

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 11-36**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of the Tennessee sales and use tax to services involving the moving and handling of tangible personal property.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

The Taxpayer provides services involving the transportation and handling of tangible personal property owned by its customers. The customer contracts with the Taxpayer for the transportation of items such as tables, chairs, and other equipment to and from an event in which the customer is participating. Because the Taxpayer does not own moving trucks or other transportation equipment, the Taxpayer hires a common carrier to transport the customer's property to and from the event; the common carrier bills the Taxpayer for this service. Upon delivery of the tangible personal property by the common carrier to the event location, the Taxpayer's personnel physically handle the customer's property and set it up. After the event's conclusion, the Taxpayer's personnel remove the property and return it to the customer via common carrier.

If the customer does not have certain items that it requires for the event, such as tables and chairs, the Taxpayer may rent them to the customer. In this scenario, the Taxpayer charges a lump sum rental fee to the customer. The rental fee includes all charges associated with the rental (*e.g.*, charges for transportation, handling, and set-up).

The Taxpayer does not execute a written agreement with respect to either the rental of tangible personal property or the moving and handling services. The only document a customer signs is a form used if the customer pays with a credit card. The customer provides the credit card information and then signs the form as an acknowledgment to the credit card company to charge his account.

If the Taxpayer provides both moving and handling services of the customer's property and rental of property to the same customer for a single event, the Taxpayer includes both transactions on a single invoice. However, charges for the rental of the Taxpayer's property and charges for moving and handling the customer's property are separately stated on the invoice as distinct line items. Thus, where the invoice indicates charges for handling, moving, etc., those charges only apply to tangible personal property owned by the customer.

QUESTIONS

1. When the Taxpayer rents tangible personal property to its customer and also provides transportation and handling of such property, are these services subject to the Tennessee sales and use tax?
2. When the Taxpayer provides services involving the transportation and handling of the customer's own tangible personal property, are these services subject to the Tennessee sales and use tax?

RULINGS

1. Yes. When the Taxpayer rents tangible personal property to its customer and provides transportation and handling of such property, charges for transportation and handling are subject to the Tennessee sales and use tax as part of the sales price of the rental.
2. No. When the Taxpayer provides services involving the handling of the customer's own tangible personal property, those services are not subject to the Tennessee sales and use tax.

ANALYSIS

1. Rental of tangible personal property belonging to the Taxpayer

When the Taxpayer rents tangible personal property to its customer and provides transportation and handling of such property, charges for transportation and handling are subject to the Tennessee sales and use tax as part of the sales price of the rental.

TENN. CODE ANN. § 67-6-204(a) (Supp. 2010) imposes the sales tax on the "sales price of all leases and rentals of tangible personal property¹ . . . where the lease or rental is a part of the regularly established business, or the lease or rental is incidental or germane to the regularly established business."

The term "sales price" is defined in pertinent part as "the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise." TENN. CODE ANN. § 67-6-102(82)(A) (Supp. 2010). TENN. CODE ANN. § 67-6-102(82)(A)(ii) disallows any

¹ TENN. CODE ANN. § 67-6-102(92)(A) (Supp. 2010) defines "tangible personal property" as "personal property that can be seen, weighed, measured, felt, or touched."

deduction from the sales price for “costs of transportation to the seller.” Similarly, TENN. CODE ANN. § 67-6-102(82)(A)(iv)-(v) disallows any deduction from the sales price for delivery or installation charges.²

In this case, the Taxpayer’s rental of tangible personal property is subject to the Tennessee sales and use tax. As discussed above, the lease or rental of tangible personal property is subject to sales tax where such lease or rental is either a part of the regularly established business, or the lease or rental is incidental or germane to the regularly established business. TENN. CODE ANN. § 67-6-204(a). Here, the Taxpayer is in the business of renting items such as tables and chairs, which are properly characterized as tangible personal property, to its customers. The Taxpayer rents such items as part of its regularly established business; thus, the Taxpayer’s rental of tangible personal property to its customers is subject to the sales and use tax pursuant to TENN. CODE ANN. § 67-6-204(a).

The sales price of the rental is the total amount charged to the customer. As discussed above, the term “sales price” is defined in pertinent part as “the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.” Note that TENN. CODE ANN. § 67-6-102(82)(A)(iv) specifically provides that the sales price is determined without any deduction for delivery charges. Thus, the sales price of the rental is the total amount charged to the customer, including any charges associated with the delivery of the tangible personal property to and from the event location.

2. Event services involving handling of the customer’s tangible personal property

When the Taxpayer provides services involving the handling of the customer’s own tangible personal property, those services are not subject to the Tennessee sales and use tax.

The sales tax does not apply to all services; rather, it only applies to retail sales of those services specifically enumerated by the statute.³ *Ryder Truck Rental, Inc. v. Huddleston*, 1994 WL 420911 (Tenn. Ct. App. Aug. 12, 1994). In particular, TENN. CODE ANN. § 67-6-205(c)(6) (Supp. 2010) imposes the sales tax on the service of “the installing of tangible personal property that remains tangible personal property after installation . . . where a charge is made for the installation,” regardless of whether the installation is incident to the sale of the tangible personal property or whether any tangible personal property is transferred in conjunction with the installation service.

Thus, the Taxpayer’s services will be subject to Tennessee sales and use tax under TENN. CODE ANN. § 67-6-205(c)(6) if the services can be characterized as: (1) the installation of tangible personal property, (2) that remains tangible personal property, and (3) there is a charge for the

² The term “delivery charges” is defined under TENN. CODE ANN. § 67-6-102(27)(A) as “charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing.”

³ Note that even if a service is not specifically enumerated by the statute, the service may be subject to sales tax where charges for the service are included in the sales price of a taxable good or service.

installation.⁴ The first element is not met, as the Taxpayer does not install tangible personal property. Neither the Tennessee Code nor the Tennessee courts have defined the terms “install” or “installation” for purposes of Tennessee sales and use taxation. However, the Tennessee Supreme Court has specifically stated that, because the Retailers’ Sales Tax Act does not contain a definition of the term “installation,” the term must be given its ordinary and common meaning. *Eusco, Inc. v. Huddleston*, 835 S.W.2d 576, 580 (Tenn. 1992). The Tennessee Supreme Court has also generally stated that when a statute does not define a term, it is proper to look to common usage to determine the term’s meaning. *See, e.g., Tenn. Farmers Assur. Co. v. Chumley*, 197 S.W.3d 767, 782-83 (Tenn. Ct. App. 2006); *Beare Co. v. Tenn. Dep’t of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993).

In common usage, the term “install” means “to set up for use or service.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 648 (11th ed. 1995). Although not dispositive, courts in other jurisdictions have also adopted this or a similar definition of the term. *E.g., Cent. Me. Power Co. v. Johnson*, 263 A.2d 713 (Maine 1970) (defining the term “install” as “to set up for use or service” for state taxation purposes).

However, this definition is overly general and vague. As a result, it is proper to consider what a reasonably prudent person would consider “installation” in the context of sales and use taxation. Under the common understanding, the concept of installation does not include a service in which tangible personal property is both set up for use and removed in the context of a single event. Therefore, tangible personal property that is set up for use for a single event with a defined period of time and removed thereafter is not properly characterized as installation.

In this case, the Taxpayer provides a service in which the customer’s tangible personal property is both set up for use and removed in the context of the customer’s event. The event is singular and of a defined time period. Therefore, when the Taxpayer provides services involving the handling of the customer’s own tangible personal property for a single event, the Taxpayer does not install tangible personal property for the purposes of TENN. CODE ANN. § 67-6-205(c)(6). As the Taxpayer’s service does not fall within the scope of any other section in the Retailers’ Sales Tax Act describing taxable services, the Taxpayer’s service is not subject to the Tennessee sales and use tax.⁵

⁴ The Taxpayer’s service does not fall within the scope of any other section in the Retailers’ Sales Tax Act describing taxable services.

⁵ While not directly relevant, note that if the Taxpayer were selling taxable installation services, it would not be exempt under TENN. COMP. R. & REGS. 1320-5-1-.21 (2008) (“Rule 21”). Rule 21 provides that “[w]arehousemen and movers engaged in the business of moving, storing, packing and shipping tangible personal property belonging to other persons render services, which are not subject to the Sales Tax.” However, the Taxpayer is not a mover engaged in the business of moving tangible personal property belonging to others. Rather, as explained above, the Taxpayer is primarily engaged in the business of staging events for its customers by setting up and removing tables, chairs, and other items at the event location. Rule 21 therefore does not apply.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

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