

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 00-43**

**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 installation and maintenance of lighting and signs. Registration requirements for sales and use tax.

**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 engaged in a business of installation and maintenance of commercial lighting and signs. The ruling request indicates that the taxpayer

considers the lighting and signs to be real property. The taxpayer does not have any over-the-counter sales and does not perform any residential work.

### **QUESTIONS**

1. Is the taxpayer required to collect and remit sales tax on its sales?
2. Is the taxpayer required to pay sales or use tax on its purchases of materials?
3. Is the taxpayer required to have a sales tax registration certificate?
4. What is the procedure for the taxpayer to relinquish its sales tax registration certificate?

### **RULINGS**

1. If the taxpayer makes no sales of tangible personal property, and the signs on which it performs services are real property, it is not required to collect or remit sales tax on its sales.
2. If the taxpayer's business is as described in Ruling (1) above, it is required to pay sales or use tax on its purchases of materials.
3. If the taxpayer's business is as described in Ruling (1) above, it is not required to have a sales tax registration certificate. If the taxpayer does not have a sales tax registration certificate and makes purchases from out-of-state vendors which do not collect Tennessee sales or use tax, or if it incurs a use tax liability under T.C.A. § 67-6-209, it will be required to obtain a use tax registration certificate.
4. If the taxpayer has no need for a sales tax registration certificate, the certificate should be surrendered to the Department of Revenue. If the taxpayer needs a use tax registration certificate, it should surrender its sales tax registration certificate and reapply for the use tax registration. The taxpayer also must notify all dealers to which it has issued resale certificates that the previously-issued resale certificates are revoked and that tax should be charged on future sales to the taxpayer.

### **ANALYSIS**

1. The sale of tangible personal property is subject to sales tax. T.C.A. § 67-6-202. Installation of tangible personal property that remains tangible personal property, and repair of tangible personal property are taxable services, T.C.A. § 67-6-102(24)(F)(iv) & (vi), and are subject to sales tax. T.C.A. § 67-6-205. Tax is also imposed on certain other taxable services, but only on those services specifically mentioned in the statute. See *Ryder Truck Rental, Inc. v. Huddleston*, 1994 Tenn. App. LEXIS 444. Installation, repair and maintenance of real property

are not among the services enumerated in T.C.A. § 67-6-102(24)(F) and therefore are not subject to tax.

In the ruling request, the taxpayer states that the signs it provides installation and maintenance services for are real property. For purposes of this ruling, it is presumed that those signs are real property.<sup>1</sup> Installation and maintenance of real property, as explained in the preceding paragraph, is not subject to sales tax.

2. The taxpayer makes purchases of tangible personal property that it uses in performing its work of installation and maintenance of real property. This property is not being purchased for resale as tangible personal property, and therefore the taxpayer must pay sales or use tax on its purchase of this property. See § 67-6-102(24)(A), TENN. COMP. R. & REGS. 1320-5-1-.62.

3. T.C.A. § 67-6-601 imposes registration requirements on dealers. TENN. COMP. R. & REGS. 1320-5-1-.63(1)(a) states:

Persons making sales of tangible personal property which is not specifically exempt from Sales or Use Tax in this State, and persons furnishing any of the services subject to the Sales Tax must make application for and hold a Registration Certificate as a dealer or supplier for each separate business location in this State.

However, if a dealer is not making sales of tangible personal property or taxable services, there is no requirement that he hold a sales tax registration certificate.

It is possible that the taxpayer may incur a use tax liability. As explained previously, the taxpayer is liable for sales or use tax on its purchases of materials. If it purchases tangible personal property from out of state vendors, or from vendors that otherwise are not required to collect the sales tax, a use tax is due pursuant to T.C.A. § 67-6-203 and/or T.C.A. § 67-6-210. Further, the taxpayer could incur a liability for the contractors use tax provided for by T.C.A. § 67-6-209.<sup>2</sup> If the taxpayer is liable for use tax but not for sales tax, it must obtain a use tax registration certificate pursuant to TENN. COMP. R. & REGS. 1320-5-1-.63(2)(b), which states in pertinent part:

Persons importing taxable tangible personal property or taxable services into the State, and who do not pay the Tennessee Use Tax to an out-of-state dealer registered with this Department, shall register with the Department for Use Tax purposes, and report and pay the appropriate Use Tax to the Department.

4. If the taxpayer no longer needs its sales tax registration certificate, the certificate should be surrendered. If the taxpayer needs a use tax registration certificate, rather than a sales tax registration certificate, it should surrender the sales tax registration certificate and reapply, pursuant to TENN. COMP. R. & REGS.

1320-5-1-.63(1)(c), which states:

When a dealer changes his business ... to a different type of business, the certificate must be submitted for cancellation, and an application for a new certificate filed.

The Taxpayer Services Division of the Department of Revenue administers registration operations, and any surrendered certificate, new application for registration, or correspondence regarding registration should be directed to that division.

Owen Wheeler  
Tax Counsel 3

APPROVED: Ruth E. Johnson

DATE: 11/8/00

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<sup>1</sup> This ruling makes no determination regarding the taxpayer's statement that the signs on which it performs its services are real property. In determining whether signs are real property or tangible personal property, it should be noted that the commissioner has promulgated a rule, TENN. COMP. R. & REGS. 1320-5-1-.65. Paragraph 1 of that rule provides:

Sales of signs which are and remain tangible personal property are subject to the Sales and Use Tax, based upon the actual sales price thereof. Charges for installing signs which are and remain personal property which are made in connection with the sale of the signs, and any charges for repairs or maintenance of signs which are and remain personal property are subject to the Sales Tax. Signs which are and remain tangible personal property are those which are not attached in a permanent fashion to buildings or which are not an integral part of such structure or buildings, or which are not displayed on structures securely anchored in the ground.

Paragraph 2 of the same rule states:

Sales of signs which are attached in a secured and permanent fashion to buildings, which are an integral part of such buildings, or which are displayed on structures securely anchored in the ground, are subject to the Sales Tax based on the selling price thereof. Any charges for installing, repairing or maintaining such signs are not subject to the tax, but the person so installing, repairing or maintaining such signs shall be regarded as the user and consumer of tangible personal property which is used in connection with such installation, repair or maintenance, and shall be liable for the Sales or Use Tax on such materials in this case, the tax is due on the actual selling price of the sign which is securely and permanently attached to the building or to structures bolted to the building or to structures permanently anchored in the ground on heavy wood or steel poles.

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Although paragraph 2 does not use the phrase “real property”, it obviously is intended to give guidance in those cases where the signs involved are intended to become part of the realty, and correctly excludes from taxation installation, repairs, and maintenance on such signs.

<sup>2</sup> The contractors use tax may apply to this taxpayer. T.C.A. § 67-6-209(a) states:

Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, which the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, other than:

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such person so using the tangible personal property shall pay the tax herein levied on the fair market value of such tangible personal property when used, without any deductions whatsoever; provided, that the foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component part of a building, and which is not sold by them as a manufactured item.

Pursuant to the above, if the taxpayer fabricates an item which becomes realty after being installed by the taxpayer, and is not a part of a building, the taxpayer would owe a use tax on a larger tax base than the cost of materials, that is, on fair market value of the fabricated item.

T.C.A. § 67-6-209(b) states:

Where a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for herein for private nonprofit colleges or universities shall apply only to the state portion of the sales tax. The sales or use tax levied by this chapter shall not apply to carpet installed for a church when the church is exempt from sales or use taxes under § 67-6-322.

Pursuant to this subsection, the taxpayer is liable for a use tax on any property that it uses which has not previously been subjected to tax, even if the property has been provided to it by another. This subsection applies even in cases where the owner of the property provided is a tax-exempt entity (other than a church or private non-profit college).