

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-40**

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 sales and use tax to the sale of steel joists and accessories delivered to job sites in Tennessee.

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 the taxpayer's detriment.

FACTS

[THE TAXPAYER] is a manufacturer of steel joists and accessories with its principal place of business in [CITY], [STATE X - NOT TENNESSEE]. The steel joists are designed, engineered, and sold to structural fabricators for a specific job. At the purchaser's request, the joists are drop shipped by an outside carrier to a job site in Tennessee which is not the structural fabricator's place of business. The joists cannot be shipped to the structural fabricator's place of business due to their weight and size. They are ready to be installed into the building per plans and specs when delivered. The structural fabricator usually has its own structural steel and metal decking delivered to the job site at about the same time. In some instances, the structural fabricator will sell the joists purchased from the taxpayer, along with its own steel and decking, to a contractor at the job site for one lump sum price. In other instances, the structural fabricator will erect the joists purchased from the taxpayer, along with the structural steel and metal decking which it has provided. The taxpayer does not know whether the structural fabricator will sell the joists or do the erection itself. The taxpayer is registered in Tennessee for sales and use tax purposes. The taxpayer asks for a ruling on whether, under these facts, it can accept resale certificates from its customers in lieu of collecting sales and use tax.

ISSUES

1. Whether the taxpayer must collect sales tax when a contractor-dealer purchases steel joists and accessories from the taxpayer and requests delivery to a job site in Tennessee.
2. Whether the taxpayer's duty to collect tax would change if the taxpayer shipped the joists F.O.B. its place of business, freight allowed to the job site.

RULINGS

1. Sales tax must be collected on sales made to a contractor-dealer if delivery is made directly to the job site.
2. Sufficient facts have not been presented to make this determination.

ANALYSIS

1. Retail sales in Tennessee are subject to sales and use tax under TENN. CODE ANN. §67-6-101 et. seq. Retail sales include those made by an out-of-

state dealer, such as the taxpayer in this case, if delivery is made to a buyer in Tennessee. TENN. CODE ANN. §67-6-102(23)(C). Furthermore, a retail sale is defined as a taxable sale of tangible personal property to a consumer or to any person for any purpose other than for resale. TENN. CODE ANN. §67-6-102(23)(A). Any sales for resale, however, must be in strict compliance with the rules and regulations promulgated by the Commissioner of Revenue. Any dealer making a sale for resale which is not in strict compliance with these rules and regulations shall be personally liable for the tax. *Id.*; *Upper East Tennessee Distributing v. Johnson*, 1997 WL 243503 (Tenn. Ct. App. May 13, 1997).

The taxpayer has not requested a ruling as to whether any exemption applies other than the “sale for resale” exemption. Nor do the facts suggest that any other exemptions apply. Under the facts provided, then, the taxpayer must collect tax on its sales unless the transaction qualifies under departmental rules as a sale for resale.

Because the taxpayer’s customers are in the business of reselling the steel joists on some occasions and are also in the business of using the steel joists on other occasions, they come under the rules governing contractor-dealers found in Sales and Use Tax Rule 8:

- (1) Contractors and sub-contractors engaged in the business of erecting, building or otherwise improving, altering and repairing real property for others, and also engaged in the business of selling building materials and supplies to other contractors, consumers, and users, and who may not be able to segregate that portion of the materials and supplies that they will use or consume in the fulfillment of their contracts from that portion of the materials and supplies that they will sell at retail, may give a resale certificate to the seller of the materials and supplies.
- (2) Contractor-dealers making sales of tangible personal property shall report all sales made, and all withdrawals from inventory for use as a contractor each month, and pay any applicable Sales or Use Tax due. Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use, either in or out of the state.
- (3) Suppliers making sales of materials and supplies to contractor-dealers and delivering such materials and supplies to a job site for use, or tagging or marking particular materials and supplies for a particular job being performed by the contractor-dealer, shall collect the applicable Sales or Use Tax on those sales.

TENN. COMP. R. & REGS. 1320-5-1-.08. Generally, a dealer may make tax-free sales to contractor-dealers on a resale certificate. Subsequently, the contractor-dealer must collect sales tax on the material which is sold at retail and pay use tax on the material which is used in the fulfillment of a contract.

However, Rule 8(3) contains an important exception. A supplier must collect sales tax from a contractor-dealer where the material is delivered to a job site for use. See, *Honest Abe Log Homes, Inc. v. Huddleston*, 1994 Lexis 635 (Tenn. Ct. App. 1994). Under the facts given, the taxpayer sells steel joists and accessories to contractor-dealers, and a portion of these sales will be for resale. They nevertheless become subject to retail sales tax under Rule 8(3) because delivery is made to the job site where they will be used. See, *Upper East Tennessee Distributing v. Johnson*, 1997 WL 243503 (Tenn. Ct. App. May 13, 1997). Although sales for resale are generally exempt, the Court of Appeals has held that TENN. CODE ANN. §67-6-102(23)(A) clearly limits the tax-exempt status of sales for resale to those sales which are in strict compliance with the rules and regulations promulgated by the Department of Revenue. *Id.* These sales fall under Rule 8(3), therefore the taxpayer must collect tax from its customers.

2. The taxpayer, an out-of-state seller, is required to collect and pay use tax in Tennessee as long as a substantial nexus exists between the state and the activity it seeks to tax. *Quill Corporation v. North Dakota*, 504 U.S. 298, 311 (1992). Sufficient facts have not been presented in order to determine if a sufficient nexus would still exist should the taxpayer stop making deliveries into the state. The taxpayer is currently registered in Tennessee. As long as the taxpayer is registered in Tennessee for use tax purposes, it is required to report the appropriate use tax and pay any amount which is due. TENN. COMP. R. & REGS. 1320-5-1-.63(2).

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APPROVED:

Ruth E. Johnson
Commissioner

DATE: 9-18-97