

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96-11**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the sales tax to the sale of certain seeds, plants, trees, and fertilizer.

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 his detriment.

ISSUES

- 1) Whether the sale of vegetable seeds, vegetable seedlings, vegetable plants, grapevines, herbs, fruit trees and fertilizer are exempt from tax?
- 2) Whether an exemption certificate is needed to purchase these items?

RULING

1) Except for the fertilizer, the sale of the items enumerated, pursuant to T.C.A. § 67-6-329(a)(3) and (4), are exempt from tax. Fertilizer is exempt only if the fertilizer is to be used to aid in the growth and development of seeds, seedlings, or plants which will produce food or fiber (including tobacco) for human or animal consumption. Lawn fertilizer, for example, would not, therefore, be exempt under this exemption statute. Also, certain types of seed, such as lawn seed, would not be exempt from tax since the statute specifically restricts itself to seeds used to produce food or fiber for human or animal consumption.

2) No exemption certificate is required by either statute or rule to purchase these items.

ANALYSIS

1) T.C.A. § 67-6-329(a)(3) provides that the retail sale of “seeds, seedlings, plants grown from seed and liners (cuttings) which will produce food or fiber (including tobacco) for human or animal consumption” will be exempt from tax. The sale of such items are exempt from tax without qualification. Caution should be exercised, however, since not all types of similar items are exempt. Lawn seed, for example, would not be exempt from tax since this type of seed is not used to produce food or fiber for human or animal consumption.

T.C.A. § 67-6-329(a)(4) provides that the retail sale of “fertilizer to be used to aid in the growth and development of seeds, seedlings or plants as defined in (a)(3) will be exempt from tax”. The sale of fertilizer is exempt only if used for the stated purpose. If the dealer knows or has reason to know that the fertilizer will not be used for the purpose of aiding in the growth and development of seeds, seedlings or plants which will produce food or fiber for human or animal consumption, he must collect the tax.

2) As stated above, no exemption certificate is required by statute or rule to make sales of these items free of tax. The Department does, however, provide exemption certificates if any dealer wishes to make use of them. The Department requires that accurate records be maintained by the dealer for audit purposes so that such exempt sales can be shown to be accurate. Accurate records are especially important when a dealer is engaged in the sale of taxable items in addition to the sale of exempt items such as those listed above. Because of the specificity needed in record keeping for the exempt sales authorized by this section, the dealer may want to require, in some instances, a person making purchases tax exempt under these provisions to make some statement in writing, in addition to filling out the certificate provided by the Department. He may want to do this in order to further substantiate his customer’s intended use of the item, especially if the purported use appears to be facially questionable.

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APPROVED: Ruth E. Johnson

DATE: 3/5/96