

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 21-07

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 out-of-state sales shipped to a transload facility in Tennessee.

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 [PRODUCT] manufacturer headquartered in [CITY, STATE OTHER THAN TENNESSEE]. The Taxpayer operates [TYPE OF BUSINESS] in [STATES OTHER THAN TENNESSEE]. The Taxpayer sells [REDACTED] products to wholesale customers ("Customer" or "Customers") that resell the [PRODUCTS] to other resellers that sell the [PRODUCTS] to consumers.

Upon the Taxpayer's sale of [PRODUCTS] to a Customer, the Customer may arrange and pay for the freight or the Taxpayer may arrange and pay for freight and pass the cost of freight to the Customer as part of the sale. The Customer arranges and pays for insurance coverage of the [PRODUCT] while it is in transit. Freight is either by truck or railcar. Regardless of who arranges and pays for freight, contractual terms between the Taxpayer and its Customer provide that title to the [PRODUCT] and risk of loss passes to the Customer upon placement of the [PRODUCT] into the hands of the common carrier at the [BUSINESS] locations outside of Tennessee.

At the Customers' direction, the common carrier delivers the [PRODUCT] to a third-party transload facility in Tennessee where transload facility employees offload the [PRODUCT] from the railcars or trucks and reload it onto other railcars or trucks for shipment to the Customers' resellers both inside and outside of Tennessee. In some instances, the common carriers that will transport the [PRODUCT] from the transload facility to the resellers are not immediately available when the inbound carrier arrives with the [PRODUCT] at the transload facility. When this occurs, the [PRODUCT] is temporarily stored at the transload facility – typically for only a few days – until the outbound railcars or trucks become available for loading.

The Taxpayer's Customers direct the transload facility where to ship the [PRODUCT] to the Customers' resellers and, while the Taxpayer is aware that the [PRODUCT] is delivered to the transload facility in Tennessee from its out-of-state [BUSINESS LOCATIONS], the Taxpayer does not know the identity of the resellers, the resellers' location(s) where the [PRODUCT] is delivered from the Tennessee transload facility, or the terms of sale between its Customers and its Customers' resellers.

The Taxpayer is registered for Tennessee sales and use tax as a remote seller. The Taxpayer's Customers using the transload facility are not registered dealers in Tennessee.

RULING

Are the Taxpayer's sales to Customers subject to Tennessee sales and use tax when title to the [PRODUCT] passes to Customers at the [BUSINESS LOCATIONS] outside of Tennessee and there is no indication that there is a transfer of possession to the Customer in Tennessee?

Ruling: No. The Taxpayer's sales to Customers are not subject to Tennessee sales and use tax when title to the [PRODUCT] passes to Customers at the [BUSINESS LOCATIONS] outside of Tennessee and there is no indication that there is a transfer of possession to the Customer in Tennessee.

ANALYSIS

Under the Retailers' Sales Tax Act,¹ the retail sale in Tennessee of tangible personal property and specifically enumerated services is subject to the sales tax, unless an exemption applies. 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." Pursuant to TENN. CODE ANN.

¹ 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 & Supp. 2020)).

67-6-201(1) (Supp. 2020), it is the declared legislative intent that every person who engages in the business of selling tangible personal property at retail in Tennessee is exercising a taxable privilege in this state.²

Additionally, TENN. CODE ANN. § 67-6-211 (2018) provides, “It is the intention of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state.” The Tennessee Supreme Court has held that this statute was intended “to extend the taxing power of the state of Tennessee to the fullest extent under the Commerce Clause, and that where a tax does not constitute a violation of the Commerce Clause, no exemption is available under the statute.”³

The Tennessee Supreme Court has also stated that tangible personal property passing through Tennessee in the course of interstate commerce is not subject to Tennessee sales or use tax absent a sufficient interruption in actual transit.⁴ In *Service Merchandise Co., Inc. v. Tidwell*,⁵ the Court held that the Department of Revenue could not impose use tax on printed materials that were shipped into Tennessee by common carrier, unloaded at the regional post office, and placed in the mail for delivery to addressees both in and outside of Tennessee. The Court determined that “the interstate character of the transactions in question here did not terminate at the postal docks.”⁶ The Court reasoned that the temporary interruption in the interstate transit of the printed materials was solely for the purpose of promoting the materials’ continued movement and the break in Tennessee was merely incidental to the journey.⁷

The Taxpayer’s situation is similar to that of Service Merchandise. In the Taxpayer’s case, title to the [PRODUCT] passes to the Taxpayer’s Customers at the Taxpayer’s out-of-state [BUSINESS] locations. As a result, the sale of [PRODUCT] for purposes of taxation occurs outside of Tennessee. The Taxpayer should comply with the laws of the state where the sale is made to determine the taxability of its sales.

When the [PRODUCT] arrives at the Tennessee transport facility, even if there is a change in mode of transportation, the offloading of [PRODUCT] from one railcar or truck to another is a temporary interruption in interstate transit. For the short period of time it is at the transport facility, the [PRODUCT] remains in the stream of interstate commerce on its movement through Tennessee to its final destination. Merely traveling through a transload facility in Tennessee is not a taxable event.

² TENN. CODE ANN. § 67-6-201(1) (Supp. 2020).

³ *Itel Containers Int’l Corp. v. Cardwell*, 814 S.W.2d 29, (Tenn. 1991) (citing *Texas Eastern Transmission Corp. v. Benson*, 480 S.W.2d 905, 907 (Tenn. 1972), and *Williams Rentals, Inc. v. Tidwell*, 516 S.W.2d 614, 615 (Tenn. 1974). Prior to 1983, TENN. CODE ANN. §§ 67-6-211 and 67-6-313 were both part of TENN. CODE ANN. § 67-3007; in 1983, they were separated when the Code Commission rearranged and renumbered Title 67.

⁴ See *Service Merchandise Co., Inc. v. Tidwell*, 529 S.W.2d 215, 218 (Tenn. 1975); *Board of Publ’n of Methodist Church Inc. v. Woods*, 609 S.W.2d 501, 502-03 (Tenn. 1980).

⁵ 529 S.W.2d 215, 218 (Tenn. 1975)

⁶ *Id.* at 218.

⁷ *Id.* at 220.

To the extent the [PRODUCT] remains in Tennessee after passing through the transload facility, it will have come to rest in this state and become a part of the mass of property in Tennessee. For example, when the Taxpayer's Customer transfers title and possession to a purchaser located in Tennessee, the Customer's sale of the [PRODUCT] will be subject to either sales or use tax unless the sale qualifies as a sale for resale or is otherwise exempt under Tennessee law.⁸

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 7/14/2021

⁸ TENN. CODE ANN. § 67-6-102(81)(A) requires that all "sales for resale" be in strict compliance with the rules and regulations promulgated by the Commissioner of Revenue. A "sale for resale" is defined in pertinent part as "the sale of the property, services, or taxable item intended for subsequent resale by the purchaser." TENN. CODE ANN. § 67-6-102(81)(A). *See also*, TENN. COMP. R. & REGS. 1320-5-1-.68(1) (2017).