

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 11-60**

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

The application of the Tennessee sales and use tax to the sale of custom designed prefabricated bridges.

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 is a manufacturer of custom designed prefabricated bridges. The Taxpayer designs, fabricates, and delivers the bridge to the jobsite.

Based on the size of the bridge, it may be necessary to deliver the bridge in component pieces and assemble it at the jobsite. The Taxpayer does not provide onsite labor to assemble or install the bridge. If needed, the Taxpayer provides drawing and/or instructions for the assembly and installation of the bridge components. In some cases, the Taxpayer may also provide an onsite consultant to provide technical expertise related to the bridge assembly or installation; however, all assembly and installation labor is the responsibility of the customer. Title to the bridge transfers to the customer upon delivery. The Taxpayer's customers are unrelated contractors, governmental entities, or property owners.

The Taxpayer provides two types of bridges: truss bridges and precast bridges, each of which is described below. With respect to each type of bridge, the Taxpayer bills the customer a single lump sum price, which is based on the total cost of fabrication, not on a compilation of costs for individual components. While individual bridge components may be listed separately on the invoice, they are not priced separately.

Truss Bridges

The truss bridge is a custom-made bridge constructed of steel or aluminum and designed to meet the specific needs of the customer. After consulting with the customer, the Taxpayer's engineer produces drawings used to custom fabricate the bridge. The raw materials are then cut to specification, welded, and painted. Depending on the bridge span, the bridge may be 1) fully

assembled at the Taxpayer's fabrication shop and delivered as a single piece; or 2) partially assembled and delivered to the customer in pieces.

To the extent assembly is required, the customer will complete the assembly process using instructions provided by the Taxpayer. In cases where the bridge is fully assembled, it is lifted into place by crane or hoist and then attached to the real property. In other cases, one end component of the bridge will be put in place and attached to the real property abutments; then subsequent components will be attached until the full bridge span is completed.

Since each truss bridge is custom designed, the partially assembled components are not interchangeable, useable, or saleable in other bridge fabrications. If the customer were to cancel the order or refuse delivery, the component pieces could not be resold and would only have scrap value.

Precast Bridges

The precast bridges are also custom designed by the Taxpayer's engineers to meet the customer's specific needs. The precast bridges are made of concrete and are fabricated by pouring concrete into Taxpayer-owned forms for individual component parts of the bridge. Due to the expense of transporting the concrete components, the Taxpayer may subcontract part of the manufacturing process to third party precasters for pouring the bridge component parts. The component parts may be delivered to the jobsite by a third party transporter.

The Taxpayer provides the customer with drawings and an onsite consultant to provide technical support during the installation process. The Taxpayer does not provide any onsite assembly or installation labor. The customer is fully responsible for the installation. Precast bridges are assembled simultaneously with their attachment to the realty. The precast bridges are specifically designed to the customer's needs.

Since each precast bridge is custom designed, the partially assembled components are not interchangeable, useable, or saleable in other bridge fabrications. If the customer were to cancel the order or refuse delivery, the component pieces could not be resold and would only have scrap value.

RULINGS

1. For purposes of the Tennessee sales and use tax, is the complete truss bridge considered a single article such that the total lump sum price is subject to the 2.75% state "single article" sales tax under TENN. CODE ANN. § 67-6-202(a) (2011) and the \$1,600 limitation on the local option sales tax under TENN. CODE ANN. § 67-6-702(a)(1) (2011)?

Ruling: In the case of a complete truss bridge that is fully assembled prior to its installation to realty, the bridge will be considered a single article as defined under TENN. CODE ANN. § 67-6-702(d) (2011) for Tennessee sales and use tax purposes. However, a complete truss bridge will not be considered a single article if the bridge is delivered to the purchaser in its individual component parts and is assembled simultaneously with its attachment to the realty upon which it is installed.

2. For purposes of the Tennessee sales and use tax, is the complete precast bridge considered a single article such that the total lump sum price is subject to the 2.75% state “single article” sales tax under TENN. CODE ANN. § 67-6-202(a) (2011) and the \$1,600 limitation on the local option sales tax under TENN. CODE ANN. § 67-6-702(a)(1) (2011)?

Ruling: A complete precast bridge will not be considered a single article as defined under TENN. CODE ANN. § 67-6-702(d) (2011), because the bridge is delivered to the purchaser as individual component parts and is assembled simultaneously with its attachment to the realty upon which it is installed.

ANALYSIS

Under the Retailers’ Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, the retail sale of tangible personal property is generally subject to the Tennessee sales and use tax. TENN. CODE ANN. § 67-6-202(a) (2011) generally imposes a state sales tax at the rate of 7% on the sales price of tangible personal property sold at retail in Tennessee. An additional state sales tax is levied at the rate of 2.75% on the amount over \$1,600, but less than or equal to \$3,200, on the sale or use of any “single article” of personal property (the “state single article sales tax”). *Id.*

TENN. CODE ANN. § 67-6-702(a)(1) (2011) authorizes counties and incorporated cities to impose a “local option” sales tax in addition to the state sales tax, at a rate of up to 2.75%. However, a “single article” of personal property is subject to the local option sales tax only with respect to the first \$1,600 of the sales price.¹

TENN. CODE ANN. § 67-6-702(d) defines the term “single article” for purposes of the Tennessee sales and use tax as “that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation.” TENN. CODE ANN. § 67-6-702(d) further provides that “[s]uch independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article.”

An item may constitute a “separate unit” even if it is delivered to the purchaser in pieces or as unassembled components for later assembly. *See, e.g., Pidgeon-Thomas Iron Co. v. Garner*, 495 S.W.2d 826, 831 (Tenn. 1973) (inferring that a steel structure delivered as component parts and assembled after delivery could be considered a single article in certain circumstances²). In cases where the item is ultimately affixed to realty, either the individual component parts of the item or

¹ The \$1,600 limit on the imposition of the local option sales tax in this case will be referred to for purposes of this revenue ruling as the “local option single article cap.”

² Note that in *Pidgeon-Thomas Iron Co.*, the Tennessee Supreme Court held that the individual components of steel structures (including custom designed bridges) were single articles. In that case, the court’s decision turned on whether the vendor sold the structures at retail or was a contractor subject to the “contractor’s use tax” under TENN. CODE ANN. § 67-6-209, which provides that the transfer of tangible personal property by a contractor who “contracts for the installation of such tangible personal property as an improvement to realty” does not constitute a sale for purposes of the sales and use tax. Rather, the contractor installing tangible personal property that becomes affixed to realty is liable for any sales or use tax that may be due with respect to the property used in performing the contract. In *Pidgeon-Thomas Iron Co.*, the vendor designed, fabricated *and installed* its structures to realty. As a result, the court held that the vendor was a contractor subject to the contractor’s use tax. *Pidgeon-Thomas Iron Co.*, 495 S.W.2d at 832. Because there was no retail sale for purposes of the sales and use tax, the final assembled item was not a single article; instead, the component parts used by the vendor in the performance of its contract were single articles. *Id.* In contrast, the facts indicate that the Taxpayer is not properly considered a contractor because it never installs its bridges to realty; installation is always undertaken by the purchaser. The Taxpayer’s sales therefore constitute retail sales for purposes of the sales and use tax. As a result, the Taxpayer’s sale of a bridge potentially constitutes the sale of a single article.

the final assembled item will constitute a single article, depending on whether the final assembled item exists separately as an item of tangible personal property before its installation to real property.

The Tennessee Office of the Attorney General has addressed this issue on a number of occasions, holding in each instance that the final assembled item will constitute a single article if the assembled item exists as a separate item of tangible personal property before its installation to realty. However, if the component parts are assembled simultaneously with their attachment to the realty upon which they are installed, such that the final assembled item never exists separately as an item of tangible personal property prior to installation, then the individual components are each considered single articles.

In an opinion issued on October 2, 1968, the Attorney General considered the sale of pre-fabricated metal buildings and whether the building or its component parts were a single article. The manufacturer fabricated and packaged the component parts of the building, which were designed to be assembled upon delivery. The Attorney General opined that each component part constituted a single article, because the component parts were assembled simultaneously with their attachment to the realty upon which they were installed. The building itself was not a single article. The Attorney General stated, however, that a particular unit at issue would constitute a single article “where the component parts are assembled into a unit and then affixed to real estate.”

Similarly, in 1973 Tenn. Op. Atty. Gen. No. 73-22 (July 5, 1973), the Attorney General opined that “where a component member of a structure consists of several individual parts when disassembled and is sold as a unit in a disassembled state, the component member and not its individual constituent parts should be treated as a single article of personal property where assembly of the component member does not destroy its character as personal property.” In this opinion, the hypothetical vendor sells individual parts of structural steel frames, storage tanks, staircases, and similar items. The individual parts are sold in a disassembled state to purchasers who then assembled them for installation to real property. Because the assembled parts existed as tangible personal property prior to installation to realty, they were properly considered single articles.

Finally, in 1981 Tenn. Op. Atty. Gen. No. 81-002 (January 9, 1981), the Attorney General opined that the component parts of a storage rack were single articles and that the storage rack itself was not. As in the opinions discussed above, the Attorney General considered the key question to be whether the storage racks retained their character as personalty when assembled. In this case, the Attorney General found that the storage racks became affixed to realty upon assembly, and that they were therefore not properly considered single articles.

1. Truss bridges

In the case of a complete truss bridge that is fully assembled prior to its installation to realty, the bridge will be considered a single article as defined under TENN. CODE ANN. § 67-6-702(d) for Tennessee sales and use tax purposes. However, a complete truss bridge will not be considered a single article if the bridge is delivered to the purchaser in its individual component parts and is assembled simultaneously with its attachment to the realty upon which it is installed. Rather, each individual component will constitute a separate single article.

As discussed above, the final assembled item will constitute a single article if the item exists as a separate item of tangible personal property before its installation to realty. However, if the component parts are assembled simultaneously with their attachment to the realty upon which they are installed, such that the final assembled item never exists separately as an item of tangible personal property prior to installation, then the individual components are considered single articles.

The facts indicate that the Taxpayer's truss bridges are either fully assembled at the Taxpayer's fabrication shop and delivered as a single piece, or partially assembled and delivered to the customer in its individual component parts. In cases where the bridge is delivered fully assembled, it is lifted into place by crane or hoist and then attached to the real property. Where the bridge is delivered in pieces, one end component of the bridge is put in place and attached to the real property abutments; then subsequent components are attached until the full bridge span is completed.

When the Taxpayer delivers a fully assembled truss bridge, the bridge exists as a separate item of tangible personal property before its installation to realty. Consistent with the authorities cited above, the truss bridge in that case will be considered a "single article" as defined under TENN. CODE ANN. § 67-6-702(d).

However, when the Taxpayer delivers a truss bridge in pieces, the facts indicate that the purchaser assembles the bridge simultaneously with its attachment to the realty upon which it is ultimately installed. Consistent with the authorities cited above, the truss bridge in that case will not be considered a "single article" as defined under TENN. CODE ANN. § 67-6-702(d). Rather, each individual component part will constitute a separate single article.

2. Precast bridges

A complete precast bridge will not be considered a single article as defined under TENN. CODE ANN. § 67-6-702(d), because the bridge is delivered to the purchaser as individual component parts and is assembled simultaneously with its attachment to the realty upon which it is installed.

The facts indicate that in all cases, precast bridges are assembled simultaneously with their attachment to the realty. Consistent with the authorities cited above, the precast bridge will not be considered a "single article" as defined under TENN. CODE ANN. § 67-6-702(d). Rather, each individual component part will constitute a separate single article.

Kristin Husat
Director of Legal

APPROVED: Richard H. Roberts
Commissioner of Revenue

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