

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-27**

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 single article cap to [MATERIAL] buildings kits.

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 TAXPAYERS] are erecting two [MATERIAL] buildings. One building is about [MEASUREMENT OF SIZE] and the other is [MEASUREMENT OF SIZE]. Both buildings are being constructed from a building kit purchased for that

purpose. The kits contain component parts for the specific building being constructed.

ISSUE

Whether the building kits are each single articles for local sales and use tax purposes.

RULING

The building kits are not single articles and are not subject to the single article cap on local sales tax.

ANALYSIS

The additional sales and use tax which may be levied by local governments is limited in application to the first one thousand six hundred dollars (\$1,600) on the sale or use of any single article of personal property. Tenn. Code Ann. § 67-6-702(a)(1). Tenn. Code Ann. § 67-6-702(d) defines "single article" as

that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article.

The statute speaks of separate units commonly understood as separate units and capable of being sold as independent units. The Tennessee Supreme Court has clarified the definition to mean that there is no need for an article to be internally sufficient. *Executone of Memphis, Inc. v. Garner*, 650 S.W. 2d 734 (Tenn. 1983). The court dismissed the plaintiff's argument that a digital telephone switching system was a single article:

In applying the considerations set out in Rule 6 to the present case, it requires no distortion to conclude that the plugs, the switching systems, and the telephone units, as they are described here, are "commonly understood" to be separate units. The Plaintiff admits that these articles have unit prices, that they can be put together to meet various office needs, and that if the occasion arose they could be sold separately to one who needs a system alteration. To conclude that only the system itself constitutes a single unit completely ignores the separate physical character of each component part, both in the design of the system and in the ultimate benefit to the customer.

Executone of Memphis, 650 S.W. 2d at 737; See also *Honeywell Information Systems, Inc. v. King*, 640 S.W. 2d 553, 554 (Tenn. 1982):

This specific question was addressed in an Attorney General's Opinion, in which it was opined:

Of course, the statutes and the rule contemplate that to be considered a single article of tangible personal property the property must be sold as personal property and when sold in a disassembled state it must constitute personal property when assembled.

Op. Atty. Gen., July 25, 1973. For an item to be considered a single article, it must retain its character as personal property after assembly. See Opinion of the Attorney General No. 81-17, 1981 Tenn. AG LEXIS 674. Prior to its becoming realty, the kit does not exist as a single article of tangible personal property. When the components are assembled into a building, the building becomes realty and has no independent existence as tangible personal property. See Op. Atty. Gen., July 25, 1973; Op. Atty. Gen., October 22, 1968.

The building kits used by the taxpayer contain component parts that clearly become realty when assembled. Accordingly, the components in the kits are no longer tangible personal property and are not single articles for the purposes of the local option sales tax.

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Tax Counsel

APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 6-1-98