

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 04-05**

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

Whether the Taxpayer, by furnishing copy machines to its customers for a charge, is leasing/renting tangible personal property or providing a service.

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 his detriment.

FACTS

[THE TAXPAYER] offers convenience copiers to its customers. The copiers are placed at various locations at the customer's place of business. Customers are charged a base amount that allows them to make a certain number of copies. An additional charge is made for each copy over the allotted amount.

The customer has the right to terminate the agreement by providing a written notice 60 days prior to the termination date and paying any applicable termination charge. The agreement between the Taxpayer and the customer usually involves not only convenience copiers but also other unrelated equipment and services but the items covered by the agreement work

independently of each other. During the term of the agreement, a customer may negotiate for a different copier with different features if desired.

It is the Taxpayer's responsibility to maintain the copiers and to provide toner, developer and fuser. The Taxpayer may, or may not, provide paper depending on the terms of service to the particular client involved.

The customer has exclusive use of the copiers and has the right to direct the way they are used. The customer operates the copiers and is able to choose the different control functions desired. The copiers are available to the customer for use anytime of the day during the agreement period, which is usually 3 years.

QUESTION PRESENTED

Is the Taxpayer leasing/renting tangible personal property or providing a service to its customers?

RULING

The Taxpayer is leasing/renting tangible personal property to its customers and must collect the applicable Tennessee sales tax.

ANALYSIS

T.C.A. § 67-6-102(a)(27)(A), set forth in pertinent part below, defines a "sale" as follows:

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration . . . (*Emphasis added*)

"Lease or rental" is defined by T.C.A. § 67-6-102(17) as follows:

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title of such property.

"Tangible personal property" is defined by T.C.A. § 67-6-102(a)(31) to mean and include ". . . personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses."

It is axiomatic that copy machines are tangible personal property. The lease or rental of tangible personal property is a taxable event under the provisions of T.C.A. § 67-6-204(a) and (b), set forth in pertinent part as follows:

(a) It is declared to be the intention of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto. The tax is levied as follows:

(1) At the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 of the gross proceeds derived from the lease or rental of

tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the business.

(2) At the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 of the monthly lease or rental price by lessee or renter, or contracted or agreed to be paid by lessee or renter, to the owner of the tangible personal property.

(b) If the owner of the property maintains continuous supervision over the personal property being leased or rented and furnishes an operator or crew to operate such property, the owner is rendering a service, and the same is not subject to sales or use tax. On the other hand, if the owner does not furnish the crew or operator, but merely rents the property, and the lessee operates it personally for a stated consideration or price, either by the day or week or month, in such case, the sales or use tax would apply as the lessee has the possession, use and control of the property.

Under the facts given, the Taxpayer is furnishing its customers with copy machines, which are tangible personal property, for a consideration, without transfer of title to the property. This transaction meets the definition of a "lease or rental" set forth in T.C.A. § 67-6-102(17). A "Lease or rental" also qualifies as a "sale" under T.C.A. § 67-6-102(a)(27)(A). The Taxpayer does not furnish a crew or operator with the copy machines and thus is not providing a service. The lessee operates the copy machines for a stated consideration or price which is a base amount that allows the lessee to make a certain number of copies and pays an additional charge for each copy over the allotted number covered by the base amount charged.

T.C.A. § 67- 6-204(a) and (b) subjects the lease/rental of the copy machines to Tennessee sales tax when leased or rented to a Tennessee customer. The Taxpayer is required to collect the tax from its customer and remit it to the Tennessee Department of Revenue.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED: Loren L. Chumley, Commissioner

DATE: 1/31/04