

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING 06-31**

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 tax to an on-line database service.

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] is a corporation organized under the laws of the State of Delaware with its principal office located in [STATE-NOT TENNESSEE]. The Taxpayer has offices in

[NUMBER] states including a sales office in Tennessee. The Taxpayer currently collects and remits sales and use tax in Tennessee.

One business activity conducted by the Taxpayer is the ownership, management, marketing, development and licensing of a proprietary database of entity, contact, and editorial information for [LANGUAGE REDACTED] (“data”). Customers access, manage and analyze the data in conjunction with inputs of information about their specific business needs. Customers access the information through the Taxpayer’s Internet web site located at [LANGUAGE REDACTED]. The data is primarily located and maintained in the [STATE-NOT TENNESSEE]. The Taxpayer does not provide Internet access.

There are four (4) basic scenarios involving the use of Taxpayer’s product that may impact the application of Tennessee’s sales and use tax:

Scenario 1. Customers access the data and compile a [LIST] based on the data using the Taxpayer’s website. Customers may print, email, or store this information electronically in their account through the website. The information is primarily stored at the Taxpayer’s location in [STATE-NOT TENNESSEE].

Scenario 2. Using the list compiled in Scenario 1, customers can create and manage the distribution of a direct communication with the contacts on the list using electronic mail and/or media printed by the customer.

Scenario 3. Customers can input content regarding keywords and scope of review for [LANGUAGE REDACTED]. Based on the customer input, the Taxpayer reviews [LANGUAGE REDACTED] and compiles a list of keyword impressions by date and location (“impressions”). The website allows customers to create, store, and manage these results in their account.

Scenario 4. Using the [LIST], the impressions, and potentially additional input from the customer, the Taxpayer assesses and evaluates various customer-defined parameters and produces reports for the customer in tabular and graphical formats, both printed and electronic.

ISSUE

Is the sale of access to the Taxpayer’s database via the Internet subject to sales and use tax?

RULING

No, the sale of access to a database via the Internet is not subject to sales and use tax.

ANALYSIS

Retail sales in Tennessee are subject to sales and use tax under Tenn. Code Ann. § 67-6-101 et. seq. Tenn. Code Ann. § 67-6-102(a)(32)(A) defines a retail sale to include a “taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than resale.” The Taxpayer sells the information contained in its database. Information does not meet the definition of tangible personal property, which is defined in Tenn. Code Ann. § 67-6-102(a)(43) as “personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses.”

Providing information also does not constitute one of the services which are specifically taxable under the Tennessee statutes. *See generally* Tenn. Code Ann. § 67-6-102(a)(32)(F). As defined in Tenn. Code Ann. § 67-6-102(a)(32)(F)(iii), a “sale at retail” includes the “furnishing, for a consideration, of either intrastate, interstate or international telecommunications services.”¹ For this purpose, “telecommunications service” is defined in pertinent part as follows:

(A) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added;

(B) “Telecommunications service” does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information. . . .

Tenn. Code Ann. § 67-6-102(a)(44).

The Taxpayer sells information by charging a fee for customers to access its database. Once the customer has access to the stored information, it can further store, process, and deliver the information in a variety of ways. Information is not taxable as tangible

¹ Legislation related to the Streamlined Sales and Use Tax Agreement, effective July 1, 2007, may result in changes regarding the application of sales and use tax sales of certain items of tangible personal property. The Department of Revenue encourages you to visit our website at www.tennessee.gov/revenue for updates.

personal property, therefore, the sale of information is not subject to tax. Accordingly, the Taxpayer's business qualifies as a non-taxable information service under Tenn. Code Ann. § 67-6-102(a)(44)(B).

The Taxpayer also produces electronic and printed reports for its customers, however, it is not selling tangible personal property. The customer is not paying for the reports but rather the information contained in the reports; thus, the provision of the reports is only incident to the sale of an information service. *See AT&T Corp. v. Chumley*, 2005 WL2739270 (Tenn. Ct. App. 2005). Since the Taxpayer provides an information service, it does not need to collect and remit sales and use tax on the sale of its service, or on the electronic and printed reports.

Deborah A. Toon
Tax Counsel

APPROVED: Loren L. Chumley
Commissioner

DATE: 9/18/06