TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-22

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

Applicability of sales or use tax to "shipping and handling charge."

SCOPE

This letter ruling is an interpretation and application of the tax 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.

FACTS

[THE TAXPAYER] has previously billed a separately stated transportation charge on its sales invoices. The taxpayer proposes to add a handling charge to the transportation charge. A single line item charge, a "shipping and handling fee," will be separately stated from the selling price of the goods.[1] The portion of the "shipping and handling fee" attributable to shipping and the portion attributable to handling cannot be identified. According to the ruling request, the implicit terms of the sale are f.o.b. origin, whereby title passes to the buyer at the taxpayer's dock in [STATE X-NOT TENNESSEE]. The goods are shipped from [STATE X-NOT TENNESSEE] to the taxpayer's customer via a common carrier.

ISSUE

Is the "shipping and handling fee" subject to the Tennessee sales or use tax?

RULINGS

Yes.

ANALYSIS

T.C.A. § 67-6-202(a) levies the sales tax "at the rate of six percent (6%) on the *sales price* of each item or article of tangible personal property when sold at retail in this state." (Emphasis added.)

"Sales price" is defined by T.C.A. § 67-6-102(25) as:

> the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expense whatsoever; provided, that cash discounts allowed and taken on sales shall not be included; provided, that "sales price" does not include any additional consideration given by the purchaser for the

[1] The term "selling price" used here is the taxpayer's terminology and is not to be confused with "selling price" as defined in T.C.A. § 67-6-102(25).

> privilege of making deferred payments, regardless of whether such additional consideration shall be known as interest, time price differential on conditional sales contracts, carrying charges or any other name by which it shall be known; and provided further, that "sales price" does not include any federal retail excise tax imposed by §§ 4051-4053 of the Internal Revenue Code of 1954, as amended, or as such tax may be amended hereafter.

As can be seen from the above, the total amount charged, with some specific exceptions which are stated in the statute, is the proper base for the sales tax. A "shipping and handling fee" is not among the exceptions noted.

T.C.A. § 67-6-203 levies a use tax "at the rate of six percent (6%) of the *cost price* of each item or article of tangible personal property when the same is not sold but is used, consumed, or stored for use or consumption in this state." (Emphasis added.) The use tax is complementary to the sales tax and generally would apply to goods purchased in a sale not subject to the sales tax, including goods purchased outside the state and imported for use in-state. In many cases, an out-of-state vendor will collect the use tax from the in-state purchaser in the same manner as the sales tax is collected.[2]

"Cost price" is defined by T.C.A. § 67-6-102(5) as:

> the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

For purpose of this ruling, it is not necessary to address whether the tax charged by the taxpayer is a sales tax or a use tax. With regard to goods purchased from a vendor located outside the state, the tax base would be the same as that for goods purchased in-state, since the terms "sale price" and "cost price" would in each case refer to the same amount, that is, the invoice price.

TENN. COMP. R. & REGS. 1320-5-1-.71 ("Rule 71") provides additional guidance on the taxability of shipping charges. It states:

> Freight, delivery, or other like transportation charges are subject to the Sales and Use Tax if title to the property being transported passes to the vendee at the destination point. Where title to the property being transported passes to the vendee at the point of origin, the freight or other transportation charges are not subject to the Sales or Use Tax. It is immaterial whether the vendor or vendee actually pays for any charges

[2] Such collection could be either mandatory or voluntary, depending on whether the out-of-state vendor has nexus with the taxing state. In the instant ruling request, it is not stated whether the taxpayer is required to or is voluntarily collecting the tax; however, that fact is not determinative in answering the question presented in the ruling request.

> made for transportation, whether the charges are actually paid by one for the other, or whether a credit or allowance is made or given for such charges. In cases, where a vendor makes a separate charge for delivering tangible personal property in his own vehicle, or makes arrangements for delivering tangible personal property, other than by a common carrier, the delivery charges shall be considered a part of the selling price subject to the Sales or Use Tax.

In the instant ruling request, it is stated that the implicit terms of the sale are f.o.b. origin, and that title to the goods passes upon their shipment from taxpayer's dock in Minnesota. Such implicit terms are not inconsistent with the Uniform Commercial Code, which governs the sale of goods. *See* T.C.A. § 47-2-401(2)(a). If the charge at issue in the ruling request were a freight, delivery, or transportation charge standing alone, it would not be subject to tax under the provisions of Rule 71.

However, neither the statute nor the regulations provide an exclusion for a "handling" charge. In *Saverio v. Carson*, 186 Tenn. 166, 208 S.W.2d 1018 (1948), the Tennessee Supreme Court addressed a single charge covering multiple items which, if each stood alone, would be partly taxable and partly nontaxable. The exclusion of the nontaxable items from the tax base was not permitted, even though, on the facts of the case, the majority of the total charge was attributable to the nontaxable component. Since the shipping component is not separated from the handling component, the "shipping and handling fee" is properly includible in the tax base.

Owen Wheeler, Tax Counsel

APPROVED: Ruth E. Johnson, Commissioner

DATE: 6/6/97