

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-29**

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

Procedure of taking credits available under Tenn. Code Ann. § 67-6-346.

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

[THE TAXPAYERS] are [STATE A - NOT TENNESSEE] corporations and wholly owned subsidiaries of [PARENT] Corporation. The Taxpayers are under contract with the [GOVERNMENT AGENCY] to manage, maintain, and operate certain of

the [GOVERNMENT AGENCY'S] facilities in [CITY Z], Tennessee, although the Taxpayers are separate entities that perform different functions with respect to the facilities. The Taxpayers have both applied for and received authority under TENN. COMP. R. & REGS. 1320-5-1-.68(4) to make all purchases of tangible personal property without the payment of tax using a resale certificate and are permitted to remit tax only on those items actually used by the Taxpayers.

ISSUES

1. Whether the Taxpayers may take credits on current tax returns for tax previously paid on items they believe qualify as pollution control under Tenn. Code Ann. § 67-6-346.
2. Whether the Taxpayers may purchase items they believe are exempt as pollution control under Tenn. Code Ann. § 67-6-346 without paying sales or use tax.

RULINGS

1. Provided they can demonstrate that they qualify under Tenn. Code Ann. § 67-6-346, the Taxpayers may take credits on current tax returns for qualifying pollution control, but only to the extent that sales or use tax was paid to the Department. In the alternative, the Taxpayers may apply for a refund of sales or use tax paid on qualifying pollution control items.
2. The Taxpayers are Rule 68 taxpayers and accordingly need not pay tax at the time of any purchase.

ANALYSIS

1. The recent amendment to Tenn. Code Ann. § 67-6-346 provides that

There shall be a credit of one hundred percent (100%) of the sales and use tax paid with respect to pollution control required to bring the purchaser into compliance with pollution control laws or regulations, whether federal, state, or local. Instead of taking the credit available under this section . . . the purchaser may apply to the commissioner of revenue for a refund of the taxes paid or for authority to make purchases exempt from the tax.

It should be noted that the benefit of this provision is only available to purchasers who themselves are required to comply with the pollution control laws or regulations. The Taxpayer should also be aware that during an audit, evidence will be required to demonstrate that the items are qualified pollution control under Tenn. Code Ann. § 67-6-346 and that tax was actually paid on the items. In the

face of insufficient evidence, the Taxpayers will be assessed the tax plus all applicable interest.

The Taxpayers may take a credit for sales and use taxes paid for qualifying pollution control. In the alternative, the Taxpayers may apply to the Department for a refund. The Taxpayers must demonstrate that the items are qualified pollution control and that sales or use tax had been paid within the statutory period.

2. TENN. COMP. R. & REGS. 1320-5-1-.68(4) allows a taxpayer, upon application to the Department, to submit a resale certificate for all purchase of tangible personal property and to self report use tax on those items actually used. The Taxpayers have authority under this rule. Accordingly, they may purchase tangible personal property, including pollution control items, without the payment of sales tax at the time of purchase.

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Tax Counsel

APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 6-12-98