

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 16-09**

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

The application of the Tennessee sales and use tax to sales involving proprietary software that allows [REDACTED] to communicate with [REDACTED] through a single, web-based interface that supports text messaging, [REDACTED] messaging, and [REDACTED].

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 Tennessee [REDACTED] that, through its proprietary software, allows [REDACTED] the ability to communicate with [REDACTED] through text messaging,

[REDACTED] messaging, and [REDACTED], all through a single, web-based interface (the “Interface”).¹ The Interface includes an encrypted channel that requires authentication and allows the exchange of [REDACTED] information. The Taxpayer’s software and all messages are stored on [REDACTED],² cloud-based servers. The Taxpayer contracts with [REDACTED] for the provision of such cloud-based hosting and storage services.

[REDACTED] who communicate via text messaging send text messages to a telephone number provided by their [REDACTED]. [REDACTED]. [REDACTED], depending on the circumstances, send formatted text messages to the Taxpayer’s software, where it can be viewed by a [REDACTED] by accessing the Interface.

A [REDACTED] responds to a [REDACTED] text message by typing a message through the Interface. The Interface will route the message to [REDACTED], and [REDACTED] software will convert the message to text messaging and send to the [REDACTED] through [REDACTED].

[REDACTED] and their [REDACTED] also exchange messages through [REDACTED]. [REDACTED].

Finally, [REDACTED] and their [REDACTED] can exchange messages through [REDACTED]. [REDACTED]. When a [REDACTED] sends an [REDACTED] message to his [REDACTED], the [REDACTED] may view the message by accessing the Interface. [REDACTED] can also use the Interface to write an [REDACTED] message [REDACTED].

RULING

Are the Taxpayer’s charges for its Interface subject to Tennessee sales and use tax?

Ruling: Yes, the Taxpayer’s charges for its Interface are subject to the Tennessee sales and use tax as the sale of ancillary services, which are taxable under TENN. CODE ANN. § 67-6-205(c)(9) (2013).

ANALYSIS

The Taxpayer’s charges for its Interface are subject to the Tennessee sales and use tax as the sale of ancillary services taxable under TENN. CODE ANN. § 67-6-205(c)(9) (2013).

Under the Retailers’ Sales Tax Act,³ the retail sale in Tennessee of tangible personal property and specifically enumerated items and services is subject to the sales tax, unless an exemption applies. “Retail sale” is defined as “any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”⁴

¹ The Taxpayer has stated that at this time a [REDACTED] can only access the Interface by logging into a website. In the near future, however, the Taxpayer plans to offer a mobile app that a [REDACTED] can download.

² [REDACTED].

³ 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 & Supp. 2016)).

⁴ TENN. CODE ANN. § 67-6-102(76) (Supp. 2016).

The furnishing of “intrastate, interstate or international telecommunication services” is one such specifically enumerated service.⁵ “Telecommunications service” is defined by TENN. CODE ANN. § 67-6-102(90)(A) as the “electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points,” and includes “such transmission, conveyance or routing in which computer processing applications are used to act on the form, code, or protocol, without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communications commission as enhanced or value added.”⁶

Another specifically enumerated service that is subject to the sales and use tax is “[t]he furnishing, for a consideration, of ancillary services.”⁷ Ancillary services are “services that are associated with, or incidental to, the provision of telecommunication services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service.”⁸

The Taxpayer’s Interface allows [REDACTED] to access and respond to [REDACTED] communications from and through various mediums via one centralized web-based access point. As part of the Taxpayer’s Interface, [REDACTED] can view and respond to text messages from [REDACTED] in one web-based location. Additionally, the Taxpayer’s Interface allows [REDACTED] to receive and send messages via text messaging by [REDACTED]. Text messaging constitutes a telecommunications service as it is an “electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.”⁹

Although the Taxpayer’s Interface allows a [REDACTED] to send and receive text messages, a telecommunications service, the overarching purpose behind the services provided by the Taxpayer’s Interface is the facilitation of communication between [REDACTED] and their [REDACTED] through various mediums and is “associated with, or incidental to, the provision of telecommunication services.”¹⁰ Accordingly, the Taxpayer’s Interface is subject to the Tennessee sales and use tax as an ancillary service.

Gary Williams
Assistant General Counsel

⁵ TENN. CODE ANN. § 67-6-205(c)(3).

⁶ TENN. CODE ANN. § 67-6-102(90)(A).

⁷ TENN. CODE ANN. § 67-6-205(c)(9). The Taxpayer’s services cannot be characterized as any other type of service that is taxable under the Retailers’ Sales Tax Act. This letter ruling, therefore, does not discuss any specifically enumerated services other than ancillary services.

⁸ TENN. CODE ANN. § 67-6-102(7).

⁹ See TENN. CODE ANN. § 67-6-102(90)(A).

¹⁰ See TENN. CODE ANN. § 67-6-102(7).

APPROVED:

Richard H. Roberts
Commissioner of Revenue

DATE:

November 10, 2016