

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 01-26**

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 in Department policy.

SUBJECT

Applicability of Sales and Use Tax to the sale of trailers used by farmers, sales of trailers to out-of-state purchasers and the application of the tire disposal fee.

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

[TAXPAYER] is in the business of selling various types of trailers at retail. The taxpayer sells enclosed trailers, open utility trailers, dump trailers with hydraulic lift equipment, and some larger trailers that are designed to haul heavier than normal loads. Although some of taxpayer's customers will be removing the trailer to an out-of-state location, the taxpayer does not make any deliveries out-of-state. When a trailer is sold, the purchase price may include a new spare tire, but the taxpayer also sells new tires separate from the sale of a trailer.

QUESTIONS

1. What are the criteria for selling a trailer to a customer who claims that the trailer will be used as farm equipment or machinery?
2. Under what circumstances is the taxpayer required to collect a \$1.00 tire disposal fee, and does this differ from the requirements placed on new car dealers?
3. If an out-of-state customer purchases a trailer and signs a three-day removal form, should the taxpayer collect Tennessee sales tax?

RULINGS

1. If a customer purports to be purchasing a trailer as farm equipment or machinery, therefore exempt from taxation, the taxpayer should request that the customer sign a Farm Equipment and Machinery Exemption Certificate which details the reasons why the exemption applies.
2. The \$1.00 tire disposal fee should not be collected when a new tire is sold as a component part of a trailer. However if a new tire sold at or near the same time as the trailer, but that is not a component part of the trailer, but is purchased as a separate option, is subject to the \$1.00 tire disposal fee.
3. If the trailer is of the type that falls within the registration and titling requirements of Tennessee law, the taxpayer is not required to collect tax when the purchaser will, within three calendar days of purchase, remove the trailer to another state where it will be registered and used. However, if the trailer is of the type exempt from the registration and titling requirements of Tennessee law, the taxpayer should collect tax even though the purchaser intends to remove the trailer from Tennessee.

ANALYSIS

1. What are the criteria for selling a trailer to a customer who claims that the trailer will be used as farm equipment or machinery?

Tennessee Code Annotated §67-6-207 provides that “after June 30, 1983, no tax is due with respect to farm equipment and machinery.” The purchase of a trailer that meets the definition of “farm equipment and machinery” is exempt from sales and use taxes.¹

‘Farm equipment and machinery’ means any appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, the retail price of which, for any such single article, exceeds two hundred and fifty dollars (\$250), Included within this definition of ‘farm equipment and machinery’ is the lease or rental, even if the amount of the lease or rental is less than two hundred and fifty dollars (\$250).

Tenn. Code Ann. §67-6-102(9). To qualify for the farm machinery exemption, the purchaser of the trailer must attest that he is purchasing the item for use directly and principally in the *production* of an agricultural product for sale and use or consumption off the premises. “Agriculture” has been defined in Tennessee as follows:

In a general sense, the cultivation of the ground for the purpose of producing vegetables and fruits for the use of man and beast; or the art of preparing the soil, sowing and planting seeds, dressing the plants, and removing the crops. In this sense, the word includes gardening or horticulture, and also the raising and feeding cattle or stock. But in a more common and appropriate sense, it is used to signify that species of cultivation which is intended to raise grain and other field crops for man and beast. It is equivalent to husbandry.

Simmons v. Lovell, 54 Tenn. 511 (1872), quoting Webster’s Dictionary.

Thus, a trailer can only qualify if it is being used by a farmer or nurseymen more than 50% of the time in the *production* of an agricultural product that the farmer intends to sell off the premises. The Department has found that very few trailers actually qualify for the exemption. Wagons and similar items designed for and used within the confines of the farm to move the harvested product to storage or

¹ Trailers used to transport livestock are considered “farm equipment and machinery” under Tenn. Code Ann. §67-6-102(9). However, the taxpayer advises that it does not sell livestock trailers.

for use in feeding the farm animals or poultry are exempt. However, tax should be collected on trailers that will be used principally before or after production (such as for hauling harvested products to market), or during times in which no production activity is occurring (such as traveling on-road to acquire products [e.g. seed, fertilizer] or to transport equipment which is destined to be used in the actual production activity). In *Essary v. Huddleston*, 1995 WL 384985 (Tenn. App. 1995), the court ruled that the taxpayer who was growing trees for the purpose of harvesting them was engaged in agriculture production.

A dealer is required to obtain and maintain documents signed by the customer attesting to the specific facts on each of the sales for which it did not collect tax. Tenn. Code Ann. §67-6-523. Tenn. Comp. R. & Regs. 1320-5-1-1.11 directs:

(1) A farmer who buys farm equipment and machinery for the purpose of producing agricultural products for sale and who is entitled to the exemption of T.C.A. §67-6-207 shall establish his right to the exemption by submitting to the dealer a signed statement to the effect that the implement or appliance to be purchased will be used directly and principally for the purpose of producing agricultural products and that it will not become attached to realty.

(2) The dealer shall attach the statement to the company's copy of the bill of sale or invoice which instrument shall show the model serial number and the name of the appliance, the sales price, and "trade in" allowance, if any, and the date of the sale and delivery; provided, however, it shall also be permissible for the dealer to incorporate the buyer's statement on the face of a bill of sale so segregating and identifying the tax exempt item and to take his signature thereto on the company file copy.

(3) Any person having bought farm equipment or machinery under the conditions herein provided who uses it in violation of the requirements of applicable law shall be liable for the tax at the full tax rate.

If taxpayer's customer misrepresents his entitlement to the exemption in the signed documents, the Department may pursue tax collection against the customer. However, the taxpayer will be liable for the tax if he fails to obtain and maintain the required documents or if the taxpayer is accepting documents that it knows are false or contain information that clearly shows that the use of the trailer does not meet the requirements for this exemption. The taxpayer cannot simply rely on a signed exemption certificate for farm equipment and machinery

without reading the information filled in by the customer. If a customer has filled out an affidavit in such a way that it is clear he or she does not qualify for the exemption, then the dealer cannot accept the affidavit as a basis for purchasing exempt farm equipment.

2. Under what circumstances is the taxpayer required to collect a \$1.00 tire disposal fee and does this differ from the requirements placed on new car dealers?

Tenn. Code Ann. §67-4-1603 provides as follows:

- (a) A pre-disposal fee in the amount of one dollar (\$1.00) per tire is imposed on each person exercising the privilege of making retail sales of new tires in this state.

- (b) A person who is subject to and pays this fee is not liable for the fee for tires sold for delivery outside of this state.

A “new tire” is one that “has not previously been used in the regular operation of a motor vehicle and does not include a tire which has been recapped or retreaded.” Tenn. Code Ann. §67-4-1602(5).

The “retail sale” of a new tire means “every sale of new tires for any purpose other than resale”. Tenn. Code Ann. §67-4-1602(6) “Sale” is defined as “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of new tires, but does not include the sale of new tires as a component part of a new or used motor vehicle”. Tenn. Code Ann. §67-4-1602(7) (Emphasis added) “Motor vehicle” is defined as “any vehicle used in the transportation of persons or property on streets or highways, including automobiles, motorcycles, trucks, trailers, semi-trailers and truck/semi-trailer combinations, and also including farm tractors, trailers and machinery, but not including vehicles propelled solely by human muscular power, such as bicycles”. Tenn. Code Ann. §67-4-1602(4)

Exemptions in tax statutes are strictly construed against the taxpayer. *Phillips & Buttorff Mfg. Co. v. Carson*, 217 S.W.2d 1 (1949). The burden is on the taxpayer to establish his exemption; every presumption against it and a well founded doubt is fatal to the claim. *Woods v. General Oils, Inc.*, 558 S.W.2d 433, 435 (1977).

...[S]trictly construing an exemption from a use tax of materials which become a component part of a finished manufactured product, it has been held that

to make out the exemption it is necessary that the materials have actually gone into the finished product as an ingredient or component,

Kingsport Publishing Corporation v. Olsen, 667 S.W.2d 745, 746 (Tenn. 1984), citing 68 Am. Jur.2d at 298-99, *Sales and Use Taxes*, §225. The \$1.00 tire disposal fee levied under Tenn. Code Ann. §67-4-1603 for the retail sale of new tires in Tennessee appears to have been designed, at least partially, to help offset the cost of disposing of used tires. However, by enacting Tenn. Code Ann. §67-4-1602(7), the legislature has seen fit to exempt from the fee all new tires that are a component part of a new or used vehicle, in this case a trailer, when it is purchased. A new tire, although it may be purchased at or near the same time as the new or used vehicle is purchased, but that is not a component part of the vehicle but rather is purchased as a separate option, is subject to the \$1.00 fee.

Tenn. Code Ann. §§67-4-1606 and 67-4-1610 directs the taxpayer in the proper procedure for remitting the tire disposal fee to the state.

(a) The fee imposed by this part shall be payable for quarterly periods as follows:

- (1) January 1 through March 31;
- (2) April 1 through June 30;
- (3) July 1 through September 30; and
- (4) October 1 through December 31.

(b)(1) It is the duty of all dealers on or before the twenty-fifth day of the month immediately following the close of the periods set out above to transmit to the commissioner, upon forms prescribed and furnished by the commissioner, returns showing the gross number of new tires sold at retail during the preceding quarter. A separate return shall be filed for each separate location or place of business.

(2)

(c) The return shall be accompanied by payment of all fees due.

(d) Failure to file a return and/or pay the fee due under this part prior to the date provided by this section shall cause the fee to become delinquent and subject to interest and penalty as provided in chapter 1, part 8 of this title.

Tenn. Code Ann. §67-4-1606. Tenn. Code Ann. §67-4-1610 allows a 10% credit back to the dealer as compensation to the dealer for accounting and remitting the tire disposal fee. (However, the credit is not allowed if the return or payment is delinquent.)

3. If an out-of-state customer purchases a trailer and signs a three-day removal form, should the taxpayer collect Tennessee sales tax?

Generally, all retail sales of tangible personal property in Tennessee are subject to Tennessee sales tax. In *Cape Fear Paging Co. v. Huddleston*, 937 S.W.2d 787 (Tenn. 1996), the Tennessee Supreme Court observed that “[p]ursuant to the Retailer’s Sales Tax Act, Tenn. Code Ann. §§67-6-101 – 67-6-712, a tax is imposed upon the business of selling tangible personal property at retail unless specifically exempted by statute.” However, if certain types of tangible personal property are sold to a purchaser who will remove the tangible personal property to a state other than Tennessee within three days of the purchase, where the item will be registered and used, the sale is exempt from Tennessee sales tax, provided that the requirements of Tenn. Comp. R. & Regs. 1320-5-1-.03 and Tenn. Code Ann. §67-6-343 are met.

Tenn. Code Ann. §67-6-343 provides:

There is exempt from the sales tax the retail sale of motor vehicles subject to registration and titling in this state pursuant to §55-3-101 that are not registered and titled in this state, but are removed for use in another state within three (3) calendar days of purchase. Use of such motor vehicles within this state subsequent to purchase, but prior to removal from the state, does not constitute a use subject to tax.

Tenn. Code Ann. §55-3-101(a) (which is referred to in the above quote) includes trailers, pole trailers, and semi-trailers in the registration and certificate of title provisions. Tenn. Code Ann. §55-1-105(4) defines “trailer” as:

a vehicle with or without motive power, ..., designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

“Pole trailer” is defined in Tenn. Code Ann. §55-1-105(2) as:

every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being

boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, or sustaining themselves as beams between supporting connections.

“Semi-trailer” is defined in Tenn. Code Ann. §55-1-105(3) as:

every vehicle without motive power and not a motor vehicle as herein defined, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

If the trailer sold by the taxpayer is of the type that falls within the registration and titling requirements of Tennessee law, the taxpayer is not required to collect tax when the purchaser will, within three calendar days of purchase, remove the trailer to another state where it will be registered and used. The taxpayer must follow the guidelines as set forth in Tenn. Comp. R. & Regs. 1320-5-1-.03(3):

(a) The sale is a bona fide transaction in which the dealer, or one of his employees, actually makes delivery of the vehicle to a point outside the State of Tennessee, or the sale is to one who will remove the vehicle to another state within three days and there is no knowledge or reason to believe that the vehicle will be used or brought back into the State of Tennessee.

(b) The dealer prepares, submits, and maintains supporting evidence of delivery to a customer outside the State, or to a purchaser who will remove the vehicle to another state, in the form of an affidavit prepared at the time of the sale containing the following information:

1. The name and Sales Tax registration number and invoice number of the trailer dealer.
2. The name and address of the purchaser.
3. A description of the vehicle.
4. The date of the sale.
5. The place and date of delivery.

6. The name of the dealer, employee, or salesman, or other person making delivery of the vehicle, if delivered out of state.

7. The place where the vehicle will be registered.

8. The trade-in allowance given, and the total sales price of the vehicle.

9. A statement that no Tennessee tax has been paid.

10. A statement that the information given is true and correct.

This statement shall be executed in triplicate by both the dealer and the purchaser.

(c) The dealer, or the employee making the delivery of the motor vehicle out of State, shall also make an oath and affidavit within two days of delivery, indicating the date and place of delivery, and the name of the person to whom delivery was made. This statement shall be executed in triplicate. The provisions of this paragraph shall not apply in cases of delivery of a new vehicle and trailer from a factory or another dealer out of this State, but the dealer shall indicate this fact on the affidavit required of him and the customer, as indicated above, and maintain records to show that the delivery was made in that manner.

(d) The original and duplicate copies of each of the affidavits referred to in this sub-section shall be submitted with the Sales Tax return reporting such sales to the Department before any credit shall be given or allowed for sales in bona fide interstate commerce.

It is the duty of the taxpayer to keep and preserve adequate and complete records to determine the amount of Sales and Use Tax for which he may be liable. See Tenn. Code Ann. §67-6-523 and Tenn. Comp. R. & Regs. 1320-5-1-.80.

If the trailer sold by the taxpayer is of the type exempt from the registration and titling requirements of Tennessee law the taxpayer should collect Tennessee sales tax even though the purchaser intends to remove the trailer from Tennessee. If the purchase is made as farm equipment or machinery, as

discussed in the Analysis section to Ruling number one, the sale will be exempt from sales tax regardless of where the purchaser intends to use the trailer.

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APPROVED: Ruth E. Johnson
Commissioner

DATE: October 29, 2001