

Use Tax for Businesses

146

Fact
Sheet

Did you know?

- ◆ The majority of businesses have a use tax liability.
- ◆ The most frequent assessments made in audits involve unreported use tax.

The use tax complements and is similar to the sales tax. Use tax and sales tax rates are identical.

Use tax applies when you buy, lease, or rent taxable items or services used in your business without paying sales tax to the seller. The use tax is based on your cost of taxable purchases.

Use tax may be due when you bring items into Minnesota or when you take them out of inventory for a taxable use. Use tax is also due if a seller does not charge Minnesota sales tax on taxable items.

Local use tax may also be due. See Fact Sheet 164, Local Sales and Use Taxes, for more information.

Examples of use tax liability

Items purchased from an out-of-state mail order company or over the Internet. If the seller ships the items to you in Minnesota but does not collect Minnesota sales tax, you owe Minnesota use tax. Items commonly purchased from retailers outside Minnesota that are subject to tax include:

- computer hardware and software
- office supplies and equipment
- business furniture, fixtures and accessories

Equipment purchased to manufacture a product. If you didn't pay sales tax when you bought the equipment, you must pay use tax. You may apply for a refund of the tax paid if the items qualify as capital equipment, but the use tax must be paid before the refund is allowed. See Fact Sheet 103, Capital Equipment, for more information.

Items purchased exempt from sales tax for the purpose of resale. If you take an item out of inventory for use in your business, use tax is due on your cost of the item taken out of inventory. For example, an office supply store buys several boxes of cash register tapes exempt for resale. Later, an employee takes a roll of tape off the shelf to use in the store register—use tax is due on the store's cost of the tape.

Taxable items donated to a charitable organization for a fund raiser. If you didn't pay sales tax when you bought the donated items, you owe use tax, even if the recipient is a tax-exempt organization.

Taxable items given as gifts to clients, employees or others. If you took possession of the gifts in Minnesota but didn't pay sales tax when you bought them, you owe use tax, even if you send the gifts out of Minnesota. If the gifts are sent out of state by the seller, no use tax is due to Minnesota. You may be liable for reporting use tax in the state to which the gifts are shipped.

Materials used by a contractor on a construction contract in Minnesota are subject to use tax if sales tax was not paid. See Fact Sheet 128, Contractors, for more information.

Fuel for non-highway use is subject to use tax if:

- no sales tax was paid, and
- petroleum tax either was not charged or was refunded.

See Fact Sheet 116, Petroleum Products, for more information.

Interstate motor carriers authorized to pay use tax directly to the Minnesota Department of Revenue must pay use tax on a percentage of the cost of parts and accessories and leased equipment. See Fact Sheet 107, Interstate Motor Carriers, for more information.

Bundled sales. Beginning January 1, 2008, use tax may be due on your cost of taxable items that are included in a nontaxable bundled transaction. Sales that otherwise meet the definition of a bundled transaction are not taxable if the transaction meets certain tests. In those cases, you owe use tax on the taxable items included in the transaction if your purchaser price of the taxable items is more than \$100.

A bundled transaction is the retail sale of two or more distinct and identifiable products for one non-itemized price. Generally, a bundled transaction is taxable when one of the products included in the sale is a taxable item. For more information refer to the article titled “Bundled transactions” in the 2008 Sales and Use Tax Newsletter which is available on our website.

Occasional sale exemption

Usually, sales of new or used business equipment are taxable. However, when a business sells its own equipment, the occasional sale exemption may apply. See Fact Sheet 132, Occasional Sales of Business Equipment and Goods, for more information.

If you buy items that are exempt from sales tax as occasional sales, use tax is not due. To document a nontaxable purchase in case of a future audit, ask the seller to give you a statement indicating the reason the sale is tax exempt.

Example: Purchases made at garage sales are generally nontaxable occasional sales, since sellers are not considered to be “a business.” If they are not “in business,” they are not required to collect sales tax. Since the seller is not obligated to charge sales tax, the purchaser is not required to pay use tax in this case.

Tax paid to another state

Minnesota allows credit for state or local sales tax legally required to be paid to another state or locality. When you buy items out of state, the supplier may be required to charge you that state’s state and local sales tax if you pick up the items there. You still owe use tax to Minnesota if the other state’s sales tax rate is less than Minnesota’s general sales and use tax rate. You pay the difference in rates as a variable rate use tax to Minnesota.

Example: A Red Wing, Minnesota business buys and picks up office supplies in LaCrosse, Wisconsin. The office supply store charges 5.5 percent sales tax (5 percent Wisconsin state sales tax and 0.5 percent LaCrosse county sales tax). The business brings the supplies back to Red Wing for use.

Minnesota sales tax rate (current rate)	6.875%
Wisconsin state and local sales tax	<u>- (5.5%)</u>
Variable rate tax due to Minnesota	1.375%

Record the 1.375 percent use tax as variable rate use tax when you electronically file your Minnesota sales and use tax return.

How to accrue use tax

A business must set up a system to record and pay use tax. This may be a use tax accrual account or other record-keeping system where purchases subject to use tax are recorded. It may be as simple as a file folder with copies of the individual invoices.

(See *Use tax accrual helpful hints* in the next section, and the sample *Minnesota Use Tax Worksheet* on page 4.) Be sure to record when the use tax is reported and paid, either on the invoice itself or somewhere in your records.

Use tax accrual helpful hints

Review a list of the sellers you buy from. In your business, regular purchases from a certain seller or of a certain product will be taxable. If you have been audited, the audit schedule listings may help you determine which purchases are normally taxable. This helps to determine which sellers normally do not charge tax.

Check fact sheets that relate to your business. They can help you identify purchases subject to use tax. Call our office or see our web site for a list of available fact sheets.

Use a spreadsheet (manual or electronic) or a separate general ledger accrual account to summarize purchases subject to use tax. Post each invoice that has a use tax liability to the spreadsheet or ledger. At the end of the filing cycle, total the taxable amount and report it as use tax when you electronically file your sales and use tax return. Keep the spreadsheet or ledger detail as a backup to your return.

Record that you accrued use tax on the invoice itself. Sometimes a business will also note the month and year that use tax was accrued. If use tax is posted to a general ledger accrual account, indicate the account number on the invoice.

Review each invoice as you approve it for payment. If the seller did not charge sales tax, report and pay use tax directly to Minnesota. Do not add the tax to the seller’s invoice.

Items to look for when reviewing invoices:

- All delivery and handling charges stated on the invoice for taxable items are taxable. If the seller charged tax only on the goods, report use tax on the shipping and handling charges. See Fact Sheet 155, Delivery Charges, for more information.
- Computer hardware, canned software and software maintenance agreements may be fully or partially taxable. See Fact Sheet 134, Computer Software, for more information.
- Fabrication labor to make taxable goods is always taxable. See Fact Sheet 152, Labor, for more information.
- Installation labor is taxable if it is part of the sales price of taxable goods. For example, installation labor for taxable goods is taxable if it is billed by the seller. However, repair labor is exempt as long as it is separately stated. See Fact Sheet 152, Labor, for more information.
- Most purchases of tangible items for your own use are taxable, including fixed assets and capital equipment.
- You may have a blanket exemption certificate on file with a seller because most items you buy are for resale. However, sometimes you may buy an item that you will *use* in your business along with other purchases of inventory. Use tax is due on your cost of the item used in your business.
- If an invoice is for a contract to improve or repair real property, sales or use tax does not usually apply. Contractors owe sales or use tax on their cost of the material used in the contract. See Fact Sheet 128, Contractors, for more information.
- If you had taxable services performed in Minnesota but were not charged sales tax, use tax is due. Local use tax also applies if the services were performed in an area with local tax. Following is a list of taxable services. For more information, see the fact sheets listed below:
 - Building Cleaning and Maintenance, #112
 - Detective and Security Services, #114

- Laundry and Cleaning Services, #120
- Lawn and Garden Care, Tree and Bush Service, Landscaping, #121
- Massages , #162
- Motor Vehicle Towing, Washing, Rustproofing, #113
- Parking Services, #166
- Pet Grooming, Boarding, and Care Services, #122

How to report Minnesota use tax

Report state, local, and variable rate use tax when you electronically file your sales and use tax return. See the Minnesota Sales and Use Tax Instruction Booklet for more information.

Local sales and use tax

If you are located in an area with local taxes, local sales and use tax may also be due. Local taxes are listed and explained in detail in Fact Sheet 164, Local Sales and Use Taxes. You may also want to adapt the Minnesota Use Tax Worksheet on page 4 to accommodate local use taxes.

References

M. S. 289A.60, Subd. 25, Penalty for failure to properly complete sales and use tax return
M. S. 297A.61, Subd. 38, Bundled transactions
M. S. 297A.63, Use taxes imposed; rates.
M. S. 297A.76, Computation of sales and use taxes.
M. S. 297A.77, Collection of sales and use taxes.
M. S. 297A.78, Liability for use tax; receipt as evidence.
M. S. 297A.80, Taxes in other states; offset against use tax.
M. S. 297A.95, Coordination of state and local sales tax rates.
M. S. 297A.99, Local sales taxes.
M. S. 297A.995, Uniform sales and use tax administration act.
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Other fact sheets that may be of interest:

Items for Business Use Outside Minnesota, #110
Telecommunications Services, #119
Sales to Government, #142
Local Sales and Use Taxes, #164

