

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 13-06**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.**

**SUBJECT**

The applicability of the Tennessee sales and use tax pollution control credit and the Tennessee sales and use tax industrial machinery exemption to a city landfill.

**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] (the "Taxpayer") partners with municipalities to design, construct, and manage solid waste landfills in Tennessee. The municipality owns the land, obtains the zoning and permitting, and contracts with the Taxpayer to construct, operate, and manage the landfill for the life of the site. The Taxpayer also provides waste collection and disposal services in Tennessee. The Taxpayer at various times purchases materials and equipment to construct and/or operate the solid waste disposal landfills.

## RULINGS

1. Do the materials and/or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill qualify for the pollution control credit found in TENN. CODE ANN. § 67-6-346 (2011)?

Ruling: No. None of the materials or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill qualify for the pollution control credit found in TENN. CODE ANN. § 67-6-346.

2. Do the materials and/or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill qualify for exemption from the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-206(a) (Supp. 2012) as industrial machinery?

Ruling: The industrial machinery exemption applies to those materials and/or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill that are used primarily for water pollution control, which is indicated by being required by the United States Environmental Protection Agency's rules and regulations promulgated under the Clean Water Act. No other materials or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill qualify as exempt industrial machinery.

## ANALYSIS

Under the Retailers' Sales Tax Act, TENN. CODE ANN. §§ 67-6-101 to -907 (2011 & Supp. 2012), retail sales of tangible personal property in Tennessee are generally subject to sales and use tax, unless an exemption applies.

There are two important statutory "exemptions" for pollution control devices. The first, contained in TENN. CODE ANN. § 67-6-346 (2011), is a primarily a credit, rather than an exemption, although it may operate as an exemption.<sup>1</sup> The second statutory exemption for pollution control devices is when they qualify as industrial machinery in accordance with TENN. CODE ANN. § 67-6-206(a) (Supp. 2012). Taxpayers purchasing pollution control devices may therefore be entitled to a pollution control credit, an industrial machinery exemption certificate, or both, as explained below.

### 1. POLLUTION CONTROL CREDIT

None of the materials or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill qualify for the pollution control credit found in TENN. CODE ANN. § 67-6-346.

The first "exemption" from Tennessee sales tax for purchases of pollution control devices is the credit contained in TENN. CODE ANN. § 67-6-346. That statute provides for a 100% credit of the

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<sup>1</sup> See TENN. CODE ANN. § 67-6-346 (granting the purchaser the option of "apply[ing] to the commissioner for a refund of the taxes paid or for authority to make such purchases exempt from the tax." As will be discussed in the response to Question #2, the burden is on the taxpayer to establish entitlement to any exemption. See *infra* note 6.

sales and use tax paid for “any system, method, improvement, structure, device or appliance appurtenant thereto that is required and primarily used to bring the purchaser into compliance with pollution control laws . . . when such pollution is created in the course of the purchaser’s regular business activities.”

But the statute also contains an important qualifier: In order to qualify for the pollution control credit, the purchaser of the pollution control equipment must have created the pollution it is seeking to control through the course of the purchaser’s own regular business activities. The statute specifically states that the credit “shall not be available to persons primarily engaged in processing, treating, or controlling pollution created by others.”<sup>2</sup>

The facts indicate that the Taxpayer constructs and manages landfills. Although landfills are subject to various pollution control laws,<sup>3</sup> and certain new pollutants may be created as a result of the Taxpayer’s activities at the landfill in moving, compacting, and managing waste, the primary purpose of landfills is the “processing, treating, or controlling pollution created by others.”<sup>4</sup> Regardless of whether a taxpayer manages a landfill that is privately owned or contracts with another party, such as a municipality, to do so, the taxpayer is a person “primarily engaged in processing, treating, or controlling pollution created by others” and is therefore not entitled to claim the credit under TENN. CODE ANN. § 67-6-346.

Consequently, the materials and equipment purchased by the Taxpayer to construct and/or manage the landfill do not qualify for the pollution control credit.

## 2. INDUSTRIAL MACHINERY EXEMPTION

The industrial machinery exemption under TENN. CODE ANN. § 67-6-206(a) (Supp. 2012) applies to those materials and/or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill that are used primarily for water pollution control, which is indicated by being required by the United States Environmental Protection Agency’s rules and regulations promulgated under the Clean Water Act. No other materials or equipment purchased by the Taxpayer to construct and/or operate a solid waste disposal landfill qualify as exempt industrial machinery.

The second manner in which purchases of pollution control devices may be exempt from Tennessee sales and use tax is if they come within the scope of the industrial machinery exemption.

TENN. CODE ANN. § 67-6-206(a) exempts “industrial machinery” from the sales and use tax, and “industrial machinery” is defined in pertinent part as

[m]achinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and

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<sup>2</sup> TENN. CODE ANN. § 67-6-346.

<sup>3</sup> This will be discussed in the response to Question #2. *See, e.g., infra* note 18.

<sup>4</sup> *See* TENN. CODE ANN. § 67-6-346.

greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, . . . or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business, . . . or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in water pollution control or sewage systems.<sup>5</sup>

This definition opens the door to two different ways that taxpayers' purchases of pollution control devices may qualify for the industrial machinery exemption.<sup>6</sup> The first is if the taxpayer is purchasing devices for use in or as a part of pollution control facilities. The second is if the taxpayer is purchasing devices for use in water pollution control or sewage systems pursuant to a contract with a county or municipality, or is itself a county or municipality.

"Pollution control facilities" is defined in pertinent part as "any system . . . used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution . . . *when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity.*"<sup>7</sup>

This definition clearly envisions a manufacturer installing devices to reduce pollutants created during a fabrication or processing operation whereby it creates tangible personal property. Landfills do not qualify under this portion of the exemption because their principal business is not fabricating or processing tangible personal property, nor are most of the pollutants created by the landfills themselves.

The second option, however, may apply to landfills in certain circumstances. As stated above, pollution control devices "use[d] by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in water pollution control or sewage systems" are exempt from Tennessee sales and use tax.<sup>8</sup>

According to the facts, the Taxpayer contracts with municipalities to construct and operate various landfills. Thus any purchases the Taxpayer makes to be used primarily for "water

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<sup>5</sup> TENN. CODE ANN. § 67-6-102(46)(A)(i) (Supp. 2012).

<sup>6</sup> Note that, under either option, the burden is on the taxpayer to establish entitlement to an exemption from taxation. The Tennessee Court of Appeals has stated that "[a]lthough the rule is well-established that taxing legislation should be liberally construed in favor of the taxpayer and strictly construed against the taxing authority, it is an equally important principle of Tennessee tax law that 'exemptions from taxation are construed against the taxpayer who must shoulder the heavy and exacting burden of proving the exemption.'" *Am. Airlines, Inc. v. Johnson*, 56 S.W.3d 502, 506 (Tenn. Ct. App. 2000) (quoting *Rogers Grp., Inc. v. Huddleston*, 900 S.W.2d 34, 36 (Tenn. Ct. App. 1995)). The Tennessee Court of Appeals has also stated that the burden is on the taxpayer to establish the exemption, and any well-founded doubt is sufficient to defeat a claimed exemption from taxation. *Am. Airlines, Inc.*, 56 S.W.3d at 506 (citing *Tibbals Flooring Co. v. Huddleston*, 891 S.W.2d 196, 198 (Tenn. 1994); *United Cannery, Inc. v. King*, 696 S.W.2d 525, 527 (Tenn. 1985)).

<sup>7</sup> TENN. CODE ANN. § 67-6-102(46)(A)(ii) (emphasis added).

<sup>8</sup> See TENN. CODE ANN. § 67-6-102(46)(A)(i). Note that this exemption is limited to counties, municipalities, or their contractors, so a private landfill cannot qualify for an exemption under this portion of the industrial machinery exemption.

pollution control or sewage systems” would be exempt.<sup>9</sup> It is unlikely that a landfill would have any involvement with “sewage systems,” so the remaining discussion will focus on “water pollution control.”

The Tennessee Code Annotated fails to define “water pollution control,” although it does state that industrial machinery “used primarily for the control of . . . water pollution includes, but is not limited to . . . [m]achines used for generating, producing, and distributing . . . treated or untreated water.”<sup>10</sup>

Tennessee’s courts apply the “plain meaning” of a statute, but if an ambiguity exists, the courts look to derive the General Assembly’s intent from the “broader statutory scheme, the history of the legislation, or other sources.”<sup>11</sup> An ambiguity exists if the statute “can reasonably have more than one meaning.”<sup>12</sup>

Notwithstanding the example provided in TENN. CODE ANN. § 67-6-102(46)(D)(i), water pollution control could reasonably encompass any number of items, so it is appropriate to turn to the legislative history of the industrial machinery exemption to determine the Legislature’s intent.

When codified in 1959, the industrial machinery exemption had no reference to pollution control devices.<sup>13</sup> The first reference to pollution control came in a 1968 amendment that created a new industrial machinery definition containing the clause “equipment primarily used for air pollution control or stream pollution control, where the use of such machinery or equipment is by one who engages in such fabrication or processing as his principal business.”<sup>14</sup>

In 1972, the General Assembly added a new clause to the industrial machinery exemption, exempting “such use by a county or municipality or a contractor pursuant to a contract with such

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<sup>9</sup> In order to qualify for the industrial machinery exemption in other contexts, a taxpayer must show that its purchase is “primarily for” the fabrication or processing of tangible personal property, for example. *See* TENN. CODE ANN. § 67-6-106(46)(A)(i). The same requirement applies to “pollution control facilities” in that the pollution control facilities must be “primarily used for air pollution control or water pollution control.” *Id.* Even though the clause of the industrial machinery definition granting an exemption to counties, municipalities, and their contractors for water pollution control and sewage systems does not contain a similar “primarily for” requirement, it is implicit that an item only incidental to water pollution control would not qualify for the industrial machinery exemption.

<sup>10</sup> TENN. CODE ANN. § 67-6-102(46)(D)(i).

<sup>11</sup> *Brundage v. Cumberland Cnty.*, 357 S.W.3d 361, 365 (Tenn. 2011) (quoting *Seals v. H&F, Inc.*, 301 S.W.3d 237, 242 (Tenn. 2010)); *see also Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010); *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 679 (Tenn. 2002).

<sup>12</sup> *Lee Med., Inc.*, 312 S.W.3d at 527 & n.20 (citing *LeTellier v. LeTellier*, 40 S.W.3d 490, 498 (Tenn. 2001); *Bryant v. HCA Health Servs. of N. Tenn., Inc.*, 15 S.W.3d 804, 809 (Tenn. 2000)).

<sup>13</sup> *See* Act of Feb. 5, 1959, ch. 15, § 1, 1959 Tenn. Pub. Acts 130, 130 (codifying the definition of “machinery for new and expanded industry”); *see also* Act of Mar. 13, 1963, ch. 172, § 1, 1963 Tenn. Pub. Acts 769, 769 (replacing the “machinery for new and expanded industry” definition with a definition of “industrial machinery”).

<sup>14</sup> *See* Act of Apr. 3, 1968, ch. 557, § 1, 1968 Tenn. Pub. Acts 512, 513.

county or municipality for use in stream pollution control or sewage systems.”<sup>15</sup> The legislature again replaced the industrial machinery definition in 1984 with similar language, changing “stream pollution control” to “water pollution control” and included the examples of pollution control now codified in TENN. CODE ANN. § 67-6-102(46)(D)(i)-(ii) (Supp. 2012).<sup>16</sup>

Finally, in 1991, the General Assembly deleted and replaced the industrial machinery definition with a version substantially similar to the current codification as relates to pollution control. This legislation added a definition of “pollution control facilities,” and clarified that one way for purchases of pollution control devices to be exempt from Tennessee sales and use tax is if they qualify as pollution control facilities.

Legislators made a number of statements while considering the 1991 legislation that illumine the General Assembly’s intended meaning of “pollution control.” One representative stated before the Tennessee House Finance, Ways and Means Committee on May 21, 1991, that the purpose of the bill was to “bring[] into practice the interpretation that the Department of Revenue has used and includes those items that the Feds have now mandated that businesses [use] under the Clean Air and Clean Water [Acts] to employ to protect our environment.” Senator Leonard Dunavant confirmed this purpose before the Tennessee Senate Finance, Ways and Means Committee on May 29, 1991, explaining that “all states are under the federal law, the Clean Air Act and the Clean Water Act, and they’re having to spend money to bring themselves into compliance.” He further suggested that this measure was needed to keep Tennessee competitive for attracting companies and that the purpose of the exemption was to protect “[t]he people [that] have to purchase and install [pollution control equipment].”

Although the “pollution control facilities” portion of the industrial machinery exemption is only applicable to private manufacturers as discussed above, the requirements of the federal Clean Water Act apply to state and local government as well as private entities. It is both fair and reasonable to apply a similar meaning for “water pollution control” in the context of counties, municipalities, and their contractors.

In other words, in determining which aspects of a landfill operated by a county, municipality, or its contractor qualify as industrial machinery, the legislative history indicates that the exemption is available for those pollution control devices that are primarily used to comply with the requirements of the Clean Water Act, in addition to any devices that fall under TENN. CODE ANN. § 67-6-102(46)(D)(i).

For example, the Clean Water Act empowered the United States Environmental Protection Agency [hereinafter EPA] to regulate landfills.<sup>17</sup> Among its requirements, for example, the EPA requires all new municipal solid waste landfills to be constructed “[w]ith a composite liner . . . and a leachate collection system that is designed and constructed to maintain less than a 30-cm

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<sup>15</sup> See Act of Mar. 30, 1972, ch. 709, § 1, 1972 Tenn. Pub. Acts 768, 769. Although this legislation is the most relevant for purposes of this ruling, the legislative tapes yielded no information helpful to discerning legislative intent.

<sup>16</sup> See Act of May 9, 1984, ch. 762, §§ 1, 3, 1984 Tenn. Pub. Acts 481, 482.

<sup>17</sup> See EPA Criteria for Municipal Solid Waste Landfills, 40 C.F.R. § 258.1 (2010).

depth of leachate over the liner.”<sup>18</sup> The Taxpayer may thus purchase, among other items, composite liners and leachate collection systems<sup>19</sup> as required by EPA regulations exempt from Tennessee sales and use tax.<sup>20</sup>

In summary, the industrial machinery exemption applies to counties’, municipalities’, and their contractors’ purchases of items primarily for use in water pollution control, which includes items required to be installed by the EPA pursuant to its power under the Clean Water Act and “[m]achinery used for generating, producing, and distributing . . . treated or untreated water.” The Taxpayer, as a contractor operating solid waste landfills pursuant to its contracts with various municipalities, may make Tennessee sales tax purchases of those items primarily for use in water pollution control as discussed above.

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APPROVED: Richard H. Roberts  
Commissioner of Revenue

DATE: 02/25/13

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<sup>18</sup> EPA Criteria for Municipal Solid Waste Landfills, 40 C.F.R. § 258.40 (2010).

<sup>19</sup> The Taxpayer did not provide a list of specific items it has purchased or will purchase for use pursuant to its landfill contracts, so this ruling does not address whether any particular item is exempt from Tennessee sales and use tax.

<sup>20</sup> Note that the EPA may impose other requirements, such as the performance of a geological survey, that would not be subject to tax because they are not taxable services.