

Minnesota DOR notice—MPU exemption only valid at time purchase

Overview

In 2013, Minnesota enacted *Minnesota Statutes*, section 297A.668, subdivision 6a, affording business purchasers the ability to provide a seller at the time of purchase with a sales and use tax exemption certificate indicating multiple points of use (MPU) for certain qualifying purchases.¹ The Minnesota Department of Revenue (Department) recently issued Revenue Notice # 15-03 outlining the Department's position that sales tax refund claims and amended use tax returns filed by business purchasers subsequent to a qualifying purchase based on the MPU provision of *Minnesota Statutes*, section 297A.668, subdivision 6a, are not valid.² This Tax Alert summarizes Revenue Notice # 15-03, as well as provides some related taxpayer considerations.

Requirements for seeking MPU exemption

Beginning July 1, 2013, business purchasers of digital goods, computer software delivered electronically, or a service can provide the seller with an exemption certificate claiming MPU³ if the following conditions are met *at the time of purchase*:

1. The purchaser knows the digital good, computer software delivered electronically, or a service will be concurrently available for use in more than one taxing jurisdiction, and
2. The purchaser delivers to the seller an exemption certificate indicating MPU.⁴

Receipt of the fully completed exemption certificate indicating MPU relieves the seller of the obligation to collect, pay, or remit the applicable tax.⁵ The purchaser may then apportion the purchase price for application of use tax on a direct pay basis using "any reasonable but consistent and uniform method of apportionment supported by the purchaser's business records as they exist" at the time of purchase.⁶

Sales tax refund claims and amended use tax returns based on MPU are invalid

Many business purchasers that could have claimed MPU at the time of purchase of a digital good, computer software delivered electronically, or a service did not do so, and instead paid sales tax to the vendor or self-assessed use tax on such purchases. Some of these business purchasers subsequently filed refund claims for sales paid to vendors and/or filed amended use tax returns seeking a refund, in each instance based on the MPU provision of *Minnesota Statutes*, section 297A.668, subdivision 6a.

In response to these business purchaser sales tax refund claims and amended use tax returns, the Department recently issued Revenue Notice # 15-03 stating "the [D]epartment's position" that purchaser refund claims asserting MPU are not valid. The Department asserts that the MPU is not an exemption from sales and use tax and only provides the business purchaser the option to apportion use tax to multiple taxing jurisdictions if all conditions of the statute are met, most notably the requirement that the MPU exemption must be claimed at the time of the purchase.⁷ Thus, business purchasers that did not avail themselves of the MPU exemption at the time of the purchase cannot, subsequent to the completion of the purchase, seek a refund of sales tax or file an amended use tax return.⁸ This Revenue Notice # 15-03 appears to be effective for all pending and future refund claims.

Considerations

Based on the Department's position as stated in Revenue Notice # 15-03, business purchasers attempting to secure refunds after the time of sale based on the MPU provision of *Minnesota Statutes*, section 297A.668, subdivision 6a, will have their purchaser sales tax refund claims and/or amended use tax returns denied. Business purchasers seeking to claim the MPU exemption on prospective purchases of a digital good, computer software

¹ Minn. Stat. § 297A.668, Subd. 6a.

² Revenue Notice # 15-03, Minnesota Department of Revenue (September 28, 2015).

³ Minn. Stat. § 297A.668, Subdivision 6a(d).

⁴ Minn. Stat. § 297A.668, Subd. 6a(a).

⁵ Minn. Stat. § 297A.668, Subdivision 6a(b).

⁶ Minn. Stat. § 297A.668, Subdivision 6a(c).

⁷ Revenue Notice # 15-03, Minnesota Department of Revenue (September 28, 2015).

⁸ *Id.*

delivered electronically or a service should closely analyze whether such purchases are eligible for MPU treatment and the necessary documentation to provide the vendor retained in the event of a subsequent sales or use tax audit.

Contacts

If you have questions regarding MPU, the application of *Minnesota Statutes*, section 297A.668, subdivision 6a, or other Minnesota sales and use tax matters, please contact any of the following Deloitte Tax professionals:

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