

## Minnesota revenue notice

### Revenue Notice # 93-02 Corporations - Safe Harbor Leasing (Apportionment Factors)

This revenue notice states the Minnesota Department of Revenue position with respect to the use of property subject to a safe harbor lease in the property factor of the three factor formula set forth in Minn. Stat. § 290.191.

In a safe harbor lease transaction a corporation in a loss position 'sells' property subject to depreciation to a profitable corporation, who in turn leases the property back to the loss corporation. Through this transaction the corporation acquires the tax attributes of the safe harbor lease property. The tax attributes are in substance the subject of a safe harbor lease transaction.

Tax attributes are of course an intangible. Because the tax attributes are an intangible, the property subject to a safe harbor lease is not to be included in either the numerator or denominator of the purchaser lessor. The property subject to a safe harbor lease, however, should be included in the property factor of the seller lessee under any view of a safe harbor lease.

The receipts factor should reflect the payments made by the seller lessee to the purchaser lessor in the purchaser lessor's receipts factor only if the purchaser lessor is in the business of leasing property.

Because the purchaser lessor's interest in the safe harbor lease is in substance an intangible, the presence of the property subject to a safe harbor lease in Minnesota will not in and of itself confer jurisdiction to tax the purchaser lessor in Minnesota.

This revenue notice is effective for tax years beginning after December 31, 1992.

Michael E. Boekhaus, Director  
Appeals, Legal Services and Criminal Investigation Division

Dated: January 4, 1993

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