

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 97-02**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

The applicability of the sales and use tax to the sale of utility poles, anchors, guys, and conduits.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

The Taxpayer is a distributor doing business in Tennessee. The Taxpayer makes sales of utility poles, anchors, guy wire, and conduits.

QUESTION

Whether the Taxpayer's sales of utility poles, anchors, guy wire, and conduits are subject to Tennessee sales and use tax, regardless of to whom the Taxpayer sells them and regardless of how they are used by the Taxpayer's customers.

RULING

The sales of utility poles, anchors, guy wire, and conduits are not subject to Tennessee sales and use tax, regardless of to whom the Taxpayer sells them, provided that such items are used in the provision of utilities.

ANALYSIS

The retail sale of tangible personal property in this state is subject to sales tax. T.C.A. Section 67-6-202(a). Tangible personal property means and includes

personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses 'Tangible personal property' does not include utility poles, anchors, guys, and conduits, and such facilities shall be deemed to be real property for the purposes of this chapter.

T.C.A. Section 67-6-102(28). The Tennessee Court of Appeals has interpreted this provision to mean that utility poles, anchors, guys, and conduits are not subject to Tennessee sales and use tax, rejecting the argument that these items must be erected or installed and in use before they are deemed real property. *United Inter-Mountain Telephone Co. v. Commissioner of Revenue*, 1994 Tenn. App. LEXIS 107. Under this decision, the sale of utility poles, anchors, guys, and conduits is not subject to sales tax, regardless of to whom these items are sold. It is the Department's position that utility poles, anchors, guys and conduits must be sold for use in the provision of utilities services in order for such facilities to not be subject to sales and use tax.

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