

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 95-03**

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 Departmental policy.

SUBJECT

Applicability of sales tax to Tennessee manufacturers whose customers are foreign dealers.

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] maintains locations in Tennessee and registers to collect Tennessee sales tax. It manufactures steel products from its Tennessee facilities. Many of its customers are foreign dealers who fail to register in Tennessee and possess no Tennessee Resale Certificate. These foreign dealers purchase goods from [TAXPAYER] in various scenarios. In each scenario, the foreign dealer claims exemption from sales tax because it purchases goods for resale.

ISSUES

1. Whether [TAXPAYER] must collect sales tax when a foreign dealer purchases products from the manufacturer and requests delivery to the dealer's customer in Tennessee.
2. Whether [TAXPAYER] must collect sales tax when a foreign dealer purchases a product that will be returned to the dealer's state for resale and requests to pick up the product at the manufacturer's Tennessee facility.
3. Whether [TAXPAYER] must collect sales tax when a foreign dealer purchases products and requests delivery to another Tennessee manufacturer who delivers the completed project to the foreign dealer via commercial carrier to resale outside Tennessee.
4. Whether [TAXPAYER] must collect sales tax when a foreign dealer purchases products and requests delivery to the foreign dealer's customer in Tennessee who is a governmental agency.

RULINGS

1. Drop shipments to a user or consumer require the shipper to collect sales tax from the foreign dealer. [TAXPAYER] must either collect sales tax or receive evidence of a Tennessee Resale Certificate in lieu of tax.
2. [TAXPAYER] may accept the foreign dealer's resale certificate issued by a foreign state in lieu of charging Tennessee sales tax. Evidence of such resale certificate prevents sales tax liability from falling on [TAXPAYER].
3. [TAXPAYER] need not collect sales tax on this transaction because it drop ships to a manufacturer rather than a consumer. [TAXPAYER] may accept the foreign dealer's resale certificate issued by a foreign state in lieu of charging Tennessee sales tax. Evidence of such resale certificate prevents sales tax liability from falling on [TAXPAYER].
4. Drop shipments to a user or consumer require the shipper to collect sales tax from the foreign dealer. [TAXPAYER] must either collect sales tax or receive evidence of a Tennessee Resale Certificate.

ANALYSIS

1. When [TAXPAYER] sells products to a foreign dealer and delivers the products to the dealer's customer in Tennessee, [TAXPAYER] must collect the sales tax if the dealer's customer is a user or consumer. Sales Tax Rule 96 states:

. . . sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as his (the out-of-state vendor) agent to deliver or ship tangible personal property or taxable services to his (the out-of-state vendor) customer, who is a user or consumer, are subject to sales or use tax. The dealer acting as agent for the out-of-state vendor must collect the tax

. . . (emphasis added.)

Tenn. Comp. R. and Regs. ch. 1320-5-1-.96. Issue number one falls precisely within this rule. [TAXPAYER] is a "dealer" registered in Tennessee who sells tangible personal property to an out-of-state vendor. That vendor instructs [TAXPAYER] to deliver tangible personal property to the out-of-state vendor's customer in Tennessee. If the out-of-state's vendor's customer is a "user or consumer," the rule subjects this transaction to tax.

Pursuant to the rule, [TAXPAYER], as "dealer acting as agent for the out-of-state vendor, bears the duty of collecting the sales tax. Accepting the out-of-state vendor's foreign resale certificate in lieu of charging Tennessee sales tax fails to relieve [TAXPAYER] of its duty to collect sales tax. Liability for the tax therefore, falls upon [TAXPAYER].

2. When [TAXPAYER] sells to foreign vendors who receive the products at [TAXPAYER] 's Tennessee facility, [TAXPAYER] may accept the out-of-state vendor's foreign resale certificate in lieu of charging Tennessee sales tax. Rule 29 states:

Bona fide dealers outside the state of Tennessee, who make purchases of tangible personal property or taxable services in this state which would otherwise be subject to the provisions of the sales and use tax law, may make purchases of items or services which they normally sell free of the sales tax, provided such a dealer will furnish his vendor in this state with a valid certificate of resale showing that he is a dealer located out of this state and would be entitled to purchase such property upon a resale certificate if he were a dealer in this state.

Tenn. Comp. R. and Regs. ch. 1320-5-1-.29(2).

When an out-of-state dealer purchases goods for resale outside Tennessee from a Tennessee dealer, the out-of-state dealer's foreign resale certificate relieves the Tennessee dealer of the duty to collect sales tax. *Id.* Thus, [TAXPAYER] may accept the out-of-state dealer's foreign resale certificate in lieu of charging Tennessee sales tax.

3. When [TAXPAYER] sells products to an out-of-state dealer and delivers to a Tennessee manufacturer, [TAXPAYER] need not collect sales tax because the Tennessee manufacturer is not a "user or consumer." This transaction fails to fall within Rule 96. Only if [TAXPAYER] drop ships products to a "user or consumer" in Tennessee does the duty to collect sales tax arise under Rule 96. Since the Tennessee manufacturer in this

scenario provides further fabrication of the products [TAXPAYER] ships, [TAXPAYER]'s transaction falls outside Rule 96 and outside the duty to collect sales tax. Thus, [TAXPAYER] may receive the out-of-state dealer's foreign resale certificate, relieving [TAXPAYER] of the duty to collect sales tax on the transaction. The resale occurs outside Tennessee, and Rule 29 permits [TAXPAYER] to receive the foreign resale certificate in lieu of collecting Tennessee sales tax.

4. [TAXPAYER] 's drop shipments to government agencies in Tennessee require [TAXPAYER] to collect sales tax. First, this transaction falls within the express language of Rule 96, which requires [TAXPAYER] to collect sales tax on this type of transaction. Unless another exemption applies, the duty remains. The eventual user or consumer is an exempt entity, but that exempt entity cannot transfer its exemption certificate. Thus, [TAXPAYER] drop ships its products to a user or consumer in Tennessee, and pursuant to Rule 96, it must collect the sales tax. Since the purchaser from [TAXPAYER] can not purchase the product using a Tennessee Resale Certificate or other valid Tennessee exemption, the sale by [TAXPAYER] is subject to tax.

Charles T. Moore
General Counsel

APPROVED: Joe Huddleston
Commissioner

DATE: 1/20/95