

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #99-06**

**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**

Application of sales and use tax to transfer of business assets in a liquidation and merger.

**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**

[THE CORPORATION] is engaged in [BUSINESS]. The Corporation currently conducts its [BUSINESS] operations through several operating subsidiaries (“the Subsidiaries”) with locations in approximately 25 states. Currently, the corporate structure of the Corporation consists of three tiers: [ABC], Inc., is the parent holding company. [QRS], Inc., and [XYZ CORP.], the intermediate holding companies, and the Subsidiaries (collectively, “the Subsidiaries”). The Corporation’s headquarters are located in [STATE - NOT TENNESSEE] but two of the operating Subsidiaries engage in [BUSINESS] operations in Tennessee.

To form a more optimal and efficient corporate structure, the Corporation wishes to collapse the Subsidiaries and intermediate holding companies into a singular intermediate holding company (“the Taxpayer”) by a concurrent Internal Revenue Code § 332 liquidation and merger of the subsidiaries and the holding companies. The actual ownership interest by the Corporation in the assets of the Taxpayer will be the same prior to and subsequent to the liquidation and merger.

During the liquidation and merger, the Taxpayer will receive business assets such as furniture, fixtures, equipment and supplies used in the Subsidiaries’ [BUSINESS] operations; inventory and [PRODUCT] held to be leased or rented to others through the Subsidiaries’ [BUSINESS] operations; and motor vehicles (non-rental property) used in the Subsidiaries’ [BUSINESS] operations.

## **ISSUES**

Whether the transfer in Tennessee of the following assets from the Subsidiaries to the Taxpayer is subject to sales or use tax:

1. Business assets such as furniture, fixtures, equipment and supplies used in the Subsidiaries’ [BUSINESS] operations;
2. Transfer of inventory and [PRODUCT] leased or rented to others through the Subsidiaries’ [BUSINESS] operations; and
3. The transfer of motor vehicles (non-rental property) used in the Subsidiaries’ [BUSINESS] operations.

## **RULINGS**

1. The transfer from the Subsidiaries to the Taxpayer of business assets such as furniture, fixtures, equipment and supplies used in the Subsidiaries’ [BUSINESS] operations are exempt from sales tax, provided that the Subsidiaries had properly remitted Tennessee sales and use tax when the assets were purchased.

2. The transfer from the Subsidiaries to the Taxpayer of inventory and [PRODUCT] used in the Subsidiaries' [BUSINESS] operations is exempt from sales tax; provided that the Taxpayer presents a valid resale certificate to the Subsidiaries.

3. The transfer of motor vehicles (non-rental property) used in the Subsidiaries' [BUSINESS] operations is subject to sales tax.

### **ANALYSIS**

Tenn. Code Ann. § 67-6-102(1) excludes from the definition of "business:"

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 services sold or purchased in such occasional or isolated transaction.

Tenn. Code Ann. § 67-6-102(1). The rule construing this statute provides that

. . .The Sales Tax, likewise, does not apply to sales of tangible personal property or taxable services not normally sold by a dealer and which has been used by the dealer prior to the sale .

. .

Comp. R. & Regs. 1320-5-1-.09(1), Casual and Isolated Sales.

1. The transfer of property occurs between the Subsidiaries and the Taxpayer. The transfer of business assets such as furniture, fixtures, equipment and supplies used in the Subsidiaries' [BUSINESS] operations are not the type of goods typically sold by the Subsidiaries. This is a one time transfer of tangible personal property resulting from the reorganization of the business. Accordingly, the transfer of these assets from the Subsidiaries to the Taxpayer is not subject to sales or use tax. Comp. R. & Regs. 1320-5-1-.09(1).

2. A retail sale is defined as "a taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than resale." Tenn. Code Ann. § 67-6-102(24)(A). The transfer of items held for resale are not subject to sales tax. The second category of items transferred consists of inventory and [PRODUCT] that the Subsidiaries will lease to its customers. It is assumed that the Subsidiaries have purchased these items on a resale certificate. These items will eventually be leased to customers

by the Taxpayer, thereby allowing the Taxpayer to purchase them without paying tax provided that they properly submit a resale certificate. Accordingly, the transfer of inventory and [PRODUCT] held for rental or leasing in the Taxpayer's [BUSINESS] operations is exempt from tax as a sale for resale.

3. The exemption from sales tax of occasional and isolated sales does not apply to "sales 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 . . ." Tenn. Code Ann. § 67-6-102(1). This provision clearly applies to the Taxpayer's transfer of motor vehicles unless the transaction is not deemed a sale.

A sale requires an element of consideration to be passed between the parties. Tenn. Code Ann. § 67-6-102(25)(A). *D. Canale & Co., et al. v. Celauro*, 765 S.W. 2d 736 (Tenn. 1989); *Northern Telecom v. Olsen*, 679 S.W. 2d 448 (Tenn. 1984). In *D. Canale*, the taxpayer created subsidiary corporations and transferred vehicles to them in exchange for stock or securities. *D. Canale & Co.*, 765 S.W. 2d at 737. The court held that because there was an entity to receive consideration, the transfer constituted a taxable sale. *Id.* at 737-38.

The Taxpayer in this case will receive title and possession of the motor vehicles from the Subsidiaries that will cease to exist after the transfer. A similar situation existed in *Northern Telecom v. Olsen*, 679 S.W. 2d 448 (Tenn. 1984). The taxpayer in *Northern Telecom* was a corporation into which a subsidiary was absorbed, resulting in a transfer of all the subsidiary's property, including an airplane, to the taxpayer. *Northern Telecom*, 679 S.W. 2d at 449. The court held that the transfer was not a taxable sale because the subsidiary received no consideration during the transaction as it ceased to exist. *Id.*

The *Northern Telecom* case was discussed in *D. Canale*. The *D. Canale* court, in holding that the transfer from a company to a new subsidiary was taxable, stated

Further, after the trial court's decision which was affirmed in *Northern Telecom*, the legislature amended the definition of "business," for the purpose of the Sales Tax Act, so as to include the "occasional and isolated sale or transaction of . . . motor vehicles . . . caused by the . . . reorganization of corporations," and made such transactions taxable.

*D. Canale*, 765 S.W. 2d at 738. The statute clearly states that business includes the transfer of a motor vehicle "caused by the merger, consolidation, or reorganization of corporations." Tenn. Code Ann. § 67-6-102(1).

The Taxpayer will receive motor vehicles as a result of the consolidation of the company. The plain language of the statute provides that such a transfer is a

taxable sale. Accordingly, the Taxpayer must pay sales or use tax on the motor vehicles.

Caroline R. Krivacka, Tax Counsel

APPROVED: Ruth E. Johnson, Commissioner

DATE: 3-17-99