

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96-28

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

The applicability of state and local taxes to a business that sells travel and entertainment packages.

SCOPE

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 his 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.

FACTS

The Taxpayer, located in Tennessee, will organize, promote and sell travel and activity packages to various tour operators. The price of the package will include lodging, food and entertainment. The Taxpayer will contract with motels, restaurants and entertainment facilities to supply lodging, food, tickets and services as part of the tour package. All the motels, restaurants and entertainment facilities are located in Tennessee. The Taxpayer will pay the motels, restaurants and entertainment facilities rates determined by pre-agreed contracts. The combined payments made to motels and entertainment facilities exceed payments made to restaurants. The tour operators, generally based out-of-state,

will charge the individual tourist a fee that includes the package described above, in addition to a transportation charge.

QUESTIONS

1. Are sales to the Taxpayer by motels, restaurants and entertainment businesses retail sales or sales for resale?
2. Are sales by the Taxpayer to the tour operators retail sales or sales for resale?
3. What is the Taxpayer's proper business tax classification under T.C.A. Section 67-4-708?
4. What amount of the Taxpayer's revenue is subject to business tax under T.C.A. Section 67-4-701, *et seq.*?
5. If the Taxpayer contracts for lodging in a locality that imposes a tax under T.C.A. Title 7, Chapter 4, should the Taxpayer be required to collect the tax from its customers or should the lodging facility collect the tax from the Taxpayer based on the amount the Taxpayer pays?

RULINGS

1. Sales to the Taxpayer by motels, restaurants and entertainment businesses are sales for resale.
2. Sales by the Taxpayer to the tour operator are sales for resale if the tour operator presents the Taxpayer with a valid Tennessee resale certificate and if the Taxpayer reasonably believes the travel and activity package is for resale.
3. The Taxpayer is a classification 3 business.
4. All revenue derived from the sale of travel and activity packages is subject to business tax at the rate of one-eighth of one percent of all retail sales and one-fortieth of one percent of all wholesale sales.
5. The tourist accommodation tax, T.C.A. Section 7-4-101 *et seq.*, is administered by the Department of Finance of the county or municipality. The Department of Revenue is therefore unable to rule on the manner in which this tax shall be collected.

ANALYSIS

Sales Tax

The retail sales of lodging, food, and entertainment are all subject to sales tax. T.C.A. Sections 67-6-102(23)(F)(i), 67-6-202(a), and 67-6-212. Retail sales are taxable sales to a person

for any purpose other than for resale Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the commissioner. Any dealer making a sale for resale which is not in strict compliance with rules and regulations shall be personally liable for and pay the tax.

T.C.A. Section 67-6-102(23)(A). Sales for resale are sales of tangible personal property or taxable services to legitimate dealers “actually selling such property or services as such.” Sales and Use Tax Rule 1320-5-1-.62(1). As described, the Taxpayer does resell the lodging, food, and entertainment as such. This is not a situation where goods are purchased so that a different service can be provided. *See, e.g., Nashville Mobilphone Co. v. Woods*, 655 S.W.2d 934 (Tenn. 1983) (purchase of radio phone and signaling equipment is not for resale if used in the provision of commercial radio and communications services), *Highland Inns, Inc. v. Olsen*, slip opinion (Tenn. 1985) (purchase of mobile motel units is not for resale if used for purpose of leasing them to visitors). Therefore, the purchase by the Taxpayer of lodging, food, and entertainment is for resale. The Taxpayer may purchase lodging, food, and entertainment intended for resale without payment of sales tax if it provides its vendors a valid Tennessee resale certificate. *Cf.*, Sales and Use Tax Rule 1320-5-1-.68(3) (resale certificates may not be used to obtain property or taxable services for the purchaser’s own use).

Similarly, the Taxpayer may sell the described travel and activity packages to tour operators free of sales or use tax when provided with a Tennessee certificate of resale. Certificates of resale may not be accepted, however, when the Taxpayer knows, or should know in the use of ordinary care, that the travel and activity package is not for resale by the purchaser, but rather for the tour operator’s own use or consumption. Sales and Use Tax Rule 1320-5-1-.68(4). “All sales for resale which are not supported by (Tennessee) resale certificates properly executed shall be deemed retail sales, and the dealer held liable for the tax.” Sales and Use Tax Rule 1320-5-1-.68(2).

Business Tax

Businesses are classified for business tax purposes according to their dominant business activity. T.C.A. Section 67-4-708. Classification 3 businesses are those which make “sales of services or engag(e) in the business of furnishing or rendering services, except those described below.” T.C.A. Section 67-4-708(3)(C). Selling travel and activity packages is not one of the excepted services, so sellers of these packages engage in a

classification 3 business. Furthermore, if the separate components of the travel and activity package are examined to determine the dominant business activity, the combined payments made to motels and entertainment providers (both are classification 3 businesses) exceed payments made to restaurants (a classification 2 business). Therefore, the Taxpayer is a classification 3 business.

The Taxpayer, like all businesses not specifically exempted, must pay a minimum tax of fifteen dollars for "each fixed place, location or outlet from which business is carried on." T.C.A. Section 67-4-709(a). Additionally, as a classification 3 business, the Taxpayer must pay tax at the rate of one-eighth of one percent of all its retail sales and one-fortieth of one percent of all its wholesale sales. T.C.A. Section 67-4-709(b)(3). A retail sale is a sale of services "to any person for any purpose other than for resale." T.C.A. Section 67-4-702(a)(11). A wholesale sale is a sale of services "to a licensed retailer for resale." T.C.A. Section 67-4-702(a)(19). If more than 80% of the Taxpayer's total sales are either retail sales or wholesale sales, all sales are deemed to be either retail sales or wholesale sales, whichever is the dominant type of sale. T.C.A. Sections 67-4-702(a)(11)(B), and (a)(19)(B).

Stephen M. Smith
Tax Counsel

APPROVED: Ruth E. Johnson

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