

TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 21-08

**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 to an online advertising platform and a data processing 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"), operates an online cloud-based platform (the "Platform") for use by [REDACTED] brokers (the "Brokers") and [CARRIERS] (the "Carriers") engaged in the business of commercial freight transportation (collectively, the "Subscribers") to arrange for transportation of freight. The Platform consists of two offerings: (1) [OFFERING 1] and (2) [OFFERING 2] (collectively, the "Offerings"). The Taxpayer provides access to the Offerings exclusively through the Platform, which

enables Brokers to post information related to freight hauling opportunities and assists Carriers in procuring hauling engagements. Subscribers either pay a monthly subscription fee or a one-time access fee to access the Platform, depending on their desired level of access.

### **[OFFERING 1]**

[OFFERING 1] is utilized by both Brokers and Carriers engaged in the business of commercial freight transportation. Brokers upload postings to the Platform that provide [INFORMATION].<sup>1</sup> The Platform enables Carrier Subscribers seeking hauling opportunities to search Broker postings using various criteria, [REDACTED]. When a Carrier identifies a posting for a desired job, the Carrier uses the contact information provided in the posting to contact the Broker. The Carrier uses its own telecommunications services to confirm the transaction, which occurs outside of the Platform. For example, postings frequently include a telephone number for the Broker. The Platform does not provide any sort of messaging system or other means of facilitating communications between Brokers and Carriers.

Most Subscribers pay a [FEE] for remote access to [OFFERING 1]. Use of the Platform does not require Subscribers to download any software to their own computers. However, Subscribers may choose to download a complimentary mobile application to access the web portal on the Subscriber's mobile device. The Taxpayer does not charge a fee for providing the mobile application to Subscribers. The contractual arrangement between the Taxpayer and its Subscribers is described as a "service agreement," the terms and conditions of which characterize the agreement as a [REDACTED] subscription service.

### **[OFFERING 2]**

[OFFERING 2] compiles and synthesizes the aggregate data collected from Subscribers to assist Brokers and Carriers in determining the fair market value of a particular route or hauling engagement. Subscribers contribute rate data from confirmed engagements on a voluntary basis by sending the information to the Taxpayer once a rate agreement is in place. The Platform processes the Subscriber data based on key market areas and includes only confirmed transactions. The data is anonymized, weighted, and otherwise protected to ensure that [OFFERING 2] cannot be used to identify any particular Subscriber that contributed data, or any particular items of rate information. [OFFERING 2] presents the aggregate data as a prevailing market rate for postings on [OFFERING 1], with options to view the data organized by temporal market trends.

The [OFFERING 2] data may only be viewed via remote access to the Platform. As with [OFFERING 1], [OFFERING 2] does not require Subscribers to download any software to their own computers to remotely access the Platform. Subscribers may either purchase [OFFERING 2] on a subscription basis or by paying a one-time access fee, depending on the terms of the agreement between the parties.

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<sup>1</sup> Uploading of information can be done by the Brokers themselves whereby the Broker goes into the Taxpayer's website and manually types the information into [OFFERING 1]. The Taxpayer then posts the information. Larger Broker customers may use an API integration to take data from their internal systems and feed it into [OFFERING 1].

## RULINGS

1. Do [OFFERING 1] and [OFFERING 2] constitute telecommunications services such that they are subject to Tennessee sales and use tax?

Ruling: No. Pursuant to TENN. CODE ANN. § 67-6-102(96)(B) (Supp. 2020), telecommunications services do not include the type of online advertising platform or the data processing and information services the Taxpayer provides.

2. Do [OFFERING 1] and [OFFERING 2] constitute use of computer software such that they are subject to Tennessee sales and use tax?

Ruling: No. [OFFERING 1] is a nontaxable online advertising platform and [OFFERING 2] is a nontaxable data processing and information service.

## ANALYSIS

Under the Retailers' Sales Tax Act (the "Act"),<sup>2</sup> retail sales of tangible personal property, which includes prewritten software, and custom computer software are subject to sales and use tax unless an exemption applies. Tennessee also imposes sales tax on services; however, the tax only applies to those services specifically enumerated as taxable.<sup>3</sup> Consequently, for the [OFFERING 1] and [OFFERING 2] fees to be subject to sales and/or use tax, the Offerings would have to be properly characterized as tangible personal property, custom computer software, or an enumerated taxable service.

### 1. [OFFERING 1]

For the [OFFERING 1] fees to be subject to taxation, [OFFERING 1] would have to be properly characterized as the furnishing of one of the following: 1) a telecommunications service; or 2) access and use of computer software by a customer from a location within Tennessee. As discussed below, [OFFERING 1] is not properly characterized as either.

The Taxpayer provides an online advertising platform for Brokers and Carriers to post and search freight transportation opportunities. The Taxpayer compiles the advertising data, processes the data to the extent necessary to make it searchable, and enables Subscribers to view the data using their own internet service via remote access to the Taxpayer's online platform. Any direct contact between Brokers and Carriers regarding a particular posting occurs entirely outside the Taxpayer's Platform, using the Subscribers' own means of communication. Consistent with the facts, the primary purpose of [OFFERING 1] is to provide the advertising to Subscribers.

Taxable services include the service of "furnishing, for a consideration, of intrastate, interstate or international telecommunication services."<sup>4</sup> "Telecommunications service" is defined as "the

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<sup>2</sup> 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. 2020)).

<sup>3</sup> *Id.*

<sup>4</sup> TENN. CODE ANN. § 67-6-205(c)(3) (Supp. 2020).

electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.”<sup>5</sup> However, “telecommunications service” does not include advertising, directory advertising, or ancillary services, such as directory assistance.<sup>6</sup> Additionally, “telecommunications service” does not include data processing and information services or internet access services.<sup>7</sup> As it is described above, [OFFERING 1] does not come within the definition of a “telecommunications service” nor is it otherwise included in Tennessee’s enumerated taxable services. It, therefore, is not a taxable service in Tennessee.

[OFFERING 1] also cannot be properly characterized as taxable remotely accessed software.<sup>8</sup> Under TENN. CODE ANN. § 67-6-231(b), the access and use of the computer software by a customer from a location within Tennessee would constitute a taxable use of the software.<sup>9</sup> However, TENN. CODE ANN. § 67-6-231(b) clarifies that the application of the sales and use tax to remotely accessed software does not make otherwise nontaxable services subject to tax. Ad placement is a nontaxable service regardless of the medium.

Here, as part of [OFFERING 1], the Taxpayer provides Subscribers with web-based access to its Platform. Although the Platform is electronic and may be accessed from locations within Tennessee, this access to information does not equate to the taxable use of remotely accessed software.<sup>10</sup> Subscribers do not purchase [OFFERING 1] to gain access to the Taxpayer’s software; rather, Subscribers to [OFFERING 1] do business with the Taxpayer in order to view and exchange information. More specifically, Brokers post freight hauling opportunities and Carriers search for freight hauling opportunities in an effort to procure hauling engagements.

Because the Taxpayer does not sell or license software to its Subscribers in connection with the [OFFERING 1] offering, nor does it provide a taxable telecommunications service, the monthly subscription fees for [OFFERING 1] are not subject to Tennessee sales and use tax.

## 2. [OFFERING 2]

Similarly, for [OFFERING 2] to be subject to tax, the Offering would have to be properly characterized as the furnishing of one of the following: 1) a telecommunications service; or 2) access and use of computer software by a customer from a location within Tennessee. As discussed below, [OFFERING 2] cannot be properly characterized as either.

[OFFERING 2] assists Brokers and Carriers in determining the fair market value of freight hauling for a particular route by compiling and processing aggregate rate data contributed by Subscribers. [OFFERING 2] is provided to Subscribers via remote access to the Platform using the Subscriber’s

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<sup>5</sup> TENN. CODE ANN. § 67-6-102(96)(A).

<sup>6</sup> TENN. CODE ANN. § 67-6-102(96)(B)(iv)-(viii). *See also* TENN. CODE ANN. § 67-6-102(7)(C) (defining directory assistance as “an ancillary service of providing telephone number information and address information”).

<sup>7</sup> TENN. CODE ANN. § 67-6-102(96)(B).

<sup>8</sup> Tennessee began taxing the use of remotely accessed software in 2015. 2015 Tenn. Pub. Acts Ch. 514, § 22 (codified at TENN. CODE ANN. § 67-6-231(b) (2018)).

<sup>9</sup> This statute, TENN. CODE ANN. § 67-6-231(a), imposes tax on both custom and prewritten software; however, prewritten computer software is included in the definition of tangible personal property while custom computer software is not.

<sup>10</sup> *See* TENN. CODE ANN. § 67-6-102(18).

internet connection. The primary purpose of [OFFERING 2] is to provide the aggregate rate data to Subscribers. Under TENN. CODE ANN. § 67-6-102(96)(B)(i), data processing and information services are not considered to be taxable telecommunications services when the “purchaser’s primary purpose for the underlying transaction is the processed data or information.” [OFFERING 2], therefore, is not a taxable telecommunications service.

[OFFERING 2], like [OFFERING 1], involves remote access to the Platform from Subscriber locations within Tennessee. Although a Subscriber is remotely accessing the Taxpayer’s Platform, that access is for the purpose of viewing processed rate data. The Taxpayer may use software to compile and synthesize the data, but the Subscriber is merely viewing the resulting data and information. TENN. CODE ANN. § 67-6-231(b) specifically states that “information or data processing services” and “the storage of data” remain nontaxable for Tennessee sales and use tax purposes.<sup>11</sup>

As the Taxpayer does not sell software to Subscribers or provide a taxable telecommunications service enabling Subscribers to access its Platform, the monthly subscription fees and one-time access fees for use of [OFFERING 2] are not subject to Tennessee sales and use tax.

APPROVED: David Gerregano  
Commissioner of Revenue

DATE: 8/26/2021

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<sup>11</sup> TENN. CODE ANN. § 67-6-231(b) (2018).