

Minnesota revenue notice, number 96-08

Sales and Use Tax: Capital Equipment - Construction Contractor as Purchasing Agent

Introduction

Minnesota Statutes, section 297A.25, subdivision 42 provides an exemption from sales and use tax for sales of capital equipment. Procedures for obtaining a refund of taxes paid on capital equipment and replacement capital equipment are found in Minnesota Statutes, section 297A.15, subdivision 5. Minnesota Statutes, section 297A.01, subdivisions 16 and 20, define capital equipment as machinery and equipment used by the purchaser or lessee primarily for manufacturing, fabricating, mining, or refining tangible personal property to be sold ultimately at retail, and for electronically transmitting results retrieved by a customer of an on-line computerized data retrieval system.

Generally, when a contractor buys and installs equipment as part of an improvement to real property, the contractor is considered the purchaser and no refund is allowed. However, a manufacturer, fabricator, miner or refiner may appoint a contractor or other person may be appointed as an agent to purchase capital equipment on its behalf of a qualified purchaser.

General Requirements

The department will recognize a third party as a purchasing agent if all the following conditions are met:

1. There must be a **written agreement** establishing the relationship and granting the agent the ability to bind the owner to pay for the purchases.
2. The capital equipment must be **purchased in the name of the owner**, not the agent.
3. All contracts or purchase orders entered into by the agent must contain a **statement** that the purchases are being made pursuant to an agency relationship and that the owner is obligated to pay for the capital equipment purchased. However, the owner can authorize the agent to pay for the items directly as long as the owner reimburses the agent for actual expenditures.
4. The capital equipment purchased under the agency agreement **must not be used by the agent for its own use**. (If there is a separate lump sum contract still in effect that requires the agent to turn over the equipment to the owner, the equipment does not qualify.)
5. **Title** to all capital equipment purchased under the agency agreement passes directly to the owner at the point of delivery.
6. The **risks of ownership** of the capital equipment purchased under the agency agreement are with the owner.

Effective Date

This notice is effective for all periods open under the statute of limitations.

Dated: August 26, 1996

Patricia A. Lien
Assistant Commissioner for Tax Policy