

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 14-04**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of the Tennessee business tax to a provider of vascular access therapy and related services as well as IV therapy certification classes.

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] (the “Taxpayer”) contracts with [CLIENTS] (“Clients”) to provide vascular access therapy and related services. The Taxpayer also provides certification classes on intravenous (“IV”) therapy to healthcare providers through its [CERTIFICATION DIVISION].

The Taxpayer provides vascular access therapy and related services to its Clients through its [SERVICE AGREEMENT]. Per that agreement, the Taxpayer provides [TYPE A CATHETER INSERTION] services, typically through [CATHETERS], and also provides [TYPE B CATHETER INSERTION]. Registered nurse intravenous specialists perform the services under the [SERVICE AGREEMENT]. [REDACTED]. When a Client gives the Taxpayer written orders, the Taxpayer provides nursing services for vascular access as well as all insertion related procedural supplies. The Client pays a fee to the Taxpayer for each [CATHETER] Insertion performed.

In addition to providing [CATHETER] Insertions, the Taxpayer provides several other services under its [SERVICE AGREEMENT] at no additional charge. The Taxpayer provides scheduled care and maintenance of its vascular devices. This may include dressing changes along with the assessment and removal of devices. For each Client, the Taxpayer also provides individually tailored educational training and support centered on care and maintenance of [CATHETERS], which may include establishing infection control programs. The Taxpayer monitors all devices inserted and collects data for quality reporting and prevention of infection. The Taxpayer also reviews policies and procedures related to venous access and infusion therapy and offers recommendations to its Clients based on the [INDUSTRY] standards of practice.

For a separate fee under its [SERVICE AGREEMENT], the Taxpayer will provide an on-site consultation service, where the Taxpayer sends a nurse to assess and troubleshoot any issues with a [CATHETER]. An example of such an issue would involve an occlusion being resolved by a nurse utilizing medication and/or flushing the line to relieve the obstruction.

In addition to offering services through its [SERVICE AGREEMENT], the Taxpayer operates an [CERTIFICATION DIVISION] that provides certification classes on IV therapy to healthcare professionals. The [CERTIFICATION DIVISION] offers several classes [IN A RANGE OF INSTRUCTION HOURS]. Clinically active instructors with real world experience teach the classes, and the classes allow healthcare professionals to keep up with the constantly changing field of vascular access and IV therapy. The classes encompass the [VARIOUS INDUSTRY STANDARDS]. The Taxpayer charges a fee for participation in each of its classes. For some of its classes, the Taxpayer provides continuing education credits.

RULING

Are the Taxpayer's gross receipts exempt from the Tennessee business tax under TENN. CODE ANN. § 67-4-708(3)(C)(i)-(xvi) (2013)?

Ruling: Yes. The Taxpayer's fees for [TYPE A AND TYPE B CATHETER INSERTION] and on-site consultation under its [SERVICE AGREEMENT] are exempt as allied health services under TENN. CODE ANN. § 67-4-708(3)(C)(i), and the Taxpayer's fees for certification classes are exempt as educational services under TENN. CODE ANN. § 67-4-708(3)(C)(iii).

ANALYSIS

The Tennessee Business Tax Act¹ is one component of Tennessee's broader privilege and excise taxation statutes. The Act imposes, in certain instances, a tax on the privilege of making sales by engaging in any business activity described in TENN. CODE ANN. § 67-4-708(1)-(4) (2013). The Act was modified in several respects by the Uniformity and Small Business Relief Act of 2013, which is effective for tax periods beginning on or after January 1, 2014.²

A taxpayer is classified under TENN. CODE ANN. § 67-4-708 according to its "dominant business activity," and this classification determines the rate of the business tax.³ The term "dominant business activity" is defined for business tax purposes under TENN. CODE ANN. § 67-4-702(a)(5) (2013) as "the business activity that is the major and principal source of taxable gross sales of the business." The Department has issued guidance interpreting "dominant business activity" to mean "[t]he item comprising the largest proportion of gross sales of the business when compared with other items sold."⁴

"Persons"⁵ whose dominant business activity is "making sales of services or engaging in the business of furnishing or rendering services" are included in Classification 3.⁶

¹ Tennessee Business Tax Act, ch. 387, §§ 1-27, 1971 Tenn. Pub. Acts 994, 994-1019 (codified as amended at TENN. CODE ANN. § 67-4-701 to -730 (2013)).

² Uniformity and Small Business Relief Act of 2013, ch. 313, §§ 1-23, 2013 Tenn. Pub. Acts (codified in various sections of Part 7 of Chapter 4 of Title 67).

³ TENN. CODE ANN. § 67-4-709 (2013).

⁴ TENN. COMP. R. & REGS. 1320-4-5-.15 (1974). If a business engages in taxable activities enumerated in TENN. CODE ANN. § 67-4-708(1)-(4) (2013), the business activities are not exempt from the Tennessee business tax just because the item comprising the largest proportion of gross sales does not fall within any of the classifications. Applying a previous version of the Tennessee Business Tax Act, the Tennessee Supreme Court has ruled that "[a]ll entities who make sales by engaging in any of the business activities enumerated in § 67—5805 [now codified, as amended, at TENN. CODE ANN. § 67-4-708 (2013)] are subject to the tax," and that "[t]he dominant business activity of a taxpayer is relevant only in determining which of the classifications in § 67—5805 applies to him." *See Hermitage Mem'l Gardens Mausoleum & Mem'l Chapel v. Dunn*, 541 S.W.2d 147, 149 (Tenn. 1976).

⁵ "Person" is broadly defined to include "any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number." TENN. CODE ANN. § 67-4-702(a)(12).

⁶ TENN. CODE ANN. § 67-4-708(3)(C) (2013).

However, TENN. CODE ANN. § 67-4-708(3)(C)(i)-(xvi) excepts services rendered by sixteen industry groups from the Tennessee business tax. TENN. CODE ANN. § 67-4-708(3)(C) states that “[i]t is the legislative intent that the exceptions . . . shall include the sales of services by those businesses or establishments so described in the Standard Industrial Classification Index of 1972, including all supplements and amendments [thereto].” The most recent version of the index is the Standard Industrial Classification Manual of 1987 [hereinafter SIC Manual of 1987].⁷

Two exceptions are particularly relevant here. First, TENN. CODE ANN. § 67-4-708(3)(C)(i) excludes from business taxation the provision of “medical, dental, and allied health services to human beings, including sanatorium, convalescent and rest home care” as described in the SIC Manual of 1987. Second, TENN. CODE ANN. § 67-4-708(3)(C)(iii) excludes “educational services offered by elementary and secondary schools, colleges, universities, professional schools and junior colleges, library and information centers, correspondence schools, vocational schools and specialized nondegree granting schools.”

If a taxpayer charges a separate fee for various services that it performs rather than one aggregate fee for all of its services, the determination of whether a service is exempt by TENN. CODE ANN. § 67-4-708(3)(C)(i)-(xvi) is based on each service to which a fee applies. Because the Taxpayer here charges three separate fees under its [SERVICE AGREEMENT] and another fee to each healthcare provider who attends a particular certification class, it is proper to analyze whether any of these fees are exempt from the business tax under TENN. CODE ANN. § 67-4-708(3)(C)(i)-(xvi) on a fee by fee basis.

[TYPE A CATHETER INSERTION]

The Taxpayer’s gross receipts from providing [TYPE A CATHETER INSERTIONS] are exempt from the Tennessee business tax as an allied health service under TENN. CODE ANN. § 67-4-708(3)(C)(i).

As stated above, when determining whether a service is exempt under TENN. CODE ANN. § 67-4-708(3)(C), it is appropriate to turn to the SIC Manual of 1987. The SIC Manual of 1987 describes “Health and Allied Services, Not Elsewhere Classified” as “[e]stablishments primarily engaged in providing health and allied services not elsewhere classified.”⁸

The Taxpayer’s [TYPE A CATHETER INSERTION] service is properly considered an allied health service because all of the activities that the Taxpayer performs in exchange for this fee involve health related services performed on humans. With this service, nurse specialists insert [CATHETERS] into patients that are necessary for the provision of medical treatment. The fee

⁷ In 1997, the Office of Management and Budget decided to replace the Standard Industrial Classification Manual with a new system, the North American Industry Classification System, in response to “[r]apid changes in both the U.S. and world economies [that] brought the SIC under increasing criticism.” OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM 13 (2007). Because the statute refers only to the SIC and the amendments to it, the SIC Manual of 1987 remains applicable under TENN. CODE ANN. § 67-4-708(3)(C).

⁸ OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, STANDARD INDUSTRIAL CLASSIFICATION MANUAL 389 (1987).

for [TYPE A CATHETER INSERTION] also includes the Taxpayer's service of providing scheduled care and maintenance of its vascular devices, provision of individually tailored educational training and support, monitoring of devices inserted and collecting data for quality reporting and preventing infection, reviewing policies and procedures related to venous access and infusion therapy and offering recommendations to its Clients.

As such, all of the Taxpayer's gross receipts from the portion of its [SERVICE AGREEMENT] related to [TYPE A CATHETER INSERTIONS] are exempt from the business tax as allied health services under TENN. CODE ANN. § 67-4-708(3)(C)(i).

[TYPE B CATHETER INSERTION]

The Taxpayer's gross receipts from providing [TYPE B CATHETER INSERTION] are exempt from the Tennessee business tax as an allied health service under TENN. CODE ANN. § 67-4-708(3)(C)(i), for the same reasons that the [TYPE A CATHETER INSERTIONS] are exempt. [TYPE B CATHETER INSERTIONS], like [TYPE A CATHETER INSERTIONS], are health related services performed on humans that are necessary for the provision of medical treatment, and they involve many of the same activities and procedures by the Taxpayer that are part of [TYPE A CATHETER INSERTION].

On-Site Consultation

The Taxpayer's gross receipts from providing on-site consultations are exempt from the Tennessee business tax as an allied health service under TENN. CODE ANN. § 67-4-708(3)(C)(i).

As the third fee component of its [SERVICE AGREEMENT], the Taxpayer provides Clients with an on-site consultation service, where the Taxpayer sends a nurse to assess and troubleshoot any issues that arise with a [CATHETER]. For example, a nurse might resolve an occlusion by utilizing medication and/or flushing to relieve obstruction.

This fee, like the [TYPE A AND TYPE B INSERTION] fees, involves the provision of allied health services to humans, and is thus exempt from the business tax under TENN. CODE ANN. § 67-4-708(3)(C)(i).

Certification Classes

The Taxpayer's gross receipts from providing certification classes are exempt from the Tennessee business tax as educational services under TENN. CODE ANN. § 67-4-708(3)(C)(iii).

Separate and apart from the previous fees that are included under its [SERVICE AGREEMENT], the Taxpayer offers certification classes on IV therapy taught by licensed healthcare professionals to the general healthcare community through its IV Institute. A healthcare provider attending a class pays a set fee for each class he or she attends.

Although the Taxpayer's certification classes are offered to medical professionals, they do not qualify as medical or allied health services under TENN. CODE ANN. § 67-4-708(C)(i) because they are not a medical or allied health service to human beings but are rather a method of training individuals on the performance of medical services.

Nevertheless, the certification classes are exempt from the business tax under TENN. CODE ANN. § 67-4-708(C)(iii), which provides an exemption for “educational services offered by elementary and secondary schools, colleges, universities, professional schools and junior colleges, library and information centers, correspondence schools, vocational schools, and specialized nondegree granting schools.” The classes most clearly fall within Industry Group 8299 of the SIC Manual of 1987, which includes “Schools and Educational Services, Not Elsewhere Classified.” This group is described as “[e]stablishments primarily engaged in offering education courses and services, not elsewhere classified,”⁹ and among the examples listed for Industry Group 8299 is “[c]ontinuing education programs.”¹⁰

The Taxpayer’s certification classes are offered to practicing medical personnel and are taught by clinically active instructors. The certification classes include instruction in established medical standards and recommendations, such as the [INDUSTRY STANDARDS]. Moreover, the Taxpayer charges a fee for participation in each of its classes, and some of the classes provide continuing education credits. The certification classes are clearly focused on vocational continuing education to keep the enrollees abreast of the current standard of care.

Accordingly, all of the Taxpayer’s gross receipts from its certification classes are exempt from the business tax as educational services under TENN. CODE ANN. § 67-4-708(3)(C)(iii).

Conclusion

In summary, the Taxpayer’s fees for [TYPE A CATHETER INSERTION], [TYPE B CATHETER INSERTION], and on-site consultation under its [SERVICE AGREEMENT] are all classified as fees for allied services, and as such, the Taxpayer’s gross receipts under its [SERVICE AGREEMENT] are exempt from the Tennessee business tax as allied health services under TENN. CODE ANN. § 67-4-708(3)(C)(i). Additionally, the Taxpayer’s gross receipts from its certification classes are exempt from the Tennessee business tax as educational services under TENN. CODE ANN. § 67-4-708(3)(C)(iii).

Jennifer Wilson
Assistant General Counsel

APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: June 23, 2014

⁹ *Id.* at 392.

¹⁰ *Id.* at 393.