

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 17-05

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of the Tennessee business tax to the sale of renewable identification numbers.

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] (the "Taxpayer") is a [REDACTED—ENTITY] organized in [REDACTED]. The Taxpayer is a wholesale marketer of [REDACTED]. It also sells [REDACTED] and renewable identification numbers ("RINs"), and it generates [REDACTED] revenue.

A RIN is a unique serial number assigned to a batch of biofuel for the purpose of tracking the fuel's production, use, and trading, in accordance with the United States Environmental Protection Agency's Renewable Fuel Standard (the "RFS"), implemented in the Energy Policy Act of 2005.¹ The RFS requires

¹ Randy Schnepf and Brent Yacobucci, *Renewable Fuel Standard (RFS): Overview and Issues*, CONGRESSIONAL RESEARCH SERVICE (March 14, 2013), available at <https://www.ifdaonline.org/IFDA/media/IFDA/GR/CRS-RFS-Overview-Issues.pdf> (last visited February 22, 2017).

blenders and producers to use a minimum volume of biofuel in the national transportation fuel supply each year.² To meet the RFS requirement, blenders and producers purchase biofuel batches to blend into fossil fuels.³ Each biofuel batch is assigned a unique RIN (an “Assigned RIN”). A purchaser obtains a batch of biofuel and the associated Assigned RIN for a single purchase price.

Blending the biofuel with the fossil fuel for retail sale or at the port of embarkation for export separates the Assigned RIN from the biofuel. Once separated, the Assigned RIN becomes a “Separated RIN.” If the blender or producer has met its annual RFS requirement and has blended surplus biofuel, it can sell its surplus Separated RINs on the open market to another blender or producer who has failed to meet its annual RFS requirement to use as a replacement for the actual purchase of biofuel.⁴ The Taxpayer engages in buying and selling Separated RINs on the open market.

RULING

Are the Taxpayer’s gross receipts from the sale of Separated RINs subject to the Tennessee business tax?

Ruling: No, the Taxpayer’s sale of Separated RINs is not subject to the Tennessee business tax; therefore, the Taxpayer’s gross receipts from the sale of Separated RINs are not included in the Taxpayer’s gross receipts for purposes of calculating its business tax liability.

ANALYSIS

The Tennessee Business Tax Act⁵ (the “Act”) is one component of Tennessee’s broader privilege and excise taxation statutes. The Act imposes a tax on the privilege of “making sales by engaging in any occupation, business, or business activity enumerated, described, or referred to in [TENN. CODE ANN.] § 67-4-708(1)-(5).”⁶

The business tax applies to the gross sales of entities engaging in activities subject to the tax.⁷ “Gross sales” is defined as “the sum total of all sales . . . without any deduction whatsoever of any kind or character, except as provided in [the Act].”⁸ “Sale” is defined, in pertinent part, as “any transfer of title or possession . . . by any means whatsoever of tangible personal property for a consideration” and “includes the furnishing of any of the things or services taxable under this part.”⁹

TENN. CODE ANN. § 67-4-702(23) (Supp. 2016) defines “tangible personal property” as “personal property that may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses.” The

² *Id.* at 1.

³ *Id.* at 14.

⁴ *Id.*

⁵ Tennessee Business Tax Act, ch. 387, §§ 1-27, 1971 Tenn. Pub. Acts 994, 994-1019 (codified as amended at TENN. CODE ANN. § 67-4-701 to -730 (Supp. 2016)).

⁶ TENN. CODE ANN. §§ 67-4-704(a), -705(a) (Supp. 2016).

⁷ *Aabakus, Inc. v. Huddleston*, No. 01A-01-9505-CH-00215, 1996 WL 548148, at *5 (citing TENN. CODE ANN. § 67-4-709(b)(3) (1994)); TENN. COMP. R. & REGS. § 1320-04-05-.08(2) (2016).

⁸ TENN. CODE ANN. § 67-4-702(a)(7) (Supp. 2016).

⁹ TENN. CODE ANN. § 67-4-702(a)(18).

definition specifically excludes “stocks, bonds, notes, insurance or other obligations or securities.”¹⁰ TENN. COMP. R. & REGS. 1320-04-05-.02(3) (1974) clarifies that a “person who, as part of his normal business activities, buys and sells intangible personal property or real property is not liable for the business tax on receipts from such sales.”

The Tennessee business tax does not apply to the Taxpayer’s receipts from the sale of intangible personal property, such as RINs; and selling Separated RINs is not a taxable privilege enumerated, described, or referred to in TENN. CODE ANN. § 67-4-708(1)-(5).

Separated RINs cannot be seen, weighed, measured, felt, or touched, or in any other manner perceptible to the senses and, thus, do not constitute tangible personal property. Separated RINs, therefore, are intangible personal property. Furthermore, because the sale of intangible personal property is not a privilege or business activity described in TENN. CODE ANN. § 67-4-708(1)-(5) and the sale of intangible personal property is specifically excluded from the business tax per TENN. COMP. R. & REGS. 1320-04-05-.02(3), the Tennessee business tax does not apply to the Taxpayer’s sale of Separated RINs. Thus, the Taxpayer should not include its receipts from selling Separated RINs in its gross receipts for purposes of calculating its Tennessee business tax liability.¹¹

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APPROVED: David Gerregano
Commissioner of Revenue

DATE: 4/12/17

¹⁰ TENN. CODE ANN. § 67-4-702(a)(23).

¹¹ The Taxpayer should include its receipts from selling Separated RINS on Line 1 of the Tennessee business tax return and deduct them on Schedule A Line 17.