

CHAPTER 5202
DEPARTMENT OF LABOR AND INDUSTRY
INDEPENDENT CONTRACTOR EXEMPTION
CERTIFICATES

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5202.0100 SCOPE.

Parts 5202.0100 to 5202.0160 implement Minnesota Statutes, section 181.723.

Statutory Authority: *MS s 181.723*

History: *33 SR 360*

5202.0110 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 5202.0100 to 5202.0160 have the meanings given them in this part.

Subp. 2. **Applicant.** "Applicant" means an individual who applies for an independent contractor certificate under parts 5202.0100 to 5202.0160, and Minnesota Statutes, section 181.723.

Subp. 3. **Certificate holder.** "Certificate holder" means an individual who has been issued a current independent contractor exemption certificate under Minnesota Statutes, section 181.723.

Subp. 4. **Commissioner.** "Commissioner" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 5. **Department.** "Department" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 6. **Document or documents.** "Document" or "documents" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 7. **Exemption certificate.** "Exemption certificate" means an independent contractor exemption certificate issued under Minnesota Statutes, section 181.723.

Subp. 8. **Main expenses.** "Main expenses" for purposes of Minnesota Statutes, section 181.723, means:

- A. the expense of purchasing, renting, and maintaining tools, equipment, facility or office space, and vehicles used in providing the service;
- B. labor expenses related to the service;
- C. business expenses that are related to the service such as advertising, insurance, taxes, licenses, and permits; and
- D. the expense of materials used in providing the service, except for building construction or improvement materials that under a contract are provided by the building owner or another contractor.

Subp. 9. **Individual.** "Individual" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 10. **Person.** "Person" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

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Subp. 11. **Sworn statement.** "Sworn statement" means a statement that is signed and sworn to before a notarial officer under Minnesota Statutes, chapter 358.

Statutory Authority: *MS s 181.723*

History: *33 SR 360*

5202.0120 WHO SHALL BE ISSUED AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE.

Subpart 1. **Individuals.** The department shall issue an exemption certificate only to an individual as described in Minnesota Statutes, section 181.723, subdivision 2. Domestic or foreign business corporations, public service corporations, development corporations, nonprofit corporations, cooperatives, cooperative associations, limited liability companies, limited partnerships, or partnerships created by statute are not individuals.

Subp. 2. **Manufacture, supply, and sale of products, materials, or merchandise excluded.** Individuals who manufacture, supply, or sell products, materials, or merchandise for the construction of public or private commercial or residential buildings, but do not install, connect, attach, or adjust for use the products, materials, or merchandise, are not performing public or private sector commercial or residential building construction or improvement services.

Subp. 3. **Landscaping services.** For purposes of Minnesota Statutes, section 181.723, subdivision 2, clause (3), landscaping services means placing soil, sod, and mulch; planting seeds, plants, shrubs, trees, and other vegetation; and installing erosion control measures, retaining walls, boundary walls, fences, brick and stone pavers, and aesthetic surface treatments.

Statutory Authority: *MS s 181.723*

History: *33 SR 360*

5202.0130 APPLICATION; REQUIRED INFORMATION AND DOCUMENTATION; APPROVAL OR DENIAL.

Subpart 1. Complete application; submission of documents.

A. An application for an exemption certificate is complete upon the commissioner's receipt of all of the following:

- (1) a signed and dated application on a form approved by the commissioner;
- (2) the information and documentation required in subpart 2; and
- (3) the fee required by Minnesota Statutes, section 181.723, subdivision 14.

B. The applicant must submit complete and legible copies of the information and documentation required in subpart 2 and must retain the original information and documentation for at least two years after submitting the application. The commissioner may store by imaging or other electronic format any information and documentation submitted as part of the application if the image or electronic format produces an accurate and readable image. The commissioner must retain the copies of the submitted information and documentation until the information and documentation is stored by imaging or other electronic format. Thereafter, the commissioner may destroy the copies.

C. The commissioner may request the original of any information and documentation required in subpart 2 if the copies submitted under item B are not legible or complete, or as needed to verify the authenticity or accuracy of the information and documentation submitted. The applicant must submit the original information or documentation within five working days after receipt of the commissioner's request for the original. The commissioner must return the originals to the applicant within 30 days after the information or documentation is either copied or stored by imaging or other electronic format.

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Subp. 2. **Required information and documentation.** All applicants for an exemption certificate must provide the information and documentation required in items A to N on a form and in the manner required by the commissioner.

A. The information in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clauses (1) to (6) and (8).

B. A designation of whether the applicant's business or residential address and business or residential telephone number will be used for purposes of contacting the applicant in connection with the application or exemption certificate and for personal service under Minnesota Statutes, section 181.723, subdivision 10.

C. The business name under which the applicant intends to operate as an independent contractor. If the business name is not the applicant's full legal name, the applicant must submit a copy of the certificate of assumed name that has been filed with the secretary of state according to Minnesota Statutes, sections 333.001 to 333.065.

D. A copy of any audit, letter, report, order, decision, determination, certificate, opinion, or ruling issued by any state or federal court or agency, to the applicant or about which the applicant has knowledge, that is related to the status of the applicant or the applicant's business as an independent contractor, sole proprietor, employer, or employee. The applicant must explain how the audit, letter, report, order, decision, determination, certification, opinion, or ruling supports one or more of the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), or why the applicant should be granted the exemption certificate despite the document's findings.

E. A copy of any credential held or training completed by the applicant that is related to, or required for, the performance of services for which the applicant is seeking an exemption certificate. Examples of these credentials include a business, professional, or personal license issued by a government entity; a certificate of completion of an apprenticeship or other training program; and a degree issued by an accredited educational institution. If the credential is a license issued by a Minnesota state agency, the applicant may provide the license number and type of license held instead of providing a copy of the license.

F. Information about whether the applicant employs individuals while acting as independent contractors under the exemption certificate. If the applicant employs individuals, the applicant must also submit documentation of the applicant's unemployment insurance tax account number under Minnesota Statutes, section 268.045, and workers' compensation coverage for the employees under Minnesota Statutes, chapter 176. If the applicant believes that unemployment or workers' compensation insurance is not required, the applicant must explain the legal basis for why unemployment or workers' compensation coverage is not required.

G. Information about whether, at any time during the two years before the date of the application, the applicant has been employed. If the applicant has been employed at any time during the two years before the date of the application, the applicant must explain why the employment does not preclude issuance of an exemption certificate.

H. All state and federal tax documents that are related to the services the applicant will provide as an independent contractor under the exemption certificate and that have been filed within the two years before the date of the application, including state and federal tax returns, forms, schedules, and other attachments. If the applicant has not filed any tax returns, forms, schedules, or other attachments required by this item for one or both years, the applicant must explain why not. Examples of tax documents that must be submitted under this item, if they have been filed with the Internal Revenue Service, the Minnesota Department of Revenue, or a taxing agency in another jurisdiction, include returns, forms, schedules, and attachments documenting:

(1) income earned and tax paid and owed, such as Internal Revenue Service tax returns on forms 1040 and 1040 SS, and Minnesota Department of Revenue tax returns on form M1;

(2) itemized deductions, such as Internal Revenue Service Schedule A;

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(3) income, profit, or loss from a business, such as Internal Revenue Service Schedule C or C-EZ;

(4) self-employment tax paid or owed, such as Internal Revenue Service Schedule SE;

(5) federal unemployment tax paid or owed, such as Internal Revenue Service form 940;

(6) withholdings from wages, such as Internal Revenue Service employer's annual or quarterly tax returns on forms 941 and 944 and the Minnesota Department of Revenue annual withholding return/reconciliation and information returns that show Minnesota withholding tax;

(7) deduction schedules for depreciation and amortization, such as Internal Revenue Service form 4562;

(8) the sale of business property, such as Internal Revenue Service form 4797;

(9) reporting cash payments received in a trade or business, such as Internal Revenue Service form 8300;

(10) expenses for business use of a home, such as Internal Revenue Service form 8829;

(11) certificates of exemption of payment of sales tax, such as Minnesota Department of Revenue form ST3; and

(12) wages or payments made by or received by the applicant as shown on Internal Revenue Service 1099, 1096, W-2, and W-3 forms. The applicant must describe the services performed by or for the applicant for each 1099 or W-2 form issued or received.

I. The applicant's Minnesota tax identification number or an explanation of why the applicant does not need one.

J. Copies of up to five executed contracts for services the applicant contracted to provide before the date of the application, if any, and template contracts that the applicant intends to use in contracting to provide services as an independent contractor under the exemption certificate. The template contracts must satisfy factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), items (iii), (iv), (v), (vi), and (vii), for the services the applicant will provide as an independent contractor under the exemption certificate.

K. Applicants must submit the documentation described in subitems (1) and (2). In addition, applicants must submit the documentation described in at least five of subitems (3) to (13) related to the services the applicant will perform under the exemption certificate.

(1) rental agreements or lease agreements, other than a post office box, for facility space used by the applicant in performing the services for which the applicant is seeking the exemption certificate. Instead of the rental or lease agreements, the applicant may provide the tax documentation described in item H, subitem (10);

(2) documentation that establishes the applicant's ownership or control of equipment, tools, materials, or vehicles necessary for the applicant to perform the services for which the applicant is seeking the exemption certificate. Examples of such documentation include contracts, rental or lease agreements, deeds, and receipts, or the tax documentation described in item H, subitem (2) or (7), showing such ownership or control;

(3) if submitted by the applicant in response to item H, the state or federal tax documentation described in item H, subitems (1), (3), (4), (8), (9), and (11), and IRS 1099 forms issued to the applicant;

(4) a commercial liability insurance policy or bond covering the applicant or the applicant's business, office equipment, and materials;

(5) a workers' compensation policy covering the applicant;

(6) business or building permits held or applied for;

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(7) bills or invoices from and payments made to vendors, suppliers, subcontractors, or other persons;

(8) contracts with vendors, suppliers, subcontractors, or other persons;

(9) bank statements and accounting statements showing receipts, expenditures, and profit or loss for the applicant's business;

(10) trade or professional memberships or affiliations;

(11) marketing or advertising materials;

(12) documentation of payment to other independent contractors as shown on IRS forms 1099 and 1096; and

(13) documentation of compliance with laws related to:

(a) workers' compensation or unemployment insurance as described in item F and item H, subitem (5); and

(b) payment or withholding of wages as shown on IRS W-2 and W-3 forms or item H, subitem (6).

L. Authorization for or completion of forms authorizing the department to verify that the application and all information and documents submitted with the application are true and correct.

M. A color photocopy of a current photo identification document issued to the applicant by the United States or a state or territory of the United States, along with documentation required by any federal electronic verification program, such as the Systematic Alien Verification for Entitlements Program adopted under United States Code, title 8, section 1642, that assists the department in verifying the applicant's authorization to work in the United States.

N. In addition to the sworn statement required by Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), a sworn statement that:

(1) the application and all information and documents submitted with the application are true and correct;

(2) the applicant is a United States citizen, or, if not a citizen, is authorized to work in the United States under federal immigration law; and

(3) the applicant has complied with and will continue to comply with federal immigration law in hiring any employees.

Subp. 3. **Approval or denial.** Applications must be approved or denied according to items A and B, and Minnesota Statutes, section 181.723, subdivision 5, paragraph (c).

A. The commissioner must issue an exemption certificate if both subitems (1) and (2) are met:

(1) the application is complete according to subpart 1; and

(2) the commissioner determines that all of the information and documentation submitted establishes that the applicant meets or could meet the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), for the services for which the applicant has requested an exemption certificate.

B. The commissioner must deny an exemption certificate if:

(1) the application is not complete according to subpart 1; or

(2) the commissioner determines that all of the information and documentation submitted does not establish that the applicant meets or could meet the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), for the services for which the applicant has requested an exemption certificate.

Statutory Authority: *MS s 181.723*

History: *33 SR 360*

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5202.0140 APPLICATION FOR A CORRECTED, RENEWAL, OR AMENDED CERTIFICATE; TIME FRAMES FOR SUBMISSION OF INITIAL AND RENEWAL APPLICATIONS.

Subpart 1. **Obligation to update identifying information.** Within 15 days of the change, each certificate holder or applicant for an exemption certificate must notify the commissioner in writing of any change in the certificate holder's:

- A. legal name;
- B. business name;
- C. business address;
- D. business telephone number;
- E. residential address;
- F. residential telephone number; or
- G. business organization.

Subp. 2. **No additional fee or documentation.** If the only change submitted under subpart 1 is to the certificate holder's business address, business telephone number, residential address, or residential telephone number, the commissioner must issue an updated exemption certificate within ten business days without requiring an additional fee or documentation.

Subp. 3. **Legal name change.** If the change is to the certificate holder's legal name or business name, the certificate holder must submit additional information and documentation if the commissioner determines it is needed to verify the change and to determine whether the name change affects the validity of the exemption certificate.

Subp. 4. **Application to add new category of service.** A certificate holder must submit a new complete application and fee according to part 5202.0130 to add a new category of service.

Subp. 5. **Time frames for submission of initial and renewal applications.** An initial application for an exemption certificate must not be submitted before September 2, 2008. To renew an exemption certificate without a lapse in the certificate, the certificate holder must submit a new complete application and fee according to part 5202.0130 at least 30 days, but no more than 60 days, before the expiration date specified on the applicant's current certificate. An individual who does not file a complete application for renewal at least 30 days before the certificate's expiration date is uncertified as of 11:59:59 p.m. Central Time on the certificate's expiration date and remains uncertified unless and until a renewed certificate is issued by the department.

Statutory Authority: *MS s 181.723*

History: *33 SR 360*

5202.0150 CONTENTS OF APPROVED CERTIFICATE; NOTICE OF CERTIFICATE; EFFECTIVE DATE.

Subpart 1. **Content of certificate.** If an application is approved, the department shall issue to the applicant an exemption certificate, which shall include at least the following information:

- A. the name of the independent contractor to whom the certificate was issued;
- B. the assumed name of the business if there is one;
- C. the address and telephone number provided in part 5202.0130, subpart 2, item B;
- D. the date the certificate was issued and the expiration date;
- E. the service or services that the independent contractor is permitted to perform under the certificate;

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F. the effect of the certificate under Minnesota Statutes, section 181.723, subdivisions 2 to 4; and

G. how a person may contact the department with questions or to verify that a specific certificate remains current.

Subp. 2. **Department list of certificate holders.** The department shall maintain a list of current certificate holders on its official Web site. The Web site shall include the information in subpart 1 and, if applicable, whether the department has received a request to cancel an exemption certificate or has revoked an exemption certificate and the date the exemption certificate is canceled or revoked.

Subp. 3. **Effective date.** An exemption certificate issued before March 1, 2009, is effective on the date stated on the exemption certificate and shall remain in effect until March 1, 2011, unless revoked by the commissioner or canceled by the certificate holder. An exemption certificate issued on or after March 1, 2009, is effective on the date stated on the exemption certificate and remains in effect for two years unless revoked by the commissioner or canceled by the individual. A certificate holder must submit a new complete application and fee under part 5202.0130 in order to obtain a new exemption certificate if the previous exemption certificate has expired, been canceled by the certificate holder, or revoked by the commissioner.

Subp. 4. **Verification of certificate and identity of certificate holder.** The individual who holds an independent contractor exemption certificate must present current photo identification issued to the individual by the United States or a state or territory of the United States to any person for whom the certificate holder performs services under the exemption certificate. Before permitting the certificate holder to provide services as an independent contractor under a contract, the person for whom a certificate holder is performing services must:

A. obtain from the department and retain for five years a copy of the department's current exemption certificate for the certificate holder; and

B. review the photo identification presented by the certificate holder to verify the certificate holder's identity.

Statutory Authority: *MS s 181.723*

History: *33 SR 360*

5202.0160 EXPIRATION, REVOCATION, OR CANCELLATION OF CERTIFICATE; NOTICE TO PUBLIC AND CONTRACTORS.

Subpart 1. **Notice.** When an exemption certificate expires, is canceled, or is revoked, the department shall indicate that certificate's status on the list of certificate holders on the department's official Web site. After a certificate has expired, is canceled, or is revoked, the department shall maintain the former certificate holder's information on its Web site for at least six months. After six months, the department may remove the expired, canceled, or revoked certificate holder's information from its list of certificate holders. A former certificate holder shall not hold out as an independent contractor for the services listed on the expired, canceled, or revoked exemption certificate. An exemption certificate expires or is canceled or revoked as of 11:59:59 p.m. Central Time on the date of expiration, cancellation, or revocation.

Subp. 2. **Cancellation.** A certificate holder may request that an exemption certificate be canceled by filing a written request, in the form and manner prescribed by the commissioner. The written request must include the current name, address, and telephone number for each person for whom the certificate holder is performing services or intends to perform services under the exemption certificate before its cancellation. In addition, the cancellation request shall include a sworn statement that the certificate holder has provided written notification of the cancellation request to each person named. Within 21 days of receipt of the request, the department must serve on the certificate holder and each person the certificate holder has named in the cancellation request an order cancelling the exemption certificate.

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The effective date of cancellation is seven days after the order is served on the certificate holder and the persons named in the certificate holder's cancellation request.

Subp. 3. **Revocation notice.** During an action to revoke an exemption certificate, the certificate holder must inform the commissioner of any person for whom the certificate holder is providing services or intends to provide services under the exemption certificate. The department must serve a final order revoking the certificate upon the certificate holder and any person identified by the certificate holder. The effective date of the revocation is seven days after the order is served on the certificate holder and the persons identified by the certificate holder.

Statutory Authority: *MS s 181.723*

History: *33 SR 360*