

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 20-10

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

The application of the Tennessee sales and use tax to pre-need funeral contracts.

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 [REDACTED] company that owns and operates funeral homes, [REDACTED]. The Taxpayer has [NUMBER] locations in Tennessee.¹

One of the Taxpayer’s offerings is a Preneed Funeral Service Contract (the “pre-need contract”).² A customer interested in purchasing a pre-need contract, meets with a pre-need sales agent³ and selects the merchandise and services they want to purchase that will be provided at an undetermined future date. The customer then signs the pre-need contract and either pays the total amount due or enters into an installment payment agreement with the Taxpayer.

The Taxpayer’s pre-need contracts consist of [NUMBER] parts. Part 1 of the Taxpayer’s pre-need contract [ADDRESSES GUARANTEED FUNERAL MERCHANDISE].⁴ Part 2 of the Taxpayer’s pre-need contract [ADDRESSES NON-GUARANTEED CASH ADVANCE ITEMS].⁵ The Taxpayer collects sales tax on all taxable guaranteed merchandise listed in part 1 of its pre-need contracts and remits this sales tax to the state of Tennessee at the time the pre-need contract is entered into. Tax is calculated on the sales price of the merchandise as of the contract date. Third-party providers remit sales tax on non-guaranteed cash advance items when those items are provided at a later date.

At the time of death of the contract beneficiary, the pre-need contract becomes an at-need contract. This may happen in a short period of time or could happen many years later. It is not uncommon for the price of guaranteed merchandise to increase between the time the pre-need contract is entered into and the time it becomes an at-need contract, especially if there are number of years between the two. The Taxpayer does not charge its customer or customer’s next of kin any additional amount for any price increase that occurs during this time period.

¹ [REDACTED]

² “Pre-need funeral contract’ means any agreement, contract or plan requiring the payment of money in advance, whether in a lump sum or installments and whether funded by a pre-need funeral trust or prearrangement insurance policy or combination of a pre-need funeral trust and a prearrangement insurance policy, that is made or entered into with any person, association, partnership, firm or corporation for the final disposition of a dead human body, for funeral or burial services or for the furnishing of personal property or funeral or burial merchandise, wherein the use of the personal property or the funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer is not immediately required.” TENN. CODE ANN. § 62-5-403(13) (2019).

³ “Pre-need sales agent’ means an individual who has applied for and has been granted, or who engages in conduct requiring, registration to sell pre-need funeral contracts on behalf of a pre-need seller pursuant to this part.” TENN. CODE ANN. § 62-5-403(9)(A) (2019).

⁴ Pre-need funeral contracts are governed by TENN. CODE ANN. § 62-5-401, *et seq.*

⁵ “Cash advance item” means any item obtained from a third party and paid for by the funeral provider on the purchaser’s behalf. Cash advance items may include, but are not limited to, sales tax, certified copies of death certificates, clergy honoraria, flowers, musicians or singers, obituary notices and gratuities. TENN. CODE ANN. § 62-5-403(1) (2019).

RULING

When the Taxpayer's pre-need contract becomes an at-need contract, if there is a price increase for the guaranteed merchandise previously sold to the customer, should the Taxpayer collect Tennessee sales tax from the customer or customer's next of kin on the difference between the price stated on the pre-need contract and the current selling price of the guaranteed merchandise?

Ruling: No. The Taxpayer should not collect additional sales tax from the customer or the customer's next of kin if there is a price increase at the time the pre-need contract becomes an at-need contract because the Taxpayer collected and remitted sales tax on the sales price of the guaranteed merchandise at the time the parties entered into the pre-need contract.

ANALYSIS

Under the Retailers' Sales Tax Act, the retail sale in Tennessee of tangible personal property and specifically enumerated services are subject to sales and use tax, unless an exemption applies.⁶ "Retail sale" is defined as "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent."⁷

TENN. CODE ANN. § 67-6-102(78)(A) (Supp. 2019) defines "sale," in pertinent part, to mean "any transfer of title or possession, or both . . . 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."⁸

TENN. CODE ANN. § 67-6-202(a) (Supp. 2019) imposes a tax on the sales price of "each item or article of tangible personal property when sold at retail in this state." "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."⁹

TENN. CODE ANN. § 67-6-501 (2018) places the duty for collecting and remitting sales and use tax on the dealer as defined in TENN. CODE ANN. § 67-6-102.¹⁰ Tax is imposed on the retail sales price, as of the moment of sale, or of the purchase price, as of the moment of purchase.¹¹

The Taxpayer sells taxable merchandise at a guaranteed price under Part 1 of its pre-need contracts. Consistent with the authority above, tax is properly due at the moment of sale, which is at the time the parties enter into the contract. The Taxpayer, therefore, correctly collects and remits tax at the time of the sale of the pre-need contract.

⁶ Tennessee Retailers' Sales Tax Act, Ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts Ch. 22, §§ 2254 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2018 & Supp. 2019)).

⁷ TENN. CODE ANN. § 67-6-102(76) (Supp. 2019).

⁸ TENN. CODE ANN. § 67-6-102(89)(A).

⁹ TENN. CODE ANN. § 67-6-102(79)(A).

¹⁰ TENN. CODE ANN. § 67-6-501(b) (2018).

¹¹ TENN. CODE ANN. § 67-6-501(c).

Even if the Taxpayer does not purchase the guaranteed merchandise until several years later when the pre-need contract becomes an at-need contract, and the cost and/or sales price of the guaranteed merchandise increases during that time, the Taxpayer still purchases the merchandise tax exempt for resale. Therefore, when the Taxpayer provides the guaranteed merchandise at the later date, the Taxpayer essentially provides the guaranteed merchandise at or below cost under the terms agreed to in the pre-need contract. Consequently, the guaranteed merchandise is sold for the previously agreed upon price and no additional tax is due.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 11/2/2020