

Minnesota Department of Revenue

Revenue Notice # 19-03: Sales and Use Tax – Physical Presence Nexus Standards – Revocation and Replacement of Revenue Notice # 00-10

Introduction

This revenue notice revokes and replaces Revenue Notice # 00-10, as published on November 6, 2000.

This revenue notice sets out the department's position on criteria for determining when a retailer or marketplace provider is a "retailer maintaining a place of business in this state" or a "marketplace provider maintaining a place of business in this state" and therefore has physical presence nexus in Minnesota, such that the retailer or marketplace provider must register, collect, and remit Minnesota sales or use tax on all taxable retail sales made or facilitated into Minnesota. This revenue notice, however, does not apply for the purpose of determining when a retailer or marketplace provider is not maintaining a place of business in this state but may have economic nexus with Minnesota, such that the retailer or marketplace provider must also register, collect, and remit Minnesota sales or use tax on all taxable retail sales made or facilitated into Minnesota.

Retail sales of taxable goods and services in Minnesota are subject to Minnesota sales tax. *Minnesota Statutes*, section 297A.66, subdivision 2, provides that a retailer or marketplace provider who maintains a place of business in Minnesota – or has physical presence nexus in Minnesota – must register to collect and remit sales or use tax on taxable retail sales made or facilitated from a location outside of Minnesota to a destination in Minnesota.

Minnesota Statutes, section 297A.66, subdivision 1, paragraph (a), defines "retailer maintaining a place of business in this state" and "marketplace provider maintaining a place of business in this state" to mean any retailer or marketplace provider who:

- has or maintains an office, place of distribution, sales or sample room or place, warehouse, or other place of business in Minnesota either directly or by a subsidiary;
- has a representative, agent, salesperson, canvasser, solicitor, or other third party (either permanent or temporary), who operates under the authority of the retailer or marketplace provider or its subsidiary in Minnesota for any purpose, including repairing, selling, delivering, installing, or soliciting orders for the retailer's goods or services or a retailer's goods or services (in the case of a marketplace provider);
- leases tangible personal property located in Minnesota; or
- delivers tangible personal property into Minnesota in their own vehicles.

Department Position

It is the department's position that a retailer or marketplace provider is maintaining a place of business in this state and has sufficient physical presence nexus in Minnesota to be required to

collect Minnesota sales or use tax when it conducts business activity in Minnesota on at least four days during a 12-month period. A retailer or marketplace provider is required to register, collect and remit Minnesota sales or use tax on sales made from outside Minnesota to destinations in Minnesota starting on the fourth day of such activity and for all sales made that day through the following 11 calendar months. *See Examples* (below).

A retailer or marketplace provider that does not satisfy the criteria stated above must still collect and remit Minnesota sales or use tax on all taxable sales made while physically present in the state.

Business Activity in Minnesota

Following are examples of business activity in Minnesota. Each day, or part of a day, that a retailer or marketplace provider participates in or conducts any of the following or similar activities is counted as a day for purposes of determining physical presence nexus for sales and use tax purposes:

- conducting business activity in Minnesota by owning, leasing or maintaining tangible personal property or real property located in Minnesota;
- providing taxable services while in Minnesota;
- engaging in convention or trade shows, or conducting seminars or similar events for the purpose of promoting or conducting business activity while in Minnesota;
- soliciting orders while in Minnesota;
- making repairs, doing warranty work, or providing or arranging for maintenance or service in Minnesota (*see also*, Revenue Notice # 96-16, Corporate Franchise & Sales and Use Tax Nexus, In-state Repair Services by Computer Companies);
- installing or assembling products in Minnesota;
- investigating, handling, or otherwise assisting in resolving customer issues or complaints while in Minnesota;
- providing customers any kind of service or technical assistance while in Minnesota, including but not limited to, engineering assistance, consulting service, training, design service, quality control, product inspection, or similar services; or
- providing delivery into Minnesota in vehicles owned, leased, or maintained by the retailer or marketplace provider.

The following activities are not considered when determining whether an out-of-state retailer or marketplace provider has physical presence nexus with Minnesota unless they involve any of the above activities or activities similar to those described above:

- meeting with Minnesota suppliers of goods and services;
- meeting in Minnesota with government representatives in their official capacity;
- attending board meetings, retreats, seminars, or conferences (not as a seller) in Minnesota;
- holding recruiting or hiring events in Minnesota;

- set up or tear down of displays before and after trade shows, seminars, and similar events; or
- advertising in Minnesota through media including, but not limited to, a website accessible from within Minnesota.

Examples

1. Representatives for an out-of-state company spend five days in Minnesota for a trade show. The trade show is a three-day event, but the representatives come a day early to set up their display booth and spend a day after the event to take down and pack the display. This is the company's only business activity in Minnesota during the past 12 months. They make several sales to customers at the show. The company must register and collect and remit Minnesota sales tax on the sales made at the show. However, they are not required to collect Minnesota tax on any other sales made into Minnesota from outside the state since they had less than four days of business activity in Minnesota during the past 12 months

2. In September 2018 and October 2018, representatives for an out-of-state company come into Minnesota for two days each month to complete warranty repair work on equipment. Since the company has four days of business activity in Minnesota, they are required to collect and remit Minnesota tax on all sales made from outside Minnesota to destinations in Minnesota beginning with the fourth day of business activity in Minnesota and continuing through the following 11 calendar months. Assuming that this company discontinues all sales activity in Minnesota after October 2018, they must collect and remit Minnesota sales or use tax on all sales starting on the date of the fourth sales activity in October 2018 and continuing through September 2019.

3. Same as example 2 (above), except the out-of-state company continues to send representatives into Minnesota to do warranty repair work after October 2018. The company will continue to have nexus with Minnesota. In the future, if the company discontinues its business activities in Minnesota, its nexus will continue for 11 months past the month of its last business activity in Minnesota.


4. In October 2018, December 2018, February 2019, and April 2019, an out-of-state company, which is a marketplace provider, sends employees all over the United States including to Minnesota for one day on the 15th day of each of these months to conduct seminars that are free to the general public to promote the benefits and extra income attendees can earn by selling tangible personal property through the marketplace provider's online platform. The employees do not make any taxable retail sales during their time in Minnesota, but after each seminar, attendees begin making sales into Minnesota that are facilitated by the marketplace provider. Assuming the marketplace provider did not satisfy Minnesota's economic nexus standards, which is beyond the scope of this revenue notice, the marketplace provider must nonetheless register and begin collecting and remitting Minnesota sales tax on all taxable retail sales to destinations in Minnesota it facilitates beginning April 15, 2019 (the fourth day of business activity in Minnesota in a 12-month period), and continuing through the following 11 calendar months

Note: In the examples above, if the out-of-state company is not required to collect Minnesota sales or use tax, its customers are required to remit use tax directly to the state on their purchases. The out-of-state company may, as a convenience to its customers, register and collect and remit Minnesota tax on any sales made to them.

Revocation of Previous Revenue Notice and Effective Date

This revenue notice revokes and replaces Revenue Notice # 00-10 effective for sales and purchases made after September 30, 2019.

Publication Date: September 30, 2019



Lee Ho, Deputy Commissioner