

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 00-30**

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 sales and use tax to the sale by a printing company of bond forms to an alleged paying agent for a local governmental entity within Tennessee.

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] has several customers for whom it prints bonds, all of which are divisions within law firms, brokerage houses, trust companies, or banks. Each customer has obtained a bid from the taxpayer for the cost of printing and delivering the bonds, and the local governmental entity within Tennessee issues a check to the customer for the exact amount of the taxpayer's bid. When the job is invoiced, the taxpayer charges sales tax for which its customer is unable to obtain payment from the local governmental entity within Tennessee, which tells the customer that it (the local governmental entity) is exempt from sales tax. The customer in turn refuses to pay the taxpayer the tax, requesting that the taxpayer not charge the tax, because it says that it is by contract serving as the registrar, transfer and paying agent for the principal's publicly held bonds and notes.

Currently, the taxpayer is paying the sales tax to the state of Tennessee but is unable to obtain the tax from its customers. The customers do not qualify for any exemption from sales tax on their own, but they insist that they are acting as agents of the local governmental entities within Tennessee.

The taxpayer provided a sample contract between one of its customers and a local governmental entity within Tennessee (a Tennessee county). The sample contract includes the following language (although the entire contract is not quoted):

The Agent agrees to provide such professional services as may be requested by Principal from time to time.

(i) Agent agrees to serve as registrar, transfer and paying agent for Principal's publicly held bonds and notes heretofore issued, pursuant to the provisions of the Tennessee Public Obligations Registration Act and in further accordance with the provisions of each governing instrument.

(ii) Agent agrees to serve as registrar, transfer and paying agent for bonds and notes issued during the term of this agreement.

(iii) Agent agrees to serve as fiscal agent with respect to the creation, issuance and sale of new bond and notes issues [sic] during the term hereof.

(iv) Agent agrees to serve as dissemination agent for continuing disclosure for those bond and note issues for which it is serving as registrar, transfer and paying agent and had served as financial advisor at the time of issuance.

QUESTION

Is the sale of bond forms by the taxpayer to its customers subject to Tennessee sales or use tax under the facts given?

RULING

No. The sale of bond forms is not subject to Tennessee sales or use tax under the facts given and the sample contract provided.

ANALYSIS

Tennessee taxes the retail sale of tangible personal property. Tenn. Code Ann. § 67-6-202. The Tennessee sales and use tax has an exemption for “[a]ll sales made to the state of Tennessee or any county or municipality within the state[.]” Tenn. Code Ann. § 67-6-329(13). See also Tenn. Comp. R. & Regs. 1320-5-1-.55.

The potential application of the exemption in Tenn. Code Ann. § 67-6-329(13) depends upon whether the taxpayer’s customers function as agents or as independent contractors on behalf of the local governmental entities. Gehl Corporation v. Johnson, 991 S.W.2d 246, 248 (Tenn. App. 1998). If the customers are agents of the local governmental entities, the taxpayer’s sales of bond forms are being made to the local governmental entities themselves, rather than to the customers. Therefore, the exemption would apply. Otherwise, the exemption would not apply.

“The principal test of agency is whether the principal has the right to control the conduct of the agent with respect to matters entrusted to the agent.” Id.

The distinctions between an independent contractor and an agent are not always easy to determine, and there is no uniform rule by which they may be differentiated. Generally the distinction between the relation of principal and agent and employer and independent contractor is based on the extent of the control exercised over the employee in the performance of his work, he being an independent contractor if the will of the employer is represented only by the result, but an agent where the employer’s will is represented by the means as well as the result. [Citation omitted.] The distinction generally between an independent contractor and an agent depends upon the intention of the parties as expressed in the contract. United States of America v. Boyd, 363 S.W.2d 193, 197 (Tenn. 1962).

The sample contract provided specifically references the Tennessee Public Obligations Registration Act. According to the Tennessee Public Obligations Registration Act:

Any issuer of fully registered public obligations is authorized to appoint a registration agent or agents and paying agent or agents with respect to the issuance, exchange and transfer of such public obligations or to maintain records so that public obligations in book-entry form may be effected, with

such duties as shall be determined by the issuer. ... Tenn. Code Ann. § 9-19-104.

The Tennessee Public Obligations Registration Act contemplates the appointment of a paying agent by a local governmental entity in the context at issue. The sample contract provided by the taxpayer specifically references the Tennessee Public Obligations Registration Act. The intention of the parties to the sample contract is to create an agency relationship as contemplated by the statute.

Furthermore, the facts given and the sample contract indicate that the requisite control exists to create an agency relationship. The local governmental entity's issuance of a check to the taxpayer's customer for the precise amount of the taxpayer's bid shows that the local governmental entity keeps control over the cost of the process. The taxpayer's customer agrees to "serve as fiscal agent with respect to the creation, issuance and sale" of the bonds. Sample contract (Emphasis added). "The Agent agrees to provide such professional services as may be requested by Principal from time to time." Sample contract.

The Tennessee Public Obligations Registration Act specifically authorizes the local governmental entity within Tennessee "to appoint a registration agent or agents and paying agent or agents with respect to the issuance, exchange and transfer" of the bonds ... "with such duties as shall be determined by the [local governmental entity within Tennessee]." Tenn. Code Ann. § 9-19-104 (Emphasis added). This statute specifically authorizes a local governmental entity within Tennessee to utilize an agent to accomplish the issuance of its bonds and to make necessary payments on its behalf. The sample contract and the other facts set out in the statement of facts indicate the intent by both parties to create such an agency relationship.

In order for the exemption from sales tax for sales to local governmental entities to apply, the local governmental entity (or its agent) must present to the taxpayer an exemption certificate pursuant to Tenn. Comp. R. & Regs. 1320-5-1-.55. The taxpayer should keep a copy of the exemption certificate as part of its records.

For the reasons explained above, the sales tax would not apply to the taxpayer's sales of bond forms to the customer, based upon the facts given and the sample contract provided. It should be noted that if an agency relationship does not exist, the sale of the bond forms would be subject to sales tax.

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APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: 9/1/00