

8130.0400 LEASES.

Subpart 1. **General rule; examples.** Any item which is taxable if sold is also taxable if leased. If an item is contracted for lease in Minnesota and physical possession of the item by the lessee occurs in Minnesota, a taxable transaction has occurred even if the lessee removes the property from the state for personal use. However, leased property shipped or transported outside Minnesota by the lessee, which will be used in a trade or business outside Minnesota by the lessee without any intermediate use in Minnesota, and which will not be returned to Minnesota except in the course of interstate commerce, is exempt from tax if the lease is not subject to tax in the jurisdiction to which the leased property is transported for use or is used in the other jurisdiction as part of a maintenance contract.

All payments made pursuant to leases of tangible personal property, including mobile equipment such as motor vehicles, trailers, and contractor's equipment, constitute sales made in Minnesota if such property is either garaged or principally used, including use thereof in interstate commerce for delivery or other temporary purpose outstate, by the lessee at or from a Minnesota situs of the lessee.

Example 1. Motor Freight Line, a Minnesota company, leases ten tractor-trailers from a leasing company. The contract is signed at the Minnesota office of Motor Freight Line, and all payments under the lease are made from this office. Motor Freight Line uses seven of the tractor-trailers to haul freight in interstate commerce to and from its Minnesota freight depot. The remaining three tractor-trailers are used to haul freight in interstate commerce to and from Motor Freight Line's depot in Illinois. From time to time, the three tractor-trailers enter Minnesota in the course of the normal interstate commerce activities of Motor Freight Line. The lease price attributable to the seven tractor-trailers used to haul freight to and from the Minnesota freight depot constitutes a Minnesota sale. The lease price of the remaining three tractor-trailers does not constitute a Minnesota sale.

Example 2. Amalgamated Contractors, a Minnesota company, leases a heavy-duty crane for a construction job in Iowa on a monthly basis. The payments are made by Amalgamated to the lessor in Iowa. Subsequently, Amalgamated secures a construction contract in Minnesota and transfers the crane to the Minnesota site. Lease payments due while the crane is located in Minnesota are subject to Minnesota use tax although such payments continue to be made in Iowa.

Example 3. Peter Smith, a resident of Fargo, North Dakota, leases a chain saw from XYZ Rental-All, an equipment leasing firm, with an office only in Moorhead, Minnesota. Mr. Smith intends to use the saw at the residence in Fargo, and takes possession of the saw from the rental firm in Minnesota. A Minnesota sales tax is due and payable on this transaction.

Subp. 2. **Leases of drive-it-yourself automobiles, trailers, or other vehicles.** All lease payments made pursuant to leases executed in Minnesota for drive-it-yourself

automobiles, trailers, or other vehicles on a mileage, hourly, or other time basis are taxable, irrespective of whether such vehicles are to be used exclusively in Minnesota or are to be used in other states. Thus, where the lessee delivers the vehicle to the lessor in a state other than Minnesota, either by express agreement with the lessor or without securing prior consent, a lease payment made to the lessor in such other state constitutes consideration for a Minnesota sale.

All lease payments made in Minnesota pursuant to leases executed in states other than Minnesota for drive-it-yourself automobiles, trailers, or other vehicles on a mileage, hourly, or other time basis do not constitute consideration paid for a Minnesota sale. Consequently, such payments are not subject to the Minnesota sales and use tax.

Example 1. A rental agency, located in Minnesota, leases an automobile to X. Thereafter, X drives the automobile to California and returns the vehicle to the rental agency's office in Los Angeles, and there pays the total lease charge of \$280. The lease charge constitutes a sale in Minnesota, and the rental agency is required to include the entire \$280 in its gross receipts subject to tax.

Example 2. A rental agency, located in New York, leases an automobile to Y. Thereafter, Y drives the automobile to Minnesota and returns the automobile to the rental agency's office in this state, and there pays the total lease charge of \$150. No part of the \$150 payment is subject to the Minnesota sales or use tax.

Subp. 3. [Repealed, L 2006 c 259 art 6 s 32; 31 SR 449]

Subp. 4. **Services of operator furnished with rentals of equipment.** For services of an operator furnished with the rental of equipment:

A. Certain types of equipment are only available with the services of an operator. For example, the hiring of a taxicab involves the concurrent hiring of a taxicab driver. The same is true with respect to bus companies and commercial airlines. The primary or chief activity of the taxicab company, or the bus line, or the airline, is furnishing transportation services. For all practical purposes, one cannot hire a taxicab or a bus or a commercial airline without accepting the services of a licensed operator. Consequently, the gross receipts from such transactions are not considered sales under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (b), clause (2).

B. There are enterprises which lease equipment either with or without operators. For example, a lessor of transport trucks will furnish a driver if the lessee so requests, or a lessor of heavy equipment will furnish an operator for a crane or caterpillar.

When a driver or operator is furnished along with the equipment, the lessor, by the lessor's employee or agent, retains control of the equipment. Accordingly, the lessor is considered to be furnishing a nontaxable service rather than leasing the equipment, and

the transaction is not considered to be a sale under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (b), clause (2).

When a lessor utilizes equipment in furnishing such nontaxable services, no exemption for the purpose of resale is allowed on purchases of such equipment.

C. On occasion, an employee may use his or her own pickup truck to transport tools on behalf of the employer from one site to another. If the employee is not engaged in the business of leasing the truck, the transportation of the tools is, in effect, a service performed by the employee at the request of the employer. Any reimbursement to the employee is deemed to be nontaxable.

Subp. 5. **Additional items or services furnished in connection with leases of drive-it-yourself equipment.** If a lessor, in addition to granting a license to use or right of possession of leased property, contracts to furnish other items or services such as gasoline, oil, lubrication, maintenance (including replacement parts and labor for installation thereof or for the repair of the property in question), license fees, highway use taxes, and insurance, the deductibility of such items will be determined under the following rules.

Items deductible from the lease price are gasoline, maintenance labor, public liability insurance, license fees, and highway use taxes. If these items are separately stated by description in the lease agreement and by specific amounts in either the lease agreement, billing, or invoice, they may be deducted in determining the amount of the lease payment subject to tax. If such items are separately stated by description only and without specification of amounts, a percentage of up to one-third of the lease payment may be deducted in determining the amount of the payment subject to tax, provided that the lessor has records that substantiate the accuracy of the percentage used.

Where the lease agreement does not specify such items, the entire payment is subject to tax.

Items not deductible under any circumstances are oil or lubrication, replacement parts, and collision and comprehensive insurance.

Subp. 6. **Maintenance contract.** When under the terms of a contract a lessor of tangible personal property other than motor vehicles agrees to provide full maintenance of such property and the periodic payment is a single sum covering both rental of the property and the maintenance service, the entire payment is subject to tax.

Subp. 7. **Leases to electing motor carrier.** Motor carriers may elect under provisions of Minnesota Statutes, section 297A.90, to pay directly to the commissioner of revenue the tax due on the leasing of certain mobile transportation equipment and accessories used in interstate commerce. Lessors of such property need not collect the tax from the electing carriers who have been issued a motor carrier direct pay certificate. See part 8130.3500 for

rules relating to the motor carrier direct pay authorization and describing the property for which the payment of tax by the lessee may be deferred.

Subp. 8. **Leases to a joint venture.** Charges for equipment furnished to a joint venture by the individual participants are not subject to the tax. Such charges are made for the purpose of allocating credit to the different members for providing the equipment.

Subp. 9. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 10. **Time of incidence of tax.** For the time of incidence of the tax:

A. A lease of tangible personal property is defined in Minnesota Statutes, section 297A.61, subdivision 14a. For leases entered into after June 30, 1997, gross receipts generated from the lease are taxable at the rate in effect at the time the obligation to make a lease payment becomes due. The initial obligation to pay becomes fixed upon the transfer of possession of the tangible personal property unless the agreement specifically sets forth another time. Subsequent obligations to pay become fixed either by the terms of the agreement, trade practices of the lessor, or practice in a course of dealing.

B. A lease of tangible personal property normally imposes upon the lessee multiple obligations. Each of these obligations may be treated separately by the agreement. The incidence of taxation upon each payment under the agreement will be determined by the obligation for which payment is made and the time at which such obligation to pay in fact arose.

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; art 7 s 23; L 2006 c 259 art 6 s 32; 31 SR 449*

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