

Revoked by Revenue Notice # 98-22.

Minnesota revenue notice, number 96-07

Sales and Use Tax - Temporary Storage

The Minnesota Supreme Court issued an opinion in the case of *Dahlberg Hearing Systems, Inc. vs. Commissioner of Revenue*, C2-95-1929, on April 26, 1996. The Court held that the taxpayer was not required to pay use tax on computer equipment that was brought into Minnesota for the purpose of installing software, testing the equipment, and subsequently shipping the equipment to other states for usage. The seller had nexus with Minnesota and was required to collect the Minnesota sales tax but failed, for some unknown reason, to collect the sales tax on the transaction. The Court found that the equipment was temporarily stored in Minnesota and therefore not subject to the Minnesota use tax even though the seller was required to collect the Minnesota sales tax when the taxpayer purchased the equipment in Minnesota.

Based upon the decision in *Dahlberg*, the Department adopts the position that temporary storage can only be claimed in certain situations when a use tax is due. The following scenarios set forth situations when temporary storage can and cannot be claimed to relieve the taxpayer of Minnesota use tax obligations.

1. When a taxpayer takes title to tangible personal property outside of Minnesota, brings the property to Minnesota for processing without putting it to intermediate use in Minnesota, and then removes the property for use outside of Minnesota, temporary storage can be claimed. The property is temporarily stored in Minnesota and provided that the property does not return to Minnesota, except in the course of interstate commerce, no Minnesota use tax is due on the property. No Minnesota sales tax is due since the sale takes place outside Minnesota.
2. When a seller, who has nexus with Minnesota, brings goods into Minnesota to fulfill a specific contract, and title to the goods passes to the buyer in Minnesota, a Minnesota sale has occurred and the Minnesota sales tax is due. If the seller fails to collect Minnesota sales tax on those specific goods, Minnesota use tax is due from the buyer. If the buyer removes the goods from Minnesota for use outside the state, without putting them to intermediate use in Minnesota, the buyer can claim temporary storage and no Minnesota use tax would be due. If the seller had *not* brought the goods into Minnesota to fulfill a specific contract with the purchaser and the goods were removed from the seller's Minnesota inventory, the Department takes the position that *Dahlberg* does not apply. Under the holding in *Dahlberg*, the sales tax is still due under Minnesota Statutes, section 297A.02 and the Department has the right to collect the sales tax from the seller. Under Minnesota Statutes, section 297A.03, subdivision 1, when the sales tax is paid by the seller, the tax is a debt from the purchaser to the seller recoverable at law in the same manner as other debts.
3. When a purchaser issues an exemption certificate to a seller having nexus with Minnesota, takes title to the property in Minnesota and then utilizes the property for any purpose not exempted under Chapter 297A, sales tax is due from the purchaser. Minnesota Statutes, section 297A.12, provides that when the purchaser issues an exemption certificate but utilizes the property for other than an exempt purpose, it shall be deemed a retail sale by the purchaser and therefore the Minnesota sales tax would be due. Since the purchaser should be paying and reporting sales tax and not use tax, temporary storage cannot be claimed even if the purchaser removes the goods from Minnesota for use outside the state.
4. When a purchaser uses a Direct Pay exemption certificate to make a purchase in Minnesota, the purchaser reports and pays use tax to the Commissioner rather than paying sales tax to the vendor. The Department takes the position that a direct pay purchaser cannot claim temporary storage on goods that were purchased from vendors registered to collect the Minnesota sales tax, if the sale takes place in Minnesota. The sale takes place in Minnesota if the transfer of either title or possession, or both, occurs in Minnesota. If the sale occurs in Minnesota and sales tax would have been paid but for the tender of the direct pay certificate, the Department takes the position that the purchaser is paying a delayed or in lieu of

sales tax and therefore temporary storage does not apply.

5. A retailer that maintains a place of business in, or that has physical nexus with, Minnesota must register to collect the Minnesota sales tax since they are a person in this state. Minnesota Statutes, section 297A.02 provides that the Minnesota sales tax is imposed upon retail sales made by persons in this state. Therefore, when a sale occurs in this state, made by a seller having nexus with this state, the purchaser cannot claim temporary storage since the seller is collecting the sales tax. If an out-of-state retailer who maintains a place of business in Minnesota ships goods to the purchaser in Minnesota but title passes at a point outside Minnesota, the seller is required to collect the Minnesota use tax. Minnesota Statutes, section 297A.21, subdivision 3, provides that the out-of-state retailer, making retail sales from outside the state to a destination in the state, must collect and remit the Minnesota use tax. Where the sale occurs outside Minnesota but was shipped to a destination in Minnesota, the use tax is being collected and temporary storage may be claimed.

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