TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #01-34

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 some transactions of a taxpayer that designs, makes, installs, and services custom signs.

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 TAXPAYER] is in the business of designing, making, installing, and servicing custom signs. When a customer needs a sign, a company representative surveys the installation site and determines what type of sign is needed. The taxpayer has artists that design the sign, and once the customer accepts the proposal, the taxpayer makes the sign from raw materials at its facility in Tennessee. Materials used in the production of signs include, but are not limited to, plastic, aluminum, steel, lamps, ballasts, transformers, neon, paint, bolts, screws, and vinyl.

There are various methods of installation depending on the type of sign. All of the signs made by the taxpayer are installed by its employees. No signs are sold to any other contractor, fabricator, wholesaler, or retailer. The taxpayer does not keep an inventory of completed product, because every sign is custom designed and produced.

When the taxpayer contracts with a customer to provide custom made signs, it charges the customer one lump sum that includes the sign itself and the installation. The customer is billed by the taxpayer and makes no separate payment to the installer.

The taxpayer performs services to signs, which may include repairs to broken or damaged parts, replacement of burned out bulbs, neon repairs, ballast or transformer replacements, cleaning, or painting. The taxpayer provides the labor and parts necessary to repair the sign and bills the customer accordingly.

The taxpayer also owns billboard structures that are located on land that is either owned by the taxpayer or leased from others. Space on these billboards is leased to customers for the purpose of maintaining advertisements. Advertising messages are either painted directly on the board, or a vinyl graphic covering is installed on the board. In most cases, the customer is charged additionally either a paint or vinyl graphics charge initially or when copy is changed.

In many instances, the taxpayer performs as a subcontractor providing labor for other sign makers to install products that they have made. The completed signs are shipped to the taxpayer from the sign maker, and the taxpayer provides the labor, equipment, and materials necessary to complete the installation. Rarely are any materials used for installation, except for concrete that is used to set the foundations.

The taxpayer makes, installs, and services many different types of signs with varying installation methods. The most common types of signs and methods of installation are as follows:

Freestanding sign: A business sign supported on the ground by poles or braces and not attached to any building. This sign structure may be installed either by

the direct burial method or by the anchor bolt method. A sign that is installed using the direct burial method is buried in the ground in a base of concrete. To be removed, the sign would have to be torched or cut down. A sign that is installed using the anchor bolt method is bolted on top of a concrete base. This structure can be removed by unscrewing the bolts, although it is not easily removed.

Wall sign: A business sign attached parallel to the wall of a building. This definition includes painted, individual letter, and cabinet signs located on the outside of a building, whether located on a wall, mansard, awning, canopy, or window. These signs are mounted by means of screws and bolts, and removal would result in varying degrees of damage to the building fascia. Additionally, individual letters may be mounted on a raceway that is used to reduce the damage to building fascias, but may result in some damage.

Neon border tubing: This is used to accent and illuminate building fascias and is attached by means of bolts and screws around the perimeter of a building.

Interior signs: Some examples of these signs are hospital interior signs which mount on the walls showing room numbers, wall plaques, etc. These signs can be mounted with bolts and screws or with adhesive tape. Damage might or might not occur to the wall upon removal of the sign.

Banners: A sign made of fabric or any non-rigid material with no enclosing framework and displayed on the outside of a building. Banners can be easily removed and rarely result in any wall or building damage.

Ground mounted sign: A freestanding sign that usually does not exceed six (6) feet. The usual installation method is to install the sign in a concrete base. However, they are not always installed in a permanent manner.

Menu board: A sign associated with drive through windows and oriented toward drive through window traffic. The usual installation method is to install the sign in a concrete base, although they are sometimes installed using the anchor bolt method.

Construction sign: A temporary sign identifying an architect, contractor, subcontractor, engineer, financier, or material supplier participating in construction on the property on which the sign is located. These signs usually are not installed in a permanent manner.

Real estate sign: A sign that announces the auction, sale, rental, or lease of the property on which the sign is located. These signs usually are not installed in a permanent manner.

Directional sign: An on-premises sign giving directions, instructions, or facility information, such as parking, loading, entrance, or exit, and usually are not more

than three (3) feet tall. The usual installation method is to install the sign in a concrete base. However, they are not always installed in a permanent manner.

Parking lot lights: Although parking lot lights are not signs, the taxpayer occasionally services them for customers. They might be installed in a direct burial method or on anchor bolts.

Directory sign: A sign that gives the names and locations of occupants or uses in a multi-occupant, nonresidential development, building, or organized merchant association. The usual installation method is to install the sign in a concrete base, but they are sometimes installed using the anchor bolt method.

Vinyl letters: May be applied to glass doors or windows and can be peeled off rather easily and usually do not result in damage. Vinyl also is used for designs and letters on vehicles.

The taxpayer supplied pictures of various types of signs.

QUESTIONS

1. How should the taxpayer charge tax to its customers for making and installing the different types of signs described above?

2. How should the taxpayer charge tax to its customers for servicing (labor and parts) the different types of signs described above?

3. Must the taxpayer pay sales tax on its purchases of raw materials used in the making of signs?

4. May the taxpayer use a resale certificate when purchasing raw materials used in the making of signs?

5. Should the taxpayer be classified as a contractor or a manufacturer? (The majority of signs produced are direct burial installations or wall mounted signs and letters.)

6. How does the single article cap issue apply to signs? (For example, if one freestanding pylon sign has two or more faces, is each face considered a single article, or is the sign as a whole a single article? Also, for individual letters on a building, is each individual letter considered a single article, or is the whole phrase a single article? An additional example would be letters mounted on a raceway. Would the entire sign be considered a single article, or would each letter count as a single article? In all of these situations, the project is priced as a whole and is not broken down into components.)

7. Should the taxpayer charge sales tax to its customers for leasing of advertising space on billboards it owns? Should sales tax be charged to the customer for the painting of billboards, or for vinyl graphics applied to billboards?

8. Should the taxpayer charge its customers sales tax on staff time incurred for obtaining sign permits?

9. How does the use tax apply to the taxpayer for exempt customers, such as hospitals, schools, and government agencies?

10. When the taxpayer provides installation labor for other sign makers, how does the sales or use tax apply?

RULINGS

1. Regarding the signs that remain tangible personal property after installation, the taxpayer should collect and remit sales tax on the sales price of the sign, including any charge for installation. Regarding the signs that become improvements to real property, the taxpayer is the user and consumer of the signs and therefore should not collect sales tax from its customers. If a sign becomes an improvement to real property and becomes a component part of a building, the taxpayer must pay sales or use tax on the purchase price of the materials used to make and to install the sign. If a sign becomes an improvement to real property but does not become a component part of a building, the taxpayer must pay use tax on the fair market value of the sign and must pay sales or use tax on the purchase price of the materials used to install the sign.

The Department declines to rule regarding which signs remain tangible personal property after installation and which signs become improvements to real property. The law of fixtures gives significant weight to the intent of the parties to determine whether something remains tangible personal property after installation or becomes an improvement to real property after installation. Therefore, without knowledge of the intent of the parties to all future transactions involving each sign at issue, it is not possible to decide with certainty that a particular type of sign always will remain tangible personal property after installation or always will become an improvement to real property after installation. However, the Department provides some discussion of this question in the Analysis with the warning that the law of fixtures could alter the result in any specific instance, depending on the specific facts.

2. Charges for the repair of signs that remain tangible personal property after installation are subject to the sales tax. Charges for the repair of signs that become improvements to real property after installation are not subject to the sales tax, but the taxpayer would be the user and consumer of any tangible personal property that is used in connection with the repair and must pay sales or use tax on the purchase price of such tangible personal property.

3-4. Because the taxpayer both sells tangible personal property and uses tangible personal property to improve real property and also does not know at the time of purchase which of the two ways the raw materials ultimately will be used, the taxpayer can purchase its raw materials on a resale certificate. However, the taxpayer must pay sales or use tax on the purchase price of the raw materials that it uses to make and install signs that become improvements to real property and that become component parts of buildings. The taxpayer must pay use tax on the fair market value of signs that become improvements to real property but that do not become component parts of buildings, and the taxpayer must pay sales or use tax on the purchase price of the materials it uses to install such signs.

5. The Department declines to rule on the question of whether the taxpayer should be classified as a contractor or a manufacturer. The proper method for a taxpayer to obtain an industrial machinery authorization is to submit an application to the Department. Also, qualification or lack of qualification for an industrial machinery authorization can change over time depending on the percentage of revenues that are derived from manufacturing at the location during particular time periods. Therefore, it would not be appropriate for the Department to bind itself to a determination of whether the taxpayer qualifies for an industrial machinery authorization in the future. The Department provides some discussion of this question in the Analysis.

6. Individual and separate letters that are combined to form a word or phrase on a building or on a raceway would not be one single article; each letter would be a single article.

Without specific facts for a specific sign, the Department declines to rule regarding whether a freestanding pylon sign with two or more faces would be a single article. The determination of whether something is a single article depends on the specific facts.

7. Charges for advertising space on billboards are not subject to the sales and use tax. The taxpayer should not collect sales tax on charges it makes for painting signs on billboards. The taxpayer would be the user and consumer of any tangible personal property used in connection with its painting of billboards, and the taxpayer should pay the sales or use tax on all such tangible personal property. If a billboard is tangible personal property, the taxpayer should collect the sales tax on its charges for installing vinyl graphics to the billboard. If the billboard is real property, such installation charge is not subject to the sales tax. The taxpayer would be the user and consumer of any tangible personal property used in connection with its application of vinyl graphics to billboards, and the taxpayer should pay the sales or use tax on all such tangible personal property.

8. Obtaining sign permits for a customer that is required to have them is a service that is not subject to the sales tax. However, if the charge for this service is not itemized or separately billed and the charge is included in the total bill for

the sale of a sign that remains tangible personal property after installation, the sales tax is due for the entire bill. If the taxpayer charges its customer for obtaining sign permits that the taxpayer is required to have and the sign remains tangible personal property after installation, the charge is part of the sales price of the sign and is subject to the sales tax even if it is itemized or separately billed. If the sign becomes an improvement to real property, the charge for obtaining sign permits is not subject to the sales or use tax regardless of whether the customer or the taxpayer is required to have the permits.

9. If a sign remains tangible personal property after installation, the sale of the sign to an exempt entity is exempt from the sales tax. If a sign becomes an improvement to real property and becomes a component part of a building, the taxpayer must pay the sales or use tax on the purchase price of the materials used to make the sign and on the materials used to install the sign. If a sign becomes an improvement to real property but does not become a component part of a building, the taxpayer must pay the use tax on the fair market value of the fabricated sign and must pay the sales or use tax on the purchase price of any tangible personal property used in the installation of the sign for the exempt entity.

10. If the taxpayer provides installation labor for other sign makers, and the sign remains tangible personal property after installation, and the taxpayer charges the end user directly for the service, the charge for the installation is subject to the sales tax. If the taxpayer provides installation labor for other sign makers, and the sign remains tangible personal property after installation, and the taxpayer charges the other sign maker for the service, and the other sign maker presents a Tennessee resale certificate with a Tennessee registration number, the taxpayer can honor the resale certificate and not charge sales tax. If the taxpayer provides installation labor for other sign makers, and the sign becomes an improvement to real property after installation, the charge for the installation is not subject to the sales tax. However, in such case, the taxpayer would be liable for the use tax on the purchase price of the tangible personal property used in the performance of the contract, if the sales or use tax has not been paid already on such tangible personal property.

ANALYSIS

1. The law of fixtures determines whether tangible personal property remains tangible personal property after installation or becomes an improvement to real property. Magnavox Consumer Electronics v. King, 707 S.W.2d 504, 507 (Tenn. 1986).

> In Tennessee only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal

> thereof would cause serious injury to the freehold. [Citations omitted.] The usual test is said to be the intention with which a chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture. Id. [Quoting Hickman v. Booth, 173 S.W. 438 (Tenn. 1914)].

The determination of whether something is real property or tangible personal property under the law of fixtures is a mixed question of law and fact. Fuson v. Whitaker, 190 S.W.2d 305, 307 (Tenn. App. 1945). The determination should include an examination of both objective and subjective factors. Hubbard V. Hardeman County Bank, 868 S.W.2d 656, 660 (Tenn. App. 1993). Objective factors include the type of structure, the mode of attachment, and the use and purpose of the property. Harry J. Welchel Company v. King, 610 S.W.2d 710, 713-714 (Tenn. 1980). The subjective factor is the expressed intent, if any, of the parties. Id. Tangible personal property can become a part of the real property, if removing it would seriously damage the building to which it is affixed. Process Systems, Inc. v. Huddleston, 1996 WL 614526, p. *3 (Tenn. Ct. App.). Tangible personal property also can become real property, if removal would destroy its essential character as personalty. Id. The determination of whether something is real property or tangible personal property under the law of fixtures depends on the particular facts.

In Harry J. Whelchel v. King, 610 S.W.2d 710 (Tenn. 1981), the Court determined whether the grain bins at issue were tangible personal property or real property. The Court decided that both the objective and subjective factors indicated that the grain bins were tangible personal property. Id. at 714.

> The undisputed proof is that a grain bin can be disassembled and hauled away at less expense and in less time than was required to erect it in the first instance, and without "serious injury to the freehold." Only the concrete base would be left, and one of the witnesses testified that if a farmer desired the removal of the base it could be broken up by a bulldozer and hauled away in a matter of hours. It is clear that the metal sheets and panels from which a grain bin is assembled are not injured by assembly or disassembly and re-erection, and that it is more economical to disassemble and move and reassemble a used grain bin than to buy a new one. Id.

The plaintiff produced affidavits from the farmers who purchased the grain bins saying that they intended the grain bins to remain tangible personal property after installation. Id. The Court decided that this subjective factor was supported by the objective factors.

> These bins merely rest upon a concrete base, attached by a half dozen or less nuts and bolts that can be removed in minutes. The attachment is solely for the purpose of keeping the large cylindrical structures from blowing over in a high wind when empty and is not for the purpose of affixing them to the realty. Further, the proof that they are financed as

> personal property, sold at foreclosure for removal as personal property by the USDA, and installed by lessees on leased farms is convincing evidence that grain bins are universally regarded as removable personal property. Id.

In Hubbard v. Hardeman County Bank, 868 S.W.2d 656 (Tenn. App. 1993), the Court determined whether three buildings at issue were real property or tangible personal property. The Court decided that the objective and subjective factors indicated that the buildings at issue were tangible personal property. Id. at 660.

> One of the buildings is approximately 14 feet by 40 feet and weighs approximately 80,000 pounds. The other two buildings measure approximately 14 feet by 30 feet and weigh approximately 60,000 pounds. The buildings are one-story and have a bathroom and kitchen. … The only way in which the buildings are attached to the realty is by the utility hookup. Id. at 659.

The ground lease said that the parties intended that the buildings "were not to attach to the land or become pertinent thereto." Id. The Court held,

> Looking at the objective and subjective factors indicating intent and purpose, we conclude that the buildings are personalty … . The buildings were constructed to be portable, such that they could be moved or sold as market conditions or a need for the buildings changed. The purpose of the buildings was to provide branch bank locations. The ground leases expressly provided that the buildings were not to become fixtures. Two of the buildings were actually moved. If the land upon which the buildings were located was sold, the owner of the land would not own the buildings. Id.

In General Carpet Contractors, Inc. v. Tidwell, 511 S.W.2d 241 (Tenn. 1974), the Court determined whether the carpet at issue was tangible personal property or real property. The Court decided that the carpet at issue was real property.

> … [T]he carpeting in all instances was laid by employing the "tackless" strip method as distinguished from gluing it to the floor. When the "tackless" strip method is used, short narrow strips of wood with little barbs or tacks projecting up at approximately forty degree angles are placed around the perimeter of the room so that the carpet is stretched over it and anchored, thereby simply holding the carpet in place. The carpet comes in rolls of 12 to 15 feet in width and is cut and seamed to fit the room. … Carpeting put down in this method may be picked up and reused, even in a room of different dimensions and shape. Id. at 242.

A witness for the plaintiff testified that the purpose of installing carpet by the tackless strip method is to install the carpet in the room for the life of the carpet. Id. at 243. In deciding that the carpet was real property, the Court found it significant that "… carpet normally has a shorter useful life than a building.

Therefore, it is logical to use a method of installation which allows for easy removal even when the parties intend for the carpet to remain for the length of its useful life." Id.

In Process Systems, Inc. v. Huddleston, 1996 WL 614526 (Tenn. Ct. App.), the Court determined whether the conveyor systems at issue were tangible personal property or real property. The Court decided that they were real property. Id. at p. *5.

> [A witness for the plaintiff] described the conveyors installed by PSI as being five feet wide and weighing approximately 100 pounds per lineal foot. In addition, drives weighing approximately 14,000 pounds each were attached to the conveyors about every 300 feet. … The conveyors could not physically be removed in large enough pieces for reuse without destroying a major part of the exterior building walls. In addition, because they are in lengths of 300 to 400 feet, they could not be moved by train or tractor trailer. If they were disassembled, an acetylene torch would have to be used to cut them into manageable pieces. Id. at p. *3.

Tenn. Comp. R. & Regs. 1320-5-1-.65 helps to apply the law of fixtures in the specific context of signs.

> Signs which are and remain tangible personal property are those which are not attached in a permanent fashion to buildings or which are not an integral part of such structure or buildings, or which are not displayed on structures securely anchored in the ground. Tenn. Comp. R. & Regs. 1320-5-1-.65(1).

Signs that become improvements to real property after installation are those "which are attached in a secured and permanent fashion to buildings, which are an integral part of such buildings, or which are displayed on structures securely anchored in the ground … ." Tenn. Comp. R. & Regs. 1320-5-1-.65(2). Also, signs that become improvements to real property after installation are those which are "securely and permanently attached to the building or to structures bolted to the building or to structures permanently anchored in the ground on heavy wood or steel poles." Tenn. Comp. R. & Regs. 1320-5-1-.65(2).

Applying the law of fixtures and the help provided by Tenn. Comp. R. & Regs. 1320-5-1-.65 to the facts and pictures supplied by the taxpayer, the Department provides the following discussion regarding signs that might remain tangible personal property after installation and signs that might become improvements to real property after installation. Although the law of fixtures controls in all factual situations, a general statement that will apply to all factual situations is impossible to make. Each factual scenario including the intent of the parties is potentially unique, and application of the law of fixtures to different factual scenarios could yield different results.

In the absence of a contrary intent, the freestanding signs that are installed using the direct burial method probably become improvements to real property, because they are displayed on structures securely anchored in the ground. In the absence of a contrary intent, the freestanding signs that are installed using the anchor bolt method probably remain tangible personal property, because the signs are not permanently anchored in the ground. However, if the signs installed by the anchor bolt method are not easily removed and in fact are not intended to be removable during the course of their useful life, they probably become a part of the real property to which they are attached.

In the absence of a contrary intent, the wall signs attached directly to the walls of buildings probably become improvements to real property and component parts of the buildings, if they are attached in a secure and permanent fashion. The wall signs attached to raceways probably become improvements to real property, if they are attached in a secure and permanent fashion to raceways attached to buildings. However, the wall signs attached to raceways probably do not become component parts of the buildings, if they are not attached to the buildings in a secure and permanent fashion and are not intended to remain during their useful life.

The neon border tubing probably becomes an improvement to real property and a component part of the building, if it is attached in a secure and permanent fashion to the building and it is intended to remain attached throughout its useful life. The neon border tubing probably remains tangible personal property, if it is not attached in a secure and permanent fashion to the building and it is not intended to remain attached throughout its useful life.

The interior signs probably become improvements to real property and component parts of the buildings, if they are attached in a secure and permanent fashion with the intention that they remain attached throughout their useful life. However, if such signs are attached in a way that they can be easily removed and are intended to be removable before their useful life is complete, they probably remain tangible personal property.

In the absence of a contrary intent, the banners probably remain tangible personal property after installation, because they are not attached in a secure and permanent fashion to buildings. In addition, they can be easily removed with little or no damage to the buildings.

In the absence of a contrary intent, the ground-mounted signs that are installed in a concrete base probably become improvements to real property, because they are displayed on structures securely anchored in the ground. In the absence of a contrary intent, the ground-mounted signs that are installed using the anchor bolt method probably remain tangible personal property after installation, because the signs are not permanently anchored in the ground.

In the absence of a contrary intent, the menu boards that are installed in a concrete base probably become improvements to real property, because they

are attached to the realty in a secure and permanent fashion. In the absence of a contrary intent, the menu boards that are installed using the anchor bolt method probably remain tangible personal property after installation, because the signs are not permanently anchored in the ground and can be removed easily with little or no damage.

In the absence of a contrary intent, the construction signs probably remain tangible personal property after installation, because they are temporary in nature and are not displayed on structures securely anchored in the ground.

In the absence of a contrary intent, the real estate signs probably remain tangible personal property after installation, because they are temporary in nature and are not displayed on structures securely anchored in the ground.

In the absence of a contrary intent, the directional signs that are installed in a concrete base probably become improvements to real property, because they are displayed on structures securely anchored in the ground. In the absence of a contrary intent, the directional signs that are not installed in a permanent manner probably remain tangible personal property after installation, because they are not permanently anchored in the ground on heavy wood or steel poles.

The parking lot lights are not signs and are not evaluated using the rule on signs. If the parking lot lights are intended to remain for the duration of their useful life, they probably become improvements to real property. If they are intended to be removable prior to the expiration of their useful life, they probably remain tangible personal property.

In the absence of a contrary intent, the directory signs that are installed in a concrete base probably become improvements to real property, because they are displayed on structures securely anchored in the ground. In the absence of a contrary intent, the directory signs that are installed using the anchor bolt method probably remain tangible personal property after installation, because they are not permanently anchored in the ground.

In the absence of a contrary intent, the vinyl letters probably remain tangible personal property after installation, because they are not attached in a permanent fashion to buildings.

Tennessee levies a tax on the retail sale of tangible personal property in this State. Tenn. Code Ann. § 67-6-202. A retail sale of tangible personal property is subject to the sales tax, if either title to or possession of the tangible personal property passes in Tennessee. Eusco, Inc. v. Huddleston, 835 S.W.2d 576, 579 (Tenn. 1992).

Tennessee also levies a tax on the use of tangible personal property in this State, if the tangible personal property has not already been subject to the sales tax. Tenn. Code Ann. § 67-6-203. The following statute levies a use tax on the use of tangible personal property by a producer, contractor or subcontractor,

including the use of tangible personal property (such as a sign) for the improvement of real property:

> Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, which the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, … such person so using the tangible personal property shall pay the tax herein levied on the fair market value of such tangible personal property when used, without any deductions whatsoever; provided that the foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component part of a building, and which is not sold by them as a manufactured item. Tenn. Code Ann. § 67-6-209(a).
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> Where a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for herein for private nonprofit colleges or universities shall apply only to the state portion of the sales tax. … Tenn. Code Ann. § 67-6-209(b).

Regarding the signs that remain tangible personal property after installation, the taxpayer should collect and remit sales tax on the sales price of the sign, including any charge for installation. Tenn. Code Ann. § 67-6-102(26), defines "sales price" as "… the total amount for which … tangible personal property is sold, including any services that are a part of the sale of tangible personal property[.]" Also, Tenn. Code Ann. § 67-6-102(24)(F)(vi) levies the sales tax on the charge for the service of installing tangible personal property that remains tangible personal property after installation.

Regarding a sign that becomes an improvement to real property but that does not become a component part of a building, the taxpayer should pay the use tax on the fair market value of the sign. Tenn. Code Ann. § 67-6-209(a). Regarding a sign that becomes an improvement to real property and that becomes a component part of a building, the taxpayer should pay the sales or use tax on the purchase price of the materials that are used to create the sign. Tenn. Code Ann. § 67-6-209(b). Regarding all signs that become improvements to real property (regardless of whether or not the particular sign becomes a component part of a building), the taxpayer should pay the sales or use tax on any tangible

personal property that is used in connection with the installation, because the taxpayer is the user and consumer of such materials. Tenn. Code Ann. § 67-6-203. If the taxpayer also sold signs that were not custom-made, the analysis of the tax base for those signs would be different. Tenn. Code Ann. § 67-6-209(a).

2. Charges for the repair or maintenance of signs that remain tangible personal property after installation are subject to the sales tax. Tenn. Comp. R. & Regs. 1320-5-1-.65(1). Tenn. Code Ann. § 67-6-102(24)(F)(iv) levies the sales tax on the service of "[t]he performing for a consideration of any repair services with respect to any kind of tangible personal property[.]"

Charges for the repair or maintenance of signs that become improvements to real property after installation are not subject to the sales tax. However, the taxpayer would be the user and consumer of any tangible personal property that is used in connection with the repair or maintenance and therefore must pay the sales or use tax on such tangible personal property. Tenn. Comp. R. & Regs. 1320-5-1-.65(2), and Tenn. Code Ann. § 67-6-203.

3-4. Because the taxpayer both sells tangible personal property and uses tangible personal property to improve real property and also does not know at the time of purchase which of the two ways the raw materials ultimately will be used, the taxpayer can purchase its raw materials on a resale certificate. However, the taxpayer must report and pay the sales or use tax on the raw materials that it uses to make and to install signs that become improvements to real property and that become component parts of buildings, because the taxpayer is the user and consumer of such raw materials. Also, the taxpayer must report and pay the use tax on the fair market value of a sign that becomes an improvement to real property but that does not become a component part of a building and must report and pay the sales or use tax on the materials used to install such signs. Tenn. Code Ann. § 67-6-209.

These results are consistent with Tenn. Comp. R. & Regs. 1320-5-1-.08, which applies to contractor-dealers that both sell building materials as tangible personal property and use building materials to improve real property. Although the taxpayer is not technically a contractor-dealer in this sense of the term, the taxpayer's situation is sufficiently similar that the Department would permit the taxpayer to operate under the same parameters as a contactor-dealer. Tenn. Comp. R. & Regs. 1320-5-1-.08 provides the following:

> (1) Contractors and sub-contractors engaged in the business of erecting, building or otherwise improving, altering and repairing real property for others, and also engaged in the business of selling building materials and supplies to other contractors, consumers, and users, and who may not be able to segregate that portion of the materials and supplies that they will use or consume in the fulfillment of their contracts from that portion of the materials and supplies that they will sell at retail, may give a resale certificate to the seller of the materials and supplies.

(2) Contractor-dealers making sales of tangible personal property shall report all sales made, and all withdrawals from inventory for use as a contractor each month, and pay any applicable Sales or Use Tax due. Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use, either in or out of the state.

(3) Suppliers making sales of materials and supplies to contractor-dealers and delivering such materials and supplies to a job site for use, or tagging or marking particular materials and supplies for a particular job being performed by the contractor-dealer, shall collect the applicable Sales or Use Tax on those sales.

5. The appropriate method for a taxpayer to apply for an industrial machinery authorization is to fill out the Department's application form completely and accurately and to submit the form to the Department for approval or rejection. The taxpayer can contact the Department's Taxpayer Services at telephone number (615) 253-0600 for assistance in this matter.

"If at least 51 percent of a taxpayer's revenues at a given location are derived from fabricating or processing tangible personal property for resale, the taxpayer is considered to be a manufacturer at that location." Beare Company v. Tennessee Department of Revenue, 858 S.W.2d 906, 908 (Tenn. 1993). Thus, the taxpayer can consider applying for an industrial machinery authorization for a particular location, if at least 51 percent of its revenues at that location are derived from the sale of tangible personal property (signs) that remain tangible personal property after installation. Otherwise, the taxpayer should not submit this application.

6. The local option sales tax on a "single article" of tangible personal property is limited by Tenn. Code Ann. § 67-6-702.

> 'Single article' means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article. … Tenn. Code Ann. § 67-6-702(d).

A sign consisting of multiple independent letters on a building or on a raceway would not be a single article, because the letters would be independent units sold in a set at a single price. This result is consistent with Honeywell Information Systems v. King, 640 S.W.2d 553 (Tenn. 1982), in which the Court held that a computer system composed of multiple components was not a single article. Instead, each component was a single article. Id. at 554. The result also is consistent with Executone of Memphis v. Garner, 650 S.W.2d 734 (Tenn. 1983), in which the Court held that a telephone system composed of multiple components was not a single article. Instead, each component was a single

article. The Court said, "To conclude that only the system itself constitutes a single article completely ignores the separate physical character of each component part, both in the design of the system and in the ultimate benefit to the customer." Id. at 737.

It is possible that an entire sign that remains tangible personal property after installation could include multiple letters and the whole sign could be a single article, but the question asked by the taxpayer is not sufficiently specific for the Department to make such a ruling for any particular sign or type of sign.

Without specific facts for a specific sign, the Department declines to rule regarding whether a freestanding pylon sign with two or more faces would be a single article. The determination of whether something is a single article depends on the specific facts.

7. The Department does not subject charges for advertising space on billboards to the sales and use tax.

The following rule applies to the painting of signs on billboards:

> Persons engaged in the business of painting signs on buildings or other real or personal property shall be considered as rendering services, not subject to the tax. Sales of paint and any other tangible personal property to such persons are subject to the Sales and Use Tax. Tenn. Comp. R. & Regs. 1320-5-1-.65(3).

If the billboard is tangible personal property, Tennessee levies the sales tax on

> [t]he installing of tangible personal property which remains tangible personal property after installation where a charge is made for such installation, whether or not such installation is made as an incident to the sale thereof, and whether or not any tangible personal property is transferred in conjunction with such installation service[.] Tenn. Code Ann. § 67-6-102(24)(F)(vi).

Thus, the installation of vinyl graphics to a billboard that is tangible personal property is a taxable service, because the vinyl graphics would remain tangible personal property after installation. If the billboard is real property, the vinyl graphics would not remain tangible personal property after installation and therefore the installation would not be a taxable service. The taxpayer would be the user and consumer of any tangible personal property used in connection with its application of vinyl graphics to billboards (real or personal), and the taxpayer should pay the sales or use tax on all such tangible personal property. Tenn. Code Ann. §§ 67-6-102(31)(A) and 67-6-203.

8. If the taxpayer charges its customer for obtaining sign permits that the taxpayer is required to have, and the sign remains tangible personal property

after installation, the charge is part of the sales price of the sign and is subject to the sales tax.

> 'Sales price' means the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property, … . Tenn. Code Ann. § 67-6-102(26).

Obtaining sign permits that the customer (rather than the taxpayer) is required to have is a service that is not subject to the sales tax. If the sign remains tangible personal property after installation, and if the taxpayer's charge for staff time incurred for obtaining sign permits that the customer is required to have is separately billed or itemized, the taxpayer should not collect the sales tax on the charge. However, if the charge is not itemized or separately billed and the charge is included in the total bill for a transaction that is subject to the sales tax, the sales tax is due for the entire bill.

If the sign becomes an improvement to real property after installation, the charge for obtaining sign permits is not subject to the sales tax regardless of whether the taxpayer or the customer is required to have the permits. There would not be a sales price in this context.

9. The sale of tangible personal property or taxable services to certain entities is exempt from the sales or use tax. See, for example, Tenn. Code Ann. § 67-6-322. If a sign remains tangible personal property after installation, the sale of the sign to an exempt entity is exempt from the sales tax.

If a sign becomes an improvement to real property after installation, and the sign does not become a component part of a building, the taxpayer owes the use tax on the fair market value of the fabricated sign and owes the sales or use tax on the purchase price of any other materials used in the installation of the sign for the exempt entity. Tenn. Code Ann. § 67-6-209(a). If a sign becomes an improvement to real property after installation, and the sign becomes a component part of a building, the taxpayer owes sales or use tax on the purchase price of the materials used to make and to install the sign. Tenn. Code Ann. § 67-6-209(b).

10. If the taxpayer provides installation labor for other sign makers, and if the sign remains tangible personal property after installation, and if the taxpayer charges the end user directly for the service, the charge for the installation is subject to the sales tax. Tenn. Code Ann. § 67-6-102(24)(F)(vi). If the taxpayer provides installation labor for other sign makers, and if the sign remains tangible personal property after installation, and if the taxpayer charges the other sign maker for the service, and if the other sign maker presents a Tennessee resale certificate with a Tennessee registration number, the taxpayer can honor the resale certificate and not charge sales tax. Tenn. Comp. R. & Regs. 1320-5-1-.68.

If the taxpayer provides installation labor for other sign makers, and if the sign becomes an improvement to real property after installation, the charge for the installation is not subject to the sales tax, but the taxpayer would be liable for the sales or use tax on the purchase price of the tangible personal property used in the performance of the contract, if the sales or use tax has not been paid already on such tangible personal property. Tenn. Code Ann. § 67-6-209(b); see Woods v. M. J. Kelley Company, 592 S.W.2d 567 (Tenn. 1980).

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Tax Counsel

APPROVED: _____
Ruth E. Johnson
Commissioner of Revenue

DATE: _____