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Opinion No. 02-087

Application of State Sales Tax Rate to Goods Delivered On or After July 15, 2002

QUESTION

Whether the higher sales tax rate may apply to a purchase of tangible personal property where the property was purchased before July 15, 2002 but delivered on or after July 15, 2002.

OPINION

If the taxable event, the date of the sale of the property under Tennessee law, occurs on or after July 15, 2002, then the higher sales tax rate applies to a purchase of tangible personal property.

ANALYSIS

This Office has been asked to provide an opinion regarding the Tennessee Tax Reform Act of 2002. The inquiry is whether the higher sales tax rate could apply to an item purchased before July 15, 2002, but delivered after July 15, 2002.

The Tennessee Tax Reform Act of 2002, Acts 2002, ch. 856 increases the Tennessee general state sales and use tax rate on the sale, use or lease of tangible personal property and taxable services from 6% to a new state rate of 7%. 2002 Pub. Acts, ch. 856 § 4. The effective date of Section 4 of the Act is July 15, 2002. Id. §14 (d). The new 7% state rate applies to sales made on or after July 15, 2002.

Whether the new 7% state rate or the old 6% rate applies will depend on the specific transaction in the context of applicable Tennessee statutes and regulations and the terms of the contract between the dealer and a customer. The sales tax dealers must collect on retail sales is "at the rate provided by law of the retail sales price, as of the moment of sale, . . ." Tenn. Code Ann. § 67-6-501(c) (emphasis added). A "sale" of tangible personal property is defined by statute as "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration . . . ." Tenn. Code Ann. § 67-6-102(25)(A). *See Volunteer Val-Pak v. Celauro*, 767 S.W.2d 635, 636 (Tenn. 1989) (elements of a sale). If a sale is governed by the Uniform Commercial Code one must

consult the Code, including Tenn. Code Ann. § 47-2-401. *See Eusco Inc. v. Huddleston*, 835 S.W.2d 576, 579 (Tenn. 1992) (citing Uniform Commercial Code to determine place where title transferred).

Tennessee Department of Revenue regulations may be relevant to determining the date of a sale, which in turn will impact the applicable sales tax rate. For example, a "sale whose delivery is conditional on payment of the amount due on the price of the sale is not completed until the amount due is received by the seller and, therefore, not taxable until the tangible personal property or service is delivered to the customer." Tenn. Comp. R. & Reg. 1320- 5-1-.75.

The applicable state sales tax rate will be either the old 6% rate or the new 7% rate, depending on the date of the taxable event. For example, if a contract explicitly provided that title to a sofa in stock passes to the customer on the date of a July 13, 2002 purchase, not the date of a subsequent delivery on July 15, 2002, then the sale (the taxable event) occurred on July 13, prior to the July 15, 2002 effective date of the new state sales tax rate. The dealer must collect sales tax at the state rate of 6% and collect local tax at the applicable rate. On the other hand, if the contract explicitly provided that title passes to the customer on the date of delivery of the sofa and the sofa is delivered on July 15, 2002, then the sale (the taxable event) occurred when title passed on July 15, 2002. The dealer must collect sales tax at the state rate of 7% and collect local tax at the applicable rate.

The above two examples are not all-inclusive. They illustrate how the new tax rate might apply to a transaction where a dealer enters into a contact with a customer prior to July 15, 2002 but delivers the goods on or after July 15, 2002.

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