

TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 22-07

**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 Tennessee sales and use tax to a subscription-based online platform and mobile application used to create and manage advertising listings.

**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 [STATE-OUTSIDE TENNESSEE] corporation that offers a subscription-based electronic product to facilitate advertising and marketing endeavors related to rental properties. Specifically, the Taxpayer has designed an online platform and mobile application (the

“Product”) that assists property management companies (the “Users”) in creating and managing advertising listings for rental properties.

#### *ADVERTISING CONTENT*

The Product provides a mechanism by which Users can efficiently create and distribute advertisements for rental properties to online platforms such as Craigslist, Google, and Facebook. The Product also allows Users to communicate with prospective renters that view the listings.

The role of the Product in creating the advertising content varies depending on the platform to which the advertisement is deployed. For advertising content posted to Craigslist, Users are able to input basic data points via the Taxpayer’s online platform, which are then assembled into advertisements by automated processes. The Product will then publish the advertisement to Craigslist. For advertisements posted to Google, Facebook, or other online platforms, the advertising content is generated and deployed by Users directly to those platforms, without assistance from the Taxpayer’s Product. However, the Product does integrate with the Google and Facebook platforms to collect communications from prospective renters for review on the User’s dashboard, as discussed below.

Following the deployment of advertising content to various online platforms, the Product will automatically consolidate prospective leads and other responses to the listings on the User’s dashboard for ease and simplicity of viewing. The Product enables Users to then communicate with the individuals that responded to the advertisements to schedule tours, follow up with interested renters, and ultimately negotiate the lease of the apartment or other rental space. Many of these communications are automated by the Product, including initial response emails and scheduling prompts for tours. The Product also provides automated live-chat functionality and a text message auto-response feature to maximize engagement with rental prospects and assist in increasing lease renewal rates.

#### *MARKETING FUNCTIONALITY*

In addition to the advertising elements outlined above, the Product also includes a marketing component. When Users receive leads and other responses to advertising content, the Product analyzes those data metrics to assist Users in evaluating the effectiveness of different advertising platforms. Specifically, the Product tracks the number of leads and the number of leases sourced from various advertising channels. This lead-to-lease ratio may inform User decisions regarding how to allocate and optimize advertising budgets.

#### *TERMS OF SERVICE AGREEMENT AND FEES*

The Taxpayer’s relationship with Users is governed by a Master Service Agreement, which imposes a Product Software Subscription fee per unit for the Taxpayer’s provision of the Product, to be billed monthly. The Master Service Agreement also includes a Terms of Service Agreement that outlines the restrictions on use of the Taxpayer’s “mobile applications, websites, software, or other products or services of [the Taxpayer].” Under the Terms of Service Agreement, the Taxpayer provides customer support by way of email and telephone during business hours. Users also pay a one-time implementation fee for help with the set-up of User log-in credentials and assistance in connecting the Product to the Users’ existing property management systems. The implementation fee has an

optional upgrade for in-person training to guide Users in navigating the Product and learning to generate ready-to-publish advertisements.

## RULING

1. Is the Taxpayer engaged in the business of providing advertising services, such that the Taxpayer's Product is not subject to Tennessee sales and use tax?

**Ruling:** No. The Taxpayer's Product is computer software rather than advertising services, and the Taxpayer's Product is thus subject to Tennessee sales and use tax.

## ANALYSIS

The Taxpayer's Product is subject to Tennessee sales and use tax because it is computer software that the Users employ to generate and manage their own advertising content. Computer software is a set of coded instructions designed to cause a computer to perform a task,<sup>1</sup> and it is subject to Tennessee sales and use tax even when the software is accessed remotely.<sup>2</sup>

Users input data points into the Product to produce advertisements for rental property listings. After the Users create advertising content using the Taxpayer's Product, the Users manually deploy the content to other platforms.<sup>3</sup> The Product then consolidates listing responses, leads, and other data related to the advertising content on the Users' dashboard. The Users are using the Product as a tool to facilitate the automated creation and subsequent management of their rental property listings.

The Taxpayer suggests that while its Product may involve access to and use of computer software, these components of the Product are ancillary to its primary function—the provision of nontaxable advertising services.<sup>4</sup> However, the Taxpayer does not assume an active role in assisting its Users to generate advertising content. Rather, the Taxpayer provides software that facilitates its Users' creation and management of their own advertising content. Furthermore, the Product is being used by the Users for this software functionality. Thus, the Taxpayer's Product is appropriately characterized as computer software that Users purchase to generate their own advertisements, manage rental property listings, and interact with potential renters, not as an advertising service. As such, the Taxpayer's Product is subject to Tennessee sales and use tax.

In its request the Taxpayer compares its facts to those presented in Tenn. Dept. of Rev. Rev. Rul. 19-01 (May 2019) ("Ruling 19-01"). While there are similarities between the facts in this ruling and those in Ruling 19-01, the key distinction is that the users in Ruling 19-01 used the taxpayer's product to create event listings that were then published on the taxpayer's platform. The true object of the transaction in Ruling 19-01 was the non-taxable platform and listing services provided by the taxpayer. The

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<sup>1</sup> Tenn. Code Ann. §67-6-102(18) (Supp. 2021).

<sup>2</sup> Tenn. Code Ann. § 67-6-231(b) (2018).

<sup>3</sup> This is the case for all online platforms other than Craigslist, to which the Taxpayer's Product posts directly.

<sup>4</sup> "Advertising services" are not subject to Tennessee sales and use tax and are defined by TENN. CODE ANN. § 67-6-102(3)(A) to mean "services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing." *See also* TENN. CODE ANN. § 67-6-205(c) (Supp. 2021); Tenn. Dept. of Rev. Rev. Rul. 20-03 (May 4, 2020).

customers accessed the platform but were not using the software tools to create reports, manage data, communicate with customers, etc.

In contrast, under the facts presented here, the Taxpayer does not provide a platform on which Users may list their advertisements. The Taxpayer's Product allows Users to create advertisements, publish these ads to *other* platforms, collect communications data, and contact prospective buyers through automated emails, text messages and live chat functionality. Users pay a subscription fee in order to use these software tools. Because Users are primarily purchasing access to computer software, the subscription fees are subject to tax.

APPROVED: David Gerregano  
Commissioner of Revenue

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