

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-61**

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 Tennessee sales and use tax laws to electronic exemption and resale certificates.

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

[TAXPAYER] is a corporation that operates approximately [NUMBER] retail stores throughout the United States, including Tennessee. The Taxpayer at times makes sales to customers that are tax-exempt organizations or that are purchasing items for resale.

The Taxpayer's current procedure to document these types of transactions for sales and use tax purposes is to have the customer complete a generic paper exemption certificate or resale certificate at the register. The Taxpayer requires its customer to supply the following information when making a purchase using an exemption or resale certificate: the name and address of the organization; the registration/permit/tax exempt number; the name and title of the person making the purchase; and the driver's license and telephone numbers of such person. The customer must sign the certificate.

The Taxpayer has implemented an electronic tax exemption certificate program where all of the information obtained from the customer on a paper certificate, including the signature of the purchaser, will be captured in the system electronically. At the register, the customer will supply all the required information to the cashier, who will key the information into the system. Once keyed in, the customer will review and approve the information shown on the display of the pin pad. Then, the customer will sign the pin pad, and the signature will be captured in an electronic format.

RULINGS

1. For Tennessee sales and use tax purposes, does Tennessee accept an electronic version of an exemption certificate that includes the electronic signature of the customer?

Ruling: For Tennessee sales and use tax purposes, the Department will accept as documentation of an exempt sale an electronic version of the Streamlined Sales Tax Certificate of Exemption. Although the dealer may electronically capture the purchaser's signature, the dealer is not *required* to obtain the purchaser's signature for an electronic Streamlined Sales Tax Certificates of Exemption. The Department also permits dealers to maintain scanned copies of Tennessee exemption certificates and Streamlined Sales Tax Certificates of Exemption.

2. For Tennessee sales and use tax purposes, does Tennessee accept out-of-state exemption certificates?

Ruling: No. For Tennessee sales and use tax purposes, the Department does not accept out-of-state exemption certificates. However, the Department will accept from an out-of-state purchaser a copy of a valid exemption from federal taxation under 26 U.S.C. § 501(c)(3).

3. For Tennessee sales and use tax purposes, does Tennessee accept an electronic version of a resale certificate that includes the electronic signature of the customer?

Ruling: For Tennessee sales and use tax purposes, the Department will accept as documentation of a sale for resale an electronic version of the Streamlined Sales Tax Certificate of Exemption. Although the dealer may electronically capture the purchaser's signature, the dealer is not *required* to obtain the purchaser's signature for an electronic Streamlined Sales Tax Certificates of Exemption. The Department also allows dealers to maintain scanned copies of valid resale certificates.

4. For Tennessee sales and use tax purposes, does Tennessee accept out-of-state resale certificates?

Ruling: Yes. For Tennessee sales and use tax purposes, the Department will accept an out-of-state resale certificate.

5. For Tennessee sales and use tax purposes, does Tennessee require any information from the Taxpayer's customers for exemption and resale certificates, in addition to the information described in the Facts section, above?

Ruling: In addition to the information that the Taxpayer already requests from the customer, the Taxpayer must also obtain information regarding the customer's type of business; reason for claiming the exemption; and state of issuance of the customer's registration/permit/tax

exempt number. Such information should be recorded using the same terminology as found on the Streamlined Sales and Use Tax Certificate of Exemption.

ANALYSIS

The Tennessee Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, imposes the Tennessee sales and use tax on the retail sale of tangible personal property and certain enumerated services in Tennessee.

TENN. CODE ANN. § 67-1-113(a) (2011), which pertains to the general administration of taxes in Tennessee, requires all persons and entities subject to any tax administered by the Commissioner of Revenue to “keep and preserve suitable records from which the taxpayer and the commissioner can determine the Tennessee tax liability, if any.” TENN. CODE ANN. § 67-1-113(a) further states that “[i]f the taxpayer maintains any such records in an electronic format, the taxpayer shall comply with reasonable requests by the commissioner or the commissioner’s authorized agents to provide those electronic records in a standard record format.”¹

With respect to exempt sales in general, TENN. COMP. R. & REGS. 1320-5-1-.78(1) (1974) (“Rule 78”) provides that dealers making otherwise taxable sales to purchasers on a tax-exempt basis must obtain and keep appropriate exemption certificates. Rule 78(2) states that “all sales where an exemption has been claimed, but which are not supported by exemption certificates, will be deemed retail sales, and the dealer will be held liable” for any sales and use tax due.

With respect to sales for resale² in particular, TENN. CODE ANN. § 67-6-102(77) (2011) requires that all sales for resale be in strict compliance with the rules and regulations promulgated by the Commissioner of Revenue. As explained in further detail below, dealers are generally required to obtain from their customers documentation of exempt sales for resale. All sales for resale that are not supported by properly executed resale certificates are deemed retail sales, and the dealer will be held liable for the tax due unless an exception applies. TENN. COMP. R. & REGS. 1320-5-1-.68(2) (2008).

¹ With respect to the Tennessee sales and use tax laws in particular, TENN. CODE ANN. § 67-6-523 (2011) imposes various recordkeeping requirements on dealers in Tennessee. In particular, TENN. CODE ANN. § 67-6-523(a) requires every dealer “to keep and preserve suitable records of the sales or purchases” that are subject to the sales and use tax and “to keep and preserve, for a period of three (3) years from December 31 of the year in which the associated return required ... was filed, all invoices and other records of goods, wares and merchandise, or other subjects of taxation” under the Retailers' Sales Tax Act. TENN. CODE ANN. § 67-6-523(b) further provides that every dealer “shall secure, maintain, and keep for a period of three (3) years from December 31 of the year in which the associated return required by this chapter was filed a complete record of tangible personal property received, used, sold at retail, distributed or stored, leased, or rented within this state by the dealer, together with invoices, bills of lading, and other pertinent records and papers as may be required by the commissioner for the reasonable administration of” the sales and use tax laws. TENN. COMP. R. & REGS. 1320-5-1-.80 (1974) advises dealers to keep and preserve records relating to the determination of sales and use tax liability for six years.

² TENN. CODE ANN. § 67-6-102(78) defines a “retail sale” as any “sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” (Emphasis added.) TENN. CODE ANN. § 67-6-102(77)(A) provides that the term “resale” means “a subsequent, bona fide sale of the property, services, or taxable item by the purchaser.” A “sale for resale” is defined under TENN. CODE ANN. § 67-6-102(77)(A) as “the sale of the property, services, or taxable item intended for subsequent resale by the purchaser.”

1. Electronic copies of exemption certificates

For Tennessee sales and use tax purposes, the Department will accept as documentation of an exempt sale an electronic version of the Streamlined Sales Tax Certificate of Exemption. The Department also permits dealers to maintain scanned copies of Tennessee exemption certificates and Streamlined Sales Tax Certificates of Exemption.

TENN. CODE ANN. § 67-6-409(a)(2) (2011) provides that, when a purchaser claims an exemption, the seller “shall obtain either a copy of the purchaser’s authorization for exemption issued by the commissioner or obtain, either in paper or electronic medium, a fully completed Streamlined Sales Tax certificate of exemption³ as approved by the governing board of the Streamlined Sales and Use Tax Agreement.” The Department also allows dealers to maintain scanned copies of exemption certificates and Streamlined Sales Tax Certificates of Exemption.

Although the Taxpayer states that it electronically captures the purchaser’s signature when it accepts an electronic certificate of exemption, note that the Taxpayer is not *required* to obtain the purchaser’s signature for an electronic Streamlined Sales Tax Certificates of Exemption. TENN. CODE ANN. § 67-6-409(a)(2).

2. Out-of-state exemption certificates

For Tennessee sales and use tax purposes, the Department does not accept out-of-state exemption certificates. However, the Department will accept from an out-of-state purchaser a copy of a valid exemption from federal taxation under 26 U.S.C. § 501(c)(3).

As explained in the response to Question #1, the Department will accept as documentation of an exempt sale either an exemption certificate issued by the Commissioner of Revenue or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include a Tennessee exemption number. TENN. CODE ANN. § 67-6-409(a)(2). Additionally, pursuant to TENN. CODE ANN. § 67-6-322(e) (2011), the Department will accept from an out-of-state purchaser a copy of a valid exemption from federal taxation under 26 U.S.C. § 501(c)(3).

3. Electronic copies of resale certificates

For Tennessee sales and use tax purposes, the Department will accept as documentation of a sale for resale an electronic version of the Streamlined Sales Tax Certificate of Exemption.

TENN. CODE ANN. § 67-6-409(a)(2) provides that, when a purchaser claims an exemption, the seller “shall obtain either a copy of the purchaser’s authorization for exemption issued by the commissioner or obtain, either in paper or electronic medium, a fully completed Streamlined Sales Tax certificate of exemption as approved by the governing board of the Streamlined Sales and Use Tax Agreement.” The Department also allows dealers to maintain scanned copies of such certificates.

4. Out-of-state resale certificates

For Tennessee sales and use tax purposes, the Department will accept an out-of-state resale certificate.

³ A copy of the Streamlined Sales and Use Tax Certificate of Exemption may be obtained on the Department’s website at <http://state.tn.us/revenue/streamlined/exemptioncertificate.pdf>.

TENN. CODE ANN. § 67-6-102(77)(A) requires that all “sales for resale” be in strict compliance with the rules and regulations promulgated by the Commissioner of Revenue.

Under TENN. COMP. R. & REGS. 1320-5-1-.29(2) (1974), a dealer outside of Tennessee may purchase items or services free of sales and use tax, “provided such a dealer will furnish his vendor in this State with a valid certificate of resale showing that he is a dealer located out of this State and would be entitled to purchase such property upon a resale certificate if he were a dealer in this State.” An out-of-state resale certificate is considered a “valid certificate of resale” for purposes of this rule. An additional example of an acceptable certificate of resale is the Tennessee Sales and Use Tax Blanket Certificate of Resale, which must be completed and signed by the out-of-state purchaser.⁴ Similarly, the purchaser may instead present a fully completed Streamlined Sales and Use Tax Certificate of Exemption in lieu of a Tennessee resale certificate.⁵

Note that a dealer, regardless of location, may register in Tennessee to collect sales and use tax and use a Tennessee resale certificate. TENN. COMP. R. & REGS. 1320-5-1-.68(1) states that for Tennessee sales and use tax purposes, a dealer must obtain a certificate of resale from a purchaser in order to make an exempt sale for resale of tangible personal property or otherwise taxable services in Tennessee. This rule applies to purchasers who are “duly registered under the provisions of” the Retailers’ Sales Tax Act. There is no restriction in the rule that limits the use of Tennessee resale certificates to Tennessee purchasers only. In order to make a purchase using a Tennessee resale certificate, a dealer only need be registered for sales tax in Tennessee, not located in Tennessee.⁶

5. Information to be included on the exemption or resale certificate

In addition to the information that the Taxpayer already requests from the customer, the Taxpayer must also obtain information regarding the customer’s type of business; reason for claiming the exemption; and state of issuance of the customer’s registration/permit/tax exempt number.

The Taxpayer has indicated that it requires the customer to supply the following information when making a purchase using an exemption or resale certificate: the name and address of the organization; the registration/permit/tax exempt number; the name and title of the person making the purchase; and the driver’s license and telephone numbers of such person.

⁴ A copy of the Tennessee Sales and Use Tax Blanket Certificate of Resale may be obtained on the Department’s website at <http://state.tn.us/revenue/forms/sales/f1300701.pdf>. If the dealer is located outside Tennessee, the certificate must indicate where the dealer is registered to collect sales tax, and must include the out-of-state sales tax registration number of the purchaser.

⁵ However, with respect to transactions whereby a foreign dealer directs a Tennessee vendor to drop ship tangible personal property to a retail customer in Tennessee, the Tennessee vendor is required to collect sales and use tax from the foreign dealer. TENN. COMP. R. & REGS. 1320-5-1-.96 (1974) (“Rule 96”) provides that, except in cases where specific and satisfactory arrangements are made with the Commissioner of Revenue before sales and deliveries are made, “sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as their (the out-of-state vendor [sic]) agent to deliver or ship tangible personal property or taxable services to their (the out-of-state vendor [sic]) customer, who is a user or consumer, are subject to the Sales or Use Tax.” The in-state dealer “so acting as agent for the out-of-state vendor must collect the tax involved on the transaction” unless the alternative arrangements referenced above were made.

⁶ However, dealers having average monthly gross sales of \$400.00 or less and taxable services of \$100.00 or less may, in the discretion of the Commissioner, be required to pay tax to their suppliers on purchases in lieu of registering for sales and use tax purposes. TENN. COMP. R. & REGS. 1320-5-1-.63(4) (2000).

TENN. CODE ANN. § 67-6-409(a)(1) requires the seller to obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase in accordance with the rules and regulations promulgated by the Commissioner. Such identifying information shall include the following: name; address; type of business; reason for exemption; and a tax identification number issued by Tennessee or other governmental authority as required by the Commissioner (and information indicating which governmental authority issued the number). *Id.* As discussed above, the Taxpayer is not *required* to obtain the purchaser's signature for an electronic form of the Streamlined Sales and Use Tax Certificate of Exemption. TENN. CODE ANN. § 67-6-409(a)(2). However, the seller must obtain from the purchaser "all other information for proof of a claimed exemption regardless of the medium in which the transaction occurred." *Id.*

Thus, in addition to the information that the Taxpayer already requests from the customer, the Taxpayer must also obtain information regarding the customer's type of business; reason for claiming the exemption; and state of issuance of the customer's registration/permit/tax exempt number. Such information should be recorded using the same terminology as found on the Streamlined Sales and Use Tax Certificate of Exemption.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 10-31-11