

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-50**

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 the manufacturer's exemption for purposes of the Tennessee business tax.

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

[TAXPAYER] is a [REDACTED] business that develops, manufactures, and sells [TYPES OF PRODUCTS]. [REDACTED].

The Taxpayer conducts its business operations at five locations in [CITY], Tennessee. Its primary business campus is located in [CITY] at [ADDRESS 1]. [REDACTED]. Its [TYPES OF DIVISIONS AND OPERATIONS] and some of its manufacturing operations, among other operations, are located there. The Taxpayer also conducts business in [CITY] at [ADDRESS 2, ADDRESS 3, AND ADDRESS 4]. The Taxpayer [REDACTED] distribution facility [IS] in [CITY] at [ADDRESS 5].

The following chart summarizes the business activities which the Taxpayer currently conducts at each site:

Location	Business Activity
[ADDRESS 1]	Manufactures [TYPE OF PRODUCT]; receives and processes sales orders for [TYPE OF PRODUCT] manufactured there, as well as the [TYPE OF PRODUCT] (manufactured the [ADDRESS 2]), through its customer service department
[ADDRESS 2]	Manufactures [TYPE OF PRODUCT]
[ADDRESS 3]	Receives and processes sales orders of the [TYPE OF PRODUCT] (manufactured at the [ADDRESS 1] facility) through its customer service department
[ADDRESS 4]	Operates a distribution facility from which all of the Taxpayer's [TYPE OF PRODUCT] manufactured in [CITY] are shipped to customers
[ADDRESS 5]	[REDACTED] a distribution center primarily for [TYPE OF PRODUCT] manufactured by the Taxpayer in [CITY]

As the chart above shows, the Taxpayer receives and processes sales orders at both its [ADDRESS 1] and [ADDRESS 3] facilities' customer service departments. More than fifty percent (50%) of gross sales made from the [ADDRESS 1] campus are of products manufactured at that location. Similarly, more than fifty percent (50%) of gross sales processed at the [ADDRESS 2] site are of products manufactured at the [ADDRESS 1] facility. All of the Taxpayer's operations in [CITY] are closely interrelated. When all of the Taxpayer's [CITY] operations are considered on a combined basis, more than fifty percent (50%) of sales made from its [CITY] facilities are of products manufactured in [CITY].

The Taxpayer has acquired the various locations for its facilities in [CITY] as sites have become available. The Taxpayer owns some properties outright and leases others. Each property location is subject to Tennessee property taxes assessed under Tenn. Code Ann. § 67-5-101 *et seq.* The Taxpayer has developed these properties to conduct its manufacturing, sales, and distribution operations as efficiently as it can, shifting different types of operations from one facility to another as the situation requires. Ideally, the Taxpayer would conduct all of its [CITY] operations from one site, but such consolidation has not proven feasible.

QUESTION

Can the Taxpayer treat all of its [CITY] facilities as a single, integrated location for the purpose of determining the availability of the Tennessee business tax manufacturer's exemption found under TENN. CODE ANN. § 67-4-712(b)(2) (2006)?

RULING

No. The Taxpayer cannot treat its [CITY] facilities as a single, integrated location for the purpose of determining the availability of the Tennessee business tax manufacturer's exemption found under TENN. CODE ANN. § 67-4-712(b)(2) (2006).

ANALYSIS

The Business Tax Act, TENN. CODE ANN. § 67-4-701 *et seq.*, is a component of Tennessee's scheme of privilege and excise taxes. TENN. CODE ANN. § 67-4-704 (Supp. 2010) allows counties and incorporated municipalities to tax the privilege of making sales by engaging in any business activity described in TENN. CODE ANN. §§ 67-4-708(1)-(4) or 67-4-710. The business tax "is applicable to each place, location or outlet in the state from which business is carried on." TENN. COMP. R. & REG. 1320-4-5-.28 (1974).¹ This point is further emphasized by TENN. COMP. R. & REG. 1320-4-5-.14 (1974), which states that "[s]ales of tangible personal property and services by a licensed wholesaler or retailer from a central warehouse or other distribution point other than his principal place of business shall be subject to the appropriate wholesale or retail tax, and persons making such sales shall be liable for the minimum tax for that location."

Therefore, if a taxpayer has multiple locations, each carrying on business by making sales, then each location is subject to the Tennessee business tax, unless an exemption applies. TENN. CODE ANN. § 67-4-712(b)(2) (2006) exempts from the Tennessee business tax "any person² primarily engaged in the manufacture of goods, wares, merchandise or other articles of value³ from a location or outlet subject to ad valorem taxation" under the property tax provisions of the Tennessee Code.

TENN. COMP. R. & REGS. 1320-4-5-.29(3) (1987) ("Rule 29(3)") interprets the exemption provided under TENN. CODE ANN. § 67-4-712(b)(2). Rule 29(3) provides that "[s]ales of tangible personal property manufactured or processed by a manufacturer or processor, who is subject to the ad valorem tax under [the property tax provisions] are exempt from the Business Tax *if made at the manufacturing or processing location* within this state." (Emphasis added.) TENN. COMP. R. & REGS. 1320-4-5-.29(4) (1987) further explains that "[s]ales of tangible personal property manufactured or processed by a manufacturer or processor *from locations other than the manufacturing or processing location* where the ad valorem tax is paid are subject to the Business Tax." (Emphasis added.)

Thus, in order to qualify for the exemption, a taxpayer must 1) be a person, 2) be primarily engaged in the manufacture of goods, 3) manufacture its goods from a location subject to property tax, and 4) sell its manufactured goods from the same location at which it manufactured the goods.

¹ "Business" is defined as "any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit, or advantage, either direct or indirect." TENN. CODE ANN. § 67-4-702(a)(2) (Supp. 2010).

² "Person" is defined as "any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit." TENN. CODE ANN. § 67-4-702(a)(12) (Supp. 2010).

³ The requirement of being "primarily engaged" in the manufacture of goods is met if more than fifty percent of its revenues at a given location are derived from manufacturing tangible personal property. *Tenn. Farmers' Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 91-92 (Tenn. 1987).

The exemption under TENN. CODE ANN. § 67-4-712(b)(2) clearly applies to the Taxpayer's [ADDRESS 1] location. The Taxpayer, as a corporation, is clearly a "person" under the broad statutory definition. Additionally, the [ADDRESS 1] location is subject to Tennessee property tax. Finally, the Taxpayer has stated that more than 50% of gross sales made from that location are of products manufactured at that location.

However, as previously stated, the business tax applies to each individual location, and the exemptions from the business tax also apply on a location-by-location basis. No other Taxpayer location manufactures goods and sells those goods at that location. Accordingly, each of the Taxpayer's other locations that engage in business by making sales is subject to the business tax. The Taxpayer cannot treat all of its locations as a single integrated location for the purpose of determining the availability of the Tennessee business tax manufacturer's exemption found under TENN. CODE ANN. § 67-4-712(b)(2).

Elizabeth Henderson
Tax Counsel

APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 9/21/2011