the seller uses an accrual accounting basis, the tax must be reported when the sale is made. If the seller uses a cash accounting basis, the tax must be reported when the seller actually receives the payment. If the sale is a lease, tax is due on each lease payment as it becomes due. If the seller is leasing out the business property, the seller must obtain a sales tax permit and report the tax under the permit until the lease has ended.

14) When personal property is sold along with real property, it is subject to the state deed tax. Is the sales tax in addition to that state deed tax?

Yes, the sales tax on the personal property is in addition to any state deed tax which may be due on the transaction.

15) Are items of tangible personal property, such as washers, dryers and other appliances, sold incidental to the sale of an owner occupied residence (a homestead) or an owner occupied seasonal residence (a "cabin") subject to the sales tax as a sale of tangible personal property primarily used in a trade or business?

No, these items are not "used primarily in a trade or business" and thus are not subject to sales tax regardless of whether the owner sold the residence him or herself, through the services of a real estate broker, or by a bank or other financial institution that repossessed the residence and then sold it without any intermediary business use.

16) If a purchaser makes a purchase of stock in a corporation, is the purchaser considered to be purchasing the business assets of that corporation and thus subject to sales tax on the tangible personal property owned by that corporation?

This transaction is not subject to sales tax. The purchaser is considered to be buying intangible property (stock) and thus this is not a sale of tangible personal property. If the sale were structured as an asset sale rather than a stock sale, then the sales tax would be due on the price of the tangible personal property.

Reporting Procedures: If the seller already has a sales/use tax permit, the sale of the business assets must be reported on the return along with the seller's regular sales. If the seller does not have a permit, the seller must report the sales on a special occasional sale return available from the Department. This special return is due on or before the 20th day of the month following the month in which the sale is made. If the seller is making sales of business assets on a regular basis, the seller must apply for a sales tax permit and report sales on a monthly, quarterly, or annual basis until all of the assets are sold.

John H. Mansun

John H. Mansun, Assistant Commissioner
for Tax Policy and External Relations

Publication Date: DEC 20 2004