

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11- 06**

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 information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Eligibility requirements for the sales and use tax credit on qualified tangible personal property provided by Tenn. Code Ann. § 67-6-224 with regard to a qualified headquarters facility.

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

In [YEAR], the [TAXPAYER] established a Tennessee “qualified headquarters facility” (the “Facility”), as the term is defined in Tenn. Code Ann. § 67-6-224(b)(9). The Facility consisted of two separate locations in the [TENNESSEE CITY] metropolitan statistical area (the “MSA”). The first location is a production facility (the “Production Facility”) [REDACTED INFORMATION]. The second location is a back-up facility (the “Back-up Facility”), which [REDACTED INFORMATION]. The Production Facility and the Back-up Facility are treated as a single

location for purposes of the “qualified headquarters facility” credit provided by Tenn. Code Ann. § 67-6-224.

In [YEAR], [TAXPAYER] announced a plan to significantly increase capacity following a merger with [COMPANY X]. Under the plan, the Production Facility would handle all production for [TAXPAYER]. [REDACTED INFORMATION]. In connection with its application as a “qualified data center” (“QDC”), as the term is defined in Tenn. Code Ann. § 67-6-102(76), [TAXPAYER] announced plans to spend [DOLLAR AMOUNT – TOTAL INVESTMENTS ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] in capital improvements in Tennessee. The majority of this expenditure related to servers, computer software and other hardware (“Computer Equipment”). [TAXPAYER] also committed to create at least [NUMBER – NUMBER OF JOBS CREATED ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] new jobs in connection with the investment (“Investment 2”).

In connection with Investment 2, [COMPANY X] made capital improvements at its Production Facility including [REDACTED INFORMATION]. All administrative services, previously located at the Production Facility, were moved to office space off [HIGHWAY NAME] in [TENNESSEE CITY] (the “Administrative Facility”).

Also in connection with Investment 2, [TAXPAYER] submitted its Business Plan for Job Tax Credits and received a letter dated [DATE] from the Department tentatively approving its Business Plan for the investment period starting with the fiscal year ended [DATE]. In connection with Investment 2, [TAXPAYER] qualified for the job tax credit, the industrial machinery exemption for sales and use tax purposes pursuant to Tenn. Code Ann. §§ 67-6-206(a) and 67-6-102(42)(K)(2008 supp.), and the industrial machinery credit provided by Tenn. Code Ann. § 67-4-2009(4)(A).

[TAXPAYER]¹ was granted an industrial machinery exemption for sales tax purposes effective [DATE]. Because the Tennessee facilities are, in essence, computer centers, [TAXPAYER], has been purchasing, leasing, or licensing Computer Equipment since originally qualifying as a “headquarters facility,” as the term is defined in Tenn. Code Ann § 67-6-224(b)(3). [TAXPAYER] uses its industrial machinery exemption to make purchases of various types of Computer Equipment and lists the following examples of types of Computer Equipment that it has or will likely purchase, lease or license as part of the operation of its QDC:

1. Various types, sizes and configurations of computer servers and peripheral devices acquired in connection with support of internal operations including but not limited to business applications, human resources, financial, sales support, electronic mail, regulatory monitoring and data security;
2. Various types, sizes and configurations of mainframe computers, and computer peripheral devices acquired in connection with or part of customer financial transaction processing, monitoring and data security;

¹ This Department issued an industrial machinery exemption to [TAXPAYER], as stated in the [DATE] letter that requested this Letter Ruling.

3. Various types, sizes and configurations of personal computers, support devices, and peripheral equipment, including but not limited to, desktop computers and notebook computers;
4. Various types, sizes and configurations of routers, input/output devices necessary to support a computer network, central units, phone systems, handsets, video equipment, and teleconferencing equipment, including but not limited to related telecommunications equipment;
5. Various types, sizes and configurations of computers, computer systems and computer networking devices acquired in connection with or part of electrical power management, intrusion, theft detection, fire suppression and various other security systems;
6. Various types, sizes and configurations of printers, support devices and associated peripherals, including, but not limited to, fax machines, multi-function printers and battery and other backup facilities;
7. Associated software and procedures for all of the above, including any supporting materials or documentation; and
8. Repair parts and services, installation services, maintenance agreements, warranty or service agreements related to all of the above.

In Letter Ruling [NUMBER], the Department stated that the purchase, license or lease of computer hardware, software, maintenance, and computer related services described in the facts presented by [TAXPAYER] for use in [TAXPAYER]'s qualified data center clearly fall within the contemplation of the terms "computer network", "computer software", and "computer system", as those terms are defined by § 39-14-601, and warranty and service contracts are considered to be "industrial machinery" by Tenn. Code Ann. § 67-6-102(42)(K)[(2008 supp)].

In [YEAR] [TAXAPYER] announced plans to increase investment in one of its U.S. facilities. In connection with the new investment, [TAXPAYER], plans to invest at least [DOLLAR AMOUNT – TOTAL INVESTMENTS ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] in [REDACTED INFORMATION] required for the facility expansion. [TAXAPYER], also plans to create at least [NUMBER – NUMBER OF JOBS CREATED ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] new jobs as part of the facility expansion.

[REDACTED INFORMATION] The potential new investment is referred to hereafter as "Investment 3." If Tennessee is chosen as the site for Investment 3, [TAXPAYER] will file an application to be an expanded qualified headquarters facility with its investment period to begin effective [DATE].

The proposed expansion in connection with Investment 3 is expected to meet the statutory requirements for [TAXPAYER] to become a "qualified headquarters facility," as defined in Tenn. Code Ann. § 67-6-224(b)(9). Accordingly, [TAXPAYER] will be filing a new Business Plan and Qualified Headquarters Application and expects to be eligible for the qualified headquarters

facility credit provided by Tenn. Code Ann. § 67-6-224 on purchases of “qualified tangible personal property,” as defined in Tenn. Code Ann. § 67-6-224(b)(11), made during the investment period.

QUESTIONS PRESENTED

1. Will [TAXPAYER]’s proposed expansion of [TAXPAYER]’s Tennessee facilities be treated as a “qualified headquarters facility,” as the term is defined in Tenn. Code Ann. § 67-6-224(b)(9)?
2. Will the Production Facility, the Back-up Facility, and Administrative Offices be recognized as one business enterprise for purposes of the qualified headquarters facility credit provided by Tenn. Code Ann. § 67-6-224?
3. Will [TAXPAYER] be permitted to use its current industrial machinery exemption certificate to acquire qualifying industrial machinery free of Tennessee sales and use tax?
4. Provided that [TAXPAYER] files an application to qualify as a headquarters facility and a new business plan and both are approved by the Commissioner of Revenue, is [TAXPAYER] entitled to the sales and use tax credit authorized by Tenn. Code Ann. § 67-6-224(a), and may this credit be used to offset liability for sales and use taxes paid on tangible personal property purchased by, or used at, any [TAXPAYER] location in Tennessee, and will the Department of Revenue work with [TAXPAYER] on a managed compliance agreement as provided in Tenn. Code Ann. § 67-6-224(h)?

RULINGS

1. Yes, assuming that [TAXPAYER] meets all of the applicable requirements set forth in Tenn. Code Ann. § 67-6-224 and other applicable statutes for the expansion of a “qualified headquarters facility,” as the term is defined in Tenn. Code Ann. § 67-6-224(b)(9).
2. Yes, as long as the Production Facility, the Back-up Facility and the Administrative Offices are located in the same county or MSA of this state (See Tenn. Code Ann. § 67-6-224(b)(1)).
3. Yes, to the extent that [TAXPAYER] meets, or has already met all applicable statutory requirements for its QDC or any expansion thereof, [TAXPAYER] may continue to purchase, lease or license industrial machinery described in Tenn. Code Ann. § 67-6-102(47)(K) for its QDC. However, only purchases made for the proposed new expansion (Investment 3) will count toward the required capital investment for the expanded qualified headquarters facility. Purchases made in connection with the previous Facility creation and its subsequent expansion (Investment 2) will be treated separately and will not qualify for the new required capital investment (Investment 3).

[TAXPAYER] will need to certify the purpose and use of any purchases proposed to be counted in the new capital investment requirement and to show the Department documentation with regard to which of the qualifying expenditures were made in connection

with its prior creation of the Facility and its subsequent expansion under Investment 2 and which where made in connection with its new Investment 3.

4. Yes.

ANALYSIS

1. [TAXPAYER]'s Expansion of [TAXPAYER]'s Tennessee Facilities Will Be Treated as a "Qualified Headquarters Facility," Assuming that [TAXPAYER] Meets all Applicable Requirements Set Forth in Tenn. Code Ann. § 67-6-224 and Other Applicable Statutes

Tenn. Code Ann. § 67-6-224(b)(9) defines a "qualified headquarters facility" as follows for purposes of the sales and use tax credit provided by Tenn. Code Ann. § 67-6-224(a):

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

For this purpose, the following definitions set forth in Tenn. Code Ann. § 67-6-224(b) 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 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 ten million dollars (\$10,000,000) in a building or buildings, either newly constructed, expanded, or remodeled, along with the creation of not fewer than one hundred (100) net new full-time employee jobs created during the investment period that pay at least one hundred fifty percent (150%) of the state's average occupational wage, as defined in § 67-4-2004, for the month of January of the year in which the 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, computer software, 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[.]

The Facts presented state that [TAXPAYER], plans to invest [DOLLAR AMOUNT – TOTAL INVESTMENTS ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] in

[REDACTED INFORMATION] required for the facility expansion in connection with its new investment. In addition, at least [NUMBER – NUMBER OF JOBS CREATED ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] new jobs will be created as a result of the facility expansion.

It appears that the minimum investment dollar amount threshold set forth in Tenn. Code Ann. § 67-6-224(b)(7)(A)(i) will be met and that the expansion will take place at a facility that has previously met the applicable requirements set forth in Tenn. Code Ann. § 67-6-224 to be considered a “qualified headquarters facility,” as the term is defined in Tenn. Code Ann. § 67-6-224(b)(9). Purchases made in connection with the previous Facility creation and its subsequent expansion (Investment 2) will be treated separately and will not qualify for the new required capital investment (Investment 3).

[TAXPAYER] will need to certify the purpose and use of any purchases proposed to be counted in the new capital investment requirement and to show the Department documentation with regard to which of the qualifying expenditures were made in connection with its prior creation of the Facility and its subsequent expansion under Investment 2 and which where made in connection with its new Investment 3.

[TAXPAYER]’s proposed expansion of [TAXPAYER]’s Tennessee facilities will be treated as a “qualified headquarters facility,” as the term is defined in Tenn. Code Ann. § 67-6-224(b)(9), assuming that [TAXPAYER] can meet all of the applicable requirements set forth in Tenn. Code Ann. § 67-6-224 and other applicable statutes for the expansion of a qualified headquarters facility.

2. The Production Facility, the Back-up Facility, and the Administrative Offices Operate as a Part of the Same Enterprise and Will be Treated as a Single Location for Purposes of the Qualified Headquarters Facility Sales and Use Tax Credit Provided by Tenn. Code Ann. § 67-6-224(a)

During [YEAR], [TAXPAYER]’s predecessor filed all of the necessary applications and received approval for [TAXPAYER]’s Tennessee facilities to be classified as a qualified headquarters facility. [TAXPAYER]’s multiple locations previously qualified as a single campus for purposes of the qualified headquarters facility investment under Tenn. Code Ann. § 67-6-224(b)(1), which states that “[a]n 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.” These facilities operate within the same metropolitan statistical area and operate as a single enterprise. As such, these facilities have previously been treated as one campus for qualified headquarters facility purposes. (See Facts presented in Letter Ruling [NUMBER] issued [DATE].)

As long as the multiple facilities that comprise the qualified headquarters facility continue to be located in the same Tennessee county or MSA and comprise a single qualified business enterprise and all other applicable statutory requirements are met, the qualified headquarters facility will be eligible for the sales and use tax credit provided by Tenn. Code Ann. § 67-6-224(a).

3. [TAXPAYER] Will be Permitted to Continue to Use its Current Industrial Machinery Exemption Certificate to Purchase Qualifying Industrial Machinery Free of Tennessee Sales and Use Tax to the Extent that [TAXPAYER] Meets, or has Already Met all Applicable Statutory Requirements

The term “industrial machinery” is defined by Tenn. Code Ann. § 67-6-102(47)(K) for Tennessee sales and use tax purposes to include the following items:

“Industrial machinery” also includes any “computer”, “computer network”, “computer software”, or “computer system”, as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (47)(K), “industrial machinery” includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center[.]

Tenn. Code Ann. § 39-14-601(3), (5), (6), (7), (8), (9), (12), (15), and (20) define the terms “computer,” “computer network,” “computer program,” “computer software,” “computer system,” “data,” “input,” “output,” and “to process” as follows:

- (3) “Computer” means a device or collection of devices, including its support devices, peripheral equipment, or facilities, and the communication systems connected to it which can perform functions including, but not limited to, substantial computation, arithmetic or logical operations, information storage or retrieval operations, capable of being used with external files, one (1) or more operations which contain computer programs, electronic instructions, allows for input of data, and output data, (such operations or communications can occur with or without intervention by a human operator during the processing of a job)[.]
- (5) “Computer network” means a set of two (2) or more computer systems that transmit data over communication circuits connecting them, and input/output devices including, but not limited to, display terminals and printers, which may also be connected to telecommunication facilities[.]
- (6) “Computer Program” means an ordered set of data that are coded instructions or statements that, when executed by a computer, cause the computer to process data[.]
- (7) “Computer software” means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer system, or computer network whether imprinted or embodied in the computer in any manner or separate from it, including the supporting materials for the software and accompanying documentation[.]
- (8) “Computer system” means a set of connected devices including a computer and other devices including, but not limited to, one (1) or more of the following: data input, output,

or storage devices, data communication circuits, and operating system computer programs that make the system capable of performing data processing tasks[.]

- (9) "Data" means a representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared in a formalized manner, and is intended to be stored or processed, or is being stored or processed, or has been stored or processed in a computer, computer system, or computer network[.]
- (12) "Input" means data, facts, concepts or instructions in a form appropriate for delivery to, or interpretation or processing by, a computer[.]
- (15) "Output" means data, facts, concepts or instructions produced or retrieved by computers from computers or computer memory storage devices[.]
- (20) "To process" means to use a computer to put data through a systematic sequence of operations for the purpose of producing a specified result.

Tenn. Code Ann. § 67-6-102(76) defines a "qualified data center" as follows:

"Qualified data center" means a data center that has made a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) during an investment period not to exceed three (3) years and that creates at least twenty-five (25) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the state's average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (76), "required capital investment" means an increase of a business investment in real or tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (76), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 1/2) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (76) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision, "good cause" includes, but is not limited to, a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center[.]

A "data center" is defined by Tenn. Code Ann. § 67-6-102(24) as follows:

"Data center" means a building or buildings, newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment[.]

The purchase, license or lease of computer hardware, software, maintenance, and computer related services described in the facts presented by [TAXPAYER] for use in a facility that is a

qualified data center clearly falls within the contemplation of the terms “computer”, “computer network”, “computer software”, and “computer system”, as those terms are defined by Tenn. Code Ann. § 39-14-601. The facts presented state that [TAXPAYER] will purchase the Computer Equipment for use in its qualified data center. Assuming that all of the requirements set forth in Tenn. Code Ann. § 67-6-102(76) for the creation of a qualified data center are met, [TAXPAYER]’s purchase, license or lease of computer hardware, software, maintenance, and computer related services for use in its QDC will qualify as industrial machinery under Tenn. Code Ann. § 67-6-102(47)(K).

[TAXPAYER] received an Industrial Machinery Authorization Exemption Certificate from this Department effective [DATE] for use in connection with its QDC and has made purchases of qualifying industrial machinery for the QDC. [TAXPAYER] will now be expanding its facilities to meet the requirements of a “qualified headquarters facility,” as defined in Tenn. Code Ann. § 67-6-224(b)(9). [TAXPAYER] will continue to maintain its QDC designation in accordance with Tenn. Code Ann. §§ 67-6-102(76) and 67-6-102(24).

[TAXPAYER] may continue to use its Industrial Machinery Authorization Exemption Certificate to purchase, lease or license industrial machinery described in Tenn. Code Ann. § 67-6-102(47)(K), provided that [TAXPAYER] meets all applicable statutory requirements.

[REDACTED INFORMATION]

4. Qualified Sales and Use Tax Credits Provided by Tenn. Code Ann. § 67-6-224(a) May be Used by [TAXPAYER] to Offset its Sales and Use Taxes Paid on Tangible Personal Property Purchased By, or Used At, any [TAXPAYER] Location in Tennessee, Provided that All Applicable Statutory Requirements are Met.

Tenn. Code Ann. § 67-6-224(a) 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 (0.5%), on the sales or use of qualified tangible personal property.”

For this purpose, “qualified tangible personal property” is defined by Tenn. Code Ann. § 67-6-224(b)(11) as follows:

“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 and computer software used primarily 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.

Tenn. Code Ann. § 67-6-224(d) sets out certain compliance requirements that must be met in order for the credit provided by Tenn. Code Ann. § 67-6-224(a) to be taken. Such requirements 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 and, if applicable, documentation verifying employment and wage 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 of Revenue to show that Tennessee sales or use taxes have been paid on the qualified tangible personal property.
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 have been met, Tenn. Code Ann. § 67-6-224(d)(4) provides that the credit may be taken only by the taxpayer establishing the qualified headquarters facility. Tenn. Code Ann. § 67-6-224(f) states that the credit cannot reduce taxes earmarked and allocated to education pursuant to Tenn. Code Ann. § 67-6-103(c).

[TAXPAYER] will be filing a new Application and Investment Plan to qualify as a headquarters facility with regard to the proposed expansion described in the Facts presented and expects to meet the qualified headquarters facility requirements set forth in the applicable statutes. Upon compliance with the applicable statutory requirements in accordance with this Letter Ruling, [TAXPAYER] will be eligible for the qualified headquarters credit provided by Tenn. Code Ann. § 67-6-224(a).

Tenn. Code Ann. § 67-6-224(h)(1) states that “[t]he commissioner may, in the commissioner’s sole discretion, enter into a managed compliance agreement with a taxpayer that is entitled to the credit provided in this section.” The statute further states that such a managed compliance agreement may contain the following provisions:

- (A) One (1) or more effective rates to be applied to a predetermined base of purchases subject to the credit provided in this section for a defined period;
- (B) A procedure under which the eligible taxpayer can use a direct pay permit issued by the commissioner to purchase tangible personal property without paying to its supplier the tax imposed by this chapter and to remit the tax due on the tangible personal property directly to the department;

- (C) A term not to exceed the investment period; provided, that nothing shall preclude the commissioner from entering into a subsequent agreement with the same taxpayer;
- (D) The conditions under which the agreement may require modification or termination;
- (E) A procedure to resolve disputes concerning the agreement; and
- (F) Any other provisions that the commissioner and the eligible taxpayer mutually agree upon to carry out the purposes of this section.

A letter from this Department dated [DATE] signed by Deputy Commissioner Glen Page stated that the Department will work with [TAXPAYER] on a managed compliance agreement in accordance with Tenn. Code Ann. § 67-6-224(h) in order to enable [TAXPAYER] to streamline the process and properly capture the qualified headquarters sales and use tax credits. Such an agreement will be entered into separate and apart from this Letter Ruling.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED: _____
Richard H. Roberts, Commissioner

DATE: _____ 3-15-11 _____