

TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 21-05

**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 owner of an online marketplace.

**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 an affiliate entity of other companies (the "Other Companies") that manufacture and distribute [PRODUCT] and related parts and products. The Other Companies are original equipment manufacturers that sell their products to a network of independent dealers located across the country. These independent dealers then resell these and other products to their customers. The dealers operate physical storefront locations within their assigned region. The dealers collect and remit applicable sales and use taxes for taxable retail sales and maintain exemption certificates for certain exempt sales. The Other Companies currently make sales to [NUMBER]

authorized dealer groups that are located in Tennessee. These dealer groups operate [NUMBER] physical storefront locations in the state.

The Taxpayer is creating an online platform called [REDACTED] (the "Platform"), which will enable participating dealers (the "Dealer Users") to create an inventory listing and make business-to-business sales to certain customers. The Taxpayer will own and administer the Platform, including the provision of necessary software and support for its Dealer Users. The Taxpayer will require Dealer Users to enter into a contract with the Taxpayer and potentially remit an initial fee for use of the Platform. Under the terms of its contracts with Dealer Users, the Taxpayer will receive a negotiated percentage of user sales made through the Platform. However, payment of this negotiated percentage will be prompted by Taxpayer invoices, to be paid either monthly or quarterly. The Taxpayer will not collect payments from customers of the Dealer Users. The contract expressly prohibits Dealer Users from making sales over the Platform into jurisdictions where the Dealer User is not registered for sales and use tax purposes.

The Platform is only accessible to particular customers (the "Purchasers") that receive log-on credentials from authorized Dealer Users. The Platform is not open to the general public. The Purchasers include end-users of products and entities purchasing parts for resale or other tax-exempt purposes. The Purchasers may utilize the Platform to view and order inventory from the Dealer User that provided the log-on credentials only; Purchasers may not use the Platform to browse inventory selections from other Dealer Users with whom they have no pre-existing relationship. Dealer Users manage their inventory listings and pricing electronically via a dealer management system ("DMS") that communicates with the Platform. When inventory items appear on the Platform, they are identified as inventory items of the particular Dealer User, not the Taxpayer.

#### **INVENTORY SELECTION PROCESS AND DELIVERY METHOD**

Purchasers select inventory to buy on the Platform by adding the identified items to an online order. The Purchaser is then prompted to choose one of three delivery options: (1) the Purchaser may pick up the item(s) at a Dealer User's physical storefront location; (2) the Purchaser may request that the Dealer User deliver the item; or (3) the Purchaser may request that the Dealer User ship the item. Depending on the delivery method selected, the Platform will calculate a preliminary invoice amount that includes estimated delivery charges and estimated sales and use tax for the order. The estimated tax amount is based on a standard percentage that the Platform will apply to all orders. This percentage will not be consistent with a tax rate for a particular state, but will be set high enough to ensure that the preliminary invoice amount covers the final amount billed to the Purchaser by the Dealer User. The Platform notifies Purchasers that the preliminary invoice amount will be different from the final amount billed, depending on the actual costs for delivery charges and the sales and use tax rate of the particular jurisdiction.

#### **PAYMENT OPTIONS**

Purchasers may remit payment for the final amount billed by Dealer Users by utilizing either (1) dealer accounts or (2) credit card processing.

##### *1. Dealer Accounts*

The Taxpayer anticipates that the majority of Platform orders will be processed through local dealer accounts, meaning that the Purchaser uses a pre-existing line of credit directly with the Dealer User, or establishes a direct line of credit. Purchasers would be able to utilize the dealer credit accounts for the purpose of completing orders initiated on both the Platform and at the Dealer Users' physical locations. When a Purchaser selects the dealer account payment option, the Platform alerts the Dealer User's DMS, which replies with an initial order approval or rejection notification. If the Dealer User approves the order, the Platform provides a confirmation message to the Purchaser. The Platform performs no further role in facilitating payment for the order. The remaining steps needed to complete the order would follow the same process utilized by the Dealer User for its ordinary sales. Specifically, the Dealer User generates a final invoice from its DMS to send to the Purchaser; the Purchaser then remits payment directly to the Dealer User. Any tax due on the invoices is collected by the Dealer User outside of the Platform and is subsequently remitted to the appropriate taxing authorities.

In addition to the dealer account payment process outlined above, which relies on a credit line established with a particular Dealer User, the Taxpayer also allows Purchasers to pay on Dealer User accounts via a credit line established with a financial services company that is an affiliate of the Taxpayer. The Platform functions in the same way with respect to these types of orders. The only process variation comes after the Platform has provided the confirmation to the Purchaser, as the Dealer User then submits the final invoice to the financial services company rather than the Purchaser. The financial services company remits payment directly to the Dealer User, including any tax due on the invoice. The financial services company may then proceed to collect the amount due from the Purchaser according to the terms of their separate agreement. In these transactions, the Dealer User remits any tax due on the invoice amount to the appropriate taxing authorities.

## *2. Credit Card Processing*

The Taxpayer also permits Dealer Users to accept credit card payments, provided that the Dealer User enters into its own direct agreement with the credit card processor. The Taxpayer is not a party to these direct agreements or to any agreement pertaining to credit card processing for orders initiated on the Platform. When a Purchaser selects the credit card payment option for an order with a Dealer User that has an agreement with a third-party processor, the Platform directs the Purchaser to what the Taxpayer describes as the processor's "payment gateway." The Platform accomplishes this by prompting another window to open on the Purchaser's browser. The credit card processor will request an initial payment authorization from the credit card issuer for the preliminary order amount and then relay either an approval or rejection notification to the Platform. If the Platform receives an approval notification from the credit card processor, the Platform will send the order to the Dealer Users' DMS and provide a confirmation message to the Purchaser.

As with payments remitted via the dealer account method, the Platform performs no further role in facilitating payment for the order beyond its provision of a confirmation to the Purchaser. To complete the order, the Dealer User generates an invoice from its DMS with the applicable delivery and tax charges. The Dealer User sends the invoice directly to the Purchaser and uses its DMS to submit a payment request for the final invoice amount to the credit card processor. After securing payment of the final invoice from the credit card issuer, the credit processor deposits the payment directly with the Dealer User according to the terms of their separate agreement. Here too, the Dealer User collects and is obligated to remit any tax due on the final invoice amount.

## RULING

Is the Taxpayer a marketplace facilitator as defined by TENN. CODE ANN. § 67-6-102(56)(A) (Supp. 2020) such that it is required to collect and remit Tennessee sales and use tax on sales made using its online platform to Tennessee consumers?

Ruling: No, the Taxpayer is not a marketplace facilitator because it does not meet the necessary requirements as provided in TENN. CODE ANN. § 67-6-102(56)(A).

## ANALYSIS

Under the Retailer's Sales Tax Act,<sup>1</sup> retail sales in Tennessee of tangible personal property and specifically enumerated services are 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>

TENN. CODE ANN. § 67-6-102(84)(A) (Supp. 2020) 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." 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.<sup>3</sup>

Tennessee's sales tax liability is imposed on the dealer. "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. TENN. CODE ANN. § 67-6-501(a) (Supp. 2020) adds that 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."<sup>4</sup>

The Tennessee General Assembly enacted into law effective October 1, 2020, a sales tax provision requiring a marketplace facilitator to collect and remit sales and use tax on sales made through its marketplace if it made or facilitated total sales to consumers in this state of more than \$100,000 during the previous twelve month period.<sup>5</sup> Effective October 1, 2020, the definition of sale includes, any sale "made or facilitated by a marketplace facilitator,"<sup>6</sup> and the definition of dealer includes a

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<sup>1</sup> Tennessee Retailers' Sales Tax Act (codified at TENN. CODE ANN. §§ 67-6-101 to -907 (2018 & Supp. 2020)).

<sup>2</sup> TENN. CODE ANN. § 67-6-102(82) (Supp. 2020).

<sup>3</sup> TENN. CODE ANN. § 67-6-102(84)(C).

<sup>4</sup> TENN. CODE ANN. § 67-6-501(a) (Supp. 2020).

<sup>5</sup> 2020 Tenn. Public Acts Ch. 646; 2020 Tenn. Public Acts Ch. 759, § 7.

<sup>6</sup> TENN. CODE ANN. § 67-6-102(84)(L).

person that “acts as a marketplace facilitator.”<sup>7</sup> Moreover TENN. CODE ANN. § 67-6-501(f) specifically states that a marketplace facilitator is responsible for collecting and remitting sales and use tax:

When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or any of the things or services taxable under this chapter, the marketplace facilitator is liable for the taxes imposed by this chapter on the sales price of the tangible personal property or the things or services taxable under this chapter regardless of whether the marketplace seller has a sales tax certificate of registration or would have been required to collect sales or use taxes had the sale not been facilitated by the marketplace facilitator.<sup>8</sup>

2020 Tenn. Public Acts Ch. 646, § 8 added a threshold to TENN. CODE ANN. § 67-6-501(f) requiring marketplace facilitators to collect and remit sales and use tax if they have more than \$500,000 in total sales into Tennessee in the previous twelve-month period. However, before the law became effective, through 2020 Tenn. Public Acts Ch. 759, § 7 (2020), the Tennessee legislature lowered the \$500,000 threshold to \$100,000 such that effective October 1, 2020, a marketplace facilitator must register in Tennessee to collect and remit sales tax if it made or facilitated total sales to consumers in this state of more than \$100,000 during the previous twelve-month period.<sup>9</sup>

A “marketplace facilitator” is defined as a person who, for consideration, facilitates sales subject to sales and use tax through a physical or electronic marketplace, and “either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser . . . and transmits payment to the marketplace seller.”<sup>10</sup> A “marketplace” includes an “electronic place, platform, or forum, including, but not limited to . . . [an] internet website . . . or dedicated sales software application, where tangible personal property . . . taxable under this chapter [is] offered for sale.”<sup>11</sup> A “marketplace seller” is a “person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator.”<sup>12</sup>

The Taxpayer’s Platform is a marketplace, as it is an internet website where taxable tangible personal property is offered for sale.<sup>13</sup> However, the Taxpayer is not a marketplace facilitator because its role is limited to listing the Dealer Users’ inventory information on the Platform and confirming a preliminary order approval or rejection, regardless of the payment method selected. This minimal role does not meet the definition of marketplace facilitator, as further discussed below.<sup>14</sup>

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<sup>7</sup> TENN. CODE ANN. § 67-6-102(23)(N).

<sup>8</sup> TENN. CODE ANN. § 67-6-501(f) (Supp. 2020).

<sup>9</sup> TENN. CODE ANN. § 67-6-501(f)(1).

<sup>10</sup> TENN. CODE ANN. § 67-6-102(56)(A).

<sup>11</sup> TENN. CODE ANN. § 67-6-102(55).

<sup>12</sup> TENN. CODE ANN. § 67-6-102(57).

<sup>13</sup> See TENN. CODE ANN. § 67-6-102(55).

<sup>14</sup> See TENN. CODE ANN. § 67-6-102(56)(A).

## **PAYMENTS SUBMITTED BY DEALER ACCOUNT**

When a Purchaser remits payment to the Dealer User via its dealer account, the Taxpayer is not involved in collecting the payment from the Purchaser nor transmitting payment to the Dealer User. The Taxpayer's role is to "ping" the Dealer User's DMS for order approval or rejection. The Dealer User sends an invoice directly to the Purchaser and the Purchaser uses the dealer account line of credit to remit payment directly to the Dealer User. The billing and payment procedures occur outside the Platform in essentially the same manner as the Dealer User's ordinary sales.

Similarly, the Taxpayer is not involved in collecting the payment from Purchasers who pay on account using a credit line established with a financial services company that is an affiliate of the Taxpayer. Again, the Taxpayer only "pings" the Dealer User's DMS for order approval or rejection. The financial services company purchases the debt or receivable owed by the Purchaser to the Dealer User in a distinct, unrelated transaction after the sale is completed. In these situations, the Dealer User submits an invoice directly to the financial services company, which reimburses the Dealer User for the invoice amount under the terms of a separate agreement. Then, the financial services company, having acquired the Purchaser's receivable, collects payment from the Purchaser at some future time depending on the terms of the agreement between the financial services company and the Purchaser. At that point, the financial services company retains the payment as its own asset rather than transmitting it to the Dealer User. Here too, the billing and payment procedures occur outside the Platform.

## **PAYMENTS SUBMITTED BY CREDIT CARD PROCESSING**

When a Purchaser chooses to remit payment for sales facilitated by the Platform via credit card processing, the Taxpayer is not involved in collecting the payment from the Purchaser or transmitting the payment to the Dealer User. As with the credit line transactions, the Taxpayer's only role is preliminary order approval or rejection. When Purchasers select inventory items to add to an online order, the Platform calculates a preliminary invoice amount, with estimated delivery charges and sales and use tax for the order. The Platform notifies Purchasers that the preliminary invoice amount will be different from the final amount billed, depending on the actual costs for these variables. Once the preliminary invoice is generated, the Platform prompts a new window to open on the Purchaser's web browser, at which point the Purchaser enters its credit card information for purposes of confirming an initial authorization from the credit card issuer. When the Purchaser enters its information, the credit card processor requests an initial authorization from the credit card issuer for the preliminary order amount and then relays either an approval or rejection notification to the Platform. Then, if the Platform receives an approval notification for the preliminary invoice amount from the credit card processor, the Platform will send the order to the Dealer Users' DMS and provide a confirmation message to the Purchaser. As the Purchaser's credit card is not charged at this time, the communication between the Platform and the credit card processor essentially functions as a sufficiency of funds inquiry.

The Platform plays no further role in facilitating the sale. To complete the order, the Dealer User generates a final invoice amount from its DMS with the applicable delivery and tax charges. The Dealer User sends the final invoice directly to the credit card processor, which communicates with the credit card issuer to arrange for deposit of the payment directly with the Dealer User. It is only after the

Dealer User sends the final invoice to the credit card processor, and the credit card processor arranges for payment of the invoice with the credit card issuer, that the sale occurs.<sup>15</sup>

In each of the transactions addressed above, the Taxpayer is not involved in collecting or transmitting payments. It is only involved in electronically displaying the Dealer Users' inventory and communicating a preliminary order approval or rejection. Accordingly, the Taxpayer does not fall within Tennessee's definition of a marketplace facilitator, and thus is not required to collect and remit Tennessee sales and use tax on sales made to Tennessee consumers who use its online platform.<sup>16</sup>

APPROVED: David Gerregano  
Commissioner of Revenue

DATE: 4/28/2021

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<sup>15</sup> The Taxpayer requires Dealer Users that choose to accept credit card payments to enter into a separate agreement directly with the credit card processor. The Taxpayer is not a party to this, *or any other*, agreement or arrangement with the payment processor.

<sup>16</sup> TENN. CODE ANN. § 67-6-102(56)(A).