

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #13-17**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

Exemption from the Tennessee sales and use tax of equipment and materials for the construction of a [REDACTED] facility on city-owned property in [CITY – IN TENNESSEE].

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 the taxpayer's detriment.

FACTS

[TAXPAYER] (the "Taxpayer") is a [REDACTED] licensed contractor specializing in the sale and installation of [ENERGY] systems. The Taxpayer provides [REDACTED] equipment that [REDACTED]. [REDACTED].

The Taxpayer has entered into an agreement with [CITY – IN TENNESSEE] to construct a [REDACTED] facility (the “Facility”) on city-owned property. The proposed Facility will [PRODUCE] electricity, which the [CITY – IN TENNESSEE] will use at its [REDACTED] facility.

RULING

Is the sale or use of equipment and materials by the Taxpayer or its suppliers and subcontractors for the construction or installation of the Facility for [CITY – IN TENNESSEE] exempt for purposes of the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-209(e) (2013)?

Ruling: Yes, the sale or use of equipment and materials by the Taxpayer or its suppliers and subcontractors for the construction or installation of the Facility for [CITY – IN TENNESSEE] is exempt for purposes of the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-209(e) (2013).

ANALYSIS

Under the Retailers’ Sales Tax Act,¹ the retail sale² in Tennessee of tangible personal property is subject to the sales tax,³ unless an exemption applies. The Retailer’s Sales Tax Act also imposes the use tax at the same rate as the sales tax on “the purchase price of each item or article of tangible personal property when the tangible personal property is not sold, but is used, consumed, distributed, or stored for use or consumption in this state; provided that, there shall be no duplication of the tax.”⁴

One specific application of the use tax involves what is known colloquially as the “contractors’ use tax,” which provides for a use tax in certain situations where property used by a contractor has not been subject to sales tax prior to the contractor’s use of the property.⁵

¹ Tennessee Retailers’ Sales Tax Act, ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts 22, 22-54 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2013)).

² For purposes of the Tennessee sales and use tax, “retail sale” is defined as “any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” TENN. CODE ANN. § 67-6-102(76) (2013). The term “sale” is defined in pertinent part to mean “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration.” TENN. CODE ANN. § 67-6-102(78)(A).

³ TENN. CODE ANN. § 67-6-202(a) (2013).

⁴ TENN. CODE ANN. § 67-6-203(a) (2013).

⁵ For example, TENN. CODE ANN. § 67-6-209(a) (2013) provides in part that where a “contractor erects or applies tangible personal property” that has been “manufactured, produced, compounded or severed from the earth” by the contractor, excluding certain uses regarding movement on the same job site or when used as “fill,” the contractor “shall pay the tax levied in this section on the fair market value of such tangible personal property when used.” In another example, TENN. CODE ANN. § 67-6-209(b) provides that where a contractor or subcontractor defined as a “dealer” uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract

There are, however, exemptions from the contractor's use tax. In particular, TENN. CODE ANN. § 67-6-209(e) (2013) exempts the "sale or use of materials and equipment purchased or used for construction or installation, by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant . . . owned or operated by . . . the state of Tennessee or any agency or political subdivision thereof." Additionally, the Department provides guidance in TENN. COMP. R. & REGS. 1320-5-1-.102 (1974) describing the application, limitation, and administration of the exemption.

Accordingly, tangible personal property may be exempt from the Tennessee sales and use tax if: 1) the tangible personal property consists of materials and equipment; 2) the tangible personal property is purchased or used by a contractor or subcontractor; 3) the tangible personal property is used in or as a part of an electric generating plant; and 4) the electric generating plant is owned or operated by the state of Tennessee, a state agency, or any political subdivision thereof.⁶ There is no question that the items purchased by the Taxpayer here are considered materials and equipment, and the Taxpayer has represented that it is a contractor. Consequently, this ruling will only address the third and fourth elements of the analysis.

ELECTRIC GENERATING PLANT USAGE

As stated above, the first remaining line of inquiry is whether the items the Taxpayer uses in the Facility are properly considered as used in, or used as a part of, an electric generating plant. They are properly considered as such, provided the items become a component part of the Facility.

The Taxpayer has indicated that the proposed Facility will [PRODUCE] electricity. Based on the facts provided, it appears that the Facility is properly considered an electric generating plant for purposes of the exemption under TENN. CODE ANN. § 67-6-209(e).

As noted above, the tangible personal property must be used in or as a part of the electric generating facility in question. The Tennessee Supreme Court examined this limitation on the applicability of the exemption in *Hall Contracting Corp. v. Tidwell*, 507 S.W.2d 697 (Tenn. 1974). In that case, the Court determined that, to be exempt, the tangible personal property must be used in or as part of the "plant," which it defined as:

"a. The line building, machinery, apparatus, fixtures, employed in carrying on a trade or mechanical or other industrial business.

b. A factory, workshop for the manufacture of a particular product.

obligations, "such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property."

⁶ See TENN. CODE ANN. § 67-6-209(e); TENN. COMP. R. & REGS. 1320-5-1-.102(1) (1974).

c. A piece of equipment or set of machine parts functioning together for performance of a particular operation.”⁷

The Court applied those definitions to a pipeline that supplied natural gas to an electric generating plant but that could be used to serve other natural gas customers in addition to the electric generating plant.⁸ The Court concluded that the pipeline was not “a part of an electric generating plant” for purposes of the exemption,⁹ reasoning that the ordinary meaning of “plant,” as defined above, did not encompass a fuel delivery system.¹⁰

Thus, in order to qualify for the exemption, the tangible personal property must be *used in or as a part of* the electric generating plant, such that the tangible personal property becomes component parts of the electric generating plant.¹¹ But the exemption “does not apply to any tangible personal property or taxable service which is used in the process of installing the exempt property, when such property does not become a component part of the electric generating plant or distribution system.”¹²

Here, the Taxpayer entered into an agreement to construct a [REDACTED] Facility. The Facility will be used to [PRODUCE] electricity for the city’s [REDACTED] facility. The Facility is properly considered an electric generating plant for purposes of the TENN. CODE ANN. § 67-6-209(e) exemption, and therefore all of the tangible personal property used in the Facility that becomes a component part of the facility is considered part of the Facility.

OWNERSHIP

The next remaining line of inquiry is whether the Facility is owned by a political subdivision of the state of Tennessee. The facts provided indicate that the Facility meets this requirement.

The final element in order for the sale or use of equipment and materials by the Taxpayer or its suppliers and subcontractors for the construction or installation of the Facility to be exempt is whether the Facility is owned and operated by “the state of Tennessee or any agency or political subdivision thereof.”¹³

⁷ *Hall Contracting Corp. v. Tidwell*, 507 S.W.2d 697, 698-99 (Tenn. 1974) (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY).

⁸ *Id.* at 699.

⁹ *Id.* Note that to the extent the Taxpayer’s facility parallels the facts in *Hall Contracting Corp.* in which the delivery method to the facility could be used by those other than the Taxpayer, the materials and equipment for that delivery method do not constitute part of the plant and are not properly exempt.

¹⁰ *Id.*

¹¹ TENN. COMP. R. & REGS. 1320-5-1-.102(1).

¹² TENN. COMP. R. & REGS. 1320-5-1-.102(2).

¹³ See TENN. CODE ANN. § 67-6-209(e).

Here, the Facility is owned and operated by [CITY – IN TENNESSEE], which is a political subdivision of the State of Tennessee.

Accordingly, the materials and equipment purchased by the contractors or subcontractors for the city-owned Facility fall within the exemption provided in TENN. CODE ANN. § 67-6-209(e).

Note that, in order to purchase items that are exempt pursuant to TENN. CODE ANN. § 67-6-209(e) without payment of the tax, the Taxpayer must follow the procedures set forth in TENN. COMP. R. & REGS. 1320-5-1-.102(2) (1974), which states that the contractors or subcontractors purchasing the tangible personal property used in the electric generating plant may furnish their supplier an exemption certificate for each purchase in lieu of the Sales and Use Tax on such sales.¹⁴

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: November 19, 2013

¹⁴ A copy of the exemption certificate referred to in TENN. COMP. R. & REGS. 1320-5-1-.102(2) may be found on the Department's website, available at <http://www.tennessee.gov/revenue/forms/sales/f1306701.pdf> (last visited Oct. 17, 2013).

