

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 00-26**

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 sales and use tax to the sale of tangible personal property, if shipment is made to locations inside of and outside of Tennessee.

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 located in Tennessee and produces [PRODUCT] for customers who are located both inside of and outside of Tennessee. The taxpayer ships the materials to the location chosen by the customer, which sometimes is outside of Tennessee. For

shipments to destinations outside of Tennessee, the taxpayer uses a carrier. The sample shipment documents provided do not specify the F.O.B. (“free on board”) point.

The taxpayer proposes three potential scenarios:

- A. Title to the tangible personal property passes at the location outside of Tennessee chosen by the customer for delivery. The taxpayer is responsible for delivering the tangible personal property to the location outside of Tennessee chosen by the customer for delivery, and the taxpayer hires a carrier for this purpose.
- B. Title to the tangible personal property passes in Tennessee. The taxpayer is responsible for delivering the tangible personal property to the location chosen by the customer for delivery either inside of or outside of Tennessee, and the taxpayer hires a carrier for this purpose. The taxpayer must insure the tangible personal property to replace lost or damaged goods.
- C. The taxpayer does not state where title passes. The taxpayer is responsible for delivering the tangible personal property to the location chosen by the customer for delivery either inside of or outside of Tennessee, and the taxpayer hires a carrier for this purpose. The carrier insures the tangible personal property and names the taxpayer as beneficiary.

QUESTION

For each scenario, does Tennessee sales or use tax apply to the taxpayer’s sale of tangible personal property?

RULING

In scenario A, the sale is not subject to Tennessee sales tax.

In scenario B, the sale is subject to Tennessee sales tax.

In scenario C, the sale is subject to Tennessee sales tax, if either title to or possession of the tangible personal property passes in Tennessee. Thus, if delivery is made to a location in Tennessee, Tennessee sales tax applies. If title to the goods passes in Tennessee regardless of the location of delivery, Tennessee sales tax applies. The sale is not subject to Tennessee sales tax, if both title to and possession of the tangible personal property pass outside of Tennessee.

ANALYSIS

Tennessee taxes the retail sale of tangible personal property in this state. Tenn. Code Ann. § 67-6-202. A taxable sale occurs in Tennessee if title to or possession of the tangible personal property is transferred in Tennessee. Jack Daniel Distillery v. Jackson, 740 S.W.2d 413, 416 (Tenn. 1987).

Scenario A

In scenario A, neither title to nor possession of the tangible personal property passes in Tennessee. Therefore, the sale is not subject to Tennessee sales tax.

Scenario B

In scenario B, title to the tangible personal property passes in Tennessee. Therefore, the sale is subject to Tennessee sales tax.

Scenario C

In scenario C, the taxpayer does not state where title to the tangible personal property passes. If delivery is to a location in Tennessee, possession passes in Tennessee. Therefore, the sale would be subject to Tennessee sales tax. Also, if title passes in Tennessee regardless of the location of delivery, the sale would be subject to Tennessee sales tax.

If the location of delivery is outside of Tennessee and title passes outside of Tennessee, the sale would not be subject to Tennessee sales tax. If neither title to nor possession of the tangible personal property passes in Tennessee, Tennessee sales tax does not apply.

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APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: 8/14/00