

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #06-05**

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

Sales and use taxability of publications published by taxpayer.

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;
- (G) 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] publishes two publications. [WEEKLY PUBLICATION] is a publication printed entirely on newsprint and distributed weekly. The Taxpayer gathers information and creates the Weekly Publication in a format suitable for a digital press. The actual printing and mailing of the Weekly Publication is not done at the Taxpayer's office in Tennessee, but is contracted for with a printer in [STATE – NOT TENNESSEE].

The Taxpayer also produces an annual publication which is distributed to its subscribers at no charge. This publication is titled [ANNUAL PUBLICATION]. The Annual Publication is mailed to subscribers separately from the Weekly Publication. Occasionally, copies of the Annual Publication are sold on request. The Annual Publication is printed by the same printer as the Weekly Publication.

QUESTIONS

1. Is the Weekly Publication subject to Tennessee sales or use tax?
2. Is the Annual Publication subject to Tennessee sales or use tax?

RULINGS

1. The Weekly Publication, if printed on newsprint, is not subject to sales or use tax.
2. The Annual Publication is subject to sales or use tax, if sold or distributed to Tennessee residents, or if the Taxpayer uses the publication in Tennessee.

ANALYSIS

1. The Weekly Publication, if printed on newsprint, is not subject to sales or use tax

The sales tax is imposed on the privilege of making retail sales of tangible personal property in Tennessee. Tenn. Code Ann. § 67-6-202(a). Tangible personal property includes "personal property, which may be seen, weighed, measured, felt or touched or is any other manner perceptible to the senses." Tenn. Code Ann. § 67-6-102(a)(43). The Weekly Publication and the Annual Publication can be weighed, measured, felt and touched; therefore each is tangible personal property. The Taxpayer imports the Weekly Publication and the Annual Publication for sale and distribution in the state of Tennessee. Absent an exemption, the Taxpayer will be subject to sales and use tax on the sale and distribution of both publications.

The statute, however, provides numerous exemptions. Tenn. Code Ann. § 67-6-329(a) states in pertinent part:

The sale at retail, the use, the consumption, the distribution and the storage for use and consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

* * * *

(21) Periodicals printed entirely on newsprint or bond paper and regularly distributed twice monthly, or on a biweekly or more frequent basis, and advertising supplements or other printed matter distributed with such periodicals.

The above sets forth two requirements for the exemption, both of which must be met: (1) the publication must be printed entirely on newsprint or bond paper;¹ and (2) the publication must be regularly distributed twice per month or on a biweekly or more frequent basis. A periodical will be considered to be regularly distributed twice per month or on a biweekly or more frequent basis if “new issues are published and distributed at least every fourteen days.” TENN. COMP. R. & REGS. 1320-5-1-.46.

The Taxpayer has represented that the Weekly Publication is printed weekly on newsprint and is distributed on a weekly basis. Assuming that the Weekly Publication is also printed entirely on newsprint or bond paper,² it meets both requirements set forth in Tenn. Code Ann. § 67-6-329(a) and is exempt from sales and use tax.

2. The Annual Publication is subject to sales or use tax, if sold or distributed to Tennessee residents, or if the Taxpayer uses the publication in Tennessee.

The Annual Publication is only published once per year, therefore it fails to meet the frequency-of-publication requirement set forth in Tenn. Code. Ann. § 67-6-329(a). The Annual Publication will therefore be subject to (A) sales tax if it is sold to Tennessee customers, or (B) use tax if it is used in Tennessee by the Taxpayer.

A. Application of the Sales Tax

¹ The statute does not furnish a definition of “newsprint” or “bond paper.” Words utilized in statutes are to be given their usual and ordinary meaning. *Pridemark Custom Plating v. Upjohn Co.*, 702 S.W.2d 566, 570 (Tenn. Ct. App. 1985). The American Heritage Dictionary of the English Language (New College Ed., 1978) defines newsprint as “[i]nexpensive paper made from wood pulp, used chiefly for printing newspapers” and defines bond paper as “[a] superior grade of strong white paper made wholly or in part from rag pulp.”

² A sample copy of the Weekly Publication was provided with the ruling request. In this ruling, the Department does not rule on whether or not the particular paper upon which the sample copy is printed constitutes newsprint, but relies solely on the statement in the ruling request that the Weekly Publication is printed on newsprint.

If the Annual Publication is sold to Tennessee customers, it is subject to sales tax as tangible personal property in accordance with the discussion set forth above. The proper tax base for imposition of the sales tax is the sales price. Tenn. Code Ann. § 67-6-202. "Sales price" is defined as "the total amount for which a taxable service or tangible personal property is sold . . . whether paid in money or otherwise. . ." Tenn. Code Ann. § 67-6-102(a)(35). The Taxpayer is obligated to collect and remit sales tax on the sales price of any copies of the Annual Publication sold to Tennessee customers. Sales of the Annual Publication which occur outside of the state of Tennessee will not be subject to Tennessee sales tax.

B. Application of the Use Tax

In cases where tangible personal property is not sold, but is instead used in the state of Tennessee, a use tax is levied at a rate equal to the sales tax. Tenn. Code Ann. § 67-6-203(a). The Taxpayer could be considered the user of the Annual Publication in two circumstances. First, "[i]tems of tangible personal property which are withdrawn from a dealer's stock...which are purchased for use as...gifts" are subject to the sales and use tax. TENN. COMP. R. & REGS. 1320-5-1-.49(1). Therefore, if the Annual Publication is given away without consideration as a gift to Taxpayer's customers, the Taxpayer is the user and consumer of the publication, and is liable for the tax on copies distributed in Tennessee. Second, because the printer is located out of state, the Taxpayer is liable for use tax on any copies of the Annual Publication that are shipped from the printer to the Taxpayer, unless such copies are either: (i) ultimately resold; or (ii) merely stored in Tennessee before being shipped to out-of-state locations. See Tenn. Code Ann. § 67-6-313(a), *Young Sales Corp. v. Benson*, 450 S.W.2d 574 (Tenn. Ct. App. 1970).

The use tax is calculated on the cost price of the tangible personal property. Tenn. Code Ann. § 67-6-203. "Cost price" is defined as "the actual cost of articles or tangible personal property without any deductions therefrom on account of the cost of materials, used, labor or service costs, transportation charges, or any expenses whatsoever." Tenn. Code Ann. § 67-6-102(a)(10).

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Approved: Loren L. Chumley
Commissioner

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