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## Sales and Use Taxability of Drop Shipment Delivery

## Sales & Use tax notice

Drop shipment delivery generally means the shipment of goods from a manufacturer or other supplier directly to the customer of an intermediate supplier. For Tennessee tax purposes, if a Tennessee registered dealer sells goods to an unregistered, out-of-state dealer, but delivers the goods directly to the out-of-state dealer's customer in Tennessee, the Tennessee registered dealer will be liable for sales tax except as provided below. A foreign certificate of resale presented by the unregistered reseller will not be allowed by the department in a drop shipment scenario where the goods are delivered to a customer in Tennessee. The department will require Tennessee registration by the out-of-state reseller and the issuance of a resale certificate with the Tennessee registration number in order to exempt such a sale. TENN. COMP. R. & REGS. 1320-5-1-.96.

The Tennessee registered dealer will not be required to collect tax in a drop shipment scenario if the purchaser to whom the goods are delivered: (1) is also a Tennessee reseller purchasing for resale and presenting a valid Tennessee resale certificate; (2) presents an exemption certificate evidencing that the sale of goods is not subject to Tennessee tax [for example, a Tennessee industrial machinery exemption, governmental exemption or not-for-profit exemption]; or (3) is purchasing goods which are specifically exempt from tax [for example, prosthetic devices, livestock feed].

The Tennessee registered dealer must maintain a copy of the out-of-state dealer's foreign resale certificate as well as the purchaser's Tennessee resale certificate or other exemption certificate in order to comply with record-keeping requirements imposed by Tennessee law.

If the Tennessee registered dealer sells materials or supplies to a contractor/dealer and delivers the materials or supplies to the contractor/dealer or the contractor/dealer's customer at a job site in Tennessee, the Tennessee registered dealer must collect the applicable sales or use tax. A resale certificate presented by a contractor/dealer where materials or supplies are delivered to the job site will be disallowed, and the dealer will be held liable for the tax. See, TENN. COMP. R. & REGS. 1320-5-1-.08(3). (A contractor/dealer is someone who sells goods and uses goods to fulfill contract obligations).

TENN. COMP. R. & REGS. 1320-5-1-.68 states, in pertinent part:

(1) Dealers shall require certificates of resale for all tangible personal property sold or services rendered in this State, for the purpose of resale, and such certificates must be available at the establishment of the dealer

for ready inspection and comparison with the deductions claimed on monthly Sales and Use Tax returns. A dealer duly registered under the provisions of the Sales Tax Act and continually engaged in the business of selling tangible personal property or taxable services at retail may present evidence to their wholesaler or supplier as to their registration as a retailer, and shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of their operation, and the purchases are of tangible personal property or taxable services of a sort usually purchased by the purchaser for resale

(2) All sales for resale which are not supported by resale certificates properly executed shall be deemed retail sales, and the dealer held liable for the tax unless the same comes within the exception mentioned as a part of paragraph (1) of this rule.

TENN. COMP. R. & REGS. 1320-5-1-.96 states:

Except in cases where specific and satisfactory arrangements are made with the Commissioner before sales and deliveries are made, 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 their (the out-of-state vendor) agent to deliver or ship tangible personal property or taxable services to their (the out-of-state vendor) customer, who is a user or consumer, are subject to the Sales or Use Tax. The dealer so acting as agent for the out-of-state vendor must collect the tax involved on the transaction unless the transaction comes within the conditions indicated herein.

TENN. COMP. R. & REGS. 1320-5-1-.08 states:

- (1)Contractors and sub-contractors engaged in the business of erecting, building or otherwise improving, altering and repairing real property for others, and also engaged in the business of selling building materials and supplies to other contractors, consumers, and users, and who may not be able to segregate that portion of the materials and supplies that they will use or consume in the fulfillment of their contracts from that portion of the materials and supplies that they will sell at retail, may give a resale certificate to the seller of the materials and supplies.
- (2) Contractor-dealers making sales of tangible personal property shall report all sales made, and all withdrawals from inventory for use as a contractor each month, and pay any applicable Sales or Use Tax due. Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use, either in or out of the state.

(3) Suppliers making sales of materials and supplies to contractor-dealers and delivering such materials and supplies to a job site for use, or tagging or marking particular materials and supplies for a particular job being performed by the contractordealer, shall collect the applicable Sales or Use Tax on those sales.

Have questions or comments? Please let us know. <u>Contact us.</u>

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