

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 06-36**

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

Whether the materials and equipment installed in [THE TAXPAYER'S] relocated headquarters during the applicable investment period or otherwise used in the construction of the headquarters during that period, including computer hardware and software, constitute "qualified tangible personal property" as defined in Tenn. Code Ann. § 67-6-224(11).

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 his detriment.

FACTS

[THE TAXPAYER] is a [STATE - NOT TENNESSEE] corporation with its global headquarters in [CITY], Tennessee. [IRREVELENT INFORMATION].

On [DATE], [THE TAXPAYER] announced that it was moving its global headquarters from [STATE – NOT TENNESSEE] to [CITY], Tennessee. This move (the “Relocation”) will be [IRREVELENT INFORMATION] the culmination of a long effort by [THE TAXPAYER] to consolidate its operations in [TENNESSEE CITY].

The Relocation, will involve the transfer of over 90 executive positions, including the Chief Executive Officer and all key executives. The average yearly salary of the positions transferred will be in excess of \$125,000. The Relocation will permit [THE TAXPAYER’s] top management to work on a daily basis with divisional managers, the majority of whom are already in [TENNESSEE CITY]. This is consistent with [THE TAXPAYER’s] ongoing efforts to streamline its operations and increase profitability in a highly competitive, mature industry.

To accommodate its divisional headquarters, [THE TAXPAYER] has constructed a number of headquarters office buildings in [TENNESSEE CITY]. The buildings constructed include facilities located on a campus at [ADDRESS] and other locations throughout the [TENNESSEE CITY] Metropolitan Statistical Area (“MSA”) (collectively, the buildings housing [THE TAXPAYER’s] headquarters operations are the “Headquarters”). Modifications to these headquarters buildings are ongoing and will include construction activity to facilitate the Relocation. Specifically, a series of executive office suites, communications facilities and a sophisticated computer system for tracking worldwide operations will be installed in the Headquarters to allow for the efficient management of the company’s far-flung international operations.

In connection with the construction of its [ADDRESS] headquarters facilities, [THE TAXPAYER] applied for Tennessee’s qualified headquarters facility sales tax credit in 2001. The Tennessee Department of Revenue (the “Department”) recognized that the company had exceeded the \$50,000,000 investment threshold set out in Tenn. Code Ann. § 67-6-224 and, in a letter from Patsy Clark, Director of the Department’s Taxpayer Services Division, to [PERSON’S NAME] in [THE TAXPAYER’s] Tax Department dated [DATE], granted [THE TAXPAYER’s] application for the credit. In that authorizing letter from the Department, it was stated that project expansions would require separate application:

The credit shall apply only to building materials, machinery and equipment used exclusively in the qualifying facility, purchased or leased between the investment period of [DATE] through [DATE]. Any subsequent projects

qualifying under Tenn. Code Ann. § 67-6-224 will require submitting a separate application and investment plan.

Accordingly, [THE TAXPAYER] received the credit for qualifying state sales tax paid on materials used in the construction of the Headquarters.

The Relocation involves [THE TAXPAYER's] global headquarters. The renovations and equipment purchases in connection with the Relocation will occur after the [DATE] cut-off set out by the Department in its [DATE] approval letter. However, [THE TAXPAYER] intends to make a new investment, in connection with the Relocation, that will independently satisfy the \$50,000,000 investment requirement set out in Tenn. Code Ann. § 67-6-224. Therefore, [THE TAXPAYER] submits herewith an application and investment plan ("New Application"). During the investment period related to the New Application (the "Investment Period"), [THE TAXPAYER] will significantly improve and renovate the Headquarters, making the following material improvements:

- Newly renovated executive offices at the [ADDRESS] facility for the management team relocating from [STATE – NOT TENNESSEE].
- Newly created telecommunications systems to permit [THE TAXPAYER's] headquarters personnel to more effectively communicate through voice and data with worldwide manufacturing and sales units.
- A "virtual headquarters" system involving hardware and software that will permit [THE TAXPAYER] executives worldwide to track sales, inventories, and customer needs on a real time basis. Once operational, this system will effectively permit managers temporarily or permanently located outside [TENNESSEE CITY] to broadly access critical business data without assistance from Headquarters employees who currently track and store such information on an array of incompatible systems.

All of these investments, while functionally part of the qualified headquarters facility designated by the Department in [YEAR], will independently satisfy the \$50,000,000 investment threshold required by the headquarters credit statute in Tenn. Code Ann. § 67-6-224.

QUESTION PRESENTED

Will the materials and equipment installed in the Headquarters during the Investment Period or otherwise used in the construction of the Headquarters during that period, including computer hardware and software, constitute "qualified tangible personal property" as defined in Tenn. Code Ann. § 67-6-224(11)?

RULING

Yes, provided that all statutory requirements explained in this Letter Ruling are met.

ANALYSIS

Applicable Statute¹

Tenn. Code Ann. § 67-6-224 makes the following provisions for a sales and use tax qualified headquarters facility credit:

- (a) A taxpayer who establishes a qualified headquarters facility in this state shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sales or use of qualified tangible personal property.

- (b) For purposes of this section, the following definitions shall apply:
 - (1) "Facility" means a building or buildings, either newly constructed, expanded, or remodeled, housing headquarters staff employees and located in a county, or metropolitan statistical area in this state. A facility may include parking facilities exclusively for the use of headquarters staff employees and visitors; provided, that the parking facilities are built in conjunction with the newly constructed, expanded, or remodeled building or buildings. An expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in this state. The facility must be utilized as a headquarters facility for a period of at least ten (10) years beginning from the date of substantial completion;

 - (2) "Full-time employee job" means a permanent, rather than seasonal or part-time, employment position, providing employment as a headquarters staff employee, for at least twelve (12) consecutive months, to a person for at least thirty-seven and one half (37.5) hours per week, with minimum health care, as described in title 56, chapter 7, part 22;

 - (3) "Headquarters facility" means a facility in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where

¹ The language of Tenn. Code Ann. § 67-6-224 set forth in this Letter Ruling includes amendments contained in §§ 36 and 37 of Chapter 1019 of the Public Acts of 2006 effective June 27, 2006.

the primary headquarters related functions and services are performed;

- (4) "Headquarters related functions and services" means those functions involving administrative, planning, research and development, marketing, personnel, legal, computer or telecommunications services performed by headquarters staff employees on an international, national, or regional basis. For purposes of this subsection (b), regional means a geographic area comprised of at least Tennessee and one (1) or more of its contiguous states. "Headquarters related functions and services" does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center;
- (5) "Headquarters staff employees" means executive, administrative, or professional workers performing headquarters related functions and services. An executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise. An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations. A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study;
- (6) "Investment period" means that the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility. However, in no event shall the investment period exceed six (6) years;
- (7) (A) "Minimum investment" means:
 - (i) A minimum investment by the taxpayer and lessor to the taxpayer of fifty million dollars (\$50,000,000) or more in a building or buildings, either newly constructed, expanded, or remodeled; or
 - (ii) A minimum investment by the taxpayer and the lessor to the taxpayer of twenty million dollars (\$20,000,000) in a building or buildings, either newly constructed, expanded, or remodeled, along with the creation of not fewer than two hundred (200) new full-time employee jobs created during the investment period, with average wages or salaries equal to or greater than two hundred percent (200%) of the average wage in the county or

the metropolitan statistical area in which the taxpayer is located, whichever is higher, as reported in the Monthly Labor Report published by the department of labor and workforce development for the month of January of the year in which such full-time employee jobs are created;

(B) The minimum investment may include, but is not limited to, the purchase price of an existing building, and the cost of building materials, labor, equipment, furniture, fixtures, parking facilities, and landscaping, but shall not include land or inventory;

(8) "New full-time employee job" means full-time headquarters staff employee jobs that are new to the state of Tennessee and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in Tennessee as a job position of the taxpayer or of another business entity. The new full-time employee jobs must be created and filled within the investment period. An employee in a new full-time employee job may be employed at a temporary location in this state, pending completion of construction or renovation work at the qualified headquarters facility;

(9) "Qualified headquarters facility" means a headquarters facility where the taxpayer has made the minimum investment during the investment period;

(10) "Qualified headquarters facility relocation expenses" means those expenses that both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, are necessary to relocate headquarters staff employees to a qualified headquarters facility in conjunction with the initial establishment of such facility in this state; and

(11) "Qualified tangible personal property" means building materials, machinery, equipment, furniture, and fixtures used exclusively in the qualified headquarters facility and purchased or leased during the investment period. Qualified tangible personal property does not include supplies or repair parts. Qualified tangible personal property does not include any payments with respect to leases of qualifying tangible personal property that extend beyond the investment period. Qualified tangible personal property does not include any materials, machinery, equipment, furniture or fixtures that replace tangible personal property that previously generated a credit under this section.

(c) A taxpayer qualifying for this credit must be subject to the taxes imposed by chapter 4, parts 20 and 21 of this title or be an insurance company as defined in § 56-1-102(2). The taxpayer shall not be permitted to take

advantage of any additional sales tax or other state tax credits, exemptions, or reduced rates that would otherwise be valuable as a result of the same purchases or minimum investment, except the tax credits provided under §§ 67-4-2009(1) and (4)(A)(ii) and 67-4-2109(a)-(c). A taxpayer qualifying for this reduced rate shall also not be permitted to utilize the credits available to hospital companies under § 67-4-2009.

- (d) (1) A taxpayer seeking this credit shall first submit to the commissioner of revenue an application to qualify as a headquarters facility, together with a plan describing the investment to be made, and, if applicable, documentation verifying employment and wage information. In the case of a leased facility, the lessor shall also file an application and plan, if any taxes paid by the lessor are to be claimed as part of the credit provided in subsection (a). The application and plan shall be submitted on forms prescribed by the commissioner and shall demonstrate that the requirements of the law will be met.
- (2) After approval of the application and business plan, the commissioner shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for the credit provided for in this section.
- (3) In order to receive the credit, the taxpayer must submit a claim for credit, along with documentation as required by the commissioner showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor, in the case of a leased facility, contractors, and subcontractors on sales or use of qualified tangible personal property. Documentation verifying that the minimum investment requirements have been met shall include, but are not limited to, employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules as required by the commissioner.
- (4) The commissioner shall review the claim for credit, and notify the taxpayer of the approved tax credit amount and provide direction for taking the credit. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the amount approved and provided direction to the taxpayer on the proper methodology for taking the credit. The credit may only be taken by the taxpayer establishing the qualified headquarters facility.
- (e) If the minimum investment requirements are not made within the investment period, or the terms of this section are not met, the taxpayer shall be subject to assessment for any sales or use tax, penalty, or

interest that would otherwise have been due and for which credit was taken. The statute of limitations shall not begin to run on these assessments until December 31 of the final year of the ten-year period provided for in subdivision (b)(1).

- (f) Credits under this section shall not reduce the taxes earmarked and allocated to education, pursuant to § 67-6-103(c).
- (g) Nothing in this section shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit.

Application of Statutory Provisions

To obtain the credit provided by Tenn. Code Ann. § 67-6-224, subsection (a) requires that [THE TAXPAYER] establish a “qualified headquarters facility” in Tennessee. Tenn. Code Ann. § 67-6-224(b)(9) defines such a facility as one in which “. . . the taxpayer has made the minimum investment during the investment period.” In order to do this, [THE TAXPAYER] must satisfy the following requirements:

1. Construct a “qualified headquarters facility” in Tennessee. A “qualified headquarters facility” is defined by Tenn. Code Ann. § 67-6-224(b)(9) to mean:

“Qualified headquarters facility” means a headquarters facility where the taxpayer has made the minimum investment during the investment period[.]

Tenn. Code Ann. § 67-6-224(b)(3) defines a “headquarters facility” as follows:

“Headquarters facility” means a facility in this state that houses the international, national or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters related functions and services are performed[.]

“Headquarters related functions and services” are defined by Tenn. Code Ann. § 67-6-224(b)(4) as follows:

“Headquarters related functions and services” means those functions involving administrative, planning, research and development, marketing, personnel, legal, computer or telecommunications services performed by headquarters staff employees on an international, national, or regional basis. For purposes of this subsection (b), regional means a geographic area comprised of at least Tennessee and one (1)

or more of its contiguous states. "Headquarters related functions and services" does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center[.]

Tenn. Code Ann. § 67-6-224(b)(1) defines a "facility," as the term is used by Tenn. Code Ann. § 67-6-224(b)(3) and (9), as follows:

"Facility" means a building or buildings, either newly constructed, expanded, or remodeled, housing headquarters staff employees and located in a county, or metropolitan statistical area in this state. A facility may include parking facilities exclusively for the use of headquarters staff employees and visitors; provided, that the parking facilities are built in conjunction with the newly constructed, expanded, or remodeled building or buildings. An expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in this state. The facility must be utilized as a headquarters facility for a period of at least ten (10) years beginning from the date of substantial completion[.]

"Headquarters staff employees" are defined by Tenn. Code Ann. § 67-6-224(b)(5) as follows:

"Headquarters staff employees" means executive, administrative, or professional workers performing headquarters related functions and services. An executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise. An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations. A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study[.]

Under the facts presented, it appears that [THE TAXPAYER] will meet the statutory requirements applicable to constructing a qualified headquarters facility in Tennessee. In accordance with the requirements of Tenn. Code Ann. § 67-6-224(b)(3), the buildings constructed or renovated by [THE TAXPAYER] will house the international headquarters and will be located in a MSA in Tennessee as is required by Tenn. Code Ann. § 67-6-224(b)(1). The employees located in such buildings will meet the definition of "headquarters staff employees" set forth in Tenn. Code Ann. § 67-6-224(b)(5) and will perform "headquarters related functions" such as those described in Tenn. Code Ann. § 67-6-224(b)(4). And, as required by Tenn. Code Ann. § 67-6-224(b)(9) and further explained in item

#2 below, [THE TAXPAYER] will make the minimum investment of \$50,000,000 in its qualified headquarters facility.

Tenn. Code Ann. § 67-6-224(b)(7)(A) requires the buildings in which the minimum investment is made to be “. . . newly constructed, expanded, or remodeled[.]” BLACK’S LAW DICTIONARY 1164 (5th ed. 1979) defines the word “remodel,” among other things, to mean “. . . reconstruct, to reform, reshape, . . . to make over in a somewhat different way.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 996 (9th ed. 1991) defines the word “remodel” to mean “. . . alter the structure of. . .” or to “remake.” The word “construction” is defined by BLACK’S LAW DICTIONARY 332 (8th ed. 2004) to mean “[t]he act of building or arranging parts or elements; the thing built.” “Construct” is defined by WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 281 (9th ed. 1991) to mean “to make or form by combining or arranging parts or elements: build . . .” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 436 (9th ed. 1991) defines “expanded” to mean “extended” and “expand” is defined as to “enlarge.”

These definitions make it clear that, for purposes of the headquarters credit, a building that is constructed, renovated or expanded or that is altered structurally or aesthetically through the addition of paint, carpet, partitions, lighting or other similar improvements will be considered “remodeled,” as the term is used in the statute, and that such improvements were intended by the legislature to qualify for the minimum investment described in Tenn. Code Ann. § 67-6-224(b)(7)(A)(i) for purposes of obtaining the state sales and use tax headquarters credit.

The applicable statutes cited above do not limit a “qualified headquarters facility” to a single location. Thus, such a facility may involve locations separate from [THE TAXPAYER’s] main headquarters campus as long as all other applicable requirements of Tenn. Code Ann. § 67-6-224 are met.

2. Make the “minimum investment.” Tenn. Code Ann. § 67-6-224(b)(7)(A)(i) defines such an investment as follows:

- (i) A minimum investment by the taxpayer and lessor to the taxpayer of fifty million dollars (\$50,000,000) or more in a building or buildings, either newly constructed, expanded, or remodeled[.]

Tenn. Code Ann. § 67-6-224(b)(7)(A)(ii) describes an alternative minimum investment of a lesser amount with additional requirements. This alternative minimum investment is inapplicable to [THE TAXPAYER] because [THE TAXPAYER] plans to meet the \$50,000,000 threshold and the other requirements described in Tenn. Code Ann. § 67-6-224(b)(7)(A)(i) for purposes of obtaining the state sales and use tax headquarters credit.

The statutory provisions regarding the types of property that qualify for the minimum investment are rather broad. However there are limitations. Tenn.

Code Ann. § 67-6-224(b)(7)(B) states that the minimum investment “. . . shall not include land or inventory.” Tenn. Code Ann. § 67-6-224(b)(11) states that qualified tangible personal property does not include “. . . supplies or repair parts . . . payments with respect to leases [of tangible personal property] that extend beyond the investment period . . . [or] materials, machinery, or equipment that replaces tangible personal property that previously generated a [sales or use tax qualified headquarters facility] credit . . .”

The statute does not specifically use the terms “computer hardware,” “computer software” and “telecommunications systems” when referring to the minimum investment required by Tenn. Code Ann. § 67-6-224(b)(7). Tenn. Code Ann. § 67-6-224(b)(7)(A)(i) states that the \$50,000,000 “minimum investment” includes “. . . a building or buildings, either newly constructed, expanded or remodeled . . .” Tenn. Code Ann. § 67-6-224(b)(7)(B) states that the minimum investment “. . . may include, but is not limited to, . . . the cost of . . . equipment and Tenn. Code Ann. § 67-6-224(b)(11) states that “qualified tangible personal property” includes “. . . building materials, machinery, equipment, furniture, and fixtures used exclusively in the qualified headquarters facility and purchased or leased during the investment period[.]” However, none of the terms used in the statutes, such as “remodeled” and “machinery and equipment” are defined.

The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). In seeking to determine the “natural and ordinary meaning” of statutory language, the usual and accepted source for such information is a dictionary. *State v. Givens*, Slip op. 1994 WL406187 (Tenn.Crim.App. Aug. 4, 1994).

As previously mentioned in #1 above, BLACK’S LAW DICTIONARY 1164 (5th ed. 1979) defines the word “remodel,” among other things, to mean “. . . reconstruct, to reform, reshape, . . . to make over in a somewhat different way.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 996 (9th ed. 1991) defines the word “remodel” to mean “. . . alter the structure of. . .” or to “remake.” The word “construction” is defined by BLACK’S LAW DICTIONARY 332 (8th ed. 2004) to mean “[t]he act of building or arranging parts or elements; the thing built.” “Construct” is defined by WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 281 (9th ed. 1991) to mean “to make or form by combining or arranging parts or elements: build . . .” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 436 (9th ed. 1991) defines “expanded” to mean “extended” and “expand” is defined as to “enlarge.”

Applying these definitions, it appears that the construction, renovation, expansion or remodeling of a building, which clearly qualifies for the minimum investment

under Tenn. Code Ann. § 67-6-224(b)(7)(A)(i) would, for purposes of the headquarters credit, include a building that is constructed, renovated or expanded or that is altered structurally or aesthetically through the addition of paint, carpet, partitions, lighting or other similar improvements will be considered “remodeled” and that such improvements were intended by the legislature to qualify for the \$50,000,000 minimum investment for purposes of obtaining the state sales and use tax headquarters credit..”

BLACK’S LAW DICTIONARY 578 (8th ed. 2004) defines “equipment” to mean “[t]he articles or implements used for a specific purpose or activity (esp. a business operation).” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 421 (9th ed. 1991) defines “equipment” to mean “. . . the set of articles or physical resources serving to equip a person or thing. . . .” THE AMERICAN HERITAGE DICTIONARY 462 (2nd ed. 1982) defines “equipment” as “[s]omething with which a person, organization, or thing is equipped.” In *Tibbals Flooring Company v. Huddleston*, 891 S.W.2d 196 at 199 (Tenn. 1994), the Tennessee Supreme Court, citing *Tibbals Flooring Company v. Olsen*, 698 S.W.2d 60 (Tenn. 1985), states that “equipment” is “. . . the physical resources serving to equip a person”

Applying these definitions, it appears that “equipment”, qualifying for the required minimum investment under Tenn. Code Ann. § 67-6-224(b)(7)(B), would include computer hardware, computer software and telecommunications systems when purchased for use in the qualified headquarters facility of a business enterprise.

The facts presented show that [THE TAXPAYER] plans to make the minimum investment in a qualified headquarters facility as required by applicable statutes. Although [THE TAXPAYER] satisfied this requirement when it first qualified for the headquarters credit in [YEAR], its new investment in building construction, expansion, remodeling and renovations, and in telecommunications equipment, compute hardware and computer software in connection with its Relocation will independently satisfy the \$50,000,000 minimum investment requirement set forth in Tenn. Code Ann. § 67-6-224.

3. Make the minimum investment within the “investment period.” Tenn. Code Ann. § 67-6-224(b)(6) defines such a period as follows:

"Investment period" means that the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility. However, in no event shall the investment period exceed six (6) years[.]

[THE TAXPAYER's] investment period will begin one year prior to the start of the construction, expansion, or remodeling described in the facts presented and in

the New Application and will end one year after substantial completion of such construction, expansion, or remodeling of the facility. However, the investment period cannot exceed six (6) years[.] In order to qualify for the credit, [THE TAXPAYER] will need to make its new investment of at least \$50,000,000 described in the facts presented and in the New Application during this period. From the facts presented, it appears that [THE TAXPAYER] intends to do this.

In almost all situations, the first step in beginning a substantial construction, expansion or remodeling project will be the engagement of architectural and/or engineering services. A construction, expansion or remodeling project involving an investment in excess of \$50,000,000 cannot take place without such services and would certainly require the architects and/or engineers engaged to do substantial design work. It follows that [THE TAXPAYER's] "investment period," as the term is defined in Tenn. Code Ann. § 67-6-224(b)(6), will start one year prior to the engagement of architectural and/or engineering services for the new project described in the facts presented. The construction, expansion, renovation or remodeling of its Headquarters buildings will include design work done by the architects and/or engineers engaged in connection with the new project.

In most situations, the "substantial completion" of a construction, expansion, renovation or remodeling project involving an investment in excess of \$50,000,000 will be evidenced by the issuance of a certificate of occupancy. However, in some situations a certificate of occupancy may be issued for the completed part of a Headquarters building that still has a build-out portion to be completed. The Headquarters buildings and the qualified headquarters facility are not substantially completed until substantial completion of the remaining build-out portion of a Headquarters building. Although the delayed build-out of any portion of any building that is part of the Headquarters buildings will extend the investment period, as previously mentioned, in no case can an investment period exceed the 6 year limitation set forth in Tenn. Code Ann. § 67-6-224(b)(6).

4. Submit an application and business plan as required by Tenn. Code Ann. 67-6-224(d)(1) and (2) which make the following provisions:
 1. A taxpayer seeking this credit shall first submit to the commissioner of revenue an application to qualify as a headquarters facility, together with a plan describing the investment to be made, and, if applicable, documentation verifying employment and wage information. In the case of a leased facility, the lessor shall also file an application and plan, if any taxes paid by the lessor are to be claimed as part of the credit provided in subsection (a). The application and plan shall be submitted on forms prescribed by the commissioner and shall demonstrate that the requirements of the law will be met.

- (2) After approval of the application and business plan, the commissioner shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for the credit provided for in this section.

[THE TAXPAYER] has met this requirement by submitting the New Application with their request for this Letter Ruling. After approval of the application and business plan, Tenn. Code Ann. § 67-6-224(d)(3) and (4), set forth below, will require [THE TAXPAYER] to take two additional steps in order to actually receive the credit:

- (3) In order to receive the credit, the taxpayer must submit a claim for credit, along with documentation as required by the commissioner showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor, in the case of a leased facility, contractors, and subcontractors on sales or use of qualified tangible personal property. Documentation verifying that the minimum investment requirements have been met shall include, but are not limited to, employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules as required by the commissioner.
- (4) The commissioner shall review the claim for credit, and notify the taxpayer of the approved tax credit amount and provide direction for taking the credit. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the amount approved and provided direction to the taxpayer on the proper methodology for taking the credit. The credit may only be taken by the taxpayer establishing the qualified headquarters facility.

The requirements of Tenn. Code Ann. § 67-6-224(d)(1) through (4) may be summarized as follows:

1. On forms prescribed by the Commissioner of Revenue, [THE TAXPAYER] must submit for approval an Application to Qualify as a Headquarters Facility.
2. On forms prescribed by the Commissioner of Revenue, [THE TAXPAYER] must submit for approval a Business Plan describing the investment to be made along with documentation verifying employment information.
3. [THE TAXPAYER] must obtain a letter from the Commissioner of Revenue stating that it has tentatively met the requirements for the headquarters credit.

4. [THE TAXPAYER] must submit a claim for the headquarters credit along with documentation required by the Commissioner to show that Tennessee sales or use taxes have been paid on the qualified tangible personal property purchased in connection with its Relocation.
5. [THE TAXPAYER] must obtain a letter from the Commissioner of Revenue stating the amount of headquarters credit approved and providing direction for taking the credit.

Once the above requirements are met, the only restrictions contained in Tenn. Code Ann. § 67-6-224(d) are that the credit can be taken only by the taxpayer establishing the qualified headquarters facility and the credit cannot reduce the taxes earmarked and allocated to education pursuant to Tenn. Code Ann. § 67-6-103(c). Tenn. Code Ann. § 67-6-224(a)(1) states that “[a] taxpayer who establishes a qualified headquarters facility in this state shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.05%), on the sales or use of qualified tangible personal property.” The credit does not apply to local Tennessee sales and use taxes.

Sales and use tax qualified headquarters credits earned by [THE TAXPAYER] for building materials, machinery, equipment, furniture and fixtures meeting the definition of “qualified tangible personal property” under Tenn. Code Ann. § 67-6-224(b)(11) and used exclusively in constructing and/or remodeling a “qualified headquarters facility” defined in Tenn. Code Ann. § 67-6-224(b)(9) may be used by [THE TAXPAYER] to offset its liability for sales or use tax paid on such tangible personal property regardless of where purchased or used by [THE TAXPAYER] in Tennessee.

Tenn. Code Ann. § 67-6-224(b)(11) requires the building materials, machinery, equipment, furniture and fixtures used by [THE TAXPAYER] in the construction, expansion, renovation or remodeling of buildings to be “. . . used exclusively in the qualified headquarters facility and purchased or leased during the investment period.” In order to qualify for the headquarters credit, Tenn. Code Ann. § 67-6-224(b)(1) requires the facility to be utilized as a headquarters facility for a period of at least 10 years beginning from the date of its substantial completion.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED: Loren L. Chumley, Commissioner

DATE: 10-4-06