

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 00-19**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the Tennessee Business Tax Act to a company that purchases accounts receivable from other businesses and then collects from the account debtors.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] is engaged in the business of purchasing accounts receivable¹ from other businesses at a discount and then collecting from the account debtors. When the taxpayer purchases the accounts receivable, it takes title to these accounts, acquires the right to receive payment from the account debtors, and bears the risk of collection. This activity constitutes the taxpayer's sole business.

The taxpayer is not required to obtain a certificate and license from the Commissioner of Commerce and Insurance under the provisions of Title 45, Chapter 5, which applies to industrial loan and thrift companies, industrial banks, and industrial investment companies.

QUESTION

Is the taxpayer subject to the Business Tax Act?

RULING

No.

ANALYSIS

The Business Tax Act, T.C.A. § 67-4-701 *et seq.*, is a component of Tennessee's privilege taxes. It allows counties and incorporated municipalities to tax the privilege of making sales in Tennessee by engaging in any of the business activities enumerated in the Act. T.C.A. § 67-4-704(a); *Westinghouse Electric Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984).

T.C.A. § 67-4-708(3)(C) includes as a taxable privilege "making sales of services or engaging in the business of furnishing or rendering services." The statute then lists fifteen service categories that are excluded from taxation. T.C.A. § 67-4-708(3)(C)(i)-(xv). One of the excluded service categories includes persons engaged in extending credit:

Services furnished by institutions which are engaged in deposit banking or closely related functions, *including* fiduciary activities, *services furnished by persons engaged in extending credit or lending money except persons taxable under subdivision (5)*; services furnished by establishments engaged in the underwriting, purchase, sale or brokerage of securities on their own account or on the account of others; services furnished by exchanges, exchange clearing houses and other services allied with the exchange of

¹ The facts in the original ruling request state that the taxpayer purchases "accounts receivable and invoices." In a subsequent letter, the taxpayer explained that the purchased invoices merely evidence the details of the particular transactions and support the total amount of the accounts receivable purchased.

securities and commodities; services furnished by investment trusts, investment companies, holding companies, and commodity trading companies...

T.C.A. § 67-6-408(3)(C)(x) (emphasis added).

In order to fully describe the services excluded from taxation, T.C.A. § 67-4-708(3)(C) provides as follows:

It is the legislative intent that the exceptions shown below shall include the sales of services by those businesses or establishments so described in the Standard Industrial Classification Index of 1972, including all supplements and amendments prepared by the bureau for the budget of the federal government, except where otherwise provided...

Thus, in order to evaluate a claim for exclusion from the tax, as it applies to services, the Standard Industrial Classification Index must be used to determine the meaning of the various excepted services. *Aabakus, Inc. v. Huddleston*, No. 01A-01-9505-CH-00215, 1996 WL 548148 at *3 (Tenn. Ct. App. Sept. 25, 1996). The 1987 version of the SIC is the one currently applicable to the business tax. Office of Management and Budget, Executive Office of the President, Standard Industrial Classification Manual of 1987 (1987).

Industry Number 6153 - "Short-Term Business Credit Institutions, Except Agricultural" - comprises establishments primarily engaged in extending credit to business enterprises for relatively short periods, and specifically includes purchasers of accounts receivable.² The taxpayer's sole business consists of purchasing accounts receivable from other businesses at a discount and collecting from the account debtors. This activity clearly falls within Industry Number 6153. That industry, in turn, falls within T.C.A. § 67-4-708(3)(C)(x), which includes persons engaged in extending credit.³

Accordingly, the taxpayer's business is excluded from the list of businesses that are subject to the Business Tax Act.

² This industry is included under Industry Group 615, Business Credit Institutions, and Major Group 61, Nondepository Credit Institutions.

³ Pursuant to T.C.A. § 67-4-708(3)(C)(x), the taxpayer would not be exempt if it fell under T.C.A. § 67-4-708(5) which includes persons required to obtain a certificate and a license from the Commissioner of Commerce and Insurance under the provisions of title 45, chapter 5. Under the facts provided, the taxpayer is not required to obtain such a certificate and license and therefore does not fall under subdivision (5).

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 7/10/00