

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 01-22**

**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 statement of Department policy.**

**SUBJECT**

Application of Tennessee sales and use tax to the purchase and use of vinyl artwork for billboards.

**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] is a corporation engaged in business as an advertising agency in Tennessee. The taxpayer routinely produces and places billboard advertising for its clients. The term "billboard" as used here refers to the large structures mounted in the ground, normally placed along major highways and interstates and to the advertising artwork on them.

The question of taxability arises when:

The client has a corporate headquarters in Tennessee with retail locations in other states. The taxpayer bills and is paid from this Tennessee headquarters. The taxpayer's invoices to the client include the cost of the artwork, the cost of installation, and a commission based on those costs.

The taxpayer creates the advertising artwork that will eventually be placed on the billboard and sends it to a "vinyl" maker.

Advertising artwork is usually enlarged and reproduced on vinyl sheets, which are subsequently stretched over, and strapped down to, the face of the billboard structures. On some (less common) occasions the older method of actually painting the artwork onto the billboard is still done.

The production of the vinyls for the billboard is done by a producer located outside of Tennessee. The producer ships the vinyls directly to the billboard vendor, who is not located in Tennessee, to be installed on a billboard also located out of state. The vinyls never enter Tennessee.

While the advertising artwork that is placed on these billboards may contain the client's corporate trademark, logo, and tagline, the principal purpose of the artwork is to refer specifically to the retail location in that particular state (not Tennessee) as it is directional advertising. "Directional" means directions to the local store and might be something like, "Take exit number 210 and then left on John Brown Road."

The taxpayer does not own the billboards. The taxpayer's client never receives title to or possession of the original artwork or the vinyls. After the vinyls are removed from the billboard, they are destroyed. The vinyls cannot be reused.

## **QUESTIONS**

1. Are out-of-state vendor charges to the taxpayer for installation of vinyls to billboard structures subject to the Tennessee sales and use tax?
2. If the principal benefit of the vinyls is appreciated by a retail location out of state, and the transactions all take place out of state, are out-of-state vendor charges for vinyls produced out of state subject to the Tennessee sales and use tax?
3. Is the taxpayer obligated to collect and pay Tennessee sales and use tax, when it bills its client for the transactions described in questions 1 and 2?

## **RULINGS**

1. No. Vendor charges to the taxpayer for the installation of vinyls to billboard structures located outside of Tennessee would not be subject to the Tennessee sales and use tax.

2. The taxpayer is the user and consumer of the vinyls. If title to the vinyls passes in Tennessee to the taxpayer, the sale is a Tennessee sale and the taxpayer must pay Tennessee sales tax to its vendor. If title to the vinyls does not pass in Tennessee to the taxpayer, the sale is not a Tennessee sale and the taxpayer need not pay Tennessee sales tax to its vendor. The location of the “principal benefit” (to which the taxpayer refers in its question) is not relevant to determining whether the Tennessee sales or use tax applies.
3. No. The taxpayer would not be obligated to collect and pay Tennessee sales and use tax, when it bills its client for the transactions described in questions 1 and 2.

### **ANALYSIS**

1. The Tennessee sales and use tax does not apply to the installation of vinyls to billboards that are located outside of Tennessee. The fact that the vinyls never enter Tennessee establishes that the billboards are located outside of Tennessee. Based on these facts, there would not be a taxable sale or use in Tennessee. Tenn. Code Ann. §§ 67-6-202 and 67-6-203.
2. Tennessee taxes the retail sale of tangible personal property in Tennessee. Tenn. Code Ann. § 67-6-202. If either title to or possession of the tangible personal property passes in Tennessee, the sale is a Tennessee sale and is subject to the Tennessee sales tax. *Eusco, Inc. v. Huddleston*, 835 S.W.2d 576, 579 (Tenn. 1991). Prior to installation, the vinyls are tangible personal property potentially subject to the Tennessee sales tax. Based on the facts provided by the taxpayer, the taxpayer is the user and consumer of the vinyls. The taxpayer does not resell the vinyls to its clients, because the clients do not receive title to or possession of the vinyls.

The facts provided by the taxpayer establish that the vinyls never enter Tennessee. Therefore, it is clear that possession of the vinyls does not pass in Tennessee to the taxpayer. However, if title to the vinyls passes in Tennessee to the taxpayer, the taxpayer’s purchase of the vinyls is a Tennessee sale and the taxpayer should pay Tennessee sales tax to its vendor. If title to the vinyls does not pass in Tennessee to the taxpayer, the sale is not a Tennessee sale and is not subject to the Tennessee sales tax.

3. The charge by the taxpayer to its client for the installation of vinyls to a billboard located outside of Tennessee would not be subject to the Tennessee sales or use tax. Also, the taxpayer does not resell the original artwork or the vinyls to its client, because the taxpayer does not transfer title to or possession of the original artwork or the vinyls to its client. Therefore, the taxpayer’s charge to its client for the cost of the original artwork or for the cost of the vinyls is not subject to the Tennessee sales tax.

Steve Butler  
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APPROVED: Ruth E. Johnson  
Commissioner

DATE: October 18, 2001