

TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 19-01

Revenue rulings are not binding on the Department. 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 Tennessee sales and use tax to a company that facilitates the sales of event tickets through its online platform.¹

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

The Company (the "Taxpayer") provides an online event creation and organization service that connects [THIRD PARTIES] seeking to market events (the ["USERS"]) with individuals interested in attending the events (the "Buyers"). [USERS] can create, promote, and manage events by using one of the Taxpayer's service packages (collectively, the "Service Packages"). The Taxpayer delivers its services through a web-based interface.

The Basic Service Package includes publication of an event on the Taxpayer's website, event promotion, event management, and organizational services. [A USER] choosing the Basic Service Package can create and edit their event online, and input the following information: the title of the event; the type of event; the date, time, and location of the event; the ticket price; and the [USER'S] name.

The Basic Service Package also allows [USERS] to view basic information regarding ticket sales. [USERS] pay the Taxpayer a fee [REDACTED] for each ticket sold through the Taxpayer's website. There is no charge for [USERS] to use the Basic Service Package to host free events.

The Advanced Service Package provides [USERS] with all services included in the Basic Service Package, plus the following: the option to have multiple ticket types such as general admission and

¹ This ruling only applies to services involving ticket sales and payment processing. To the extent the Taxpayer offers other services or sales of tangible personal property, those services and/or sales of tangible personal property are not addressed in this ruling.

VIP tickets; additional promotional activity, customer support, and sales analytics tools. [USERS] pay the Taxpayer a fee [REDACTED] for each ticket sold through the Taxpayer's website. There is no charge for [USERS] to use the Advanced Service Package to host free events.

The Taxpayer also offers a Payment Processing Service for an additional fee per transaction (the "Payment Processing Fee"). When [A USER] uses the Taxpayer's Payment Processing Service, a third-party payment processing partner collects all revenue from ticket sales (including any associated fees). The payment processing partner subtracts the amount that it is owed and the amount owed to the Taxpayer, and remits the remaining amount to the [USERS]. The payment processing partner separately remits to the Taxpayer the amount due for the Taxpayer's fees.

[USERS] may select their own third-party payment processor instead of using the Taxpayer's Payment Processing Service. When [A USER] chooses this option, the Taxpayer invoices the [USER] on a monthly basis for all fees due.

[USERS] pay all fees for both service packages (the "Service Package Fees") directly to the Taxpayer. In some cases, [USERS] may choose to recoup the Service Package Fees by passing them along to Buyers. If [A USER] chooses to pass along the cost of the Service Package Fees, the [USER] does so by charging an additional fee to the Buyers at the time of sale. Similarly, [USERS] may also choose to pass Payment Processing Fees along to Buyers at the time of sale.

RULINGS

1. Are the Taxpayer's Service Packages and Payment Processing Services subject to Tennessee sales and use tax?

Ruling: No. The Taxpayer's Service Packages and Payment Processing Services are not subject to Tennessee sales and use tax. Although the Taxpayer's Service Packages and Payment Processing Services involve the use of remotely accessed computer software, the true object of the Service Packages is the provision of nontaxable event platform and listing services. Additionally, TENN. CODE ANN. § 231(b) provides that Payment Processing Services are not taxable.

2. Are the Taxpayer's Service Package Fees and Payment Processing Fees subject to the Tennessee sales tax when such fees are passed along to the Buyer as part of the sales price of a ticket?

Ruling: Yes. If the ticket is subject to sales tax, the Service Package Fees and Payment Processing Fees that are passed along to the Buyer are included in the sales price of the ticket. The entire sales price is subject to Tennessee sales tax.

3. Is the Taxpayer liable for collection and remittance of Tennessee sales and use tax on tickets sold through its website?

Ruling: No. When the Taxpayer collects money for [A USER'S] ticket sales, it is acting on behalf of a disclosed seller, and as such, is not liable for the collection and remittance of Tennessee sales and use tax pursuant to TENN. COMP. R. & REGS. 1320-05-01-.01 (1974).

ANALYSIS

TAXATION OF SOFTWARE AND SERVICES

A. BACKGROUND

Under the Retailers' Sales Tax Act,² the retail sale or use of tangible personal property and specifically enumerated services are subject to the sales and use 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."³

TENN. CODE ANN. § 67-6-102(78)(A) (2018) defines "sale," 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." "Tangible personal property" includes "property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses."⁴ Tangible personal property also includes "prewritten computer software," which is defined in TENN. CODE ANN. § 67-6-102(68) in pertinent part as "computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser."⁵

In addition to the transfer of tangible personal property, the term "sale" also includes "the furnishing of any of the things or services" taxable under the Retailers' Sales Tax Act.⁶ One of the "things" specifically taxable is:

[t]he retail sale, lease, licensing or use of computer software in this state, including prewritten and custom computer software . . . regardless of whether the software is delivered electronically, delivered by use of tangible storage media, loaded or programmed into a computer, created on the premises of the consumer or otherwise provided.⁷

² 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 (2018)).

³ TENN. CODE ANN. § 67-6-102(76) (2018).

⁴ TENN. CODE ANN. § 67-6-102(89)(A).

⁵ TENN. CODE ANN. § 67-6-102(68) further provides that "[p]rewritten computer software' or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software." Note, however, that "where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software."

⁶ TENN. CODE ANN. § 67-6-102(78)(C).

⁷ TENN. CODE ANN. § 67-6-231(a) (2018). The term "sale" specifically includes the transfer of computer software, including the creation of computer software on the premises of the consumer and any programming, transferring, or loading of computer software onto a computer. TENN. CODE ANN. § 67-6-102(78)(K).

“Computer software” is “a set of coded instructions designed to cause a computer . . . to perform a task.”⁸ Computer software is “delivered electronically” if delivered “by means other than tangible storage media.”⁹ The Tennessee Supreme Court has stated that the fabrication of, or customized modification or enhancement to, computer software is considered a taxable sale of computer software.¹⁰

Additionally, the term “sale” specifically includes the transfer of computer software, including the creation of computer software on the premises of the consumer and any programming, transferring, or loading of computer software onto a computer.¹¹

In response to advances in technology that allow the remote access and use of software over the Internet, the Tennessee General Assembly adopted into law 2015 Tenn. Pub. Acts Ch. 514, § 22. This law effectively treats all uses of computer software in this state equally, regardless of how a person accesses the software. It amended TENN. CODE ANN. § 67-6-231 to include a new subdivision (b), which states in pertinent part that:

[f]or purposes of subdivision (a), “use of computer software” includes the access and use of software that remains in the possession of the dealer who provides the software or in the possession of a third party on behalf of such dealer. If the customer accesses the software from a location in this state as indicated by the residential street address or the primary business address of the customer, such access shall be deemed equivalent to the sale of licensing of the software and electronic delivery of the software for use in the state.¹²

As a result, effective for all billing periods beginning on or after July 1, 2015, the access and use of computer software in this state, which has generally been subject to tax since 1977,¹³ remains subject to sales and use tax regardless of a customer’s chosen method of use.

The sales tax also applies to retail sales of services specifically enumerated in the Retailers’ Sales Tax Act.¹⁴ However, the application of the sales tax to retail sales of services in Tennessee remains unaffected by the enactment of 2015 Tenn. Pub. Acts Ch. 514, § 22. The sales tax remains applicable only to those services specifically enumerated in the Retailers’ Sales Tax Act. As reassurance of this

⁸ TENN. CODE ANN. § 67-6-102(18).

⁹ TENN. CODE ANN. § 67-6-102(24).

¹⁰ See *Creasy Sys. Consultants, Inc. v. Olsen*, 716 S.W.2d 35, 36 (Tenn. 1986).

¹¹ TENN. CODE ANN. § 67-6-102(78)(K).

¹² 2015 Tenn. Pub. Acts Ch. 514, § 22 (codified at TENN. CODE ANN. § 67-6-231(b) (2018)).

¹³ The General Assembly amended the definition of “tangible personal property” in 1977 to specifically include computer software in response to the Tennessee Supreme Court’s holding to the contrary in *Commerce Union Bank*, 538 S.W.2d 405, 408. 1977 Tenn. Pub. Acts Ch. 42 (defining “tangible personal property” to include computer software); see also *Univ. Computing Co. v. Olsen*, 677 S.W.2d 445, 447 (Tenn. 1984) (detailing the General Assembly’s actions taken to subject computer software to sales and use tax).

¹⁴ See TENN. CODE ANN. § 67-6-205(c) (2018).

fact, the General Assembly included language in Section 22 stating that nothing in the new subdivision (b) of TENN. CODE ANN. § 67-6-231:

shall be construed to impose a tax on any services that are not currently subject to tax under this chapter, such as, but not limited to, information or data processing services, including the capability of the customer to analyze such information or data provided by the dealer; payment or transaction processing services; payroll processing services; billing and collection services; internet access; the storage of data, digital codes, or computer software; or the service of converting, managing, and distributing digital products.¹⁵

Therefore, while TENN. CODE ANN. § 67-6-231(b) (2018) modernizes taxation of computer software in this state, it has no effect on the taxation of services.

Additionally, whenever two or more items are sold for a single sales price and at least one of the items is subject to sales tax, the entire sales price is subject to sales tax as a bundled transaction.¹⁶ When a transaction involves taxable and nontaxable components and the transaction's true object or a "crucial,"¹⁷ "essential,"¹⁸ "necessary,"¹⁹ "consequential,"²⁰ or "integral"²¹ element of the transaction is subject to tax, the entire transaction is subject to sales tax.²² Only if the true object of the transaction is not independently subject to sales tax and the items that would be subject to sales tax are "merely incidental" to the true object of the transaction will the transaction not be subject to sales tax.²³

¹⁵ 2015 Tenn. Pub. Acts Ch. 514, § 22 (codified at TENN. CODE ANN. § 67-6-231(b) (2018)).

¹⁶ See generally Tenn. Dept. of Rev. Ltr. Rul. 14-10 (Oct. 14, 2014) [hereinafter "Ltr. Rul. 14-10"] (discussing Tennessee law regarding bundling and the "true object" test).

¹⁷ See, e.g., *Thomas Nelson, Inc. v. Olsen*, 723 S.W.2d 621, 624 (Tenn. 1987) (holding that a transaction involving the sale of nontaxable intangible advertising concepts was nevertheless subject to sales tax on the entire amount of the transaction because advertising models, which were tangible personal property, were an "essential," "crucial," and "necessary" element of the transaction).

¹⁸ *Id.*; see also *AT&T Corp. v. Johnson*, No. M2000-01407-COA-R3-CV, 2002 WL 31247083, at *9 (Tenn. Ct. App. Oct. 8, 2002) (holding that a transaction involving the sale of engineering services along with separately itemized tangible telecommunications systems was subject to sales tax on the entire amount of the contract because "equipment, engineering, and installation combine in this instance to produce BellSouth's desired result: a functioning item of tangible personal property assembled on the customer's premises," and further describing the engineering services as "essential" and "integral" to the sale of tangible personal property).

¹⁹ See *supra* note 17.

²⁰ See *Rivergate Toyota, Inc. v. Huddleston*, No. 01A01-9602-CH-00053, 1998 WL 83720, at *4 (Tenn. Ct. App. Feb. 27, 1998) (holding that a transaction involving the commission and distribution of advertising brochures was subject to sales tax on the "entire cost of the transaction" because, although the transaction involved a number of services, the brochures themselves "were not inconsequential elements of the transaction but, in fact, were the sole purpose of the contract").

²¹ See *AT&T Corp. v. Johnson*, 2002 WL 31247083, at *8.

²² See generally Ltr. Rul. No. 14-10, *supra* note 16.

²³ See generally *id.*

B. APPLICATION TO THE TAXPAYER

Service Package Fees

With respect to the taxable use of computer software in this state that remains in possession of the dealer, TENN. CODE ANN. § 67-6-231(b) requires the access and use of the computer software by a customer from a location within Tennessee. However, TENN. CODE ANN. § 67-6-231(b) clarifies that the application of the sales and use tax to remotely accessed software does not make otherwise nontaxable services subject to tax. TENN. CODE ANN. § 67-6-231(b) specifically states that “information or data processing services,” and “the storage of data,” remain nontaxable for Tennessee sales and use tax purposes.²⁴

Here, as part of its Service Packages, the Taxpayer provides [USERS] with web-based access to its online platform so they can market and sell tickets to events. Although this constitutes access to computer software for Tennessee sales and use tax purposes,²⁵ and some of the [USERS] use the software from locations within Tennessee, [A USER'S] use of the software is merely incidental to the true object of the Taxpayer's Service Packages. [USERS] do not purchase the Taxpayer's Service Packages to gain access to the Taxpayer's software; rather, [USERS] do business with the Taxpayer for its online event platform and listing services.

With respect to the sale of services in Tennessee, only specifically enumerated services are subject to tax under the Retailers' Sales Tax Act. The Taxpayer's event creation and organization services, which are the true object of the Taxpayer's Service Packages, are not specifically enumerated in TENN. CODE ANN. § 67-6-205 (2018). Accordingly, the Taxpayer's event platform and listing services are not subject to Tennessee sales and use tax.²⁶

Payment Processing Fees

As noted above, TENN. CODE ANN. § 67-6-231(b) clarifies that the application of the sales and use tax to remotely accessed software does not make otherwise nontaxable services subject to tax. TENN. CODE ANN. § 67-6-231(b) specifically states “payment or transaction processing services” remain nontaxable for Tennessee sales and use tax purposes.²⁷ Accordingly, the Taxpayer's Payment Processing Services are also not subject to Tennessee sales and use tax.

TAXABILITY OF TICKET SALES

As noted above, TENN. CODE ANN. § 67-6-102(78)(A) (2018) defines “sale,” in pertinent part, to mean “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or

²⁴ TENN. CODE ANN. § 67-6-231(b).

²⁵ See TENN. CODE ANN. § 67-6-102(18).

²⁶ The Taxpayer has stated that its Advanced Service Package includes sales analytics tools. There is an exception in the remote software provision for marketing analytics services. TENN. CODE ANN. § 67-6-231(b). This ruling does not address this issue because of the determination that the Service Packages in general are not taxable as remote access software.

²⁷ TENN. CODE ANN. § 67-6-231(b).

otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration." "Sale" includes charges for admission, dues, or fees, except for sales of tickets legally purchased for resale.²⁸

Tennessee imposes a sales tax on the "sales price" of "[s]ales of tickets, fees or other charges made for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities."²⁹ "Sales price" is the "total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction" for charges by the seller for any services necessary to complete the sale.³⁰

Although TENN. CODE ANN. § 67-6-330(a) (2018) exempts from the sales tax on amusements certain transactions that are otherwise taxable as "amusements" under TENN. CODE ANN. § 67-6-212 (2018), none of the listed exemptions applies to taxable ticket sales made through the Taxpayer's online platform. Therefore, the sales price of the ticket for admission to places of amusements, sports, entertainment, exhibition, display, or other recreational events or activities in this state, including any fees passed along to the Buyer, will be subject to Tennessee sales tax, whether the fees are separately stated or not.

REPORTING AND REMITTING SALES AND USE TAX

The sales tax is collected from dealers.³¹ "Dealer" is defined under TENN. CODE ANN. § 67-6-102(23)(C) to include any person who offers for sale at retail, or who has in such person's possession for sale at retail," tangible personal property in this state, and under TENN. CODE ANN. § 67-6-102(23)(L) to include any person who "[s]ells at retail, or charges admission, dues or fees." Every such person "making sales, whether within or outside the state, of tangible personal property, for distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter" is liable for the collection and remittance of sales and use tax.³²

Notwithstanding the foregoing, a dealer may not be liable for the sales tax when it is acting on behalf of a disclosed third party. TENN. COMP. R. & REGS. 1320-05-01-.01 (1974) ("Rule 1") instructs that sales by a factor, auctioneer, or agent "entrusted with possession of . . . property for the purpose of sale" and "acting for a known or disclosed principal" are taxable to the principal, not the seller.

Here, [USERS] use the Taxpayer's website to promote events and sell tickets to Buyers. [USERS] may complete the sale of tickets through a third-party payment processor or through the Taxpayer's Payment Processing Service. When [A USER] uses the Taxpayer's Payment Processing Service, the Taxpayer collects all revenue from ticket sales (including any associated fees) from its payment processing partners, subtracts the amount it is owed, and remits the remaining amount to the

²⁸ TENN. CODE ANN. § 67-6-102(78)(G).

²⁹ TENN. CODE ANN. § 67-6-212(a)(2) (2018).

³⁰ TENN. CODE ANN. § 67-6-102(79)(A).

³¹ TENN. CODE ANN. § 67-6-501(b) (2018).

³² TENN. CODE ANN. § 67-6-501(a).

