

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 97-11**

WARNING

Revenue rulings are not binding on the Department. 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 sales tax to sale of publications sold to Tennessee consumers from out of state.

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 telemarketing operation headquartered in Tennessee with a branch office in [STATE A]. [THE TAXPAYER] sells magazine subscriptions to customers in Tennessee and other states. [THE TAXPAYER] solicits sales and collects money in its Tennessee location. [THE TAXPAYER]'s sales include news and sports journals as well as periodicals. All magazines and journals are shipped to Tennessee customers and out of state customers by United States mail from locations outside Tennessee.

ISSUES

1. Whether [THE TAXPAYER] must collect sales tax on the sales of magazines, books, and periodicals shipped to Tennessee customers from out of state.

2. Whether [THE TAXPAYER] must collect sales tax on its sales made to out of state customers when the publications are shipped from an out of state location to the out of state customer.

RULINGS

1. [THE TAXPAYER] must collect sales tax on the sale of magazines, books, and periodicals sold to Tennessee customers unless the publications are periodicals printed entirely on newsprint or bond paper and regularly distributed twice monthly, or on a biweekly or more frequent basis.

2. [THE TAXPAYER] should not collect Tennessee sales tax on sales in which the products are shipped from an out of state location to another location out of state without a transfer of title or possession in Tennessee.

ANALYSIS

1. [THE TAXPAYER]'s sales from both its Tennessee and [STATE A] locations to Tennessee customers are considered Tennessee sales and if not otherwise exempt, are subject to tax in Tennessee.

[THE TAXPAYER] asserts that the exemption in Tenn. Code Ann. § 67-6-329(a)(16) may apply, which exempts

[m]agazines and books which are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in Tennessee are those activities having to do with the printing, storage, labeling, and/or delivery to the United States mail or common carrier of such magazines or books . . . notwithstanding that such seller or distributor maintains in Tennessee employees solely in connection with the production and quality control of such printing, storage, labeling and/or delivery, or in connection with news gathering and reporting.

This exemption, however, is not applicable, because [THE TAXPAYER] has offices in Tennessee which actively solicit sales from Tennessee customers. [THE TAXPAYER]'s activities in Tennessee are not limited to printing, storage, labeling, or delivery, but include soliciting and accepting orders. Accordingly, this provision will not prevent the taxation of sales of magazines and books made to Tennessee customers.

[THE TAXPAYER] also asserts that Tenn. Code Ann. § 67-6-329(a)(21) applies, which exempts from tax the retail sale of “[p]eriodicals printed entirely on newsprint or bond paper and regularly distributed twice monthly, or on a biweekly or more frequent basis.” To the extent that any publications sold by [THE TAXPAYER] meet the specifications in

Tenn. Code Ann. § 67-6-329(a)(21), the exemption applies and those sales to Tennessee customers are exempt from tax. All other sales, however, are subject to tax.

2. [THE TAXPAYER] solicits the orders from its Tennessee or [STATE A] location. With respect to the sales generated from its Tennessee location, the sale is taxable in the state of delivery and sales tax, if applicable, should be collected in that state. The sales from the [STATE A] location to locations outside Tennessee do not involve the state of Tennessee, since the publications are ordered from [STATE A] and delivered from another state (not Tennessee) to the customer without a transfer of title or possession of the publications in Tennessee. Accordingly, there is no taxable incident in Tennessee and these transactions are not subject to sales tax.

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APPROVED: Ruth E. Johnson
Commissioner

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