

**8130.5800 ISOLATED OR OCCASIONAL SALES AND SALES OF PERSONAL PROPERTY USED IN TRADE OR BUSINESS.**

Subpart 1. **In general.**

A. As provided in Minnesota Statutes, section 297A.67, subdivision 23, the sales or use tax does not apply to isolated or occasional sales of tangible personal property or a service made by a person who is not engaged in selling such property or service in the normal course of business. This exemption does not apply to a sale of tangible personal property that is primarily used in a trade or business.

B. Under Minnesota Statutes, section 297A.68, subdivision 25, the sale of tangible personal property that is primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling that kind of property and the sale meets one of the listed conditions.

Subp. 1a. **Definitions.** For purposes of this part, the following definitions apply:

A. "Isolated" means standing alone or solitary.

B. "Normal course of business" is defined in Minnesota Statutes, section 297A.61, subdivision 21. The sale of inventory is considered to be made in the normal course of business and thus is subject to tax. The lease of tangible personal property is subject to tax.

Example 1. A bank repossesses secured property. This is part of the bank's business. Repossessed items are considered to be inventory in possession of the bank and the sale by the bank is considered to be made during the normal course of business and is subject to tax.

Example 2. A construction company leases excavating and hauling equipment without an operator to another business, when not otherwise in use. The leasing is considered to take place in the normal course of business and is subject to tax.

Example 3. A luxury boat business sells one or two boats a year. The sales are taxable because, while the sales are infrequent, they are made in the normal course of business.

C. "Occasional" means occurring at infrequent intervals, as incidental, or as casual; that is, as distinguished from events of a similar nature recurring with some degree of regularity.

Example. A person has a garage sale once each year. The sale is considered to be occasional.

D. "Trade or business" means any continuous and regular activity carried on for the production of income from selling goods or performing services. Organizations exempt from federal taxation under Internal Revenue Code, subchapter F, such as organizations

exempt under section 501(c)(3), are only considered to be engaged in a trade or business to the extent the activity is unrelated to their exempt purposes. Government organizations, including public schools, are not considered to be engaged in a trade or business since most of their activities are conducted to further a public purpose. However, if the government entity makes sales of surplus equipment or other tangible personal property on a regular basis, it is considered to be engaged in a trade or business.

Examples of a trade or business: apartment buildings or other rental property, home day care centers, farms, law offices, manufacturers, retail stores, and restaurants.

Examples of entities that are not considered to be engaged in a trade or business: American Red Cross, churches, nonprofit hospitals, and government agencies.

Example of an exempt organization engaging in a taxable activity: a nonprofit hospital also has a gift shop that sells taxable items to the general public. The gift shop is considered to be engaged in a trade or business. Sales of items used by the hospital, such as waiting room furniture, are not subject to tax because the hospital is not a business. However, sales of items used by the gift shop, such as shelves or computers used in the store, are taxable, unless one of the exclusions under Minnesota Statutes, section 297A.68, subdivision 25, applies, since these activities are not related to the hospital's exempt purpose.

E. "Primarily used" means used in the trade or business 50 percent or more of its operating time. If it is used less than 50 percent of the time in the trade or business, it is not used primarily in the trade or business and may qualify for the isolated or occasional sale exemption. The seller's use of the equipment is the determining factor. It does not matter how the buyer uses the item.

Example. An owner of a lawn mower has a small business operation to mow the neighbors' yards. The lawn mower is used 60 percent of the time for the owner's lawn and 40 percent of the time for the neighbors' lawns. Since the mower is used less than 50 percent of the time in the owner's business, it is not considered to be used primarily in a trade or business.

F. "Substantially all of the assets of a trade or business," as provided under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (a), clause (5), or "substantially all of the property sold," as provided under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (b), clause (1), means 90 percent or more of the total fair market value of tangible personal property and does not include property that is subject to an ad valorem property tax. It also includes the assets of a separate division, branch, or other identifiable segment of a business, if before the sale, the income and expenses attributable to the separate division, branch, or segment could be separately ascertained from the records. If the separate division, branch, or segment is leased or rented, rather than sold, the assets are taxable.

Example. A company has a retail hardware business, as well as a building construction division. The records of the businesses are kept separately. The retail hardware business closes while the construction division continues to exist. The sale of all the assets of the hardware business is exempt from tax. Sales of inventory items are taxable.

Subp. 2. **Isolated or occasional sales by person other than trade or business.** An isolated or occasional sale of tangible personal property or a service by a person who is not in the business of selling that kind of property or service is not subject to tax.

The following transactions are considered to be isolated or occasional sales because they are infrequent sales of a nonrecurring nature made by a person not engaged in the business of selling tangible personal property or a service.

Example 1. The sale of a used vacuum cleaner by one neighbor to another.

Example 2. Payment from a neighbor for mowing a neighbor's grass or taking care of a pet while the neighbor is on vacation.

Example 3. Sales by executors, administrators, trustees, and other fiduciaries in the liquidation of an estate, except inventory or stock in trade or tangible personal property primarily used in a trade or business.

Example 4. Sales or executions pursuant to a court order or by a court officer, except inventory or stock in trade or tangible personal property primarily used in a trade or business.

Subp. 3. **Nonisolated sales.** The following are examples of transactions that are not considered isolated or occasional sales:

A. The sale of property held primarily for sales to customers in the ordinary course of trade or business.

Example 1. Leasing company sells to X a bulldozer that was previously used in its business by leasing to others. Since a lease constitutes a sale, leasing company is deemed to be in the business of selling this kind of property. The sale of the bulldozer to X is not an isolated or occasional sale.

B. The infrequent sale of an inventory item by a retailer, jobber, or other vendor, even though such sales do not happen often and only comprise an insignificant part of the vendor's total business.

Example 1. Sporting goods store sells one power cruiser during the calendar year. The sale is taxable.

C. Sales that constitute an integral part of a business even though the sale of such tangible personal property is not the primary business of the seller (as the sale of repossessed property by a finance company).

D. The sale of by-products, waste, scrap, and other obsolete and used equipment by a person engaged in a business, when sales are regularly made to employees or to the public to dispose of these items.

**Subp. 3a. Sale of property used in trade or business in transactions qualified and reported under Internal Revenue Code.**

A. The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling such property; the sale occurs in a transaction subject to, or described in, section 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033 of the Internal Revenue Code, and the following conditions are met:

(1) the sale must qualify, as well as be reported, as a transaction occurring under one of the Internal Revenue Code sections listed in this item; and

(2) the transfer must be between partnerships and their partners or between corporations and their shareholders or, if the sale is under section 1563(a) of the Internal Revenue Code, between members of a controlled group.

B. Limited liability companies are generally treated as either corporations or partnerships for federal income tax purposes and transfers between limited liability companies and their members are covered by one of the Internal Revenue Code sections listed in Item A. Single member limited liability companies that elect to be treated as a corporation are also covered by one or more of the Internal Revenue Code sections listed in item A. However, when a single member limited liability company does not elect to be treated as a corporation for federal income tax purposes, the limited liability company is neither a partnership nor a corporation and transfers between the limited liability company and its one member are not exempt from sales tax under this subpart.

**Subp. 3b. Sale of substantially all assets of a trade or business.**

A. The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling such property and the sale is a sale of substantially all of the assets of a trade or business, as defined in Minnesota Statutes, section 297A.68, subdivision 25, paragraph (b), clause (3), and as defined in subpart 1a, item F. A buyer of property is not subject to use tax if the buyer has a written statement from the seller confirming that the sale of the property is a sale of substantially all of the assets of the business, as defined in subpart 1a. If the buyer has a written statement from the seller to that effect and the seller does not sell substantially all of the assets of the trade or business, the seller is subject to tax on the total amount received.

B. Under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (b), clause (3), the sale of substantially all of the assets has to take place within the period of 12 months. This means that the seller must sell 90 percent or more of the total fair market

value of tangible personal property within the 12-month period in order to be exempt from tax.

Subp. 3c. **Sale of property used in trade or business in transaction with \$1,000 gross receipts limitation.** The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling such property and the total amount of gross receipts from the sale of trade or business property made during the calendar month of the sale, as well as sales of property made in the previous 11 months, does not exceed \$1,000, as provided under Minnesota Statutes, section 297A.68, subdivision 25, paragraph (a), clause (6). A buyer of property is not subject to use tax if the buyer has a written statement from the seller confirming that the sale of the property meets this requirement. In this case, if the seller sells property for an amount exceeding \$1,000, the seller is subject to tax on the total amount received, including the first \$1,000. The limitation of \$1,000 does not apply when the business sells substantially all of its assets.

Example. A company sells some cabinets and desks for \$12,000 during a period of 12 months but it is not a sale of substantially all the assets of the business. The sale of these fixtures does not qualify for the exemption since the amount received exceeds \$1,000.

Subp. 3d. **Farm auctions.** The sale of tangible personal property sold at a farm auction is exempt if substantially all the property sold is used in the trade or business of farming, or is other nonbusiness property. However, inventory sold by another trade or business is subject to tax.

Example. The following farming equipment is sold at a farm auction: tools, lawn mowers, and other supplies. A neighboring home improvement business sells patio furniture at the farm auction and the auction also includes personal items owned by various individuals. The farming equipment and the personal items consist of 95 percent of the fair market value of the items sold; the home improvement inventory consists of five percent of the items sold. The farming equipment and the personal items are exempt. The items sold by the home improvement business are subject to tax.

Subp. 4. **Garage sale or personal sale.** A "garage sale or personal sale" is a sale by a person or persons selling their personal belongings. A garage sale or personal sale does not include flea markets, craft shows, antique shows, coin shows, stamp shows, comic book shows, convention exhibit areas, or similar selling events, as provided under Minnesota Statutes, section 297A.87. A garage sale includes moving sales, estate sales, and other similar sales. If a person does not regularly hold garage sales or personal sales and the items sold have not been collected or purchased for the purpose of resale, the sales are isolated or occasional. A person who collects or purchases items for resale is deemed to be in business, and must obtain a sales and use tax permit and collect and remit tax on sales of taxable items.

If any trade or business assets are sold at the garage sale, sales tax is due on those items.

Example 1. A person sells personal belongings at an annual neighborhood garage sale that was advertised through word-of-mouth, notices on a bulletin board, or an advertisement in the classified section of a newspaper. No sales tax applies.

Example 2. A person sells new or used items that were purchased for the purpose of resale, as well as personal items, at a garage sale. The personal items include some children's toys and a lamp. The person is considered to be carrying on a trade or business and sales tax must be charged on all sales of taxable items that were purchased for resale. The sale of the lamp and the toys is not subject to tax.

Subp. 5. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 6. [Repealed, L 2006 c 259 art 6 s 32]

Subp. 7. [Repealed, 33 SR 771]

Subp. 8. **Auctions.**

A. For purposes of this part, an auction is a method of selling tangible personal property in a public forum through open and competitive bidding conducted by an auctioneer licensed under Minnesota Statutes, chapter 330. An auction does not include a consignment auction or consignment sale, as defined in subpart 10.

B. The sale of items held in inventory, taxable services, and property primarily used in a trade or business is generally subject to tax, as provided in Minnesota Statutes, section 297A.68, subdivision 25.

C. When tangible personal property is sold in an auction, the sale qualifies as an isolated or occasional sale under Minnesota Statutes, section 297A.67, subdivision 23, if it would qualify as an isolated or occasional sale when sold by the owner of the property, and if the following conditions are met:

- (1) the title is exchanged directly between the owner and the buyer;
- (2) the auctioneer does not carry insurance on the property; and
- (3) the auctioneer and the owner of the property to be sold have entered a written agreement as provided under Minnesota Statutes, section 330.10.

D. When the sale is taxable, the person receiving the payment is responsible for collecting and remitting the sales tax on the total sales price of the property.

Example 1. An auctioneer conducts an estate sale and sells personal belongings of the deceased person. No tax is due if the conditions provided under this subpart are met.

Example 2. An auctioneer purchases 50 tires from an individual. The tires are auctioned to the general public. The sale is subject to tax since the auctioneer took title of the tires and, therefore, is considered to be selling the tires in the normal course of business.

Example 3. An insurance company contracts with an auctioneer to sell its used office furniture at an annual auction. The items sold are subject to tax, unless the sales meet the exceptions provided in subparts 3a to 3d. The insurance company is a business and thus Minnesota Statutes, section 297A.67, subdivision 23, does not apply.

**Subp. 9. Brokered sales.**

A. For purposes of this part, a broker is a person who sells tangible personal property owned by others and who receives a fee or a commission for selling the owner's property. A broker is not an auctioneer.

B. The sale of items held in inventory, taxable services, and property primarily used in a trade or business is generally subject to tax, as provided in Minnesota Statutes, section 297A.68, subdivision 25.

C. When tangible personal property is sold by a broker, the sale qualifies as an isolated or occasional sale under Minnesota Statutes, section 297A.67, subdivision 23, if it would qualify as an isolated or occasional sale when sold by the owner of the property, and the following conditions are met:

- (1) the title to the property passes directly from the owner to the buyer;
- (2) the payment does not pass through any accounts of the broker;
- (3) the broker does not carry insurance on the property; and
- (4) the rights to accept or reject any offer are retained by the owner.

D. When the sale is taxable, the person receiving the payment is responsible for collecting and remitting the sales tax on the total sales price of the property.

Example 1. The owner of a boat marina sells a boat on behalf of a boat owner who is not in the trade or business of selling boats. The marina owner advertises the boat for sale and obtains offers to purchase the boat. The marina owner informs the buyer of the offers. The boat owner retains the power to accept or reject the offers. Title to the boat passes directly from the owner to the buyer. Payment is made directly to the owner. Upon sale of the boat, the marina owner receives a commission from the seller. This sale is exempt from tax.

Example 2. A boat marina negotiates the sale of a boat for the owner of a boat. The owner has no involvement in the negotiation of the sale. Payment for the boat is deposited in the marina's account. The sale is subject to tax.

**Subp. 10. Consignment sales and consignment auctions.**

A. For purposes of this part, consignment sales are sales in which a retailer maintains a place of business where tangible personal property owned by others is sold by

the retailer in the normal course of business. The retailer may also sell property owned by the retailer. A consignment sale is not an auction, as defined in subpart 8.

B. Consignment auctions are events that are regularly scheduled, are open to members of the public to sell their items, and are held at the same location. Consignment auctions are not selling events, as provided under Minnesota Statutes, section 297A.87. Consignment auctions are not auctions, as defined in subpart 8.

C. The sale of items held in inventory, taxable services, and property primarily used in a trade or business is generally subject to tax, as provided in Minnesota Statutes, section 297A.68, subdivision 25.

D. Consignment sales and consignment auctions are exempt from tax if:

- (1) the title to the property passes directly from the owner to the buyer;
- (2) the payment does not pass through any accounts of the retailer or auctioneer;
- (3) the retailer or auctioneer does not carry insurance on the property; and
- (4) the rights to accept or reject any offer are retained by the owner.

E. When the sale is taxable, the person receiving the payment is responsible for collecting and remitting the sales tax on the total sales price of the property.

Example 1. A person sells used books on consignment at a retail store. Under the contract, the store determines the selling price of the books. The sale is taxable.

Example 2. A person sells a lawn mower at a consignment auction. Title passes from the owner directly to the buyer. Payment is deposited in the auction company's books. The company deducts its fee and then pays the owner a share of the payment. The sale is subject to tax.

Example 3. A person rents space from the operator of a craft show to sell craft items. The seller participates in the event for four days. The sales at the show are taxable since the selling event lasts more than three days, as provided under Minnesota Statutes, section 297A.87, subdivision 3.

**Statutory Authority:** *MS s 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; 33 SR 771*

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