

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #95-16A**

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

This Letter Ruling is intended to clarify and replace Letter Ruling No. 95-16 which was previously issued to this taxpayer on these facts and which did not address certain concerns raised in the taxpayer's letter ruling request. This ruling is a clarification of the original ruling and shall be considered issued effective May 30, 1995, which was the date of the original ruling.

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 of 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 his detriment.

FACTS

[THE TAXPAYER], which conducts business as [COMPANY X], proposes to transfer in escrow ninety-five percent (95%) of its Tennessee based assets relating to [BUSINESS ACTIVITY] in [TENNESSEE CITY] and [TENNESSEE CITY]. The purchaser is [COMPANY Y], L.L.C., a [STATE - NOT TENNESSEE] limited liability company. The seller will contribute the remaining five percent (5%) of the capital to the purchaser in an equity contribution.

The seller is in the business of [BUSINESS ACTIVITY]. Sometimes it also sells or leases equipment to customers.

The transaction described above will include the transfer by the seller of title to its motor vehicles in Tennessee. The purchaser will pay the required Tennessee use tax with respect to the value of the motor vehicles at the time of the transfer of the same.

ISSUE

Whether [COMPANY X] and/or [COMPANY Y] will be subject to sales or use tax on the sale or subsequent use of the assets sold as described above.

RULING

The sale of the seller's assets other than motor vehicles and inventory held for resale (including lease) would be a casual or isolated transaction not subject to Tennessee sales tax. The sale of inventory held for resale (including lease) will not be subject to sales tax provided the inventory is purchased for resale and the purchaser presents a resale certificate. The transfer of motor vehicles is subject to sales tax. Tangible personal property purchased for resale or in a casual and isolated transaction will not be subject to use tax in the hands of the purchaser.

ANALYSIS

T.C.A. § 67-6-202(1) imposes a tax on “the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state.” T.C.A. § 67-6-102 provides the following definition of the term “business” as used in T.C.A. Section 67-6-202:

(1) “Business” includes any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect. *“Business” does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of*

taxable services or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. “Business” includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations.

T.C.A. § 67-6-102(1) (emphasis added).

Under the facts provided, the seller is not normally in the business of selling its tangible personal property in Tennessee other than some inventory held for lease. Therefore, the sale of those tangible personal assets other than inventory held for sale is not within the statutory definition of the term “business “ and will not be subject to the sales tax. See *Liberty Cash Grocers, Inc. v. Atkins*, 202 Tenn. 448, 304 S.W.2d 633 (1957).

The sale of inventory which the seller leases or sells to its customers will be subject to sales tax unless purchased for resale. Under T.C.A. § 67-6-102(23)(A) the term “sale at retail” does not include sales for the purpose of resale. Any sales for resale must be in strict compliance with rules and regulation promulgated by the commissioner. Under Sales and Use Tax Rule 1320-5-1-.68, exempt purchases for resale must be supported by a certificate of resale presented by the purchaser.

The exemption in T.C.A. § 67-6-102(1) for casual and isolated transactions also does not apply to sales of motor vehicles, aircraft and vessels which are required to be registered under the laws of Tennessee with an agency of this state, or under the laws of the United States with an agency of the federal government.

T.C.A. § 67-6-203 imposes a use tax on tangible personal property “when the same is not sold but is used, consumed, distributed, or stored for use and consumption in this state; provided, that there shall be no duplication of the tax.” The use tax would not be applicable to those assets transferred to the purchaser in a casual and isolated transaction as described above. Neither does it apply to inventory purchased and held for resale.

Steve Thomas, Senior Tax Counsel

APPROVED: _____
Ruth E. Johnson, Commissioner

DATE: September 22, 1995