

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 11-33**

**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 sales and use tax to the leasing of equipment and to the sale of moving and assembly services.

**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] leases [EQUIPMENT] for [REDACTED INFORMATION]. In addition, the Taxpayer sets up [TYPE OF EQUIPMENT]. The equipment to be leased primarily consists of modular [TYPE OF EQUIPMENT] and supporting metal structures. A significant portion of the fees charged are based on the labor for cartage, assembly, and disassembly of the [EQUIPMENT]. The equipment is leased on an [REDACTED] basis and is typically leased for a short time period, depending on the needs of the customer.

The Taxpayer has provided sample invoices given to customers. These invoices do not show a separate charge for cartage, assembly, and disassembly of the [REDACTED] equipment.

### QUESTIONS

1. Is the leasing of [REDACTED] equipment subject to the Tennessee sales and use tax?
2. Are the charges for cartage, assembly, and disassembly services subject to the Tennessee sales and use tax?

### RULINGS

1. Yes. The leasing of [REDACTED] equipment is subject to the Tennessee sales and use tax.
2. Yes. Charges for cartage, assembly, and disassembly services constitute part of the sales price of the lease of the [REDACTED] equipment and as such are subject to the Tennessee sales and use tax.

### ANALYSIS

#### *1. Leasing of [REDACTED] Equipment*

The Taxpayer's leasing of [REDACTED] equipment in Tennessee is subject to the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-204 (Supp. 2010).

TENN. CODE ANN. § 67-6-204 imposes the sales tax on the "sales price of all leases and rentals of tangible personal property<sup>1</sup> in this state where the lease or rental is a part of the regularly established business, or the lease or rental is incidental or germane thereto." Under TENN. CODE ANN. § 67-6-102(82)(A) (Supp. 2010), "sales price" is defined in pertinent part as the "total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money."

Accordingly, the Taxpayer's leasing of [REDACTED] equipment will be subject to the Tennessee sales and use tax if the lease occurs within the state and is part of the Taxpayer's regularly established business.

In this case, the Taxpayer leases [REDACTED] equipment in Tennessee, which satisfies the first requirement. In addition, the Taxpayer leases the equipment as a part of its regularly established business. Thus, the Taxpayer's leasing of [REDACTED] equipment constitutes the lease or rental of tangible personal property, and is subject to the Tennessee sales and use tax.

#### *2. Charges for Cartage, Assembly, and Disassembly Services*

Charges for the Taxpayer's cartage, assembly, and disassembly services are included in the sales price of the lease of the [REDACTED] equipment and as such are subject to the Tennessee sales and use tax.

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<sup>1</sup> "Tangible personal property" is defined as "property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses." TENN. CODE ANN. § 67-6-102(92)(A).

As discussed above, TENN. CODE ANN. § 67-6-102(82)(A) defines “sales price” in pertinent part as “the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased or rented.” TENN. CODE ANN. § 67-6-102(82)(A)(iv),(v) specifically disallows any deduction from the sales price for delivery and installation charges. Similarly, TENN. CODE ANN. § 67-6-102(82)(A)(iii) disallows any deduction from the sales price for “[c]harges by the seller for any services necessary to complete the sale, other than delivery and installation charges.”

In this case, charges attributable to the cartage, assembly, and disassembly services are not separately stated on the Taxpayer’s invoices. As a result, the sales price of the lease of the [REDACTED] equipment includes any charges attributable to such services.

Additionally, TENN. CODE ANN. § 67-6-102(82)(A)(iv), specifically prohibits the deduction of charges for delivery from the sales price of the lease. Accordingly, any charges for cartage will be included in the sales price of the lease even if the Taxpayer invoices them on a separate basis.

Similarly, even if the Taxpayer were to separately state the charges for its assembly and disassembly services, such charges are nevertheless included in the sales price of the lease because such services are necessary to complete the sale (*i.e.*, the lease of the [REDACTED] equipment). First, the Taxpayer does not offer the assembly and disassembly service independent of the rental of the [REDACTED] equipment. In addition, the Taxpayer would be unable to complete the rental of the [REDACTED] equipment without assembling and disassembling the equipment. These services are clearly necessary to the Taxpayer’s rental of the equipment, and as a result is also included in the sales price of the lease under TENN. CODE ANN. § 67-6-102(82)(A)(iii).

Accordingly, charges for the Taxpayer’s cartage, assembly, and disassembly services are included in the sales price of the lease of the [REDACTED] equipment and as such are subject to the Tennessee sales and use tax.

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APPROVED: Richard H. Roberts  
Commissioner of Revenue

DATE: 7/21/11