

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 11-65**

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

The application of the Tennessee sales and use tax to the maintenance and monitoring of [TYPE OF INDUSTRY] assets.

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 [REDACTED] has customers both inside and outside Tennessee. The Taxpayer's services include equipment monitoring and the maintenance (primarily preventative) of [CUSTOMER PROPERTY].

The Taxpayer provides personnel on a contract basis to perform its monitoring and maintenance services to [REDACTED] companies. The types of assets maintained include: [EXAMPLES].

The Taxpayer performs preventative maintenance services, including [EXAMPLES]. However, the Taxpayer does not perform major maintenance services such as [EXAMPLES]; the customer uses other, unrelated contractors to performs major maintenance of its assets.

The Taxpayer charges customers either on an hourly basis or on a monthly lump sum basis. The monthly lump sum amount covers all services performed by the Taxpayer during the month in question. The Taxpayer also charges customers for reimbursable expenses, including: supplies; the cost of trucks and their maintenance; travel expenses; certain training classes; and other related costs. All reimbursable expenses are billed at cost, plus a markup ranging from [PERCENTAGE] to [PERCENTAGE].

RULING

What is the correct application of the Tennessee sales and use tax to the Taxpayer's services?

Ruling: The Taxpayer's maintenance services performed with respect to its customers' tangible personal property are properly considered "repair services" that are subject to the Tennessee

sales tax. The Taxpayer must also collect sales tax with respect to charges for reimbursable expenses that relate to the repair services.

If billed on a separate basis, charges for the maintenance of real property are not subject to the Tennessee sales tax. However, in the event that the Taxpayer charges a lump sum amount, whether it be hourly or monthly, the entire amount will be subject to the sales tax if any of the services rendered include services for the maintenance of tangible personal property.

The Taxpayer's sales of repair services will be exempt for purposes of the Tennessee sales and use tax as sales of industrial machinery if the customer presents the Taxpayer with a proper exemption certificate.

ANALYSIS

Under the Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales of tangible personal property and specifically enumerated services in Tennessee are subject to the sales and use tax.¹ In particular, TENN. CODE ANN. § 67-6-205(c)(4) (2011) imposes the sales tax on the "performing, for a consideration, of any repair services with respect to any kind of tangible personal property or computer software."

The sales tax does not apply to all services; rather, it only applies to retail sales of those services specifically enumerated by the statute. *Ryder Truck Rental, Inc. v. Huddleston*, 1994 WL 420911 (Tenn. Ct. App. Aug. 12, 1994). Even if a service is not specifically enumerated by the statute, however, the service may be subject to the sales tax where charges for the service are included in the sales price of a taxable good or service. Specifically, TENN. CODE ANN. § 67-6-102(81)(A) (2011) provides that the sales price of a good or service equals the "total amount of consideration . . . for which personal property or services are sold," including any otherwise nontaxable services necessary to complete the sale, with no deduction for the seller's labor costs, costs of materials used, or charges by the seller for services necessary to complete the sale. Thus, when the sale of a non-enumerated service is part of the sale of a taxable good or service, the charges for the non-enumerated service are included in the sales price of the taxable good or service and as such are subject to taxation.

TENN. COMP. R. & REGS. 1320-5-1-.54 (2000) ("Rule 54") explains TENN. CODE ANN. § 67-6-205(c)(4). Rule 54(1) provides that "[a]ll charges for repair services and repairs of any kind of tangible personal property, such as automobiles, clothing, watches and jewelry, office equipment, machinery, tires, etc., including all parts and/or labor, are subject to the Sales Tax." This includes occasions when there may be no new parts involved in the transaction, and occasions when a customer may furnish any or all of the parts necessary for the repair work. *Id.* Rule 54(1) further states that "[a]ny factor entering into the consideration charged for repair services and repairs such as 'service call', minimum charge, hourly or flat rates, mileage, etc., shall be subject to the Sales Tax." Rule 54(2) further provides that "repair services" and "repairs" of tangible personal property "shall mean and include any one or all of the following for a user and consumer; work done to preserve or restore to or near the original condition made necessary by wear, normal use, wastage, injury, decay, partial destruction, or dilapidation; mending,

¹ TENN. CODE ANN. § 67-6-102(80)(C) (2011) defines the term "sale" to include "the furnishing of any of the things or services taxable" under the Retailers' Sales Tax Act.

correction, or adjustment made for any defect or defective portion; alterations; refinishing; any cleaning that is a necessary part of any repair work; ‘service calls’ where any repair work is done or contemplated; and changes in the size, shape, or content.” However, repair services and repairs of tangible personal property “shall not include any maintenance or other work on buildings, or electrical wiring, plumbing, or fixtures attached to and a part of any real property; installation of tangible personal property not incidental to a sale or repair thereof; service calls where no repair is contemplated.”² *Id.*

The Taxpayer’s maintenance and monitoring services performed with respect to its customers’ tangible personal property are properly considered “repair services” that are subject to the Tennessee sales tax under TENN. CODE ANN. § 67-6-205(c)(4).³ Such services include [EXAMPLES], and come within the definition of “repair services” and “repairs” under Rule 54(2) because they constitute work done to preserve or restore the tangible personal property that is made necessary by wear, normal use, wastage, injury, decay, partial destruction, or dilapidation; mending, correction, or adjustment made for any defect or defective portion; alterations; refinishing; or cleaning that is a necessary part of the Taxpayer’s repair work.

The Taxpayer must also collect sales tax with respect to charges for reimbursable expenses that relate to such repair services. As noted above, Rule 54(1) states that “[a]ny factor entering into the consideration charged for repair services and repairs such as ‘service call’, minimum charge, hourly or flat rates, mileage, etc., shall be subject to the Sales Tax.” Accordingly, charges related to supplies, travel expenses, and other costs are part of the sales price of the repair services and as such are subject to the sales tax under TENN. CODE ANN. § 67-6-205(c)(4).

The Taxpayer also performs maintenance services with respect to real property, such as [EXAMPLE]. As noted above, Rule 54(2) provides that repair services and repairs of tangible personal property “shall not include any maintenance or other work on buildings.” If billed on a separate basis, charges for such services are therefore not subject to the Tennessee sales tax. *See TomKats Catering, Inc. v. Johnson*, 2001 WL 1090516 (Tenn. Ct. App. September 19, 2001) (holding that optional catering services were not subject to tax when invoiced separately from taxable sales of food and not necessary to complete the taxable sale).

However, the Taxpayer has indicated that it at times charges customers a monthly lump sum amount, which covers all services performed by the Taxpayer during the month in question. Alternatively, the Taxpayer may charge an hourly rate, which may include both taxable and non-taxable services. In the event that the Taxpayer charges a lump sum amount, whether it be hourly or monthly, the entire amount will be subject to the sales tax if any of the services rendered constitute taxable repair services. *See* TENN. CODE ANN. § 67-6-102(81)(A) (definition of “sales price,” discussed above).

² Rule 54(3) provides that dealers “performing repair services and repairs of tangible personal property” may purchase repair parts without tax, on a certificate of resale. However, all equipment, energy fuel, and other supplies and taxable services are subject to the sales and use tax, and the tax due thereon must be paid to the vendor.

³ Under Rule 54(2), monitoring services constitute repair services if repair work is done or contemplated during the service call. Additionally, monitoring constitutes a labor cost to the Taxpayer with respect to the provision of the Taxpayer’s repair services and is a service that is necessary to complete the sale of such repair services.

The facts indicate that the Taxpayer may render services to customers who qualify for the industrial machinery exemption under TENN. CODE ANN. § 67-6-206 (2011).⁴ Specifically, the Taxpayer performs maintenance services with respect to [EXAMPLES OF INDUSTRIAL EQUIPMENT]. Such items of tangible personal property may qualify as “industrial machinery,” which TENN. CODE ANN. § 67-6-102(46)(A)(i) defines in pertinent part as “machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, *repair parts and any necessary repair or taxable installation labor therefor* [sic], that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises ... where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one’s principal business.” (Emphasis added.)

The Taxpayer’s sale of repair services will be exempt for purposes of the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-206 if the customer presents the Taxpayer with a proper exemption certificate. Pursuant to TENN. CODE ANN. § 67-6-409(a)(2) (2011), the Taxpayer must obtain from the customer a copy of a Tennessee industrial machinery exemption certificate issued by the Commissioner of Revenue or a fully completed Streamlined Sales Tax Certificate of Exemption, either in paper or electronic form, that includes the customer’s Tennessee manufacturing exemption number.⁵

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: November 21, 2011

⁴ TENN. CODE ANN. § 67-6-206(a) exempts “industrial machinery” from the sales and use tax, providing that “[a]fter June 30, 1983, no tax is due with respect to industrial machinery.”

⁵ TENN. COMP. R. & REGS. 1320-5-1-.78(1) (1974) (“Rule 78”) requires that dealers making sales to purchasers who are exempt from payment of the sales and use tax obtain and keep appropriate exemption certificates. The Department allows dealers to maintain scanned copies of exemption certificates. Rule 78(2) provides that all sales where an exemption has been claimed, but which are not supported by exemption certificates, will be deemed retail sales, and the dealer will be held liable for the sales and use tax due.