

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 12-16**

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

The application of the Tennessee sales and use tax industrial machinery exemption found under TENN. CODE ANN. § 67-6-206(a) (2011) to [REUSABLE SPECIALTY CONTAINERS].

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] and its affiliates (collectively, the "Taxpayer") have a [MANUFACTURING] facility (the "Facility") [REDACTED] in [LOCATION], Tennessee (the "Project Site"). The Facility has several facilities, including [REDACTED] (the "[PARTS STORAGE FACILITY]"). [REDACTED].

The [PARTS STORAGE FACILITY] forms part of the Taxpayer's Facility for the production of [PRODUCTS]. [REDACTED].

Parts are transported by the Taxpayer from the [PARTS STORAGE FACILITY] to other parts of the Facility by a conveyance dolly. Before loading the parts on the conveyance dolly, the Taxpayer protects the parts by [PLACING] the parts in [REUSABLE SPECIALTY CONTAINERS]. The containers protect the parts from damage during transportation from storage at the [PARTS STORAGE FACILITY] to the production and assembly line. Each part is transported in a container that has been specifically designed for that part.

[REDACTED].

The containers may hold parts anywhere from [TIME DURATION] to [TIME DURATION] before the parts are removed from the container during production or assembly. [REDACTED]. After the parts are removed from the containers, the containers are returned to the [PARTS STORAGE FACILITY] for reuse. None of the containers are used [REDACTED] to transport parts to the [PARTS STORAGE FACILITY].

[REDACTED].

The Taxpayer is principally engaged in the fabrication of [PRODUCTS] for resale to others for use and consumption off the Project Site's premises; the Taxpayer possesses a valid industrial machinery authorization number issued by the Department. The [REUSABLE SPECIALTY CONTAINERS] are used exclusively for manufacturing and assembling [PRODUCTS] at the Facility.

RULING

Do the [REUSABLE SPECIALTY CONTAINERS] utilized at the Project Site qualify for the Tennessee sales and use tax industrial machinery exemption under TENN. CODE ANN. § 67-6-206(a) (2011)?

Ruling: Yes. The Taxpayer's [REUSABLE SPECIALTY CONTAINERS] used at the Project Site qualify for the industrial machinery exemption from Tennessee sales and use tax under TENN. CODE ANN. § 67-6-206(a).

ANALYSIS

Under the Retailers' Sales Tax Act, TENN. CODE ANN. §§ 67-6-101 to -907 (2011), the retail sale of tangible personal property is generally subject to the Tennessee sales and use tax, unless an exemption applies.¹ One exemption from the sales and use tax is found in TENN. CODE ANN.

¹ TENN. CODE ANN. § 67-6-102(78) (2011) defines a "retail sale" as "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent." The term "sale" is defined under the Tennessee sales and use tax laws in pertinent part 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 tangible personal property for a consideration." TENN. CODE ANN. § 67-6-102(80)(A). Additionally, TENN. CODE ANN. § 67-6-102(91)(A) defines "tangible personal property" in pertinent part as "personal property that can be seen, weighed, measured, felt, or touched."

§ 67-6-206(a) (2011), which provides that “[a]fter June 30, 1983, no tax is due with respect to industrial machinery.”²

“Industrial machinery” is generally defined in pertinent part as

[m]achinery, 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, 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.³

Moreover, the definition of “industrial machinery” specifically includes “[e]quipment used in transporting raw materials from storage to the manufacturing process.” TENN. CODE ANN. § 67-6-102(46)(D)(ii).

In order for the [REUSABLE SPECIALTY CONTAINERS] to qualify as industrial machinery, the Taxpayer must first qualify as a manufacturer.

A manufacturer, for purposes of the industrial machinery exemption from sales and use taxation, is “one who engages in . . . fabrication or processing as one’s principal business.” TENN. CODE ANN. § 67-6-102(46)(A)(i); *cf.* TENN. CODE ANN. § 67-6-206(b)(2). Manufacturing is a taxpayer’s principal business if more than fifty percent of its revenues at a given location are derived from fabricating or processing tangible personal property for resale. *Tenn. Farmers’ Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 91-92 (Tenn. 1987); *see also Beare Co. v. Tenn. Dep’t of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993).

The Taxpayer has indicated that it is principally engaged in the fabrication of [PRODUCTS] for resale to others for use and consumption off the Project Site’s premises. Consistent with these facts, the Department has issued an industrial machinery authorization that permits the exempt purchase of industrial machinery by the Taxpayer. The Taxpayer is therefore a manufacturer for purposes of the industrial machinery exemption.

As noted above, TENN. CODE ANN. § 67-6-102(46)(D)(ii) includes as part of the definition of “industrial machinery” any equipment that is used for “transporting raw materials from storage

² The burden is on the taxpayer to establish entitlement to an exemption from taxation. The Tennessee Supreme Court has stated that “exemptions are strictly construed against the taxpayer, who has the burden of proving entitlement to the exemption.” *Steele v. Indus. Dev. Bd. of the Metro. Gov’t of Nashville & Davidson Cnty.*, 950 S.W.2d 345, 348 (Tenn. 1997); *see also Am. Airlines, Inc. v. Johnson*, 56 S.W.3d 502, 506 (Tenn. Ct. App. 2000) (quoting *Rogers Grp., Inc. v. Huddleston*, 900 S.W.2d 34, 36 (Tenn. Ct. App. 1995)) (“Although the rule is well-established that taxing legislation should be liberally construed in favor of the taxpayer and strictly construed against the taxing authority, it is an equally important principle of Tennessee tax law that ‘exemptions from taxation are construed against the taxpayer who must shoulder the heavy and exacting burden of proving the exemption.’”). The Tennessee Supreme Court has also recognized that any well-founded doubt is sufficient to defeat a claimed exemption from taxation. *See Tibbals Flooring Co. v. Huddleston*, 891 S.W.2d 196, 198 (Tenn. 1994); *United Cannery, Inc. v. King*, 696 S.W.2d 525, 527 (Tenn. 1985)).

³ TENN. CODE ANN. § 67-6-102(46)(A)(i) (2011).

to the manufacturing process.” The Taxpayer utilizes the [PARTS STORAGE FACILITY] for storing component parts. [REDACTED]. Most importantly, the Taxpayer has indicated that at no time are the [REUSABLE SPECIALTY CONTAINERS] used for storing raw materials or for moving raw materials around the [PARTS STORAGE FACILITY]. The [REUSABLE SPECIALTY CONTAINERS] are clearly equipment that meets the requirements of TENN. CODE ANN. § 67-6-102(46)(D)(ii), and thus qualify as industrial machinery for Tennessee sales and use tax purposes.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 8-2-12