

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING #00-01**

**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 sales tax to the purchase of computer software by a Tennessee customer from an out-of-state vendor, when the customer distributes the software to locations outside of Tennessee.

**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**

A customer (Licensee) located in Tennessee ordered computer software from the vendor (Licensor). Licensor billed Licensee for the software, including Tennessee sales tax. Licensor paid the sales tax to the State of Tennessee. Licensor delivered the software to Licensee's main offices in Tennessee and trained Licensee's employees how to install the software. Licensee then installed the software in each of its branch offices in other states. The software was installed directly onto the desktop computers rather than to a server. There was no Wide Area Network (WAN) application.

The sale at issue was accomplished by a license agreement. The license agreement provided that Licensor retained ownership of the computer software. However, possession of the software was transferred pursuant to the license agreement. According to the license agreement, the software was deemed accepted by Licensee upon the completion of a formal acceptance test of the software at an agreed office of Licensee. The agreed office was in Tennessee.

**QUESTION**

Is the sale of the computer software subject to Tennessee sales tax, even though Licensee distributed it to its branch offices in other states?

## ANSWER

Yes. The sale of the computer software is subject to Tennessee sales tax.

## ANALYSIS

Computer software is tangible personal property. Tenn. Code Ann. §§ 67-6-102(25)(B) and (29). The sale of tangible personal property is subject to sales tax. Tenn. Code Ann. § 67-6-202. The License Agreement is considered a sale for purposes of the sales tax. Tenn. Code Ann. § 67-6-102(25)(A).

‘Retail sale’ or ‘sale at retail’ includes the delivery in this state of tangible personal property by a retailer who has no place of business in this state, if the delivery is made to a consumer in this state or to another person for redelivery to a consumer in this state pursuant to a retail sale made by such retailer to such consumer[.] Tenn. Code Ann. § 67-6-102(24)(C).

The only potential exemption under the facts given is found in the following statute: “It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export.” Tenn. Code Ann. § 67-6-313(a). The question is whether the computer software at issue was imported into Tennessee for export.

Tennessee law does not support the application of the exemption under the facts given. The acceptance of the computer software by Licensee in Tennessee and the accompanying training by Licensor in Tennessee regarding the installation of the computer software clearly rendered the transaction subject to taxation in Tennessee. Licensee’s later act of transferring the computer software to other states did not make the sale exempt from tax as an import for export.

Tennessee case law clearly supports this conclusion. The facts given are similar to the facts of Jack Daniel Distillery v. Jackson, 740 S.W.2d 413 (Tenn. 1987). The facts in that case were as follows: “The taxes in question are those imposed by the State of Tennessee on advertising materials shipped from locations outside Tennessee to appellant’s warehouse in Tennessee, where they were stored and ultimately shipped to destinations outside Tennessee.” Id. at 414. The Court upheld the application of the Tennessee sales tax. The basis for the decision was that the “sale or transfer of possession to a buyer took place in Tennessee.” Id. at 417. The subsequent exportation of the items to other states did not render such purchases imports for export, because such exportation was a separate event. Id. at 416.

Tennessee sales tax is due under the facts given. The transfer of the computer software to branch offices in other states does not alter this result. Such transfer was a separate event that occurred after Licensor both had transferred possession of the computer software to Licensee in Tennessee and had trained Licensee in Tennessee regarding how to install the computer software. The “import-for-export” exemption does not apply.

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