

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 00-49**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of the Tennessee sales and use tax to the sale and storage of exhibits.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

The taxpayer provides its customers with various services related to the design, construction, maintenance and storage of exhibits. All of these activities are performed in Tennessee. Many of these exhibits are constructed for use by customers at trade shows and similar events. Other exhibits are built specifically for a fixed location, such as a museum.

The taxpayer proposes four potential scenarios:

A. The taxpayer constructs an exhibit in Tennessee and upon completion, ships the exhibit by a carrier to the buyer at a trade show outside the state. The buyer pays the entire purchase price prior to the shipping of the exhibit. The taxpayer assembles the exhibit at the show and bills the buyer separately for those services. Although the sales contract does not address the issue, it is understood by both parties that final acceptance of the exhibit does not occur until the buyer has inspected the assembled exhibit at the trade show.

B. This scenario is the same as scenario A, except that the sales contract between the two parties specifically states that neither title to nor possession of the exhibit passes to the buyer until after the exhibit has been assembled and inspected by the buyer at the trade show.

C. This scenario is the same as scenario A, except that the buyer does not make the final payment on the purchase of the exhibit until after the exhibit has been assembled and inspected by the buyer at the trade show. The buyer is required to make an initial deposit of at least fifty percent of the exhibit's purchase price.

D. The taxpayer constructs the exhibit in Tennessee and ships it to the buyer outside of Tennessee. Possession of the exhibit passes to the buyer outside of Tennessee, and no Tennessee sales tax is collected on the construction of the exhibit. The buyer ships the exhibit back to the taxpayer in Tennessee for storage.

QUESTIONS

1. In scenarios A, B and C, is the construction of the exhibit subject to Tennessee sales tax?
2. In scenario D, are there any Tennessee sales or use tax consequences related to the return or storage of the exhibit?
3. Are the responses to these scenarios the same regardless of whether the buyer is based in Tennessee or outside of Tennessee?

RULINGS

1. In scenario A, the sale of the exhibit is subject to Tennessee sales tax, if either title to or possession of the exhibit passes in Tennessee. If neither title to nor possession of the exhibit passes in Tennessee, the sale is not subject to Tennessee sales tax.

In scenario B, the sale of the exhibit is not subject to Tennessee sales tax.

In scenario C, the sale of the exhibit is subject to Tennessee sales tax, if either title to or possession of the exhibit passes in Tennessee. If neither title to nor possession of the exhibit passes in Tennessee, the sale is not subject to Tennessee sales tax.

2. In scenario D, the importation of the exhibit for the purpose of storage in Tennessee renders the exhibit subject to Tennessee use tax owed by the owner of the exhibit.

3. Whether the buyer of the exhibit is based inside of or outside of Tennessee does not alter the above rulings, unless the location of the buyer's base affects the location of the passing of title to or possession of the exhibit. If either title to or possession of the exhibit passes in Tennessee, the sale is subject to Tennessee sales tax. If neither title to nor possession of the exhibit passes in

Tennessee, the sale is not subject to Tennessee sales tax. If an exhibit that has not been subject to Tennessee sales tax is imported into Tennessee for use, consumption, distribution or storage, the exhibit is subject to Tennessee use tax, minus any amount actually paid to another state for a legally imposed sales or use tax.

ANALYSIS

1. Tennessee taxes the retail sale of tangible personal property in this State. Tenn. Code Ann. § 67-6-202. Tennessee sales tax is due, if either title to or possession of the tangible personal property passes in Tennessee. Jack Daniel Distillery v. Jackson, 740 S.W.2d 413, 416 (Tenn. 1987); Eusco, Inc. v. Huddleston, 835 S.W.2d 576, 579 (Tenn. 1992).

Scenario A

The facts given do not establish where title to or possession of the exhibit passes. The mutual understanding of the parties regarding “final acceptance of the exhibit” does not alone establish where title to or possession of the exhibit passes, although it may be a relevant factor. If either title to or possession of the exhibit passes in Tennessee, the sale is subject to Tennessee sales tax. If neither title to nor possession of the exhibit passes in Tennessee, the sale is not subject to Tennessee sales tax.

Scenario B

The facts given establish that neither title to nor possession of the exhibit passes in Tennessee. Therefore, the sale is not subject to Tennessee sales tax.

Scenario C

The facts given do not establish where title to or possession of the exhibit passes. The mutual understanding of the parties regarding “final acceptance of the exhibit” does not establish where title to or possession of the exhibit passes, although it may be a relevant factor. Likewise, the timing of payment does not establish where title to or possession of the exhibit passes, although it may be a relevant factor. If either title to or possession of the exhibit passes in Tennessee, the sale is subject to Tennessee sales tax. If neither title to nor possession of the exhibit passes in Tennessee, the sale is not subject to Tennessee sales tax.

2. Scenario D

Tennessee imposes the use tax on tangible personal property imported into Tennessee by a dealer for use, consumption, distribution or storage. Tenn. Code Ann. § 67-6-210(a). Also, Tennessee imposes the use tax on tangible

personal property “after it has come to rest in this state and has become a part of the mass of property in this state.” Tenn. Code Ann. § 67-6-211.

“Use” is defined broadly to include “the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business[.]” Tenn. Code Ann. § 67-6-102(31)(A).

“Storage” is defined as follows:

‘Storage’ means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to non-residents of Tennessee shall not constitute a taxable use in Tennessee[.] Tenn. Code Ann. § 67-6-102(28).

The facts given indicate that the exhibit is returned to Tennessee for the purpose of storage. Storage in Tennessee “for any purpose other than sale at retail in the regular course of business” is a taxable use. Tenn. Code Ann. § 67-6-102(28); Vector Company v. Benson, 491 S.W.2d 612, 614 (Tenn. 1973). The facts given do not indicate that the storage is merely a temporary stop pending shipment to a location outside of Tennessee. Therefore, the exhibit is subject to Tennessee use tax owed by the owner of the exhibit.

Tennessee provides the following credit for sales or use tax paid to other states:

Persons actually paying a legally imposed Sales or Use Tax to another State on tangible personal property or taxable services imported into this State may claim such payment as a credit against any Use Tax liability accruing in this State. The Commissioner may require persons claiming such credit to furnish the name of the vendor from whom he purchased the property, and an affidavit that such tax has been paid. Tenn. Comp. R. & Regs. 1320-5-1-.91(1).

3. Whether the buyer of the exhibit is based inside of or outside of Tennessee does not alter the above rulings, unless the location of the buyer’s base affects the location of the passing of title to or possession of the exhibit. If either title to or possession of the exhibit passes in Tennessee, the sale is subject to Tennessee sales tax. If neither title to nor possession of the exhibit passes in Tennessee, the sale is not subject to Tennessee sales tax. If an exhibit that has not been subject to Tennessee sales tax is imported into Tennessee for use, consumption, distribution or storage, the exhibit is subject to Tennessee use tax, minus any amount actually paid to another state for a legally imposed sales or use tax.

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