

Minnesota Department of Revenue

Revenue Notice # 17-10: Sales and Use Tax – Construction Contracts with Exempt Entities – Revocation and Replacement of Revenue Notice # 95-05

Introduction

This Revenue Notice revokes and replaces Revenue Notice # 95-05, as published on July 17, 1995.

Department Position

When an entity that is exempt from sales and use tax on their own purchases appoints a contractor or subcontractor as its purchasing agent in accordance with *Minnesota Rules*, that contractor or subcontractor may make otherwise taxable purchases exempt from sales or use tax for use on a construction contract. The Minnesota Supreme Court applied that rule in *Stretar Masonry Company, Inc. v. Commissioner of Revenue*, 518 N.W. 2d 29 (Minn. 1994), *rev'g Stretar Masonry Company, Inc. v. Commissioner of Revenue*, 1993 WL 185714 (Minn. Tax Ct. May 26, 1993). For purposes of this Revenue Notice, "exempt entity" means exempt government agencies and nonprofit organizations that are able to purchase materials exempt from sales and use tax.

Minnesota Rules, part 8130.1200, subpart 3, item D, has established strict requirements that taxpayers must meet in order to qualify for the purchasing agent exemption. Either all of the General Requirements discussed in Part A below, **or** all of the Alternative Requirements discussed in Part B below, must be met to qualify for the exemption. The purpose of Part A is to clarify the department's position with respect to construction contracts and the purchasing agent exemption. The purpose of Part B is to describe the alternative requirements applicable to subcontractors who claim that exemption.

Taxable purchases include purchases of tangible personal property (e.g., building materials) and taxable services (e.g., final construction cleaning). Although most construction contracts are for improvements to real property as the result of the installation of tangible personal property, some construction contracts include taxable services. In the discussion below, taxable services should be treated the same as materials provided pursuant to a construction contract.

A. General Requirements

i. Contractor Requirements

Minnesota Statutes, section 297A.70, subdivisions 2 and 4, provide that the following two requirements must be met before a contractor may make otherwise taxable purchases exempt from sales or use tax for use on a construction contract with an exempt entity:

- The construction contract cannot be a lump-sum contract (or similar type of contract with a guaranteed maximum price) covering both materials and labor; and

- The building or facility being constructed or altered must be used principally by the exempt entity.

ii. Valid Purchasing Agent Agreement Requirements

The following steps must be taken to create a valid purchasing agent agreement. These requirements apply to the general contractor and every subcontractor that supplies materials and or labor:

1. Contract Eligibility. Contractors who are hired by and work for exempt entities such as churches, schools, and federal agencies must pay sales or use tax on all taxable purchases used in performing the contract unless they are appointed by the exempt entity as a purchasing agent. An exempt entity may appoint a contractor as its purchasing agent if:
 - a. The exempt entity initially advertises for separate bids for materials and labor;
 - b. The contract allows the exempt entity to either accept the bid for materials or the bid for labor, and does not require the exempt entity to accept both bids; and
 - c. Separate contracts are issued for the accepted bids for materials and labor.
2. Written Contract. If all of the above requirements are met and the contractor is awarded both the contract for materials and the contract for labor, *Minnesota Rules*, part 8130.1200, subpart 3, item D, provides that the exempt entity may appoint the contractor as its purchasing agent for materials if the written contract clearly sets forth all of the following:
 - a. Contractor has been appointed as purchasing agent;
 - b. Exempt entity takes title to all materials and supplies at the point of delivery;
 - c. Exempt entity has the risk of loss for all materials and supplies; and
 - d. Exempt entity has responsibility for all defective materials and supplies, including those incorporated into realty.
3. Vendor Notification. All appointed contractors must provide adequate notification to all vendors and suppliers that clearly state that it is the exempt entity's (not the contractor's) obligation to make the payment for materials and supplies. *Minnesota Rules*, part 8130.1200, subpart 3, item D, provides that purchase orders and other documents furnished to a vendor must clearly reflect the agency relationship between the purchasing agent and exempt entity.

B. Alternative Requirements

A subcontractor will be deemed to qualify for the purchasing agent exemption if, *at the time of the sale or purchase* of the materials and supplies, the subcontractor has done all of the following:

1. Submitted separate bids for materials and labor or submitted only a bid for materials;
2. Obtained separate contracts for materials and labor, or only obtained a materials contract;
3. Obtained a letter or other notice appointing the subcontractor and all other subcontractors who will use the materials and the general contractor as purchasing agents for the exempt entity for the project; and
4. Obtained a copy of the Form ST3 (Certificate of Exemption) showing that the purchasing entity is exempt from sales and use tax.

If these Alternative Requirements are not all met *at the time of the sale or purchase*, the General Requirements listed in Part A of this Notice must be met in order to qualify for the purchasing agent exemption.

Revenue Notice # 95-05 is revoked.

Publication Date: 12/4/2017



Ryan Church, Deputy Commissioner