SALES AND USE TAX

SALES AND USE TAX REGISTRATION

Every person who makes taxable retail sales or provides taxable services in Minnesota must obtain a Minnesota tax identification number and register for authorization to collect and remit Minnesota sales and use tax. This must be done before making any taxable sales in Minnesota. This includes not only all sellers located in Minnesota, but also any seller located outside Minnesota who:

- Has an office, place of distribution, sales or sample room, warehouse, or other place of business in Minnesota, either directly or by a subsidiary, or;

- Has an agent, representative, member, sales person, canvasser, solicitor or employee (either temporary or permanent) in Minnesota for any purpose, including the repair, sale, delivery, installation, or solicitation of orders for taxable items, or the leasing of tangible personal property located in Minnesota.

As described in further detail below, a business that does not pay sales tax at the time it purchases taxable goods and services is required to pay use tax. A business that is required to pay use tax must also obtain a Minnesota tax identification number and register for the sales and use tax authorization.

To obtain a Minnesota tax identification number and register to collect and remit the sales and use tax, go to the Minnesota Department of Revenue's website at www.revenue.state.mn.us. If you do not have Internet access call (651) 282-5225 and ask about other methods of registration.

THE MINNESOTA SALES TAX

The sales tax is a tax on the gross receipts from selling, leasing or renting tangible personal property at retail, or providing taxable services, in Minnesota. The end user of the personal property or services is responsible for paying the tax. Generally, a sale is at retail unless the customer purchases the property for purposes of reselling it, or plans to incorporate the property purchased into a new product for sale at retail. Sales by a manufacturer or wholesaler that are sold to customers who are not in the business of reselling the items purchased are sales at retail. However, some sales are specifically exempted by law from the sales and use tax. These exemptions are discussed later in this section.

The Department of Revenue has issued fact sheets on certain sales tax issues. Several fact sheets are industry specific. Copies of fact sheets can be obtained by telephoning (651) 296-6181, from the Department's website at www.revenue.state.mn.us.

Minnesota has a 6.875 percent general sales tax rate. This rate was effective July 2009 and applies to all sales subject to sales and use tax under Minn. Stat. § 297A and 297B. A comprehensive list of taxable sales and special tax rates is available from the Minnesota Department of Revenue.

The new law does not provide transitional language. This means that if an invoice or billing includes charges for taxable items or services for dates prior to July 1, 2009, and dates on or after

July 1, 2009, the entire billing will be subject to the 6.875 percent tax rate, unless those charges are separately stated for sales before July and for sales beginning July 1, 2009. When the charges are separately stated, charges for taxable items or services sold prior to July 1, 2009 will be taxed at 6.5 percent and charges for taxable items or services sold on or after July 1, 2009 will be subject to the 6.875 percent rate.

Some sales are subject to alternative sales and use tax treatment. These include sales such as admission tickets, construction contracts, leases of tangible property, meals, and catering contracts and motor vehicles. Businesses are advised to check with the sales tax division of the Minnesota Department of Revenue for further information.

THE MINNESOTA USE TAX

The use tax complements and is similar to the sales tax. It applies when you buy, lease or rent taxable items on services used in your business without paying sales tax to the seller. The use tax rate is the same as the sales tax rate. The rate is applied to the cost of the taxable purchases on which the sales tax is not paid. The buyer pays use tax directly to the state. **Both businesses and individuals are subject to use tax.** For more information, request the Department's Use Tax Fact Sheets (Fact Sheet 146, Use Tax for Businesses, or Fact Sheet 156, Use Tax for Individuals).

Use tax must be paid on:

- Items purchased outside Minnesota from retailers who do not collect Minnesota sales tax, if the items are for use, storage or consumption in Minnesota.
- Items originally purchased for resale, if the items are taken out of inventory for business or personal use. When items are taken out of inventory, use tax is calculated on the purchase prices of the items.
- Items originally purchased for use in agricultural or industrial production, if the items are put to a taxable use. The use tax must be paid when the item is put to taxable use.
- Items and taxable services purchased from a Minnesota seller who does not collect the sales tax, if the items are put to a taxable use.

Businesses that have registered for sales and use tax should report the cost of the use tax items when they electronically file their sales and use tax return. Individuals must file a Form UT-1, Consumer's Use Tax Return, which is due April 15 following the end of the calendar year. Local use tax is alsodue if the items are used in an area that imposes a local sales and use tax. Note that with the exception of Duluth local use taxes, all local use taxes are required to be reported on the taxpayer's state return.

EXEMPTION CERTIFICATES

Generally, all sales of taxable merchandise are presumed to be subject to the sales tax. However, certain customers are not required to pay the tax at the time of purchase. To show they are authorized to buy goods without paying the tax, these customers must give the seller a properly completed Certificate of Exemption, Form ST-3.

Unless the customer gives the seller a properly completed exemption certificate, the seller is required to collect the sales tax. It is not sufficient for the customer to provide only its sales and use tax number. Certificate of Exemption, Form ST-3, is available from the Department of Revenue at the address and telephone number listed in the Resource Directory section of the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota,* or from its website, www.revenue.state.mn.us.

An exemption certificate may be for either a single purchase or a blanket exemption. Customers who frequently make exempt purchases from one seller should give that seller a blanket exemption certificate to cover future purchases. That way, the seller will not need to collect a new certificate each time the customer makes a purchase.

A properly completed exemption certificate should be retained in the seller 's files to substantiate the exemption. Certificates are subject to inspection by the Department of Revenue, but they should not be mailed to the Department.

EXEMPTIONS AND EXEMPT ORGANIZATIONS

Certain sales are exempt from sales and use tax. Exemptions commonly encountered by Minnesota businesses are listed below. Detailed information on the exemptions may be obtained from the Minnesota Department of Revenue at the address and telephone number provided in the Resource Directory section of the *Guide* or from the Department's website, www.revenue.state.mn.us.

Food, Clothing and Prescription Drugs

Generally, the sale of clothing, prescription drugs and most food is exempt from the sales and use tax. However, the exemption for sales of food does not apply to food purchased from restaurants, bars, delicatessens or caterers, or from vending machines, and it does not include candy, soft drinks or dietary supplements.

Refund for Tax Paid On Capital Equipment Purchases

Purchasers of "capital equipment" as defined in Minn. Stat. § 297A.68, subd 5, may be eligible for a refund of the sales tax paid at the time of purchase. The sales or use tax must first be paid at the full rate. The purchaser may then file a claim for refund (Form ST-11) with the Department of Revenue for the sales or use tax paid.

In order to qualify for the refund, the capital (or replacement capital) equipment must be used by the purchaser or lessee primarily for manufacturing, fabricating, mining, or refining tangible personal property to be sold ultimately at retail, or for electronically transmitting results retrieved by a customer of an on-line computerized data retrieval system. Capital equipment includes all machinery and equipment that is essential to the integrated production process; also included are repair and replacement parts, materials used for foundations that support machinery or equipment, and materials used to construct and install special purpose buildings used in the production process.

Resource Recovery

An exemption from sales and use tax is allowed for purchases of equipment used for processing solid or hazardous waste at a resource recovery facility. Such an exemption requires prior approval by the Minnesota Department of Revenue. For more information, contact the Minnesota Department of Revenue, Corporate and Sales Tax Division.

Sales to Non-Profit Organizations

Nonprofit organizations may, in certain instances, be exempt from paying sales tax. Nonprofit organizations that purchase otherwise taxable goods or services will not have to pay sales tax on such purchases if: the organization is organized exclusively for a charitable, religious, or educational purpose; and the organization receives prior authorization from the Department for the exemption. The exemption does not apply to the purchases of meals, lodging, or motor vehicles, and also does not apply to the additional 6.2 percent tax or 3 percent fee on short term rental of vehicles. Qualifying exempt organizations must provide a certificate of Exemption, Form ST-3.

Sales to Government Agencies; "Direct Pay" Permits

All sales made directly to the federal government are exempt from sales tax. To claim that exemption, an agency of the federal government merely needs to provide a purchase order or payment voucher indicating that the purchase is made directly by the federal government; alternatively, the purchasing federal agency may provide a Certificate of Exemption form (Form ST-3). Sales to employees of the federal government are not exempt from sales tax.

Although sales made directly to the State of Minnesota are not exempt from sales tax, Minnesota State agencies use a direct pay permit, which means that those agencies do not pay the tax to the seller, but instead pay the tax directly to the Department of Revenue. Purchase orders used by Minnesota State agencies contain information about the direct pay permit, so it is not necessary for vendors to obtain a copy of it. There are exceptions to the use of direct pay permits. Sellers of prepared food or beverages, lodging and related services, admissions to amusement or athletic events, motor vehicles or certain services to the State of Minnesota must collect sales tax on those sales from the purchasing Minnesota State agency.

Most sales to local governments (such as cities, counties, townships) are not exempt from sales tax.

Most purchases by public schools, local government hospitals and nursing homes are exempt from sales tax. To claim the exemption, these purchasers must provide a Certificate of Exemption (Form ST-3) to their sellers. However, sales of meals, or lodging to those entities are not exempt.

Fund Raising Sales by Non-Profit Organizations

Under certain conditions, non-profit organizations are not required to collect sales tax on sales of tangible personal property, admission charges, and sales of food, meals, or drinks at fund raising events sponsored by the organization. Fund raising sales by certain youth and senior citizen organizations also are exempt. The exemption is subject to strict requirements, and failure to meet

the requirements can make taxable the entire gross receipts from fund raising for the year. For more information, contact the Department of Revenue at (651) 296-6181.

FILING THE SALES AND USE TAX RETURN

A sales and use tax account is set up on either a monthly, quarterly or annual filing basis depending on how much tax is owed each month.

Annual Filing. Tax must average less than $100 per month.

Quarterly Filing. Tax must average less than $500 per month.

Seasonal Filing. If the business is not open year-round, request seasonal filing. With seasonal filing you only need to file returns for those periods when the business is open.

One-time Filing. If you will be making taxble sales in Minnesota at only one event or during one month, ask for one-time filing. Do not apply for one-time filing if you plan to make taxable sales in the future.

If the amount of tax you report is consistently higher or lower than the limits, you can change your filing cycles when you log into e-File Minnesota to file or pay taxes. If internet service is not available, contact the Minnesota Department of Revenue.

You will not receive a notice to remind you to file your return or pay the tax due. The following are the due-dates:

Monthly Filers. 20th day of the following month.

Quarterly Filers. April 20, July 20, October 20 and January 20.

Annual Filers**.** February 5 of the following year. Annual filers must file on a calendar-year basis, not a fiscal year basis.

Unregisterd Individuals Filing Annual Return. April 15 of the following year.

Payments must be electronically received or postmarked by the due date. If the due date falls on a legal holiday or weekend, the return is due the next business day.

Mandatory electronic payment. Taxpayers who have a sales and use tax liability of $10,000 or more in the state's fiscal year (July 1 - June 30) must file all taxes electronically starting with the next calendar year.

LOCAL SALES AND USE TAXES

The Minnesota Department of Revenue currently administers and collects local taxes for any local unit of government that imposes them. Local sales tax applies to retail sales made and taxable services provided within the local taxing area. The tax applies to the same items that are taxed by the Minnesota sales and use tax law.

All retailers who are registered to collect Minnesota sales tax and are doing business in an area with local tax must be registered with the Minnesota Department of Revenue to collect that local tax. This includes sellers from outside the locality:

- Have an office, distribution, sales, sample or warehouse location, or other place of business in the local area either directly or by a subsidiary;
- Have a representative, agent, sales person, canvasser, or solicitor in the local area, on either a permanent or temporary basis, which operates under the authority of the retailer or its subsidiary for any purpose;
- Ship or deliver tangible personal property to the local area; or
- Perform taxable services in the local area.

Local tax applies to sales made or services performed within city limits or county boundaries only. To figure the tax, combine the state tax rate and the local tax rate and apply the combined rate to the taxable sales price.

Local use tax applies when items or services are bought for business or personal use in the local area without paying local sales tax to the seller. Use tax is similar to the sales tax and the rates are identical. It is based on the cost of taxable purchases. Common examples of when use tax is due are when:

- Items are bought outside the local area and the seller doesn't charge local sales tax, and then the item is used for business or personal use in the local area;
- A taxable item is bought for your business from an out-of-state seller who does not charge or collect local sales tax.

Expanded information on local sales and use tax is available from the Minnesota Department of Revenue.