

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING # 99-17**

**WARNING**

**Revenue rulings are not binding on the Department. 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 document storage and consulting service.

**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 is a corporation headquartered in [STATE OTHER THAN TENNESSEE] with operating facilities in [STATES OTHER THAN TENNESSEE] and Tennessee. The Taxpayer provides document servicing at each of its facilities. Document servicing consists of receiving medical records from the Taxpayer's customers to be catalogued and stored. The medical records will be scanned onto a CD-ROM, which will contain all the information from the paper records. The Taxpayer will then send the CD-ROM to the customer and will invoice the customer for cataloging, storage and production of the CD-ROM. The Taxpayer also provides computer consulting, which includes advising and recommending software and hardware and overseeing computer installations by other vendors as well as in-house installations performed by the customer. The Taxpayer does not sell computer hardware or software in connection with the service. The Taxpayer does not provide any installation of computers.

**ISSUES**

1. Whether the document service is subject to sales and use tax.
2. Whether the computer consulting is subject to sales and use tax.

**RULINGS**

1. The document service is subject to sales and use tax.
2. The computer consulting service is not subject to sales tax, provided that it does not result in the creation of computer software by programming, installation, or implementation.

### **ANALYSIS**

The term “sales price” is defined by Tenn. Code Ann. § 67-6-102(26) as “the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property.” Computer software is defined as tangible personal property for sales and use tax purposes. Tenn. Code Ann. § 67-6-102(25)(B). The definition of “sales price” also includes certain services that are subject to tax. Tenn. Code Ann. § 67-6-102(24)(F). If a service is neither rendered in Tennessee incident to the sale of tangible personal property nor listed as a taxable service, it is not subject to tax.

Although the document service is not a specifically taxable service, it is necessary to look at the net result, or crucial element, of the transaction between the Taxpayer and its customer before taxability can be determined. The treatment of “crucial elements” of a sale was considered in *Thomas Nelson, Inc. v. Olsen*, 723 S.W. 2d 621 (Tenn. 1987). The taxpayer in *Thomas Nelson* alleged that advertising design mockups and models received pursuant to contracts for the development of advertising ideas were not tangible personal property, but were created merely incidental to the nontaxable furnishing of design services. *Thomas Nelson*, 723 S.W. 2d at 621. The court held that the models were a “crucial element” of the contracts to conceive an advertising contract and rendered the cost of the transaction subject to tax. *Id.* at 622.

In essence, the *Thomas Nelson* court held that if a crucial element of an otherwise non-taxable service is subject to tax, then the entire charge is subject to tax. *Id.* There was no dispute that the models were tangible personal property and subject to tax. *Id.* The court stated that “the bare assertion that the creation of these models constituted a minute part of what was actually a contract to provide a service does the Taxpayer no good. Such an interpretation of Tennessee’s Sales and Use Tax has previously been considered and rejected by this Court as administratively unworkable.” *Thomas Nelson, Inc.*, 723 S.W. 2d at 622 (citation omitted).

1. The crucial element of the document service is the creation of a CD-ROM. The CD-ROM is not only tangible personal property in a general sense, but also constitutes computer software and hence is statutorily deemed tangible personal property. Tenn. Code Ann. § 67-6-102(25)(B). Accordingly, the creation and sale of a CD-ROM is the sale of tangible personal property and is subject to sales or use tax. Since the Taxpayer has a presence in Tennessee, the Taxpayer should

collect sales tax on sales made by any of the three locations to a Tennessee customer.

2. Computer consulting is not a specifically taxable service pursuant to Tenn. Code Ann. § 67-6-102(24)(F). Based on the facts provided, the computer consulting service is not related to nor does it result in the creation of computer software by programming, installation, or implementation. Accordingly, the computer consulting service is not subject to sales tax.

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APPROVED: Ruth E. Johnson, Commissioner

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