S T A T E O F T E N N E S S E E
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Opinion No. 02-036

Taxability of Sale of Electricity for Use in Rental Cabins

QUESTIONS

1. Is the sale of electricity to the owners of overnight rental cabins subject to the state portion of the sales tax or is it exempt pursuant to Tenn. Code Ann. § 67-6-334(b)(1)?

2. Does Tenn. Code Ann. § 67-6-334(b)(2) include transients at overnight rental cabins where no business activity (i.e. sales office or collection of monies) occurs on the premises?

OPINIONS

1. The sale of electricity to owners of overnight rental cabins is subject to state sales tax. Tenn. Code Ann. § 67-6-334(b)(1) does not provide an exemption for owners of overnight rental cabins.

2. Use of electricity by transient occupants at overnight rental cabins where no business activity occurs on the premises does not constitute residential use under Tenn. Code Ann. § 67-6-334(b)(2). Thus, those sales of electricity are taxable.

ANALYSIS

1. Taxation on Sale of Electricity to Owners of Overnight Rental Cabins

Tenn. Code Ann. § 67-6-334 provides exemptions from sales and use tax for energy fuels sold to consumers for residential use. Specifically, § 67-6-334(b)(1) exempts from taxation energy fuels sold directly to consumers for use in single private residences, which include free-standing homes as well as apartments and other multiple dwellings actually used for residential purposes.

Overnight rental cabins that are not being used as single private residences would not qualify for this exemption simply because they do not meet the definition of a private residence. Overnight rental

cabins are generally used for transient purposes, which puts them in the same category with hotels, motels and other transient accommodations that are designed for short-term use. Thus, the the purchase of electricity or other energy fuels for use in overnight rental cabins would not be a purchase made for private residential use. Consequently, owners of overnight rental cabins are subject to taxation when they purchase electricity or other energy fuels for use in their overnight rental cabins.

2. Applicability of Tenn. Code Ann. § 67-6-334(b)(2) to Rental Cabins

Section 67-6-334(b)(2) says, "Use of electricity or other energy fuels in hotel or motel units by transient occupants does not constitute residential use." Applicable definitions for Title 67, Chapter 6 of the Code are found in § 67-6-102. There is no definition for hotel, motel or overnight rental cabin specifically, but the meaning can be extrapolated from the definition of "retail sale" of services found in § 67-6-102(24)(F). Section 67-6-102(24)(F)(i) indicates that retail sales price includes the "sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for consideration." This language indicates that the General Assembly views the various terms that define types of transient accomodation as being synonymous. Arguably, an overnight rental cabin would be the same as a "tourist cabin," which would place it in this same category. Thus, it is the opinion of this Office that § 67-6-334(b)(2) does include overnight rental cabins, which would encompass any kind of overnight rental cabin, including those where no business activity occurs on the premises. Consequently, use of electricity or other energy fuels by transient occupants in overnight rental cabins would not qualify as residential use. Therefore, sales of electricity for use in overnight rental cabins remains subject to the sales tax.

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