

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 19-06

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 the sale and installation of modular cleanrooms.

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") specializes in the design, manufacturing, installation, and services associated with modular cleanrooms for their [REDACTED] customers. The Taxpayer advertises its cleanroom as a removable self-contained space to be installed within a larger space. The purpose of a cleanroom is to create an environment that is free from outside contaminants and where dust or particles are kept to a minimum.

The Taxpayer fabricates the component parts, such as walls and ceilings, off-site and then delivers and installs them at the end user's facility. Installation begins with the ceiling system that consists primarily of [REDACTED] ceiling panels. The [CEILING] panels are fabricated with [REDACTED] that locks into adjacent panels with a removable [REDACTED] spline. The ceiling panels are supported by [REDACTED] beams that are supported from the existing structure above with removable [REDACTED] hardware. After the ceiling is installed, a removable and adjustable floor track is attached to a [REDACTED] floor [REDACTED]. Once the floor track is installed, [REDACTED] [WALL] panels are installed on top of the floor track with removable [REDACTED] spline. Wall panels are progressively installed with windows and doors also being installed with removable spline. When the architectural component installation is complete, all wall and ceiling panels are treated with a [REDACTED] gap filler¹ to ensure all seams are airtight.

To remove or relocate a cleanroom, the steps are essentially performed in reverse. The [REDACTED] gap filler is [REMOVED] and all components are systematically removed and either stacked or bundled for transport to the new location.

The Taxpayer's intent is to treat a cleanroom as a type of equipment. The cleanroom is designed and installed with the intention that it may be removed or relocated without causing permanent damage to the surrounding realty.

RULING

Is the sale and installation of a modular cleanroom subject to the Tennessee sales and use tax?

Ruling: Yes. The sale and installation of a modular cleanroom is subject to the Tennessee sales and use tax because the cleanroom remains tangible personal property after installation.

ANALYSIS

Under the Retailers' Sales Tax Act,² the retail sale in Tennessee of tangible personal property and specifically enumerated services is subject to the sales tax, unless an exemption applies.³ One specifically enumerated service taxable at retail is the installing of "tangible personal property that remains tangible personal property after installation . . . where a charge is made for the installation."⁴

Thus, the sale and installation of a cleanroom will be subject to the Tennessee sales and use tax if the cleanroom remains tangible personal property following installation. If, on the other hand, the

¹ The [REDACTED] gap filler is [REDACTED].

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 "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) (2018). TENN. CODE ANN. § 67-6-102(78)(A) 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."

⁴ TENN. CODE ANN. § 67-6-205(c)(6) (2018). "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." TENN. CODE ANN. § 67-6-102(89)(A).

cleanroom becomes affixed to realty upon installation, the sale and installation of the cleanroom will not be subject to the Tennessee sales and use tax.⁵

The issue of whether an item of tangible personal property becomes part of realty depends upon the application of the law of fixtures to the particular factual circumstances. The Tennessee Supreme Court has held that the question of when an item is considered a fixture must be resolved by ascertaining the intent of the parties.⁶ The court has explained that “only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold.”⁷

Therefore, if the property is intended to be removable at the pleasure of the owner, it is not a fixture.⁸ Both objective and subjective factors may show such intent.⁹ Objective factors include the type of structure, the mode of attachment, and the use and purpose of the property.¹⁰ The subjective factor is the expressed intent, if any, of the parties.¹¹

Courts have also found that tangible personal property becomes a part of realty if removing the personalty would seriously damage the building to which it is affixed.¹² Further, courts have held that tangible personal property is more akin to a fixture if removal would destroy its essential character as personalty.¹³

For example, the Tennessee Supreme Court in *Harry J. Whelchel Co.* looked at both the stated intent of the farmers, as well as the objective factors noted above, and reached the conclusion that the grain bins at issue were personalty.¹⁴ Although the bins were large in size and bolted to a concrete base, the court found that they were attached to the concrete base solely for the purpose of preventing them from blowing over in a high wind when empty.¹⁵ Additionally, the bins were financed as personal

⁵ However, the Taxpayer would be liable for use tax with respect to all tangible personal property used in the performance of its contract, unless the Taxpayer had already paid sales and use tax on the purchase of such items. See TENN. CODE ANN. § 67-6-209(b) (2018); TENN. COMP. R. & REGS. 1320-5-1-.27(2) (2016).

⁶ *Gen. Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241, 242-243 (Tenn. 1974).

⁷ *Magnavox Consumer Elects. v. King*, 707 S.W.2d 504, 507 (Tenn. 1986) (quoting *Hickman v. Booth*, 173 S.W.438 (Tenn. 1914)).

⁸ *Id.*

⁹ *Hubbard v. Hardeman Cnty. Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993).

¹⁰ *Harry J. Whelchel Co. v. King*, 610 S.W.2d 710, 713-714 (Tenn. 1980).

¹¹ *Id.*

¹² See *Process Sys., Inc. v. Huddleston*, No. 101801-I, 1996 WL 614526, at *3 (Tenn. Ct. App. Oct. 25, 1996) (citing *Memphis Hous. Auth. v. Memphis Steam Laundry-Cleaner, Inc.*, 463 S.W.2d 677, 679 (Tenn. 1971)).

¹³ See *id.* (finding that conveyor system's essential character would be destroyed upon removal, which required cutting system components into pieces with an acetylene torch) (citing *Green v. Harper*, 700 S.W.2d 565, 567 (Tenn. Ct. App. 1985)).

¹⁴ 610 S.W.2d at 714.

¹⁵ *Id.*

property, sold at foreclosure as personal property, and installed by lessees on leased farms.¹⁶ Likewise, the Tennessee Court of Appeals in *Keenan* found that a large ornamental gate remained personalty despite having a substantial concrete foundation poured for its support that would leave craters were it removed.¹⁷ The court lent greater significance to the person's stated intention that the gate would be moveable and that it was designed so as to be moveable if necessary.¹⁸

On somewhat different facts, the Tennessee Court of Appeals in *Hubbard* reached a similar conclusion in holding that two one-story branch bank buildings were personal property.¹⁹ It based its ruling on the facts that the leased buildings were constructed to be portable, such that they could be moved or sold as market conditions or need for the buildings changed, and that the leases expressly provided that the buildings were not to become fixtures.²⁰

In contrast, the Tennessee Supreme Court in *General Carpet Contractors* examined carpet that was laid using the tackless strip method and was therefore easily removable.²¹ The court found that the carpet became realty because the parties installed it with the intent that it remain in place for the length of its useful life. The method of installation simply allowed for easy replacement of the carpet when it was worn out.²² Similarly, the Tennessee Court of Appeals found in *Process Systems, Inc.* that removal of a conveyor system would damage the building in which it was installed and would destroy the system's essential character.²³ Accordingly, the conveyor system was held to be an improvement to real property.²⁴

Likewise, the Tennessee Court of Appeals found in *Hermann Holtkamp Greenhouses, Inc.* that a person's greenhouses became realty upon installation based on their enormous square footage, built-in restrooms and lunchrooms, and concrete tunnels.²⁵ The court expressed that each of these facts reflected an intention that the greenhouses remain permanently installed on the property.²⁶

In the Taxpayer's case, the totality of the circumstances indicates that a cleanroom remains tangible personal property following installation. First, the cleanrooms are intended to be removable at the pleasure of the owner. As noted above, the Tennessee Supreme Court has held that the question of

¹⁶ *Id.*

¹⁷ *Keenan v. Fodor*, No. M2011-01475-COA-R3CV, 2012 WL 3090303, at *8-9 (Tenn. Ct. App. July 30, 2012).

¹⁸ *Id.*

¹⁹ 868 S.W.2d at 660.

²⁰ *Id.*

²¹ 511 S.W.2d at 243.

²² *Id.*

²³ 1996 WL 614526 at *3.

²⁴ *Id.*

²⁵ *Hermann Holtkamp Greenhouses, Inc. v. Metro. Nashville & Davidson Cnty.*, No. M2009-00345-COA-R3-CV, 2010 WL 366697, at *9 (Tenn. Ct. App. Feb. 2, 2010).

²⁶ *Id.*

when an item is considered a fixture is resolved by ascertaining the intent of the parties.²⁷ In other words, tangible personal property becomes a fixture following installation only if the relevant parties intend that it remain with the real property.²⁸ The Taxpayer has indicated that installed cleanrooms can be relocated within a customer's facility or removed completely and resold.

Second, the cleanrooms are designed to be removed without causing permanent damage to the surrounding realty. The courts have held that tangible personal property becomes a part of the realty if removing the personal property would seriously damage the real property to which it is affixed.²⁹ Here, no serious damage results to the real property from which the cleanroom is removed. Unlike the large fuels tanks determined to have become realty in *Magnavox Consumer Electronics*, uninstalling a clean room is a straightforward process.³⁰ To do so, the Taxpayer reverses the installation process by [REMOVING] the [REDACTED] gap filler [REDACTED] and then systematically removing all components and preparing them for transport to the new location. The facts indicate that no serious damage to the underlying real property occurs upon removal of a cleanroom.³¹

Third, removal of a cleanroom would not destroy its essential character as personal property. The Tennessee Court of Appeals has stated that tangible personal property becomes a part of the realty if removal would destroy its "essential character as personalty."³² The Taxpayer has stated that a cleanroom may be removed from the site upon which it is installed and moved to a new location. This indicates that the cleanroom's "essential character" remains intact upon removal and relocation.

Based on the physical characteristics of the cleanroom as described above, it appears the parties intend for a cleanroom to remain personalty following its installation. Thus, a cleanroom must be treated as tangible personal property and charges for both the sale and installation of a cleanroom are subject to the Tennessee sales and use tax.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 9/6/19

²⁷ *Gen. Carpet Contractors*, 511 S.W.2d at 242-243.

²⁸ *See Magnavox Consumer Elects.*, 707 S.W.2d at 507.

²⁹ *Magnavox Consumer Elects.*, 707 S.W.2d at 507; *Process Systems, Inc.*, 1996 WL 614526, at *3; *Memphis Housing Authority*, 463 S.W.2d at 679.

³⁰ 707 S.W.2d at 506-07.

³¹ While considerable effort may be required to remove a clean room, the cost or inconvenience of removal is not a determinative factor. As discussed above, the courts have found that large items, such as a one-story bank building, remained tangible personal property following installation; presumably, the removal of an entire building requires considerable effort and expense. *Hubbard*, 868 S.W.2d at 660.

³² *See Process Sys., Inc.*, 1996 WL 614526, at *3; *Green*, 700 S.W.2d at 567.