

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 03-07**

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 Tennessee sales tax to vending machine sales.

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] owns and operates snack food vending machines in the state of Tennessee. 2002 Tennessee Public Acts, ch. 856, § 5(a) repealed the optional gross receipts tax applicable to vending machine sales and § 5(b) made charges for the privilege of obtaining merchandise from vending machines retail sales for purposes of the Tennessee sales and use tax.

The Taxpayer seeks confirmation of the correct application of the sales tax in the context of its vending machine sales in Tennessee. Specifically, it seeks advice as to whether the sales tax it must collect may be included in the customer's total cash outlay for the item purchased through a vending machine (i.e., the total cash amount deposited by the customer in the vending machine).

For example: Assume the Taxpayer intends to offer a food item for sale to its customers through a vending machine for fifty-one cents (51¢). If the sales tax is computed on the sales price of fifty-one cents (51¢), the tax amount to be collected would be four cents (4¢)¹. The Taxpayer would like to require its customer to deposit fifty-five cents (55¢) into the vending machine to purchase the item, which amount would include both the fifty-one cents (51¢) sales price and the four cents (4¢) sales tax on the item.

The Taxpayer seeks verification that sales tax has been correctly computed above and that tax need not be calculated on the gross amount deposited by the customer in the machine, which in the above example would be fifty-five cents (55¢).

QUESTION

Must the sales tax due on the sale of an item from the Taxpayer's vending machine be computed on the gross amount of money the vending customer deposits in the vending machine to purchase the item, or can the Taxpayer determine a total amount to be deposited in the vending machine by its customer for the item and then compute the portion of the total amount allocable to sales tax and to the customer's cost, or purchase price, for the item?

RULING

The Taxpayer can determine the total amount a customer must deposit in its vending machine to purchase an item and then compute the portion of the total amount allocable to sales tax and to the customer's cost, or purchase price, for the item, respectively. The Taxpayer is not prohibited from including the sales tax in the amount its customer must deposit in the vending machine to purchase the item.²

ANALYSIS

¹ See various Department of Revenue important notices on the Department's website (www.Tennessee.gov/revenue) for different rates of taxation on food and nonfood items.

² Nevertheless, the Taxpayer must insure that it has met the requirements of Tenn. Code Ann. § 67-6-503 and Tenn. Comp. R. & Regs. 1320-5-1-.90 (Rule 90) to prevent the Department from assessing tax based on the gross amount deposited by the customer into the vending machine.

In 2002, the Tennessee legislature effectively overhauled the taxing system applicable to vending machine sales. Prior Tennessee law had provided for a gross receipts tax payment option for vending machine sales, with such payment elected by the operator of vending machines in lieu of the regular Tennessee sales tax.

However, 2002 Tennessee Public Acts, ch. 856, § 5(a) repealed the gross receipts tax payment option for vending machine sales by deleting in its entirety Tenn. Code Ann. § 67-4-506³. The repealing provision became effective on July 15, 2002.

The new system of taxation essentially made vending machine sales subject to the Tennessee sales tax like other items of tangible personal property. § 5(b) of 2002 Tennessee Public Acts, ch. 856 added the following new definition to Tenn. Code Ann. § 67-6-102(25) in the Tennessee Sales and Use Tax law:

- (I) “Retail sale” or “sale at retail” includes charges made for the privilege of obtaining merchandise from any vending machine or device; provided, that “charges” for this purpose shall be the amount of money deposited into the vending machine or device.

This provision also became effective on July 15, 2002.

The sales tax base on which the Tennessee sales tax is generally computed is the sales price of the item of tangible personal property subject to the tax. “Sales price” under the sales and use tax law is generally defined to mean “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 . . .”⁴ Tenn. Code Ann. § 67-6-102(27).

However, the new sales tax definition enacted as Tenn. Code Ann. § 67-6-102(25)(I) raises some question regarding the proper computation of sales tax on vending machine sales. When reading the proviso of this statutory provision relative to charges, one might erroneously conclude that tax must be computed on the amount of money deposited into the vending machine by the machine operator’s customer.

Nevertheless, Tenn. Code Ann. § 67-6-502 provides that the tax imposed by this chapter (i.e., Chapter 6 of Title 67, which contains the Sales and Use Tax Law) shall be collected by the retailer from the consumer insofar as it can be done. Based on the nature of vending machine sales, the only feasible way the vending retailer can collect the tax from its customer is to require the customer to include the sales tax amount in the total amount deposited in the vending machine at the time the purchase is made. This means that both the customer’s cost of the item sold and the sales tax must be included in the total amount of money the customer inserts in the vending machine to obtain the item being purchased.

³ Note, however, that 2003 Tennessee Public Acts, ch. 358 enacted a new gross receipts tax that applies to certain vending machine sales but is much more limited in scope. That legislation does not appear relevant to this ruling request.

⁴ While the complete definition given in the sales tax law for “sales price” includes significant additional language and provisos, the text quoted above states the sales tax base generally applicable against which the response to this vending machine sales ruling request has been determined.

Where two or more statutes deal with the same subject, they are to be read *in pari materia* and harmonized, if possible. Jones v. St. Louis-San Francisco Ry., 728 F.2d 257 (6th Cir. 1984).

The Department believes the new definition established by Tenn. Code Ann. § 67-6-102(25)(I) should be considered a statutory provision that brings vending machine sales generally within the scope of the previously-established sales tax law rather than one which defines a sales tax base upon which tax must be computed.

This construction permits both Tenn. Code Ann. § 67-6-102(25)(I) and § 67-6-502 to be considered compatible provisions applicable to vending machine sales such that vending machine operators, like other retail vendors, are allowed to collect the sales tax from their customers.

It should be noted however that Tenn. Code Ann. § 67-6-503 authorizes the commissioner to prescribe regulations providing that the amount collected by the retailer from the consumer in reimbursement of the tax must be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sale check or other proof of sale. The Commissioner has promulgated Rule 90, which requires vendors to indicate in some definite manner whether their customers are paying any Sales Tax, which indication must be stated on the ticket, invoice, or other record given to the customer, or it may be shown by posting a sign in the dealer's place of business indicating the prices shown include any applicable sales tax. Tenn. Comp. R. & Regs. 1320-5-1-.90.

Therefore, the Taxpayer should insure that it has met the requirements of Tenn. Code Ann. § 67-6-503 and Rule 90 to avoid a situation where the Department would assess tax, even under the example presented in the Facts above, based on the gross amount deposited by the customer into the vending machine.

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APPROVED: Loren L. Chumley
Commissioner

DATE: 9/15/03