

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #01-16**

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 purchase and temporary storage in Tennessee of tangible personal property for resale and for use by the taxpayer.

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 TAXPAYER] has a [TYPE OF] product distribution facility located in Tennessee that receives products from various manufacturers located inside of and outside of Tennessee. The taxpayer temporarily stores the products at the Tennessee warehouse for subsequent shipment to other companies, as well as to its own [RETAIL BUSINESSES]

that are located inside of and outside of Tennessee. When the product enters the warehouse, it is soon shipped to its desired destination. The products that are shipped to the taxpayer's own [RETAIL BUSINESSES] are either resold at the [RETAIL BUSINESSES] or are consumed by the taxpayer while performing [TYPE OF] services. The taxpayer resells the majority of the products to other companies or to its own customers at its [RETAIL BUSINESSES].

QUESTIONS

1. Can the taxpayer use a resale certificate to purchase the products free of Tennessee sales tax?
2. Does the temporary nature of the storage of the products in Tennessee have any effect on the Tennessee use tax applicable to the products?
3. Regarding the products used by the taxpayer at its own [RETAIL BUSINESSES], should the taxpayer pay sales or use tax to Tennessee?

RULINGS

1. Yes. The taxpayer may use a resale certificate to purchase the tangible personal property free of Tennessee sales tax. The taxpayer must pay Tennessee sales or use tax on any tangible personal property that it uses in its [RETAIL BUSINESSES] whether inside of or outside of Tennessee, if either title to or possession of the tangible personal property passed in Tennessee and such tangible personal property was purchased on a resale certificate.
2. Yes. Tennessee use tax does not apply to the temporary storage of tangible personal property for subsequent shipment to destinations outside of Tennessee under the facts given. Tennessee use tax does apply to the storage in this State of tangible personal property for use or distribution in this State, if the Tennessee sales or use tax has not been paid already on such items. However, the use tax does not apply to inventory held for resale, if the taxpayer is in strict compliance with the rules and regulations applicable to sales for resale.
3. Yes. If either title to or possession of the tangible personal property passes in Tennessee and the taxpayer purchases the products on a resale certificate, the taxpayer would owe Tennessee sales or use tax on such tangible personal property that it uses in its own [RETAIL BUSINESSES] regardless of the specific location of such use (whether used inside of or outside of Tennessee). Also, the taxpayer would owe Tennessee sales or use tax on any tangible personal property that it uses in its Tennessee [RETAIL BUSINESSES] regardless of where title to or possession of the tangible personal property passes, but the taxpayer could claim a credit for a legally imposed sales or use tax that it actually paid to another state on such items.

ANALYSIS

1. Tennessee taxes the retail sale of tangible personal property in this State. Tenn. Code Ann. § 67-6-202. A “retail sale” is defined as “a taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than for resale. . . . Any sales for resale must, however, be in strict compliance with the rules and regulations promulgated by the commissioner.” Tenn. Code Ann. § 67-6-102(24)(A).

The term “sales for resale” is defined in Tenn. Comp. R. & Regs. 1320-5-1-.62(1).

“Sales for resale” means those whereby a supplier of materials, supplies, equipment and services makes such tangible personal property or services available to legitimate dealers actually selling such property or services as such, or which becomes an industrial material or supply in a manufacturing or processing operation. Tenn. Comp. R. & Regs. 1320-5-1-.62(1).

Because the taxpayer is a legitimate dealer actually selling the tangible personal property at issue, it may use a resale certificate to purchase the tangible personal property free of Tennessee sales tax.

Regarding any tangible personal property that the taxpayer removes from inventory for its own use after purchasing the items on a resale certificate, the following rule applies:

When a person purchases tangible personal property or taxable services upon which no Sales or Use Tax is paid, and which is used or consumed as tangible personal property subject to the Sales or Use Tax, such use must be reported and a tax paid thereon for the month in which the taxable use arose. It is the duty of the person to keep accurate records to show what determination is made of such property. Tenn. Comp. R. & Regs. 1320-5-1-.95.

If either title to or possession of the tangible personal property passes in Tennessee, the sale is a Tennessee sale is subject to the Tennessee sales tax. Eusco, Inc. v. Huddleston, 835 S.W.2d 576, 579 (Tenn. 1992). If the taxpayer’s original purchase of the tangible personal property would have been subject to Tennessee sales or use tax but for the utilization of a resale certificate, the taxpayer owes Tennessee sales or use tax on all such tangible personal property that it subsequently uses at its [RETAIL BUSINESSES], regardless of whether the [RETAIL BUSINESS] is located inside of or outside of Tennessee. The reason for this result is that the taxpayer’s purchases from its suppliers were Tennessee sales, and (in hindsight) the resale certificate should not have been utilized for those specific purchases.

2. Tennessee use tax does not apply to the temporary storage of tangible personal property in this State for subsequent shipment to another state. Tenn. Code Ann. §§ 67-6-102(28) and 67-6-313(a); Young Sales v. Benson, 450 S.W.2d 574, 577 (Tenn. 1970); Beecham Laboratories v. Woods, 569 S.W.2d 456, 458 (Tenn. 1978).

Tennessee use tax does apply to the storage of tangible personal property in this State for use or distribution in this State, if the Tennessee sales or use tax has not been paid already. Tenn. Code Ann. §§ 67-6-102(28) and 67-6-203. However, the use tax does not apply to inventory held for resale, if the taxpayer is in strict compliance with the rules and regulations applicable to sales for resale. Tenn. Code Ann. § 67-6-102(24)(A). Under the facts given, the taxpayer would not owe Tennessee use tax on the storage of the tangible personal property, because the items in its inventory are held for resale. In this specific fact situation, the identification of taxable items occurs subsequent to the storage of those items.

3. Tennessee sales tax is due, if either title to or possession of the tangible personal property passes in Tennessee. Eusco, Inc. v. Huddleston, 835 S.W.2d 576, 579 (Tenn. 1992); Jack Daniel Distillery v. Jackson, 740 S.W.2d 413, 417 (Tenn. 1987). If either title to or possession of the tangible personal property passes in Tennessee but the taxpayer utilizes a resale certificate and thus does not pay Tennessee sales or use tax, the Tennessee sales or use tax would be due for any such tangible personal property used by the taxpayer regardless of the location of such use (whether inside of or outside of Tennessee). Tenn. Comp. R. & Regs. 1320-5-1-.95. The reason for this result is that the sales or use tax should have been paid on any items that were not actually purchased for resale. The sales or use tax paid by the taxpayer on these items compensates for the sales or use tax that was not paid by utilizing a resale certificate. See Nasco, Inc. v. Jackson, 748 S.W.2d 193, 196 (Tenn. 1988).

If the original purchase would have been subject to Tennessee sales or use tax except for the utilization of a resale certificate (i.e., if either title to or possession of the tangible personal property passed in Tennessee), the use of those items anywhere indicates that the resale certificate (in hindsight) should not have been utilized. Therefore, the taxpayer would owe the Tennessee sales or use tax for the use of all such items, regardless of the specific location of such use (whether inside of or outside of Tennessee). However, if the original purchase would not have been subject to Tennessee sales or use tax even without a resale certificate (i.e., if neither title to nor possession of the tangible personal property passed in Tennessee), the Tennessee sales or use tax would not apply to the use of those items in the taxpayer's [RETAIL BUSINESSES] located outside of Tennessee.

Products used by the taxpayer in its Tennessee [RETAIL BUSINESSES] are subject to the Tennessee sales or use tax regardless of where the products were purchased, if the taxpayer has not paid the Tennessee sales or use tax on those products already. Tenn. Code Ann. § 67-6-203. However, the taxpayer could claim a credit against the Tennessee sales or use tax for a legally imposed sales or use tax that it actually paid to another state for those items. Tenn. Comp. R. & Regs. 1320-5-1-.91(1).

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APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: 7/27/01