

TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 17-10

**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**

Sales and use tax exemption 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 the taxpayer's detriment.

**FACTS**

[REDACTED] (the "Taxpayer") [REDACTED – TAXPAYER SELLS ELECTRICITY].

The Taxpayer services a diverse base of customers that includes manufacturers seeking to purchase electricity at a reduced rate or exempt from sales and use tax and pursuant to TENN. CODE ANN. § 67-6-206 (2013) and various not-for-profit entities seeking to purchase electricity exempt from the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-322 (2013). The Taxpayer's customers

may have multiple meters at one premise location, where buildings span over several city blocks, or they may have more than one location within the Taxpayer's service territory.

### RULINGS

1. Are the Taxpayer's customers that are manufacturers seeking to purchase electricity at the reduced rate or exempt from Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-206(b) required to present separate certificates of exemption for each separate location?

Ruling: The Taxpayer's customers that are manufacturers must present separate exemption certificates for each manufacturing location. If one manufacturing location consists of various buildings, it is only necessary for the manufacturer to obtain and present one exemption certificate listing the physical address of the main building.

2. Are the Taxpayer's not-for-profit customers seeking exemption from Tennessee sales and use tax under TENN. CODE ANN. § 67-6-322 required to present separate exemption certificates for each location within Tennessee?

Ruling: The Taxpayer's not-for-profit customers seeking exemption from sales and use tax under TENN. CODE ANN. § 67-6-322 must present separate certificates of exemption for each location. A not-for-profit customer that operates a single site or campus with buildings spanning over multiple streets is only required to obtain and present one certificate of exemption listing the physical address of its main office.

### ANALYSIS

Under the Retailers' Sales Tax Act,<sup>1</sup> the retail sale in Tennessee of tangible personal property and specifically enumerated 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."<sup>2</sup> Tangible personal property includes energy producing fuels such as electricity.<sup>3</sup>

The Taxpayer indicates that it has non-residential customers that are manufacturers seeking to purchase electricity at the reduced rate as well as manufacturers seeking complete exemption from sales and use tax on their purchases. It also has customers that are not-for-profit entities seeking to purchase electricity exempt from the sales and use tax.

TENN. CODE ANN. § 67-6-409 (2013) generally sets forth the requirements for claiming an exemption for sales and use tax. It provides that sellers are required 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," including the purchaser's "name,

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

<sup>2</sup> TENN. CODE ANN. § 67-6-102(76) (Supp. 2016).

<sup>3</sup> TENN. CODE ANN. § 67-6-102 (89)(A).

address, type of business, reason for exemption, and a tax identification number issued by Tennessee or other governmental authority as required by the commissioner.”<sup>4</sup>

### *Manufacturers*

TENN. CODE ANN. § 67-6-206(b) (Supp. 2016) authorizes manufacturers<sup>5</sup> to purchase gas, electricity, fuel oil, coal and other energy fuels at a reduced sales and use tax rate and in certain circumstances to purchase such substances entirely exempt from sales and use tax.

TENN. CODE ANN. § 67-6-206(b)(1) imposes a one and one half percent (1.5%) sales and use tax rate on a manufacturer’s purchase and use of such substances. TENN. COMP. R & REGS. 1320-05-01-.15(2) (1983) states, “a manufacturer whose principal business at a specified location is fabricating or processing tangible personal property for resale and for ultimate use or consumption off his premises may apply to the Commissioner and be authorized to purchase energy fuel and water for use at that location at such reduced rate as authorized by law.” The manufacturer must furnish a copy of the authorization to the vendor of the energy fuel.<sup>6</sup>

A manufacturer’s purchase or use of energy fuel is entirely exempt from sales and use tax in certain circumstances as set forth in TENN. CODE ANN. § 67-6-206(b)(3 and 5). A manufacturer can purchase or use energy fuels completely exempt from sales and use tax by establishing, “by separate metering or otherwise, they [the substances] are exclusively used directly in the manufacturing process, coming in direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of the contract.”<sup>7</sup> Moreover, a manufacturer may purchase or use electricity exempt from sales and use tax if it uses the electricity to generate radiant heat for the production of heat-treated glass.<sup>8</sup>

With regard to both the reduced rate for energy fuels and the exemption from sales and use tax for water and energy fuels, a manufacturer is required to submit the Application for Industrial Machinery Energy Fuels and Water Sales and Use Tax Exemption for “each place engaged in manufacturing or processing tangible personal property for sale.”<sup>9</sup> This application requires that a manufacturer list both its mailing address and the facility location where it uses the energy fuels. The Manufacturing and Processing Industrial Machinery, Energy Fuels and Water Sales and Use Tax Certificate of Exemption issued by the Department that a manufacturer presents to the seller lists both the manufacturer’s mailing address and the facility address for the specific manufacturing

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<sup>4</sup> TENN. CODE ANN. § 67-6-409(a) (Supp. 2016).

<sup>5</sup> For this purpose, a manufacturer is defined as “one whose principal business is fabricating or processing tangible personal property for resale.” TENN. CODE ANN. § 67-6-206(b)(2) (2013).

<sup>6</sup> TENN. COMP. R. & REGS. 1320-05-01-.15(2) (1983). The Application for Industrial Machinery Energy Fuels and Water Sales and Use Tax Exemption is available on the Department’s website at <http://tn.gov/assets/entities/revenue/attachments/f1303101fillin.pdf>.

<sup>7</sup> TENN. CODE ANN. § 67-6-206(b)(3).

<sup>8</sup> TENN. CODE ANN. § 67-6-206(b)(5).

<sup>9</sup> TENN. COMP. R. & REGS. 1320-05-01-.15(4) (1983).

location qualifying for the reduced rate or the exemption.<sup>10</sup> A manufacturer qualifying for exemption for sales and use tax must present to its supplier an exemption certificate issued by the Department or a fully completed Streamlined Sales Tax certificate of exemption that includes the manufacturer's exemption authorization number.<sup>11</sup>

Therefore, the Taxpayer's customers seeking to purchase electricity at a reduced rate or exempt from Tennessee sales and use tax must present to the Taxpayer a Manufacturing and Processing Industrial Machinery, Energy Fuels and Water Sales and Use Tax Certificate of Exemption for each manufacturing location. If a manufacturing location consists of various buildings, it is only necessary for the manufacturer to obtain and present one exemption certificate listing the physical address of the main building.

### *Not-for-Profit Entities*

Not-for-profit entities are authorized make purchases exempt from the sales and use tax pursuant to TENN. CODE ANN. § 67-6-322 (2013). TENN. CODE ANN. § 67-6-322(a) provides for an exemption for "any sales or use tax upon tangible personal property, computer software, or taxable services sold, given, or donated" to any religious, charitable, and educational organizations. Such organization must obtain an exemption certificate issued by the Commissioner of Revenue.<sup>12</sup>

With regard to exempt organizations or institutions seeking exemption from sales and use tax, a qualifying entity is required to submit to the Department an Application for Exempt Organizations or Institutions Sales and Use Tax Exemption.<sup>13</sup> The Exempt Organizations or Institutions Sales and Use Tax Certificate of Exemption issued by the Department lists both the entity's mailing address and the physical location address of the location claiming the exemption.<sup>14</sup> Once a qualifying organization has been issued an exemption certificate, it may make purchases of tangible personal property and taxable services exempt from the sales and use tax by presenting the dealer from which it makes a purchase a copy of the exemption certificate or a fully completed Streamlined Sales Tax certificate of exemption.<sup>15</sup>

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<sup>10</sup> If a manufacturer purchases energy fuels exempt from tax pursuant to TENN. CODE ANN. § 67-6-206(c)(3), it must keep records through separate metering or otherwise that the substances used "are exclusively used directly in the manufacturing process, coming in direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of the contract."

The Department does not issue exemption certificates for water and energy fuels according to specific utility meter. If the Taxpayer receives an exemption certificate from a customer that does not list a physical location address but rather a post office box or a meter number, the Taxpayer should ask its customer to contact the Department to request a new exemption certificate.

<sup>11</sup> TENN. CODE ANN. § 67-6-206(b)(3, 5).

<sup>12</sup> TENN. CODE ANN. § 67-6-322(e) (2013).

<sup>13</sup> *Id.* The Application for Exempt Organizations or Institutions Sales and Use Tax Exemption is available on the Department's website at <http://tn.gov/assets/entities/revenue/attachments/f1306901.pdf>.

<sup>14</sup> The Department does not issue exemption certificates to exempt organizations or institutions according to specific utility meter regardless of whether the organization has buildings that span over multiple streets.

<sup>15</sup> TENN. CODE ANN. § 67-6-322(e).

Therefore, the Taxpayer's not-for-profit customer that has multiple locations in Tennessee should present to the Taxpayer separate certificates of exemption for each location to make purchases exempt from Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-322. If such customer operates one site or campus that has buildings that span multiple streets, it is only necessary for it to present one certificate of exemption to the Taxpayer listing the physical address of its main office.

Jennifer Wilson  
Senior Tax Counsel

APPROVED: David Gerregano  
Commissioner of Revenue

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