

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-47**

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

Sales tax as applied to dog stud and breeding business.

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

[THE TAXPAYER] is a limited dog stud and breeding operation. Breeding of the dogs and sales of the stud service is intermittent but ongoing. Puppies from the litters may be sold in and out of state on an intermittent basis.

ISSUES

1. Whether the intermittent but ongoing sale of a pedigreed dog's stud service in Tennessee is subject to tax.
2. Whether the intermittent but ongoing breeding of a pedigreed dog for the purposes of producing litters for sale, the resulting puppies sold in and out of state, is subject to tax.
3. Whether the Taxpayer may purchase dog food or grooming and maintenance supplies used in advertising and marketing exempt from tax.

RULINGS

1. The sale of a dog's stud service is not subject to tax.
2. The breeding of a pedigreed dog is not subject to tax. If puppies are sold in state during more than semiannually, all puppies sold in state are subject to tax.
3. The Taxpayer may not purchase dog food or grooming and maintenance supplies exempt from tax.

ANALYSIS

Tenn. Code Ann. § 67-6-201 declares the business of selling tangible personal property at retail to be a taxable privilege. A "sale at retail" is defined by Tenn. Code Ann. § 67-6-102(23)(F) to include certain services.

1. The services provided by the Taxpayer as the provider of a dog's stud service are not of the types enumerated in Tenn. Code Ann. § 67-6-102(23)(F). Accordingly, the sale of these services is not subject to tax.
2. Breeding a pedigreed dog is not a taxable service. Accordingly, there is no tax liability for the sale of this service. There is no use tax imposed on services rendered for one's own benefit.

Puppies will be sold when they are available on an intermittent basis. Puppies constitute tangible personal property, the sale of which is subject to tax. Tenn. Code Ann. § 67-6-102(1) excludes from the definition of "business" "occasional and isolated sales or transactions by a person not regularly engaged in business,

or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services . . .” The rule stemming from this statute provides that

(1) The Sales Tax does not apply to casual and isolated sales by persons who are not, or who have been deemed by the Commissioner not to be engaged in the business of selling tangible personal property or furnishing any of the services subject to the Sales or Use Tax. . . .

(4) Irregular sales of tangible personal property or regular sales of tangible personal property made only during a temporary sales period occurring on a semiannual or less frequent basis are casual and isolated sales not subject to tax. If a person other than a public or private school, grades K-12, or school group has or conducts more than two (2) sales periods during a calendar year, such person shall be liable for sales tax on all sales during that calendar year. . . .A sales period shall be presumed to be temporary if it is of 30 consecutive days duration or less. . . .

TENN. COMP. R. & REGS. 1320-5-1-.09. If the sale of puppies occurs during 30 or fewer consecutive days semiannually or on a less frequent basis, however, the Taxpayer is not required to collect tax from the purchaser.

The number of female dogs available for breeding and the natural timing of the resulting litters are irrelevant with respect to the exemption for casual and isolated sales. If the Taxpayer sells any puppies during more than two temporary semiannual sales periods during a calendar year, the Taxpayer must register as a dealer and collect tax on all sales to Tennessee purchasers. TENN. COMP. R. & REGS. 1320-5-1-.09(4).

Sales delivered outside Tennessee to out of state purchasers are exempt. Tenn. Code Ann. § 67-6-313.

3. The sale of tangible personal property is subject to tax unless an exemption applies. There are no exemptions to allow the Taxpayer to purchase dog food, grooming supplies, or maintenance supplies, all of which are tangible personal property, exempt from sales tax if purchased for the Taxpayer’s own use. If the Taxpayer registered as a dealer with the Department, it might be entitled to purchase these items on a resale certificate if the items are to be resold to customers for the customers’ use. Based on the facts provided, however, the Taxpayer will use these items for itself and will not resell any products. Accordingly, the purchase of these items is subject to tax.

Caroline R. Krivacka
Tax Counsel

APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 10-31-97