

Minnesota Department of Revenue

Revenue Notice # 18-04: Sales and Use Tax - Improvements to Real Property - Revocation and Replacement of Revenue Notice # 04-04

Introduction

Minnesota Statutes, section 297A.61, subdivision 58, provides that for chapter 297A, real property includes:

- Land
- Buildings, and structures erected on the land and intended to be permanent
- Improvements or fixtures incorporated into buildings and structures that both:
 - Are intended to be of a permanent benefit given its present use
 - Cannot be removed without causing substantial damage to the building or structure

Real property does not include tools, implements, machinery, and equipment that:

- Are attached or installed to real property for use in the business or production activity conducted thereon, and
- Qualify for exemption under *Minnesota Statutes* section 297A.68, regardless of size, weight, or method of incorporation into the real property

Minnesota Statutes, section 297A.61, subdivision 4(d), provides that building materials, supplies and equipment are subject to Minnesota sales or use tax at the time of purchase if they will be used to either:

- Erect buildings or structures
- Otherwise alter, repair, or improve real property

This Revenue Notice sets forth the Department of Revenue's position as to when tangible personal property becomes an improvement or fixture to real property. This Revenue Notice only applies to sales and use taxes imposed under Chapter 297A and cannot be used to classify property for any other purpose.

Department Position

Improvements or Fixtures to Real Property.

Tangible personal property becomes an improvement or fixture when it becomes part of the real property and loses its identity as separate tangible personal property. This occurs when the improvement or fixture is incorporated into and intended to be a permanent benefit to the real property given its current use, and would cause substantial damage to the real property if removed.

Therefore, the seller must collect sales tax from the purchaser on tangible personal property in the form of building materials, supplies, and equipment that both:

- Are purchased by an owner, contractor or subcontractor
- Will be used to construct, build, rebuild, repair or improve buildings or structures erected on the land.

"Building materials, supplies and equipment" include, but are not limited to: gravel, blacktop, bricks, cement, steel beams and rods, insulation, electrical supplies, glass, woodwork, paint and paint supplies, pipes and valves, aluminum sheathing, wood and composition sheathing, lumber, vapor barriers, moisture barriers, roofing, drywall, ceiling boards, lighting and plumbing fixtures, bathroom fixtures, furnaces and boilers for space heating, central air-conditioning units for space cooling, elevators, people movers, and built-in appliances.

Retail Sales of Tangible Personal Property.

Building materials, supplies, and equipment do not become real property when they are any of the following:

- Are free-standing or minimally incorporated into real property
- Intended to be temporary, and provide no permanent benefit to the real property given the present use
- Do not cause substantial damage to the real property when removed

Such items retain their identity as tangible personal property. The installer does not pay sales or use tax when purchasing the components to construct or install the item, but instead purchases them exempt for resale and charges sales tax when selling the items to a customer.

The amount subject to tax is determined by sales price, and can include delivery, installation and other charges as specified in *Minnesota Statutes*, section 297A.61, subdivision 7.

Business or Production Property Exclusion.

However, trade fixtures such as tools, implements, machinery or equipment that are used in a business or production activity remain tangible personal property- regardless of size, weight, or method of attachment to real property - when they both:

- Are installed into real property
- Qualify as exempt under *Minnesota Statutes*, section 297A.68

To qualify for this exclusion, the purchaser must provide the installer with a fully completed exemption certificate specifying each tool, implement, machine, or equipment that qualify for exemption under section 297A.68. Listing any non-qualifying items constitutes the improper use of an exemption certificate under *Minnesota Statutes*, section 297A.73.

Revenue Notice # 04-04 is hereby revoked.

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Lee Ho, Deputy Commissioner