

Minnesota Department of Revenue

Revenue Notice # 16-07: Sales and Use Tax – Exemptions – Qualified Data Centers; Revocation of Revenue Notice # 12-11

Introduction

This Revenue Notice sets out the department's positions regarding the sales tax exemptions under *Minnesota Statutes*, section 297A.68, subdivision 42, for certain purchases for use in a "qualified data center," under the law as amended in 2013 and clarified in 2014. Terms and phrases with quotation marks are as used in section 297A.68, subdivision 42, unless indicated otherwise. This Revenue Notice replaces and revokes Revenue Notice # 12-11.

This notice states below that the exemptions apply to purchases made by a qualifying facility after June 30, 2013. However, if a qualified facility has met the investment and square footage criteria under the 2011 law, then the exemption applies to eligible purchases made after June 30, 2012. Aside from the different exemption date available for purchases, and the different investment criteria and square footage criteria, positions set out in this notice apply equally to facilities qualifying under 2011 law.

I. Enterprise Information Technology Equipment, Software, and Electricity Exemptions

The sales tax exemptions apply to the following purchases made after June 30, 2013:

- (1) Purchases of "enterprise information technology equipment and computer software," including replacements and upgrades, for use in a "qualified data center, or a qualified refurbished data center" (each center hereafter will be referred to as either a "facility" or a "qualified facility").

The purchaser of exempt equipment and software must first pay the sales tax, and then once the facility is certified by Minnesota Department of Employment and Economic Development (DEED) as a qualified facility (as described below), the "owner of the qualifying business" may apply for a refund of the sales tax paid on the purchases, within 3-1/2 years from the invoice date. If the tax was paid by a contractor, subcontractor, or builder, then that person must furnish to the owner of the qualifying business a statement which includes "the cost of the exempt items and the taxes paid on the items," so that the owner may apply for the refund. See *Minnesota Statutes*, sections 297A.75, 289A.40, and 289A.50.

- (2) Purchases of electricity used or consumed in the operation of the qualified facility, upon providing a fully completed exemption certificate, Form ST3, to the purchaser's utility provider.

To qualify for the exemptions, the facility must be used to house "enterprise information technology equipment" (as defined in *Minnesota Statutes*, section 297A.68, subdivision 42); must have met the stated investment threshold and the required square footage; and must have

“(i) uninterruptible power supplies, generator backup power, or both; (ii) sophisticated fire suppression and prevention systems; and (iii) enhanced security.”

The exemptions end either 20 years from the date of the first purchase of enterprise information technology equipment and computer software for use in a qualified facility, or by July 1, 2042, whichever is earlier.

II. DEED Certifies that Investment and Square Footage Requirements are Met

DEED certifies to the Department of Revenue when a facility qualifies for the exemptions by meeting the investment thresholds and square footage requirements. DEED will look at the total costs of construction or refurbishment, enterprise information technology equipment, and supporting computer software, to determine if the investment threshold is met. Only purchases made after June 30, 2012, count toward the qualifying investment threshold and period, except that costs for computer software maintenance agreements purchased before July 1, 2013, are not includable.

The square footage criteria for a qualified facility is as follows:

- (1) For either a facility that has been constructed or an existing facility that has been “substantially refurbished,” the facility must be located on a single parcel or on contiguous parcels, and be comprised of one or more buildings with a combined square footage of at least 25,000 square feet.
- (2) For a “substantially refurbished” facility at least 25,000 square feet of the facility must have been rebuilt or modified. “Substantially refurbished” means an existing facility has been rebuilt or modified, including installation of enterprise information technology equipment, environmental control, computer software, energy efficiency improvements, or building improvements.
- (3) The facility may include the square footage of the following spaces or facilities as long as they support the operation of the enterprise information technology equipment: office or meeting spaces, and mechanical and other support facilities.

The investment criteria for a qualified facility are as follows:

- (1) For a constructed facility, a \$30,000,000 investment within a 48-month period.
- (2) For a “substantially refurbished” facility, a \$50,000,000 investment within a 24-month period.

Department Position

I. Investment Cost and Period; Qualities and Square Footage

- A. In determining if the dollar threshold has been met within the investment period, only the following are included: construction and refurbishment costs incurred after

June 30, 2012, purchases of enterprise information technology equipment and computer software made after June 30, 2012, and purchases of computer software maintenance agreements made after June 30, 2013.

- B. The months of the investment period must be consecutive months.
- C. The cost of land acquisition, if any, is not included in meeting the dollar threshold.
- D. A qualified facility may include one or more businesses using enterprise information technology equipment. If more than one business using enterprise information technology equipment is located at the facility, either as co-owners or tenants of the building or buildings that constitute the facility, the following applies:
 - 1. Their combined total cost of construction or refurbishment, investment in enterprise information technology equipment, and of computer software must meet the dollar threshold within the corresponding investment period: \$30,000,000 within a 48-month period for a constructed facility; and \$50,000,000 within a 24-month period for a “substantially refurbished” facility.
 - 2. The investment period for all co-owners or tenants begins when the initial purchase and investment is made by any of the co-owners or tenants.
- E. The square footage must be documented and the computation of the square footage must follow industry standards.
- F. Mechanical and other support facilities are “in support of the operation of the enterprise information technology equipment” if their function is to control, direct, maintain, manage, monitor, regulate or service the enterprise information technology equipment, or to allow staff to carry out these functions. If so, their square footage may be included to determine if the facility meets the minimum square footage criteria.
- G. Office or meeting spaces are “in support of the operation of the enterprise information technology equipment” if their function is to allow staff to control, direct, maintain, manage, monitor, regulate, or service the enterprise information technology equipment, or to provide training, discussions, performance evaluation and enhancement, and other similar activities to ensure the optimum operation of the enterprise information technology equipment. If so, their square footage may be included to determine if the facility meets the minimum square footage criteria.

II. Purchases of Items that Meet Investment Thresholds or are Used within Spaces that Support the Operation are not Automatically Exempt

- A. Costs of enterprise information technology equipment and software purchased after June 30, 2012, will count toward meeting the investment threshold (except that software maintenance agreements must be purchased after June 30, 2013), but to qualify for the exemption they must be purchased after June 30, 2013.

- B. Costs of constructing or refurbishing a facility will count toward meeting the investment threshold, but the items used in the construction or refurbishment of a facility do not qualify for the exemption unless they are enterprise information technology equipment and software and are purchased after June 30, 2013.
- C. Office or meeting spaces that support the operation of the enterprise information technology equipment will count toward meeting the square footage requirement, but the purchases of furniture and equipment used in the office or meeting spaces (e.g., tables, chairs, and photocopiers) do not qualify for the exemption.

III. Substantially Refurbished

- A. The terminology “refurbished” and “rebuilt or modified” both mean that the facility has been repaired, remodeled, or altered. This refurbishment may include, but is not limited to, upgrading, expanding, or retrofitting enterprise information technology equipment and its supporting infrastructure and systems, as well as significant interior or exterior structural modification.
- B. Making cosmetic changes to the interior or exterior appearance of a building (e.g., painting office space walls) does not constitute a “substantially refurbished” facility or a “building improvement.” Space which has been changed cosmetically and has not otherwise been repaired, remodeled or altered will not be included in the minimum square footage for determining if the facility has been substantially refurbished.

IV. Electricity Exemption

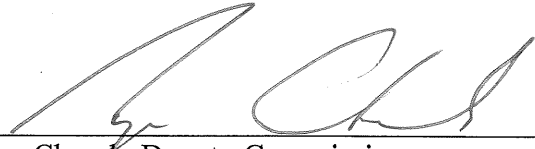
- A. Electricity used or consumed in operation of the facility is exempt once the facility is certified by DEED as a qualified facility, and not before.
- B. Once a facility is qualified, electricity that is used or consumed in the operation of a qualified facility, is exempt from sales tax to the extent it is used as follows:
 - 1. To operate “(i) uninterruptible power supplies, generator backup power, or both; (ii) sophisticated fire suppression and prevention systems; and (iii) enhanced security”;
 - 2. To operate enterprise information technology equipment; or
 - 3. As used in office and meeting spaces, and mechanical and other support facilities, to support the operation of the enterprise information technology equipment in the facility.
- C. Once a facility is certified by DEED as a qualified facility, any business that pays for the electricity used or consumed in the operation of the qualified facility may purchase it exempt from sales tax, and is not itself required to be a qualified facility.

- D. While the use of separate meters that solely measure the electricity for qualifying uses and spaces is preferable, the department will accept a valid energy audit conducted by a qualified energy audit engineer or consultant, or other reasonable methods, to determine the portion of the total electricity that is used for qualifying uses and spaces at the qualified facility.
- E. When the business provides a fully completed exemption certificate, Form ST3, to its utility provider, it must indicate on the form the percentage of the total electricity in the qualified facility that qualifies for the exemption.
- F. The sales tax exemption for electricity does not apply to other utilities. Services other than electricity—for example, natural gas, water, or telecommunications services—are not included in this exemption.
- G. The Department will allow a refund claim for sales tax paid on electricity only to the extent the electricity was used or consumed after the date the facility became a qualified facility.

V. Refunds—Processing Claims and “Owner of the Qualifying Business”

- A. The “owner of the qualifying business,” as that term is used in *Minnesota Statutes*, section 297A.75, subdivision 2, clause (7), is one of the following:
 - 1. Where the qualified facility is used to house “enterprise information technology equipment” and all of that equipment is owned by one person, that person is the “owner of the qualifying business” and may apply for a refund of the tax paid on that equipment and related software.
 - 2. Where the qualified facility is used to house multiple and distinct “enterprise information technology equipment,” and different enterprise information technology equipment is owned by different persons, each person is the “owner of the qualifying business” for purposes of applying for a refund of the sales tax paid on the equipment and its related software that are owned by that person.
- B. For purposes of processing the refund claim, the department will presume the sales tax was reported on a sales tax return for the month corresponding with the date of the purchase of enterprise information technology equipment and computer software, based on the date of the invoice or billing statement.

Publication Date: 10-10-2016



Ryan Church, Deputy Commissioner