

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #98-18**

**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 sales and use and petroleum tax laws to the purchase and sale of gasoline and tires by a [LOCAL GOVERNMENTAL ENTITY].

**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**

The [LOCAL GOVERNMENTAL ENTITY] ("the Taxpayer") purchases gasoline from a distributor at cost and does not pay any sales tax on the purchase of tires. The Taxpayer has entered into an agreement with [COMPANY A] for the lease and operation of [MOTOR VEHICLES]. Pursuant to the agreement, the

Taxpayer pays [COMPANY A] on a per diem and per mile basis, but reduces the total compensation by the amount of gasoline and tires sold by the Taxpayer to [COMPANY A] for use in its operations. The amount charged for gasoline and tires sold to [COMPANY A] is the same amount at which the Taxpayer purchases the gasoline and tires. The contract provides that the owner of the [MOTOR VEHICLES] will maintain continuous supervision and will furnish an operator for the [MOTOR VEHICLES]. The Taxpayer is not registered as a dealer for sales and use tax or as a petroleum wholesaler.

### ISSUE

Whether the Taxpayer may resell gasoline and tires, purchased exempt from tax, to [COMPANY A] without the collection of sales and use or petroleum tax.

### RULING

The Taxpayer may not purchase tires tax exempt and resell them to [COMPANY A]. The Taxpayer may not purchase gasoline tax exempt and sell it to a nongovernmental entity.

### ANALYSIS

#### *Petroleum Tax*

As a governmental entity, the Taxpayer is entitled to an exemption from the privilege tax on petroleum products upon gasoline only if the gasoline is received, stored, handled, and used in compliance with the manner set forth in Tenn. Code Ann. § 67-3-1501, which provides in relevant part as follows:

(d) In order to be entitled to the exemption, the governmental agency shall receive, store, handle and use the petroleum products strictly in the following manner:

...

(4) Use exclusively for governmental purposes, **in equipment either owned or leased by the governmental agency and operated by governmental employees.**

(e) It is unlawful for any person to use petroleum products sold to a governmental agency for any purpose other than governmental.

...

(k) Any governmental agency using, storing, distributing or selling petroleum products in any manner except strictly in accordance with the provisions of this part:

(1) Shall be liable for the state petroleum products taxes and fees imposed in part 13 of this chapter. In the event of such

liability, the taxes and fees shall be collected in the manner otherwise provided by law; and further,  
(2) Shall be subject to revocation of its governmental agency exemption permit.

The [MOTOR VEHICLE] operators provided by [COMPANY A] are not government employees. It is therefore unlawful for the Taxpayer to sell the gasoline free from tax when the gasoline was purchased tax exempt for a governmental use. See Tenn. Op. Atty. Gen. 79-197.

The Taxpayer is liable for the petroleum products taxes and fees if it uses petroleum products in any manner except as specified in Tenn. Code Ann. § 67-3-1501. [COMPANY A] is also liable for any taxes and fees that have not been previously paid on the gasoline. The Department could collect the taxes and fees from either the Taxpayer or the [COMPANY A]. The Taxpayer should also be aware that it may lose its governmental agency exemption permit by selling the gasoline to [COMPANY A].

*Sales and Use Tax*

The sale to the Taxpayer of the gasoline and tires is exempt from sales and use tax through the Taxpayer's exemption as a governmental agency. Tenn. Code Ann. § 67-6-329(a)(13). This exemption is limited to the Taxpayer and may not be passed through to an entity that does not qualify for the exemption. If the Taxpayer wishes to sell tires to [COMPANY A] as described above, it must register with the Department as a dealer for sales and use tax purposes, obtain a resale certificate for its purchases, and collect sales tax upon the ultimate sale to [COMPANY A].

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Caroline R. Krivacka, Tax Counsel

APPROVED: \_\_\_\_\_  
Ruth E. Johnson, Commissioner

DATE: 4-7-98