

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 19-08

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 and the Tennessee rental car tax to the lease of motor vehicles provided through a subscription service.

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") provides a motor vehicle subscription service (the "Subscription Service") in Tennessee to qualified customers pursuant to a Subscription Agreement (the "Agreement"). Under the terms of the Agreement, a qualified customer (the "Subscriber") may use one or more passenger motor vehicles available from a fleet of vehicles as provided in the Agreement.

The Taxpayer offers two different subscription plans, [TIER 1] (Tier 1) and [TIER 2] (Tier 2). Under both plans, all Subscribers must pay a one-time activation fee of [AMOUNT]. A [TIER 1] plan Subscriber pays [AMOUNT] per month, which entitles the Subscriber to the use of any of the [TIER 1] plan vehicles, but never more than one vehicle at a time. The [AMOUNT] monthly fee includes liability insurance covering the Subscriber's use of the vehicle, maintenance and repairs to the vehicle, sales taxes, and the ability to exchange the vehicle for other motor vehicles available through the [TIER 1] plan. A [TIER 1] plan Subscriber may also pay an additional fee of [AMOUNT] per day to upgrade to a vehicle that is otherwise reserved for [TIER 2] plan Subscribers. Neither the Taxpayer nor a [TIER 1] plan Subscriber executes a new Agreement or modifies an existing Agreement if the Subscriber exchanges one [TIER 1] plan vehicle for another [TIER 1] plan vehicle pursuant to the Agreement.

A [TIER 2] plan Subscriber pays [AMOUNT] per month, which entitles the Subscriber to the use of any of the [TIER 2] plan vehicles, but never more than one vehicle at a time. The [AMOUNT] monthly fee includes liability insurance covering the Subscriber's use of the vehicle, maintenance and repairs to the vehicle, sales taxes, and the ability to exchange the vehicle for other motor vehicles available through the [TIER 2] plan. Neither the Taxpayer nor a [TIER 2] plan Subscriber executes a new Agreement or modifies an existing Agreement if the Subscriber exchanges one [TIER 2] plan vehicle for another [TIER 2] plan vehicle pursuant to the Agreement.

Both the [TIER 1] and [TIER 2] plans provide for additional fees to be charged under certain circumstances as provided in the Agreement. The additional fees are a [AMOUNT] hold fee, a [AMOUNT] late fee, a cleaning fee of up to [AMOUNT] and fees for use of vehicles by [AN ADDITIONAL] Driver¹ (the "[ADDITIONAL] Driver fee").²

Subscribers under both plans may suspend their Subscription Service for [A PERIOD OF TIME] by paying a [AMOUNT] hold fee. The Taxpayer charges Subscribers a [AMOUNT] late fee if the Taxpayer is unable to process a monthly subscription fee on the date due. Subscribers may be charged a cleaning fee if evidence of pets, or smoking is found, or if more than normal cleaning is necessary to make a vehicle ready for use by another Subscriber.

Potential Subscribers register for the Subscription Service using the Taxpayer's mobile app and payments are made by credit or debit card. Upon approval, Subscribers must pay a one-time activation [REDACTED] fee of [AMOUNT] and the first month's subscription fee to begin the Subscription Service. The Agreement has an initial term of [NUMBER] days. After the initial term, the Agreement renews automatically (i.e., without execution of a new Agreement or modification of an existing Agreement) on a monthly basis until either the Subscriber or the Taxpayer elects to terminate the Agreement.

RULINGS

1. Are the Taxpayer's activation fees, monthly subscription fees, [AMOUNT] hold fees, [AMOUNT] late fees, cleaning fees, and [ADDITIONAL] Driver fees subject to the 2.75% state "single article" sales tax under TENN. CODE ANN. § 67-6-202(a) (2018) and the \$1,600 limitation on the local option sales tax under TENN. CODE ANN. § 67-6-702(a)(1) (2018)?

¹ [REDACTED].

² The amount of this fee is not specified in the Agreement.

Ruling: The Taxpayer's activation fees, monthly subscription fees, [AMOUNT] late fees, cleaning fees, [AMOUNT] hold fees and [ADDITIONAL] Driver fees are subject to the \$1,600 limitation on the local option sales tax under TENN. CODE ANN. § 67-6-702(a)(1) (2018) and the 2.75% state single article sales tax under TENN. CODE ANN. § 67-6-202(a) (2018).

2. Are the Taxpayer's subscription fees subject to the rental car tax?

Ruling: No. The Taxpayer's subscription fees are not subject to the rental car tax pursuant to TENN. CODE ANN. § 67-4-1901 (Supp. 2018) because the Agreement entered into between the Taxpayer and the Subscriber constitutes the lease of a motor vehicle in Tennessee for a term of more than thirty-one (31) days.

ANALYSIS

Under the Retailers' Sales Tax Act,³ the retail sale in Tennessee 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."⁴

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." Furthermore, TENN. CODE ANN. § 67-6-102(49) defines "lease or rental" as "any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration." "A 'lease or rental' may include future options to purchase or extend."⁵ "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."⁶

TENN. CODE ANN. § 67-6-204(a)(1) (2018) imposes a tax on the sales price of all leases and rentals of tangible personal property where the lease or rental is part of the taxpayer's regularly established business or is incidental or germane to its regularly established business. "Sales price" is defined as "the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented."⁷ The sales tax is computed based on the billing cycle set forth in the applicable lease or rental contract.⁸

Under the terms of the Agreement at issue, the Subscriber pays the Taxpayer a monthly fee for the use of a vehicle. The Taxpayer is transferring possession of the vehicle, which is tangible personal

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 (2018)).

⁴ TENN. CODE ANN. § 67-6-102(76) (2018).

⁵ *Id.*

⁶ TENN. CODE ANN. § 67-6-102(89)(A).

⁷ TENN. CODE ANN. § 67-6-102(79)(A).

⁸ TENN. COMP. R. & REGS. 1320-05-01-.32(2) (1987).

property, to the Subscriber for a consideration, without transferring title to the vehicle. Although the Subscriber may substitute one vehicle for another during the term of the Agreement, it nonetheless constitutes the lease of a motor vehicle in Tennessee. Thus, the Agreement is subject to the Tennessee sales and use tax.

SINGLE ARTICLE LIMITATION

TENN. CODE ANN. § 67-6-702(a)(1) (2018) authorizes counties and incorporated cities to impose a tax on the same privileges that are subject to the state sales and use tax (the “local option sales tax”). However, the local option sales tax, when applied to the sale of any single article of tangible personal property, is imposed only on the first \$1,600 of the sales price (the “local option single article cap”). Furthermore, TENN. CODE ANN. § 67-6-202(a) (2018) imposes an additional state tax at the rate of 2.75% on the amount over \$1,600, but less than or equal to \$3,200, on the sale or use of any single article, as defined by TENN. CODE ANN. § 67-6-702(d), of tangible personal property (the “state single article sales tax”).

TENN. CODE ANN. § 67-6-702(d) defines the term “single article” as “that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation.” A motor vehicle is commonly understood to constitute a single article. Generally, when a taxpayer leases a motor vehicle, the motor vehicle is treated as a single article for purposes of the local option single article cap as well as the state single article sales tax.

Here the Taxpayer charges Subscribers a monthly fee or fees for the lease of a motor vehicle and allows Subscribers the opportunity to use multiple vehicles, but never more than one vehicle at any given time. Therefore, the Taxpayer’s lease of motor vehicles is properly characterized as the lease of a single article for purposes of the local option single article cap as well as the state single article sales tax.

As long as the Subscriber continues to renew the Agreement on a monthly basis, the Department will treat the Agreement as the single lease of a motor vehicle until either the Subscriber or the Taxpayer elects to terminate the Agreement. This is true even if the Subscriber exercises the option to temporarily suspend their Subscription Service by paying the [AMOUNT] hold fee. The local option single article cap and the state single article sales tax, therefore, will apply to the Agreements.

As noted above, the “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.”⁹ The Taxpayer’s activation fees, monthly subscription fees, late fees, hold fees, cleaning fees and [ADDITIONAL] Driver fees are all part of the sales price of the lease of a motor vehicle, and must be included when calculating the amount of sales tax owed. Accordingly, the Taxpayer’s activation fees, monthly subscription fees, late fees, and [ADDITIONAL] Driver fees will be included in the total amount subject to the \$1,600 limitation on the local option sales tax under TENN. CODE ANN. § 67-6-702(a)(1)¹⁰ and the 2.75% state single article sales tax under TENN. CODE ANN. § 67-6-202(a).

⁹ TENN. CODE ANN. § 67-6-102(79)(A).

¹⁰ Prior to October 1, 2019, TENN. CODE ANN. § 67-6-702(f) provided that dealers with no location in Tennessee could choose to pay a uniform local rate of 2.25%. Effective October 1, 2019, out-of-state dealers must apply the specific local sales tax rate in effect for the city or county jurisdiction into which the sale is shipped or delivered. See 2019 Tenn. Pub. Acts Ch. 491, § 2,

In sum, the state sales tax rate of 7% is due for the entire length of the lease contract. The local option sales tax will be due on the first \$1,600 of the sales price.¹¹ And the state single article tax will be due on the sales price beginning at \$1,600.01 and continuing up to, and including \$3,200.¹²

RENTAL CAR TAX

In addition to sales and use tax, Tennessee law requires businesses that rent motor vehicles to collect and remit a three percent (3%) surcharge or tax (the “rental car tax”) on charges for the retail rental of private passenger motor vehicles when such vehicles are rented in Tennessee for a period of thirty-one (31) days or less.¹³ The rental car tax is levied on the gross proceeds of the rental agreement, excluding any sales taxes, and includes any charges related to the rental including gas, insurance, and other related charges.¹⁴

The Agreement entered into between the Taxpayer and the Subscriber constitutes the lease of a motor vehicle in Tennessee for a term of more than thirty-one (31) days. Therefore, the Taxpayer’s subscription fees are not subject to the rental car tax.

APPROVED:	David Gerregano Commissioner of Revenue
DATE:	10/14/19

which deleted TENN. CODE ANN. § 67-7-702(f). For more information see Notice #19-05 at <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales19-05.pdf>.

¹¹ TENN. CODE ANN. § 67-6-202(a).

¹² *Id.*

¹³ TENN. CODE ANN. § 67-4-1901(a) (Supp. 2018).

¹⁴ TENN. CODE ANN. § 67-4-1901(b).