MINNESOTA DEPARTMENT OF REVENUE

Revenue Notice # 06-05: Sales and Use Tax – Use Tax – Fractional Ownership Interests

Background

When a sale of tangible personal property purchased for use in Minnesota occurs outside of Minnesota, no Minnesota sales tax is due but if the property is used in Minnesota, a use tax is imposed on the privilege of using, storing, distributing, or consuming tangible personal property in Minnesota. *Minnesota Statutes*, section 297A.63. More than one person or entity may purchase tangible personal property and share in the ownership of the property.

This Revenue Notice explains on what basis the Department of Revenue will assess use tax against fractional ownership interests.

Statutory Authority

Minnesota Statutes, section 297A.61, subdivision 4(a) defines "retail sale" as "any sale, lease, or rental for any purpose other than resale, sublease, or subrent."

Minnesota Statutes, section 297A.61, subdivision 3(b)(1) defines "sale and purchase" to include "any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally, for a consideration in money or by exchange or barter."

Minnesota Statutes, section 297A.63, imposes a use tax on the privilege of "using, storing, distributing, or consuming" tangible personal property in Minnesota, unless sales tax was paid on the tangible personal property or services, or the purchase meets the de minimis requirements in *Minnesota Statutes*, section 297A.67, subdivision 21.

Minnesota Statutes, section 297A.61, subdivision 6, defines "use" to include "the exercise of a right or power incident to the ownership of any interest in tangible personal property or services, purchased from a retailer, other than the sale of that property in the regular course of business."

Position

Use tax will be imposed on purchasers on the purchase price of their ownership interest if:

1) the purchaser buys a fractional ownership interest in tangible personal property that is used in Minnesota;
2) the purchaser does not hold the property solely for resale in the normal course of business;
3) the vendor has not collected Minnesota sales tax on the purchase or the purchaser has paid sales tax to another state at a rate less than the rate imposed under *Minnesota Statutes,* chapter 297A; and
4) the tangible personal property is used in Minnesota.

Examples

Example 1: Y, a Minnesota company, purchases a fractional interest in an aircraft in Wisconsin. The vendor does not collect or remit sales tax to either Wisconsin or Minnesota on the purchase. Y's ownership interest allows it the right to use the aircraft along with the other owners. Y flies the aircraft into and out of Minnesota. The use of the plane in Minnesota is the exercise of a right or power over the aircraft which creates nexus with Minnesota so that Y is subject to use tax on the purchase price of Y's ownership interest.

Example 2: Z, a Minnesota resident, purchases a fractional interest in several aircraft from a vendor in Wisconsin. The vendor does not collect or remit sales tax to either Wisconsin or Minnesota on the purchase. The aircraft are part of a pool of aircraft owned by Z and others. The terms of Z's ownership contract allows Z to use any of the aircraft in the pool. Z flies the aircraft into and out of Minnesota on several occasions. The use of the pooled aircraft in Minnesota is an exercise of Z's right or power over the aircraft and Z is subject to use tax on the purchase price of Z's fractional ownership interest in the aircraft flown into Minnesota.

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