

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 23-07

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

Applicability of the Tennessee sales and use tax to online training courses.

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

[REDACTED] (the "Taxpayer") is an online school that offers various licensing courses, exam preparations, and continuing education products for its customers to obtain a license to sell real estate in each customer's respective state. The courses are designed to be compliant with the educational and training guidelines required by the applicable state. All courses are offered online and are self-paced.

In Tennessee, the Taxpayer's school, courses, and instructors are approved by the Tennessee Real Estate Commission. In addition, the online licensing course is approved by the Association of Real Estate License Law Officials ("ARELLO"), which is an organization that supports jurisdictions in the administration and enforcement of their real estate license laws.

The Taxpayer has three revenue streams: the online licensing course; course textbooks; and exam guide course. These products are described in more detail below.

Online Licensing Course

The online licensing course provides customers with pre-recorded audio lectures and written transcripts of the lectures. Chapter quizzes and the number of questions asked are required by ARELLO and directed by ARELLO requirements. The chapter quizzes and final exam are administered and graded automatically through the learning management system. Customers will receive a certificate of completion for the licensing course after passing the final exam.

The Tennessee Real Estate Commission requires prospective licensees to meet certain educational requirements. The certificate of completion offered in the course follows a format approved by the Tennessee Real Estate Commission. Certificates are used by customers as evidence to satisfy the Tennessee Real Estate Commission's requirements.

Customers pay a one-time, non-itemized fee to access the online licensing course. The course is hosted online on the Taxpayer's learning management system and is accessed through a web browser. The course is self-paced and must be taken in sequential order. Customers can start, stop and re-start the audio recordings. Each course includes an instructor who is available to answer questions through email and Facebook Messenger. However, this is not a live feature and responses are not returned in real time. In addition, the courses also include a Facebook Group where customers can interact with the Taxpayer and other students about the courses. There are no video recordings included in this course, and customers have twelve months from the time of purchase to complete the course materials.

In the future, the Taxpayer is considering adding a live chat feature to this service. This will allow customers to interact with course instructors in real time.

Course Textbook

The course textbook is available to customers as a PDF download of the course materials. It comprises lessons from the course compiled into a single downloadable PDF document. Customers pay a one-time, non-itemized fee to access the course textbook, and there is no expiration date.

Exam Guide Course

The exam guide course provides the customers with text-based lessons and practice exams. The course is hosted online on the Taxpayer's learning management system and is accessed through a web browser. The course is self-paced, and customers can freely navigate between lessons and practice exams. There are no audio or video recordings included in this course. Customers cannot input information, manipulate data, or create reports through the learning management system. The course includes an instructor who is available to answer questions through email and Facebook Messenger. However, this is not a live feature and responses are not returned in real time. Customers pay a one-time, non-itemized fee to access the exam guide courses. For this course, there is no expiration date for the materials.

In the future, the Taxpayer is considering adding a live chat feature to this service. This will allow customers to interact with course instructors in real time.

Mortgage Loan Origination Course

The Taxpayer does not currently offer a mortgage loan origination (MLO) course to its customers. However, the Taxpayer is considering offering this course in the future.

This course will be an instructor led course that has a set schedule for customers. Twenty instructor hours and a three hour self-paced, state-module course will be included in the course. The state-module course is an online text-based course with chapter quizzes and a final exam that are automatically administered and graded. In addition, other instructor interaction will be included such as graded case studies. The course is designed to comply with pre-licensing education requirements of the National Multistate Licensing System (NMLS) and will be approved by the NMLS.

RULINGS

1. Is the online licensing course subject to Tennessee sales and use tax? Does adding a real time, live chat feature to the online licensing course affect its taxability?

Ruling: Yes. The online licensing course is subject to Tennessee sales and use tax as remotely accessed computer software. The addition of a live chat feature does not alter the taxability of this transaction.

2. Is the course textbook available as a downloadable PDF subject to Tennessee sales and use tax?

Ruling: No. Textbooks are not subject to sales and use tax whether in digital or physical form.

3. Is the exam guide course subject to Tennessee sales and use tax? Does adding a real time, live chat feature to the exam guide course affect its taxability?

Ruling: Yes. The exam guide course is subject to Tennessee sales and use tax as remotely accessed computer software. The addition of a live chat feature does not alter the taxability of this transaction.

4. Will the proposed mortgage loan originating course be subject to Tennessee sales and use tax?

Ruling: Yes. The proposed course includes the self-paced state-module course in the transaction, which will subject the entire transaction to sales and use tax.

ANALYSIS

1. *The online licensing course is subject to Tennessee sales and use tax.*

The online licensing course is subject to Tennessee sales and use tax because it is remotely accessed computer software.¹ Customers access the online licensing course hosted by the Taxpayer's learning management system via a web browser. Through the learning management system, the customers gain access to lectures and transcripts of those lectures. The software allows the customers to move through the course at their own pace. The software also automatically administers and grades the required chapter quizzes and final exam.

This is analogous to taxable pre-packaged software accessed via a tangible medium, such as a DVD or compact disk that users purchase to study for career advancement, college entrance exams, or learning a new skill, such as a new language. Therefore, the online licensing courses are subject to Tennessee sales and use tax when sold to a Tennessee customer because the customer is paying to use dealer owned software.

Although there are other elements included with the course that are not otherwise subject to sales and use tax such as access to instructors who can answer questions in an email like format and membership in a social media group, those additional services are not essential to listening to the lectures and completing the steps necessary to earn a certificate. The true object of the transaction is access to the software (online lectures, quizzes, and final exam).² Adding a live chat feature would not change the taxability of the transaction, as that would also be an incidental service.

2. *The course textbooks are not subject to Tennessee sales and use tax.*

Textbooks available in PDF form are exempt from Tennessee sales and use tax. Tennessee has a specific exemption from sales and use tax for textbooks and workbooks³ and defines "textbook" as a "a printed book that contains systematically organized educational information that covers the primary objectives of a course of study" that is not primarily published and distributed for sale to the

¹ TENN. CODE ANN. § 67-6-231(a) (2022).

² See Tenn. Dept. Rev. Ltr. Rul. 14-10 (Oct. 13, 2014) for a full explanation of the "true object" test and Tenn. Dept. Rev. Ltr. Rul. 20-04 (June 10, 2023)(applying the true object analysis to online courses).

³ TENN. CODE ANN. §67-6-329(a)(3).

general public.⁴ The term “textbook” does not include a computer or computer software.⁵ However, under TENN. CODE ANN. § 67-6-329(d)(1), the textbook exemption extends to a specified digital good that would be exempt if sold in tangible form.

The PDF sold by the Taxpayer comprises lessons from the licensing courses. It is primarily for sale to customers seeking certification from the Tennessee Real Estate Commission and is not distributed for sale to the general public. In print form, this compilation would meet the definition of a “textbook.” Following TENN. CODE ANN. § 67-6-329(d)(1), the sale of the textbooks in PDF form is exempt from Tennessee sales and use tax.

3. *The exam guide course is subject to Tennessee sales and use tax.*

The exam guide course is subject to Tennessee sales and use tax because it is remotely accessed computer software.⁶ The exam guide course is accessed by the customer through the Taxpayer’s learning management system. The self-paced courses allow customers to learn through text-based lessons and to freely navigate between lessons and practice exams. The exams are administered automatically and graded automatically. Much like the online licensing course analyzed above, the exam guide course is subject to Tennessee sales and use tax when sold to customers in Tennessee because the course is remotely accessed computer software.

Although there are items in this transaction that are not subject to tax on their own, such as receiving instructor feedback through email and membership in a social media group, as explained above these are merely incidental to the true object of accessing the course.

4. *The proposed MLO course will be subject to sales and use tax.*

Under these proposed facts, MLO course will include 20 hours of instructor led classes, as well as an online module that is a self-paced, text-based course with chapter quizzes and a final exam that will be automatically administered and graded through the learning management system. Consistent with the discussion above, the self-paced course will be considered computer software subject to sales and use tax. In contrast, live instruction accessed online is not subject to Tennessee sales and use tax.⁷

If a transaction has both taxable and nontaxable items, such that it does not readily lend itself to classification for sales tax purposes, the “true object” test is employed, looking at the totality of the facts and circumstances, to determine what objective is really being accomplished by the transaction.⁸ The objective of purchasing the course will not be to simply gain information about originating loans

⁴ TENN. CODE ANN. § 67-6-102(99).

⁵ TENN. CODE ANN. §67-6-102(99).

⁶ TENN. CODE ANN. § 67-6-231(a) (2022).

⁷ Live classes are not an enumerated taxable service. TENN. CODE ANN. § 67-6-205 (2022); *see also Ryder Truck Rental, Inc. v. Huddleston*, No. 91-3382-III, 1994 WL 420911, at *3 (Tenn. Ct. App. Aug. 12, 1994) (stating that the sales tax does not apply to all services; it applies only to those services specifically enumerated by the statute); *see, e.g.*, Tenn. Dept. Rev. Ltr. Rul. 17-17 (Oct. 31, 2017) and Tenn. Dept. Rev. Ltr. Rul. 20-04 (June 10, 2020) (stating that live instructor-led webinars and classes are not subject to Tennessee sales and use tax because the student is purchasing access to live classes, and the software platform providing access to the classes is merely incidental to the transaction).

⁸ *See generally* Tenn. Dept. Rev. Ltr. Rul. 14-10, *supra* note 2.

from live instructors, but to meet requirements in order to qualify for the National MLO licensing exam. To meet those requirements, the facts indicate that completion of the automatically administered quizzes and exam will be necessary. As such, the self-paced course is essential to the transaction. The MLO course, therefore, will be subject to sales and use tax.⁹

Alternatively, if two or more products can be sold separately but are instead sold for one non-itemized, the transaction is a bundled transaction. In a bundled transaction, the inclusion of one taxable product in the bundle renders the entire transaction subject to tax.¹⁰ While the proposed facts suggest that the self-paced online state-module is essential to the MLO course, if the online state-module is instead a separate product that could be sold on a standalone basis (separate and optional from the live instruction), then the taxpayer could sell the courses separately. If sold separately, the online state-module would be subject to tax, and the live instruction, sold by itself, would not be taxable.

Approved: David Gerregano
Commissioner of Revenue

Date: August 21, 2023

⁹ See also TENN. CODE ANN. § 67-6-102(87)(A)(iii) (defining sales price to include services necessary to complete the sale).

¹⁰ See, e.g., TENN. CODE ANN. § 67-6-102(87)(A)(vi).