

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 20-01

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 Tennessee business tax to administrative fees received in connection with the provision of human resource management services.

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 limited liability company organized under [STATE] law, with its principle place of business in [CITY, STATE]. The Taxpayer is a workplace solutions provider that primarily provides human resource vendor management services to its customers. Specifically, the Taxpayer serves customers who receive staffing services from multiple suppliers to meet the customers' workforce requirements as those requirements expand and contract. Thus, the

customers, instead of hiring and firing these individuals as their workforce demands expand and contract, are able to contract with the Taxpayer who, in turn, contracts with third-party staff-augmentation providers in order to meet the customer's workforce demands as those demands change from time to time. To simplify its customers' administrative processes and create efficiencies, the Taxpayer coordinates all of a customer's staffing service providers to create a total staffing solutions program for the customer. Under this arrangement, the Taxpayer manages each of its customer's supply of contract workers by itself contracting with the third-party providers of staff-augmentation services.

As part of this arrangement, the Taxpayer enters into a [MANAGEMENT] Agreement with each of its customers. Under the terms of the [MANAGEMENT] Agreement, the Taxpayer assumes responsibility for managing the customers' supply of contract workers, and the customers agree to exclusively use the Taxpayer to coordinate the customers' staff-augmentation needs. This arrangement allows the customers, who would otherwise be required to coordinate with multiple staff-augmentation providers and administer multiple staffing contracts, to treat the Taxpayer as their single point of contact for all issues related to staff augmentation.

After entering into a [MANAGEMENT] Agreement with a customer, the Taxpayer identifies [SUPPLIERS] (the "Suppliers") that can provide contract workers to the customer and enters into [SUPPLIER] Agreements with the Suppliers. In general, the [SUPPLIER] Agreements applicable to the Suppliers for a particular customer provide for the same rates, standards, and other essential terms. Each customer is identified in the corresponding [SUPPLIER] Agreement as a third-party beneficiary of the contracts.

If a customer has a staff augmentation need, it communicates that need to the Taxpayer, who, in turn, sends a requisition to one or more of the Suppliers to fill the customer's need. The Suppliers will recruit any necessary contract workers to meet the customer's need. The Taxpayer does not employ or control these contract workers. Instead, for purposes of payroll tax administration and other similar functions, the contract workers are employed by the Suppliers who recruit them. The Taxpayer's customers retain control over the day-to-day activities and performance of the contract workers. The contract workers work alongside the customers' own employees and perform roles similar to those performed by the customers' own employees. Each customer retains the right to have any contract worker removed from his or her assignment to the customer.

The Taxpayer coordinates with the Suppliers and coordinates payments to the Suppliers on behalf of the customers. On a weekly basis, each Supplier invoices the Taxpayer for the hours billed by the contract workers recruited by that Supplier. The Taxpayer then compiles all of the Suppliers' invoices for each customer and sends each customer a consolidated invoice. Each customer pays the Taxpayer's consolidated invoice and the Taxpayer remits payment to Suppliers on each customer's behalf.

The Taxpayer is compensated through an administrative fee that is [REDACTED]. Under the terms of the [MANAGEMENT] Agreements and the [SUPPLIER] Agreements, the Taxpayer is contractually obligated to remit all payments from the customers for invoiced amounts, less the Taxpayer's administrative fees, to the Suppliers. The Suppliers, in turn, retain a fee for their services and pay the remainder of the amounts received to the contract workers.

RULING

What amounts of the Taxpayer's receipts from customers for the provision of human resource vendor management services are subject to the Tennessee business tax?

Ruling: Of the amounts the Taxpayer receives from customers in conjunction with the provision of human resource management services, the Taxpayer is only subject to Tennessee business tax on the administrative fees that it retains as compensation. The Taxpayer is not subject to Tennessee business tax on the amounts that it receives from customers that are transferred to Suppliers and not ultimately retained by the Taxpayer.

ANALYSIS

The Tennessee Business Tax Act¹ (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)."²

Pursuant to TENN. CODE ANN. § 67-4-709 (Supp. 2018), for exercising a privilege set forth in TENN. CODE ANN. § 67-4-708, the business tax applies to all sales of a retailer or a wholesaler according to its dominant business activity at the rate set forth in that section. "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."³

The business tax is computed upon the total sales price of property or services sold and "is based upon actual consideration passed, or agreed to be passed between the purchaser and the vendor."⁴ For purposes of the business tax, "sales price" is "the total amount paid for which tangible personal property or services rendered is sold . . . without any deduction from the price on account of the cost of the property sold, the cost of materials used, labor or service costs, or any other expense whatsoever."⁵

In the unreported case of *Aabakus, Inc. v. Huddleston*,⁶ the Tennessee Court of Appeals addressed the business tax liability of a human resource support service. It examined the definition of sales price found in TENN. CODE ANN. § 67-4-702(a)(19) and concluded that the fees that the agency earned providing personnel management services to small businesses were subject to business tax.⁷ On the

¹ 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 (2013 & Supp. 2018)).

² TENN. CODE ANN. §§ 67-4-704(a), -705(a) (2013).

³ TENN. CODE ANN. § 67-4-702(a)(18) (Supp. 2018).

⁴ TENN. COMP. R. & REGS. 1320-04-05-.08(2) (2016).

⁵ TENN. CODE ANN. § 67-4-702(a)(19); see also TENN. COMP. R. & REGS. 1320-04-05-.08(1) (defining "sales price" similarly).

⁶ No. 01A-01-9505-CH-00215, 1996 WL 548148, at *2 (Tenn. Ct. App. Sept. 25, 1996).

⁷ *Id.* at *6.

other hand, it held that expenses that were simply passed through the agency, such as withholding and payroll taxes, were not subject to business tax because they were funds that the agency was required to pay over to third parties on its clients' behalf and the agency was simply acting as a paying agent.⁸

In this case, the Taxpayer is no different from Aabakus. The invoice payments the Taxpayer receives, less the Taxpayer's administrative fees, are funds that the Taxpayer is required to pay over to third parties, the Suppliers, on its customers' behalf for wages, payroll taxes, insurances, and other employment related charges that are simply passed through the Taxpayer. Accordingly, the Taxpayer is not subject to Tennessee business tax on the amounts that it receives from customers that are transferred to Suppliers and not ultimately retained by the Taxpayer. The Taxpayer is only subject to Tennessee business tax on the administrative fees that it retains as compensation.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 1/13/2020

⁸ *Id.*