September 27, 2010

Scott Peterson, Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike, #305
Nashville, TN 37215

Dear Mr. Peterson:

The letter is to address the concerns raised in the “Preliminary Report on 2010 Annual Recertification” concerning Minnesota’s compliance with the Streamlined Sales and Use Tax Agreement.

Issues were raised concerning Minnesota’s compliance in the following areas:

1. **Ringtones.** The taxability matrix indicates that digital audio works are not taxable in general but that ringtones are. Digital audio works is a product definition that includes ringtones. Ringtones is defined “for purposes of the definition of "digital audio works"” and is not set out as a separate definition that can be treated as a product definition. This issue was identified in the 2009 review process. No change was made in the 2010 legislative session.

   **State response:** This issue was noted on Minnesota’s Taxability Matrix (Revised July 2010) and listed as an item of noncompliance in our letter to you dated July 23, 2010. Attempts to correct this during the 2009 and 2010 Legislative Sessions failed. Minnesota intends to propose legislation again for the 2011 Legislative Session to come into compliance with this issue, unless the proposed amendment to the digital products definition (AM10004), which would allow states to treat “ring tones” differently than it treats “digital audio works,” is adopted by the Governing Board.

2. **Bad debts (Section 320).** The SSUTA bad debt provisions provide that when the amount of bad debt written off is greater than the taxable sales for the period, a refund claim may be filed. The state instead allows the excess to be used in the subsequent month. While this may be same as a refund for some at certain times, but not if the amount is so large it exceeds taxable sales in the subsequent month.

   **State response:** As noted in Minnesota Rule 8130.7400, Subpart 3, when the uncollectible debt deduction exceeds the amount the seller has due for the month in which the debt is determined to be uncollectible, the balance of the deduction can be carried forward to the next month. However, in practice, when a sales and use tax return is filed with Minnesota that shows a credit amount, a refund of the overpayment is automatically generated so no claim for refund or carry forward is necessary.
3. **Rounding rule (Section 324).** The rounding rule in the statute cited does not require computation to the third decimal place.

*State response:* You are correct, we should have also included a reference to Revenue Notice #05-08, Sales and Use Tax – Rounding – Per item or Per Invoice, in response to the questions in Section 324. This Revenue Notice requires rounding to the third decimal point and indicates that sellers may elect to compute the tax due on a transaction on either an item basis or an invoice basis. A copy of this Revenue Notice is enclosed. Following is a link to the referenced Revenue Notice on our website:

http://taxes.state.mn.us/sales/Documents/publications_revenue_notices_content_rn_05_08.pdf

4. **Sales price definition.** The definition of “sales price” does not include the receipt of consideration from third parties provisions.

*State response:* The language concerning receipt of consideration from third parties has been included in Minnesota’s definition of sales price since 2008. A copy of Minnesota Statutes, section 297A.61, Subd. 7, is provided below with the section concerning receipt of consideration from third parties highlighted:

M. S. 297A.61, Subd. 7. Sales price.

(a) "Sales price" means the measure subject to sales tax, and means the total amount of consideration, including cash, credit, personal property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

1. the seller's cost of the property sold;
2. the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;
3. charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
4. delivery charges, except the percentage of the delivery charge allocated to delivery of tax exempt property, when the delivery charge is allocated by using either (i) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment, or (ii) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment; and
5. installation charges.

(b) Sales price does not include:
(1) discounts, including cash, terms, or coupons, that are not reimbursed by a third party and that are allowed by the seller and taken by a purchaser on a sale;

(2) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(3) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(c) Sales price includes consideration received by the seller from third parties if:

(1) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(2) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(3) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(4) one of the following criteria is met:

(i) the purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount when the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(ii) the purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any customer does not constitute membership in such a group; or

(iii) the price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

5. Administrative practice. For a number of items, the state uses administrative practice for the legal authority. These include the Section 317 provision for drop shipments, the Section 324 provision allowing sellers to round at the item or invoice level, the Section 329 effective date for services covering periods before and after the effective date of the change, and the Section 401 provision that the state will not use registration under the central system in determining whether a seller has nexus.

State response: We agree, "administrative practice" should not be included in the column as a citation to legal authority. When administrative practice is used, it should be included in the “Notes” column. We would argue, however, no legal authority is needed to support what the commissioner has authority to do administratively.
Section 317 – Drop shipments. Minnesota has never required collection of sales tax on drop shipments. Seller's have always been allowed to accept an exemption certificate claiming an exemption for resale when products are drop shipped to their customer's clients. It seems unnecessary and even redundant to put something in statute saying that a seller can accept a resale exemption certificate on drop shipment sales since M.S. 297A.665 clearly indicates that a seller is relieved of liability for collection of tax if they are provided with a fully completed exemption certificate or all the relevant information. There are no restrictions placed on acceptance of the exemption certificate for drop shipments or any other type of transaction.

Section 324 – Rounding at the item or invoice level. As noted above, a reference should have been provided to Revenue Notice 05-08 (copy enclosed) for this item.

Section 329 – Effective date for rate changes. Allowance of a transitional period for services covering periods before and after the effective date of a rate change has been allowed administratively in Minnesota. That is evidenced by information published in law changes notices and information letters sent to taxpayers when new local sales and use taxes are implemented. Prior to the rate change made in 2009, the last change in the sales and use tax rate was in 1991 when the rate was increased from 6 percent to 6.5 percent. Enclosed for your information is a copy of the 1991 Law Change Notice with the transitional language for services highlighted. We have had more experience with imposition of new local taxes than rate changes in Minnesota and have enclosed copies of notices for the two most recent new local taxes that provide transitional language for utility services.

Section 329 of the Agreement provides that a state must provide the transitional language described in that section when the period of the service starts before and ends after "the statutory effective date" of the rate change. As to the Minnesota sales and use tax rate increase that occurred on July, 2009, no transitional language was provided. Minnesota, however is not out of conformity with Section 329 because there was no "statutory effective date" to the rate increase, given the rate increase was not due to a law passed by our legislature. Instead, the 0.375 percent rate increase was the result of a constitutional amendment approved by voters at the November 4, 2008, state general election, with the funds dedicated to specific projects. The specific language of the constitutional amendment, which was put to and elected by the voters, called for adopting a “three-eighths of one percent” sales tax increase to be effective from July 1, 2009, until the year 2034. Subsequently, Minnesota Statutes, section 297A.62, was amended during the 2009 legislative session to clarify that the tax rate increase of “three-eighths of one percent,” “as required under the Minnesota Constitution, article XI, section 15” is equal
to an “additional sales tax of 0.375 percent.” This was done so that the total state rate could be easily identified by taxpayers. While the statutory amendment to section 297A.62 was effective on July 1, 2009, the statutory amendment did not impose the rate increase, rather the State Constitution did.

Section 401 – registration under the central registration system will not be used in determining whether a seller has nexus. Reference should have been made to M. S. 297A.995, Subd. 6(e), on our Certificate of Compliance for this issue. M. S. 297A.995 (copy enclosed), Uniform Sales and Use Tax Administration Act, authorizes the commissioner of revenue to enter into the Streamlined Sales and Use Tax Agreement. This section also authorizes the commissioner to take actions reasonably required to implement the provisions of the Agreement. M. S. 297A.995, Subd. 6 provides that the commissioner shall not enter into the agreement unless it requires each state to abide by certain specific requirements, including the provision in (e) which specifies that the agreement must provide that registration with the central registration system and collection of sales and use taxes in member states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

All Minnesota tax auditors have received training on this issue so that they are aware that registration through the Streamlined registration system cannot be used at any time for determining whether a taxpayer has nexus for any tax type. We include an indicator on all taxpayer accounts that clearly shows those accounts that are registered through the Streamlined registration system. In order to put taxpayers on notice concerning this issue, we added a special note under the Streamlined Sales Tax Project information on our website to indicate that registration through the Streamlined Registration system cannot be used as a factor in determining nexus.

If you have questions or require additional information, please contact me directly.

Sincerely,

[Signature]

Jack Mansun, Assistant Commissioner
Minnesota Department of Revenue
E-mail: jack.mansun@state.mn.us
Phone: 651-556-6009

Enclosures: Revenue Notice 05-08, Sales and Use Tax – Rounding Per Item or Per Invoice
1991 Sales and Use Tax Law Changes
Cook County 1% Sales and Use Tax
Worthington 0.5% Sales and Use Tax
M. S. 297A.995, Uniform Sales and Use Tax Administration Act

600 North Robert Street
St. Paul, MN 55146

Minnesota Relay (TTY): 711
An equal opportunity employer
MINNESOTA DEPARTMENT OF REVENUE

Revenue Notice # 05-08: Sales and Use Tax – Rounding – Per Item or Per Invoice

Introduction
In computing sales or use tax to be collected or remitted as the result of a transaction, the tax computation must be carried to the third decimal place. Minnesota Statutes, section 297A.78, subdivision 1, provides that in computing the tax "amounts of tax less than one-half of one cent must be disregarded and amounts of tax of one-half cent or more must be considered an additional cent." Additionally, when the seller is collecting or remitting both state and local taxes, this rounding rule shall be applied to the aggregated state and local taxes.

Issue
Whether sellers may elect to compute the tax due on a transaction on either an item basis or an invoice basis.

Department Position
Sellers may elect to compute the tax due on a transaction on either an item basis or an invoice basis.

Examples
1. Seller X sells the following taxable items to Purchaser A:
   • 10 widgets for $19.65 total
   • 1 component part for $3.56
   The applicable tax rate (aggregate of state and local) is 7.5%. Seller X elects to compute the tax due on a per item basis. The tax on the 10 widgets is $1.47 (7.5% of $19.65 = $1.47375). The tax on the component part is $0.27 (7.5% of $3.56 = $0.267). Using the rounding rule on a per item basis, the total tax is $1.74.

2. Same as Example 1, except Seller X elects to compute the tax due on an invoice basis. The invoice price before tax is $23.21. The tax rate of 7.5%, multiplied by $23.21, equals $1.74075. Using the rounding rule on an invoice basis, the tax is $1.74.

Regardless of which method the seller uses to compute the sales tax on the transaction that is due from the customer, pursuant to section 297A.82, the seller must remit the sales tax imposed on the gross receipts from retail sales as defined in section 297A.61, subdivision 4.

John H. Mansun, Assistant Commissioner
for Tax Policy and External Relations

Publication Date: August 29, 2005
Sales Tax Rate Changes

Minnesota State Sales Tax - The general sales and use tax and motor vehicle excise tax rates are temporarily increasing by 0.5 percent to 6.5 percent. The additional 0.5 percent rate applies to all taxable sales, including items taxed at special rates, made from July 1, 1991, through December 31, 1991. Sales of qualified farm machinery, logging equipment, and aquaculture equipment (see the information in next column concerning the new reduced rate for aquaculture equipment) will be taxed at 2.5 percent; special tooling will be taxed at 4.5 percent; and liquor sales will be taxed at 9 percent.

Sales Contracted Before July 1, 1991 - The Legislature did not provide language allowing for an exemption from the new sales tax rates for sales or contracts entered into prior to July 1, 1991. However, the department has taken an administrative position allowing a transitional period. The following rules will apply:

- **Construction contracts.** The rate increase does not apply to sales of building materials and supplies made under a bona fide written lump-sum or fixed-price construction contract that has no allocation provision for future taxes. The contract must be signed and enforceable prior to June 1, 1991, and delivery of the materials and supplies used in performing the contract made on or before December 31, 1991. The department is currently working on procedures for administration of the transitional period.

- **Leases and taxable service contracts.** For leases of tangible personal property and contracts to provide taxable services entered into prior to June 1, 1991, the additional 0.5 percent tax rate applies to payments made after August 31, 1991.

- **Motor vehicles and tangible personal property.** The increase in rate does not apply to sales made under a bona fide written contract that was enforceable before June 1, 1991, if delivery is made before September 1, 1991.

- **Utility sales.** The 6 percent tax rate applies to utility bills that include charges for service for any date before July 1, 1991, unless the billing period extends past August 31, 1991. If the billing period includes services both before July 1 and after August 31, 1991, the 6.5 percent tax rate applies to services after July 1, 1991.

Local Option Sales Tax - Beginning January 1, 1992, counties may impose a 0.5 percent sales and use tax on retail sales. County sales and use tax will apply to the same items subject to the 6 percent general sales and use tax, and to vehicles subject to the motor vehicle excise tax. The local option tax will replace the temporary increase in the Minnesota state sales and use tax rate and will be in addition to any existing local sales taxes. The Department of Revenue will collect and administer the local option sales tax in the same manner as the state sales and use tax.

A county may impose the tax by adopting an authorizing resolution by July 1, 1991. There are various ways for the cities, townships, and individual voters within a county to reverse the decision of the county board to impose or to later rescind the tax.

Revenues from the temporary increase in the general rates and the local option excise taxes will be deposited in a new fund, called the local government trust fund, along with 1.5 percent of the revenues from the state sales and use tax and the motor vehicle excise tax. This money will be paid back to the participating local units of government in place of the state aid they now receive.

Aquaculture Production Equipment - Aquaculture is the cultivation of animals in water for consumption or sale. Starting June 4, 1991, purchases of new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in aquaculture production are subject to tax at the rate of 2 percent. (The 0.5 percent sales tax rate increase also applies to aquaculture equipment, making the effective rate 2.5 percent.)

Repair and replacement parts for aquaculture production equipment are subject to the full sales and use tax rate. For additional information on the specific equipment that qualifies for the reduced tax rate, contact the Taxpayer Information Office and ask for a copy of the Aquaculture Production Equipment Fact Sheet.
Beginning April 1, 2009, the city of Worthington will have a one half of one percent sales and use tax that will be administered by the Minnesota Department of Revenue. The tax will be used to pay the costs of a community center complex and to renovate the Memorial Auditorium.

The sales tax applies to retail sales made within the city limits of Worthington. The use tax applies to taxable items used in Worthington if the local sales tax was not paid. The tax applies to the same items that are taxable under the Minnesota sales and use tax law. Vehicle sales. The Worthington sales and use tax does not apply to sales of motor vehicles registered for road use. However, an excise tax of $20 applies to sales of vehicles made by dealers located within the city of Worthington. Contact the city of Worthington about the $20 tax, since they administer this tax. For leased vehicles, see “Leases” on the next page.

Fact Sheet 164, Local Sales and Use Taxes, contains more information about local taxes and is available on our website.

Who must be registered
All retailers who are registered to collect Minnesota sales tax and are doing business in Worthington must be registered to collect the Worthington city tax. This includes sellers outside Worthington who:

- have an office, distribution, sales, sample, or warehouse location, or other place of business in Worthington either directly or by a subsidiary;
- have a representative, agent, salesperson, canvasser, or solicitor in Worthington, either on a permanent or temporary basis, who operates under the authority of the retailer or its subsidiary for any purpose, such as repairing, selling, installing, or soliciting orders for the retailer’s taxable goods or services, or leasing tangible personal property in Worthington;
- ship or deliver tangible personal property into Worthington; or
- perform taxable services in Worthington.

How to register and report Worthington tax
To register for Worthington tax:
- Log into e-FILE Minnesota. Click on “Update business information” on the Main Menu page. Click on the “Sales and use tax” link in the left sidebar. Click “Continue” to advance to the “Additional taxes” page and add Worthington tax.
- If you file over the internet, you may register for the Worthington tax on-line when you file your April sales tax return. On the “File a return” page, click “Add a sales tax type” and check the box for Worthington tax (before you enter your figures).
- If you file by phone, you must register for local tax before you file your return. Call 651-282-5225 or e-mail us at salesuse.tax@state.mn.us to register. Be sure to include your MN ID number if you send us an e-mail.

Worthington sales and use tax is reported at the same time you report your Minnesota sales and use tax, but the figures are reported on separate lines.

Use tax
Worthington use tax applies when you are located in Worthington and you buy items or services without paying Worthington sales tax to the vendor. Use tax is similar to the sales tax and the rates are identical. It is based on your cost of taxable purchases. Common examples of when you owe use tax are when:
- You buy items on the internet, by phone, or from any business and the seller doesn’t charge Worthington sales tax and you use the item for business or personal use in Worthington.
- You buy items for resale at your business, and then remove some of the items from inventory for business or personal use in Worthington.

Figuring the tax
To figure the tax, combine the state sales tax rate (6.5 percent) and the Worthington rate (0.5 percent), apply the combined rate (7 percent) to the sales price and round to the nearest full cent. A 7 percent rate chart is available on our website. Paper rate charts are available upon request.

Charge Worthington sales tax to customers from in or outside Worthington who pick up items in Worthington for business or personal use, even if the items are taken out of Worthington.

Charge Worthington sales tax to customers from in or outside Worthington if you perform taxable services, such as dry cleaning or car washing, for them in Worthington.

Do not charge Worthington sales tax on sales of taxable items when you deliver the items outside the Worthington city limits.
MINNESOTA • REVENUE

Worthington 0.5% Sales and Use Tax

Exemption certificates
If your customer gives you a fully completed exemption certificate for state sales tax, also use that certificate as proof of exemption from the Worthington sales tax.

Local governments
Local governments are not required to pay local general sales taxes. Local governments include cities, towns, counties, instrumentalities, political subdivisions, commissions, special districts and government boards. No exemption certificate is necessary. However, state sales tax generally applies.

How to handle transitional sales

Tangible items
Worthington tax does not apply to sales of tangible items or vehicle sales if you have a bona fide written contract enforceable before April 1, 2009, and the items are delivered on or before May 31, 2009.

Service contracts
If there is an enforceable contract for taxable services in effect before April 1, 2009, and payment is made before April 1, 2009, Worthington sales tax does not apply. However, the Worthington sales and use tax shall apply to payments made on or after April 1, 2009, to provide taxable services.

Leases
Worthington sales tax does not apply to lease payments that include periods before April 1, 2009. It does apply to lease payments for periods beginning April 1, 2009, or after. If the lease is for a vehicle that requires an up-front payment of state sales tax, Worthington sales tax is also due up-front for leases entered into April 1, 2009, or after, if the vehicle is principally garaged in Worthington.

Utility sales
Worthington tax does not apply to utility bills that include charges for service for any date before April 1, 2009. It does apply to utility bills for service periods beginning April 1, 2009, or after.

Admission tickets
If admission tickets are purchased and paid for before April 1, 2009, the Worthington sales tax does not apply, even if the event occurs April 1, 2009, or after.

Construction contracts
New procedure! To claim exemption, contractors and subcontractors must now use Form ST3 (Revised 6/08), which is now available on our web site. No need to apply to our office for an ST8 Contractors Exemption Certificate, as was done in the past.

Worthington sales and use taxes do not apply to building materials for a lump-sum construction contract in force before April 1, 2009, if delivery is made before December 1, 2009. To qualify for the exemption:
- the construction contract must be signed and in force before April 1, 2009;
- the contract must be a bona fide written lump-sum or fixed-price construction contract (meaning that the contractor is locked into a price for completing the contracted work, with no provision for an increase in the price due to tax increases); and
- the building materials must be used exclusively on the qualifying contract and delivered before December 1, 2009. Purchases delivered after that date are subject to Worthington sales tax.

Documentation. You must have the documentation described below in your records to verify the exemption:
- the owner (the person contracting for the work);
- the name, location of the project, and contract or project number;
- the contract price and payment terms;
- the date of the contract and signatures; and
- a listing of subcontractors with qualifying contracts.

To claim exemption, give a fully completed Form ST3, Certificate of Exemption, to each supplier. Suppliers must keep all exemption certificates. Do not send exemption certificates to the Department of Revenue.

Reminder: When the conditions above are followed, only the Worthington tax is exempt. State and other local sales and use taxes still apply.

Information and assistance

Call: 651-296-6181 or toll free 1-800-657-3777
Fax: 651-556-3102
E-mail: salesuse.tax@state.mn.us
Web site: www.taxes.state.mn.us
Write: Minnesota Revenue
Sales and Use Tax Division
Mail Station 6330
St. Paul, MN 55146-6330

January 2009
Beginning April 1, 2010, Cook County will have a one percent sales and use tax that will be administered by the Minnesota Department of Revenue. The revenues will be used to fund the construction, improvements, and additions to county community centers and public recreation areas, including, but not limited to, improvements and additions to the public parking areas; construction of and improvements to the Grand Marais Public Library, a countywide high-speed communications infrastructure network, and a district energy plant for public facilities in Grand Marais.

The sales tax applies to retail sales made within the limits of Cook County. The use tax applies to taxable items used in Cook County if the local sales tax was not paid. The tax applies to the same items that are taxable under the Minnesota sales and use tax law.

Vehicle sales. The Cook County sales and use tax does not apply to sales of motor vehicles registered for road use.

Fact Sheet 164, Local Sales and Use Taxes, contains more information about local taxes and is available on our website.

Who must be registered
All retailers who are registered to collect Minnesota sales tax and are doing business in Cook County must be registered to collect the Cook County tax. This includes sellers outside Cook County who:

- have an office, distribution, sales, sample, or warehouse location, or other place of business in Cook County either directly or by a subsidiary;
- have a representative, agent, salesperson, canvasser, or solicitor in Cook County, either on a permanent or temporary basis, who operates under the authority of the retailer or its subsidiary for any purpose, such as repairing, selling, installing, or soliciting orders for the retailer’s taxable goods or services, or leasing tangible personal property in Cook County;
- ship or deliver tangible personal property into Cook County; or
- perform taxable services in Cook County.

How to register and report Cook County tax
To register for Cook County tax:

- Log into e-FILE Minnesota. Click on “Update business information” on the Main Menu page. Click on the “Sales and use tax” link in the left sidebar. Click “Continue” to advance to the “Additional taxes” page and add Cook County tax.

  - If you file over the internet, you may register for the Cook County tax on-line when you file your April sales tax return. On the “File a return” page, click “Add a sales tax type” and check the box for Cook County tax (before you enter your figures).

  - If you file by phone, you must register for local tax before you file your return. Call 1-800-657-3605 or e-mail us at Business.Registration@state.mn.us to register. Be sure to include your MN ID number if you send us an e-mail.

Cook County sales and use tax is reported at the same time you report your Minnesota sales and use tax, but the figures are reported on separate lines.

Use tax
Cook County use tax applies when you are located in Cook County and you buy items or services without paying Cook County sales tax to the vendor. Use tax is similar to the sales tax and the rates are identical. It is based on your cost of taxable purchases. Common examples of when you owe use tax are when:

- You buy items on the internet, by phone, or from any business and the seller doesn’t charge Cook County sales tax and you use the item for business or personal use in Cook County.

- You buy items for resale at your business, and then remove some of the items from inventory for business or personal use in Cook County.

Figuring the tax
To figure the tax, combine the state sales tax rate (6.875 percent) and the Cook County rate (1.0 percent), apply the combined rate (7.875 percent) to the sales price and round to the nearest full cent. A .875 percent rate chart is available on our website. Paper rate charts are available upon request.

Charge Cook County sales tax to customers from in or outside Cook County who pick up items in Cook County for business or personal use, even if the items are taken out of Cook County.

Charge Cook County sales tax to customers from in and outside Cook County if you perform taxable services such as, dry cleaning or car washing, for them in Cook County.

Do not charge Cook County sales tax on sales of taxable items when you deliver the items outside the Cook County limits.
MINNESOTA • REVENUE

Cook County 1% Sales and Use Tax

Exemption certificates
If your customer gives you a fully completed exemption certificate for state sales tax, also use that certificate as proof of exemption from the Cook County sales tax.

Local governments
Local governments are not required to pay local general sales taxes. Local governments include cities, towns, counties, instrumentalties, political subdivisions, commissions, special districts and government boards. No exemption certificate is necessary. However, state sales tax generally applies.

How to handle transitional sales

Tangible items
Cook County tax does not apply to sales of tangible items if you have a bona fide written contract enforceable before April 1, 2010, and the items are delivered on or before June 30, 2010.

Service contracts
If there is an enforceable contract for taxable services in effect before April 1, 2010, and payment is made before April 1, 2010 and the service is provided before June 30, 2010, Cook County sales tax does not apply. However, the Cook County sales and use tax shall apply to payments made on or after April 1, 2010, to provide taxable services.

Leases
Cook County sales tax does not apply to lease payments that include periods before April 1, 2010. It does apply to lease payments for periods beginning April 1, 2010, or after. If the lease is for a vehicle that requires an upfront payment of state sales tax, Cook County sales tax is also due upfront for leases entered into April 1, 2010, or after, if the vehicle is principally garaged in Cook County.

Utility sales
Cook County tax does not apply to utility bills that include charges for service for any date before April 1, 2010. It does apply to utility bills for service periods beginning April 1, 2010, or after.

Admission tickets
If admission tickets are purchased and paid for before April 1, 2010, the Cook County sales tax does not apply, even if the event occurs April 1, 2010, or after.

Construction contracts

New procedure! To claim exemption, contractors and subcontractors must now use Form ST3 (Revised 6/08), which is now available on our web site. No need to apply to our office for an ST8 Contractors Exemption Certificate, as was done in the past.

Cook County sales and use taxes do not apply to building materials for a lump-sum construction contract in force before April 1, 2010, if delivery is made before September 30, 2010. To qualify for the exemption:

• the construction contract must be signed and in force before April 1, 2010;
• the contract must be a bona fide written lump-sum or fixed-price construction contract (meaning that the contractor is locked into a price for completing the contracted work, with no provision for an increase in the price due to tax increases); and
• the building materials must be used exclusively on the qualifying contract and delivered before September 30, 2010. Purchases delivered after that date are subject to Cook County sales tax.

Documentation. You must have the documentation described below in your records to verify the exemption:

• the owner (the person contracting for the work);
• the name, location of the project, and contract or project number;
• the contract price and payment terms;
• the date of the contract and signatures; and
• a listing of subcontractors with qualifying contracts.

To claim exemption, give a fully completed Form ST3, Certificate of Exemption, to each supplier. Suppliers must keep all exemption certificates. Do not send exemption certificates to the Department of Revenue.

Reminder: When the conditions above are followed, only the Cook County tax is exempt. State and other local sales and use taxes still apply.

Information and assistance

Call: 651-296-6181 or toll free 1-800-657-3777
Fax: 651-556-3102
E-mail: salesuse.tax@state.mn.us
Web site: www.taxes.state.mn.us
Write: Minnesota Revenue
Sales and Use Tax Division
Mail Station 6330
St. Paul, MN 55146-6330

January 2010
297A.995 UNIFORM SALES AND USE TAX ADMINISTRATION ACT.

Subdivision 1. Title. This section may be cited as the Uniform Sales and Use Tax Administration Act.

Subd. 2. Definitions. As used in this section:

(a) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(b) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(c) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

Subd. 3. Legislative finding. The legislature finds that this state should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Subd. 4. Authority to enter agreement. The commissioner of revenue is authorized and directed to enter into the agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the commissioner is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The commissioner of revenue is further directed to negotiate the agreement with the express intention of ensuring uniform sales and use taxation as applied to like-kind transactions.

The commissioner is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The following officials are authorized to represent this state before the other states that are signatories to the agreement:

(1) the commissioner or the commissioner's designee;
(2) the chair of the house of representatives committee with jurisdiction over taxes or the house chair's designee; and

(3) the chair of the senate committee with jurisdiction over taxes or the senate chair's designee.

Subd. 5. Relationship to state law. No provision of the agreement authorized by this bill in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

Subd. 6. Agreement requirements. The commissioner of revenue shall not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(a) Uniform state rate. The agreement must set restrictions to achieve more uniform state rates through the following:

(1) limiting the number of state rates;
(2) eliminating maximums on the amount of state tax that is due on a transaction; and
(3) eliminating thresholds on the application of state tax.

(b) Uniform standards. The agreement must establish uniform standards for the following:

(1) the sourcing of transactions to taxing jurisdictions;
(2) the administration of exempt sales;
(3) the allowances a seller can take for bad debts; and
(4) sales and use tax returns and remittances.

(c) Uniform definitions. The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(d) Central registration. The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) No nexus attribution. The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(f) Local sales and use taxes. The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
(1) restricting and eliminating variances between the state and local tax bases;

(2) requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(3) restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(4) providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(g) **Monetary allowances.** The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(h) **State compliance.** The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(i) **Consumer privacy.** The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(j) **Advisory councils.** The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Subd. 7. **Cooperating sovereigns.** The agreement authorized by this bill is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Subd. 8. **Limited binding and beneficial effect.** (a) The agreement authorized by this bill binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with paragraph (a), no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency,
or other instrumentality of this state, or any political subdivision of this state, on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or its application, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

Subd. 9. Seller and third-party liability. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Subd. 10. Relief from certain liability. (a) Notwithstanding subdivision 9, sellers and certified service providers are relieved from liability to the state for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider (1) relying on erroneous data provided by the commissioner in the database files on tax rates, boundaries, or taxing jurisdiction assignments, or (2) relying on erroneous data provided by the state in its taxability matrix concerning the taxability of products and services.

(b) Notwithstanding subdivision 9, sellers and certified service providers are relieved from liability to the state for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on the certification by
the commissioner as to the accuracy of a certified automated system as to the taxability of product categories. The relief from liability provided by this paragraph does not apply when the sellers or certified service providers have incorrectly classified an item or transaction into a product category, unless the item or transaction within a product category was approved by the commissioner or approved jointly by the states that are signatories to the agreement. The sellers and certified service providers must revise a classification within ten days after receipt of notice from the commissioner that an item or transaction within a product category is incorrectly classified as to its taxability, or they are not relieved from liability for the incorrect classification following the notification.

Subd. 11. Purchaser relief from certain liability. (a) Notwithstanding other provisions in the law, a purchaser is relieved from liability resulting from having paid the incorrect amount of sales or use tax if a purchaser, whether or not holding a direct pay permit, or a purchaser's seller or certified service provider relied on erroneous data provided by this state in the database files on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix. After providing an address-based database for assigning taxing jurisdictions and their associated rates, no relief for errors resulting from the purchaser's reliance on a database using zip codes is allowed.

(b) With respect to reliance on the taxability matrix provided by this state in paragraph (a), relief is limited to erroneous classifications in the taxability matrix for items included within the classifications as "taxable," "exempt," "included in sales price," "excluded from sales price," "included in the definition," and "excluded from the definition."

Subd. 12. Database files. For purposes of this section, "database files on tax rates, boundaries, and taxing jurisdiction assignments" and the "taxability matrix" means those databases and the taxability matrix required under the agreement.

History: 1Sp2001 c 5 art 12 s 84; 2002 c 377 art 3 s 19; 2003 c 127 art 1 s 31; 2008 c 366 art 13 s 6-8