

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #96-39**

**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 sales tax to aluminum materials purchased and fabricated in Tennessee by the Taxpayer for use in modifications made by the taxpayer to an out-of-state water treatment plant.

**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 this 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 is a general contractor who has contracted to perform modifications to a water treatment plant located in a [STATE A - NOT TENNESSEE] city. Fabricated

aluminum, weir troughs are required to be installed pursuant to the terms of the contract for this project. These weir troughs are used to increase the capacity of the water treatment plant to filter water. The Taxpayer purchases the aluminum for the troughs in Tennessee. The Taxpayer also fabricates the troughs and attachments, including structural supports in Tennessee. After completion, the troughs are shipped to [STATE A - NOT TENNESSEE] for installation in a city water treatment plant. For purposes of this ruling, it is assumed the troughs become realty upon installation by the Taxpayer, and are not purchased for resale as tangible personal property. The Taxpayer has previously received a non-binding letter from the Department indicating that T.C.A. § 67-6-339 "would appear" to exempt these purchases of aluminum in Tennessee from the sales or use tax. The Taxpayer seeks a binding ruling that may be presented to its Tennessee vendors so that they will not continue to hold the taxpayer liable for the tax.

### **QUESTION**

Is the Taxpayer exempted from the sales tax on its purchases of aluminum in Tennessee pursuant to T.C.A. § 67-6-339?

### **RULING**

No. The exemption is not available.

### **ANALYSIS**

T.C.A. § 67-6-339 provides an exemption from the sales and use tax for materials sold to or used by a structural metal fabricator as follows:

- (a) The tax imposed by this chapter does not apply to materials sold to or used by a structural metal fabricator; provided, that such materials are used by the fabricator to fabricate structural metal products for application or use by the fabricator in the performance of a contract outside the state.
- (b) For the purpose of this section, "structural metal fabricator" means any person engaged in those activities described under Industry 3441, fabricated structural metal, of Major Group 34 of the Standard Industrial Classification Index of 1972, prepared by the office of management and budget of the federal government.
- (c) For the purpose of this section, "fabricated structural metal products" means those products listed under Industry 3441, fabricated structural metal, of Major Group 34 of the Standard Industrial Classification Index of 1972, prepared by the office of management and budget of the federal government.

First the exemption requires that the materials must be sold to or used by a structural metal fabricator. The statute defines a "structural metal fabricator" as one engaged in the activities described in Industry 3441 of the Standard Industrial Classification Index (SIC)

of 1972.<sup>1</sup> Secondly, the exemption requires that the product being fabricated must be listed in Industry 3441. Therefore, in regard to this exemption the following language of the index or manual is controlling:

### **3441 Fabricated Structural Metal**

Establishments primarily engaged in manufacturing fabricated iron and steel or other metal for structural purposes, such as bridges, buildings, and sections for ships, boats and barges. Establishments primarily engaged in manufacturing metal doors, sash, frames, molding, and trim are classified in Industry 3442; and establishments doing fabrication work at the site of construction are classified in Division C.

Barge sections, prefabricated metal	Radio and television towers
Bridge sections, highway: prefabricated	Railway bridge sections, prefabricated
Expansion joints: iron and steel (structural shapes)	Ship sections, prefabricated metal
Floor jacks, metal	Steel joints, open web:long-span series
Floor posts, adjustable: metal	Steel tri-level railroad car racks (for transporting motor vehicles, etc.)
Gates, dam: metal plate	Structural steel, fabricated
Highway bridge sections, prefabricated	Television towers
Joists, open web steel: long-span series	Towers, transmission

The facts presented do not establish that the Taxpayer is primarily engaged in the fabrication of metal for structural purposes. However, even if the first requirement of the statute is met the second requirement is not. The product the Taxpayer is fabricating, aluminum weir troughs, is not found among the products listed under Industry 3441. Clearly, under the terms of the statute, the exemption does not apply unless the product is listed. The products listed are all heavier, weight-bearing structural components. Not only are the troughs absent from this list, but troughs are not similar to the products listed under this industry. While at least one definition of the noun "weir" is a type of a dam,<sup>2</sup> weir is an adjective in the context of this ruling. The information provided does not demonstrate that weir troughs are used at the water treatment plant as a dam or part of a dam. Furthermore, Industry 3443 described as "Fabricated Plate Work (Boiler Shop)" within this same major group does contain a listing for troughs. "Troughs, industrial: metal plate" is among the products listed in Industry 3443. Sheet metal ducts and culverts that are products very similar to troughs are also found in Industry 3444.

Generally, exemptions from taxation are only allowed when the statute grants the exemption in clear and unmistakable terms. All doubts must be resolved against the exemption, and statutes that confer exemptions are to be strictly construed against the

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<sup>1</sup> The most recent version of the Standard Industrial Classification Manual (or Index) is the 1987 Edition. The statute does not cite this amended version. However, there are no relevant changes in Industry 3441, 3443 or 3444 in the 1987 Edition.

<sup>2</sup> WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1337 (1991) has as the second definition of the noun weir: "a dam in a stream to raise the water level or divert its flow."

taxpayer. 23 Tenn. Juris., Taxation, § 18. Taken in a light most favorable to the Taxpayer, there remains considerable doubt that the exemption of T.C.A. § 67-6-339 applies. For purposes of this ruling that doubt must be resolved against application of the exemption.

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APPROVED: Ruth E. Johnson

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