

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 00-45**

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 Tennessee sales and use tax to sales made to an out-of-state dealer but drop shipped to an end user in 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 1], [TAXPAYER 2], [TAXPAYER 3], and [TAXPAYER 4] are located in [STATE OTHER THAN TENNESSEE]. For purposes of this ruling, each of the four companies is engaged in business as described below. Accordingly, the four will be referred to hereinafter collectively as "the taxpayer."

The taxpayer purchases equipment from an equipment manufacturer (“Company A”). The taxpayer, in turn, sells the equipment to a leasing company (“Company B”). Company B leases the equipment to the end user (“Company C”) who is located in Tennessee. Company A delivers the equipment to Company C in Tennessee. Both Company A and Company B are registered for Tennessee sales and use tax purposes. Company B collects and remits Tennessee sales tax on the lease payments. The taxpayer is not registered for Tennessee sales and use tax purposes.

QUESTION

Can Company A sell the equipment to the taxpayer as an exempt sale for resale, and if so, what documentation must the taxpayer provide to Company A to support the exemption?

RULING

Company A can sell the equipment to the taxpayer as an exempt sale for resale, if the taxpayer provides Company A with the taxpayer’s foreign resale certificate as well as a Tennessee resale certificate from Company B.

ANALYSIS

The Retailers’ Sales Tax Act, T.C.A. § 67-6-101, et seq., imposes sales and use tax on all sales of tangible personal property to a consumer or to any person for any purpose other than for resale, unless a specific exemption applies. Any sale for resale, however, must be in strict compliance with rules and regulations promulgated by the commissioner. T.C.A. § 67-6-102(24)(A); *Upper East Tennessee Distributing v. Johnson*, No. 03A01-9701-CH-00011, 1997 Tenn. App. LEXIS 325 (Tenn. Ct. App. May 13, 1997) *perm. app. denied*. Any dealer making a sale for resale that is not in strict compliance with the rules and regulations will be liable for the tax. *Id.*

There are three regulations that are relevant to the facts presented in this ruling request.

Tenn. Comp. R. & Regs. 1320-5-1-.68 (“Rule 68”) governs sales for resale, and states, in pertinent part:

(1) Dealers shall require certificates of resale for all tangible personal property sold or services rendered in this State, for the purpose of resale, and such certificates must be available at the establishment of the dealer for ready inspection and comparison with the deductions claimed on monthly Sales and Use Tax returns. A dealer duly registered under the provisions of the Sales Tax Act and continually engaged in the business of selling tangible personal property or taxable services at retail may present evidence to his wholesaler or supplier as to his registration as a retailer, and shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of his operation, and the purchases are of tangible personal property or taxable services of a sort usually purchased by the purchaser for resale.

(2) All sales for resale which are not supported by resale certificates properly executed shall be deemed retail sales, and the dealer held liable for the tax unless the same comes within the exception mentioned as a part of paragraph (1) of this rule.

Tenn. Comp. R. & Regs. 1320-5-1-.96 ("Rule 96") states:

Except in cases where specific and satisfactory arrangements are made with the Commissioner before sales and deliveries are made, sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as his (the out-of-state vendor) agent to deliver or ship tangible personal property or taxable services to his (the out-of-state vendor) customer, who is a user or consumer, are subject to the Sales or Use Tax. The dealer so acting as agent for the out-of-state vendor must collect the tax involved on the transaction unless the transaction comes within the conditions indicated herein.

The pertinent part of Tenn. Comp. R. & Regs. 1320-5-1-.29 ("Rule 29") states:

(2) Bona fide dealers outside the State of Tennessee, who make purchases of tangible personal property or taxable services in this State which would otherwise be subject to the provisions of the Sales and Use Tax Law, may make purchases of items or services which they normally sell free of the Sales Tax, provided such a dealer will furnish his vendor in this State with a valid certificate of resale showing that he is a dealer located out of this State and would be entitled to purchase such property upon a resale certificate if he were a dealer in this State.

In summary, Rule 68 requires that any sale for resale be supported by a valid resale certificate issued by the purchasing dealer to the supplier. Ordinarily, under Rule 29, a foreign dealer may present a valid foreign resale certificate showing that he is a dealer located outside Tennessee and would be entitled to purchase the property on a Tennessee resale certificate if he were a dealer in this state. However, when the property is sold to a foreign dealer for resale, but drop shipped to the foreign dealer's customer who is a user and consumer in Tennessee, Rule 96 adds certain additional requirements.

The taxpayer in this case is a foreign dealer purchasing equipment to be drop shipped from Company A (the equipment manufacturer) directly to Company C (the end user located in Tennessee). If the taxpayer was reselling the equipment directly to the end user in Tennessee, then Rule 96 would apply and could only be satisfied by the taxpayer registering in Tennessee and presenting a valid Tennessee resale certificate to Company A. Absent a Tennessee resale certificate from the taxpayer, Company A would, in that case, be required to collect and remit tax on its sale to the taxpayer.

In the present case, however, the taxpayer will actually be reselling the equipment to Company B, who will in turn lease it to the end user. Therefore, Company B is also purchasing the equipment for resale and is not the end user.

Under these facts, Company A can sell the equipment to the taxpayer as an exempt sale for resale. To do so, Company A must receive and maintain for its records the taxpayer's foreign resale certificate as well as Company B's Tennessee resale certificate. Company B's Tennessee resale certificate is necessary in order to demonstrate that the taxpayer is not selling the equipment to the end user. Company B's resale certificate should be issued to the taxpayer. The taxpayer should then provide it to Company A along with the taxpayer's own foreign resale certificate.

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 11/17/00