

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11- 48**

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 Tennessee sales and use tax to the sale and/or installation of certain window treatments and cubical curtains and tracking in various factual situations.

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 his detriment.

FACTS

[TAXPAYER] is a commercial interior finishing contractor. Its projects involve [TYPES OF PRODUCTS]. This Letter Ruling request primarily concerns contracts to install cubicle curtains, blinds and window treatments. The window treatments may include blinds, shades and drapes.

Primarily, the window treatments are installed in commercial buildings, but some may be installed in residential homes. The installations are generally performed under subcontracts. In most instances, an interior designer or general contractor may hire [TAXPAYER] to provide and install custom window treatments. In other instances, [TAXPAYER] is hired by the property owners themselves, including businesses, individuals and nonprofit entities. The nonprofit entities or exempt entities include [EXAMPLES].

The window treatments and cubicle curtains are described as follows:

- Blinds: Blinds are custom fit to each window and are made of high quality materials such as wood or aluminum. In about [PERCENTAGE] of the projects, each blind is made to fit inside the window frame.
- Shades: Shades are also custom fit to each window and are inside the window frame in about [PERCENTAGE] of the projects.
- Drapes and Valances: Drapes and other soft treatments may consist of cloth covered boards and are attached above the blinds. Most drapes consist of only cloth material and are hung on rods.
- Cubicle Curtains: A cubicle curtain creates a space separate from the rest of the room where a person can have privacy when changing clothes and attending to other personal matters. Cubicle curtains are normally used for patient privacy in healthcare facilities. The curtain installation involves installing metal track systems, carriers, and hanging the privacy curtain.

The requester of this Letter Ruling believes that blinds and window treatments are always considered tangible personal property both before and after installation and that the total charge for their installation, which includes materials, markup and labor, is subject to Tennessee state and local sales tax. The Letter Ruling requester also believes that [TAXPAYER] can accept a customer's Tennessee sales and use tax exemption certificate for blinds and window treatments installed for the use and consumption of an entity that is exempt from Tennessee sales tax.

The requester of this Letter Ruling states that several questions have arisen regarding the sales and use tax consequences with regard to the sale and installation of window treatments. One of the questions concerns whether

window treatments installed in new buildings should be considered real property. [TAXPAYER]'s contracts involving window treatments for new buildings may range from [DOLLAR AMOUNT] to [DOLLAR AMOUNT].

QUESTIONS PRESENTED

What are the Tennessee sales and use tax requirements in each of the following situations:

1. Pursuant to a subcontract with a general contractor, [TAXPAYER] supplies and installs custom window treatments for a new commercial building.
2. Pursuant to a subcontract with a general contractor, [TAXPAYER] supplies and installs custom window treatments for the purpose of upgrading or remodeling an existing commercial building.
3. Pursuant to a contract with the owner of a new commercial building, [TAXPAYER] supplies and installs custom window treatments for the building.
4. Pursuant to a contract with the owner of an existing commercial building, [TAXPAYER] supplies and installs custom window treatments for the building.
5. Pursuant to a subcontract with a general contractor, [TAXPAYER] supplies and installs custom window treatments in the construction of a new building for an exempt entity such as [EXAMPLES].
6. Pursuant to a subcontract with a general contractor, [TAXPAYER] supplies and installs custom window treatments for the purpose of upgrading or remodeling of an existing building owned by an exempt entity.
7. Pursuant to a contract with the exempt entity owner of a new building, [TAXPAYER] supplies and installs custom window treatments for the building.
8. Pursuant to a contract with the exempt entity owner of an existing building, [TAXPAYER] supplies and installs custom window treatments for the purpose of upgrading or remodeling the building.
9. Pursuant to a contract with a residential contractor, [TAXPAYER] supplies and installs custom window treatments in a new single or multi-family dwelling.
10. Pursuant to a contract with a residential contractor, [TAXPAYER] supplies and installs custom made window treatments for the purpose of upgrading or remodeling an existing single or multi-family dwelling.

11. Pursuant to a contract with the owner or landlord, [TAXPAYER] supplies and installs custom made window treatments in the construction of a new single or multi-family dwelling.
12. Pursuant to a contract with the owner or landlord, [TAXPAYER] supplies and installs custom made window treatments for the purpose of upgrading or remodeling an existing single or multi-family dwelling.
13. Pursuant to a contract with an interior design firm or other vendor, [TAXPAYER] supplies and installs custom window treatments for resale by the interior design firm or other vendor in a new or an existing commercial or residential building.
14. [TAXPAYER] makes over-the-counter sales of custom window treatments to customers without any installation being performed by [TAXPAYER].
15. Pursuant to a contract with a general contractor, [TAXPAYER] supplies and installs cubicle curtains and tracking for a new building.
16. Pursuant to a contract with a general contractor, [TAXPAYER] supplies and installs cubicle curtains and tracking for the purpose of upgrading or remodeling an existing building.
17. Pursuant to a contract with the non-exempt entity owner of a new commercial building, [TAXPAYER] supplies and installs cubicle curtains and tracking for the building.
18. Pursuant to a contract with the non-exempt entity owner of an existing commercial building, [TAXPAYER] supplies and installs cubicle curtains and tracking for the building.
19. Pursuant to a contract with the exempt entity owner of a new commercial building, [TAXPAYER] supplies and installs cubicle curtains and tracking for the building.
20. Pursuant to a contract with the exempt entity owner of an existing commercial building, [TAXPAYER] supplies and installs cubicle curtains and tracking for the building.
21. Pursuant to a contract with the non-exempt entity owner of a new or existing building, [TAXPAYER] supplies and installs cubicle curtains (no tracking) for the building.
22. Pursuant to a contract with the exempt entity owner of a new or existing building, [TAXPAYER] supplies and installs cubicle curtains (no tracking) for the building.

23. Pursuant to a contract with a general contractor, [TAXPAYER] supplies and installs cubicle curtains (no tracking) for a new building.
24. Pursuant to a contract with a general contractor, [TAXPAYER] supplies and installs cubicle curtains (no tracking) for the purpose of upgrading or remodeling an existing building.

RULINGS

With regard to all Rulings herein, the status of a building, whether a commercial, non-commercial, new, existing or remodeled building or a single or multi-family dwelling, does not determine whether Tennessee sales and use taxes are applicable to tangible personal property installed therein.

It should also be noted that, with regard to all Rulings herein, if at the time [TAXPAYER] purchases materials and supplies, [TAXPAYER] does not know whether they will be used and consumed by [TAXPAYER] in the performance of a contract or sold at retail, [TAXPAYER] may purchase such materials and supplies on a resale certificate without paying Tennessee sales tax. If the materials and supplies so purchased are later taken from inventory to be used and consumed by [TAXPAYER] in the fulfillment of a contract, [TAXPAYER] must then pay use tax on their purchase price.

Questions 1. - 4. and 9. - 13.

Custom blinds and shades installed in a building are considered improvements to realty (fixtures). [TAXPAYER] is the user and consumer of materials and supplies purchased to supply and install custom blinds and shades that are improvements to realty. As such, [TAXPAYER] is subject to state and local sales or use taxes on the purchase price of materials and supplies used to supply and install custom blinds and shades pursuant to a subcontract with a general contractor, residential contractor, interior design firm or other vendor, or a contract with the building owner or landlord. [TAXPAYER] will not be required to collect Tennessee sales tax from the general contractor, residential contractor, interior design firm or other vendor, or a contract with the building owner or landlord, because [TAXPAYER] has already paid Tennessee sales or use tax on the purchase price of such materials and supplies.

Questions 5. - 8.

Custom blinds and shades installed in a building are considered improvements to realty (fixtures). If [TAXPAYER] is the purchaser and title holder of tangible personal property that becomes real property upon installation on property owned by an exempt entity that is not a church or private nonprofit college or university, [TAXPAYER] is the user and consumer of such property. In such a case, [TAXPAYER] must pay sales tax on the purchase price of the materials

and supplies that it purchases. The exempt entity itself is not subject to sales and use taxes.

However, if a church or private nonprofit college or university, rather than [TAXPAYER] (the installer), is the purchaser and title holder of the materials and supplies used by [TAXPAYER] to custom make blinds and shades that become real property upon installation and the custom made blinds and shades are for church or private nonprofit college or university construction and direct use, [TAXPAYER] and the church will be exempt from sales and use tax on materials and supplies purchased by the church and installed by [TAXPAYER] for the church, and [TAXPAYER] and the private nonprofit college or university will be exempt from the state portion of sales and use tax on the purchase price of materials and supplies purchased by the private nonprofit college or university and installed by [TAXPAYER] for the private nonprofit college or university. In this situation, [TAXPAYER] will be liable for the local portion of sales and use tax on the purchase price of materials and supplies installed by [TAXPAYER] for the private nonprofit college or university.

If the materials and supplies purchased are not for church or private nonprofit university construction and direct use, [TAXPAYER] is liable for sales and use tax on their purchase price.

If [TAXPAYER] has a subcontract with a general or residential contractor, an interior design firm or other vendor, or a contract with the exempt entity owner of a building to supply and install custom blinds and shades for an exempt entity, no Tennessee sales tax should be collected by [TAXPAYER] from a general or residential contractor, an interior design firm or other vendor, or the exempt entity building owner because, as discussed above, [TAXPAYER] is either exempt from the tax, or has already paid the Tennessee sales and use tax for which it is liable on the purchase price of the tangible personal property used to custom make the blinds and shades installed for the exempt entity.

In all of the situations described above, no Tennessee sales tax should be collected by [TAXPAYER] from the general contractor or building owner, because, if the transaction is not exempt from sales and use tax, [TAXPAYER] will have already paid Tennessee sales or use tax on the purchase price of the materials and supplies.

Question 14.

When [TAXPAYER] sells custom or non-custom made blinds, shades, and other window treatments in Tennessee to customers over-the-counter at retail without installation, [TAXPAYER] must collect sales tax from the purchaser and remit it to this Department unless the sale is to an exempt entity or is a sale for resale and the customer presents [TAXPAYER] with a valid exemption certificate or resale certificate.

In this regard, it should be noted that the transfer of tangible personal property by a contractor who contracts for the installation of such property as an improvement to realty is not a sale for purposes of the Tennessee sales and use tax. Thus, [TAXPAYER] cannot accept a resale certificate from a general contractor under such circumstances.

However, if the general contractor also operates a retail hardware or builders supply store and is purchasing custom or non-custom made blinds, shades, and other window treatments to sell at retail in the hardware or builders supply store that it operates, then [TAXPAYER] can accept a resale certificate from the general contractor who makes such purchases.

If the customer tenders a valid resale certificate to [TAXPAYER], the customer will be responsible for collection of Tennessee sales tax upon selling the merchandise at retail in Tennessee. If [TAXPAYER]'s customer uses or consumes the merchandise purchased from [TAXPAYER] in fulfillment of a contract, the customer will be responsible for remitting use tax to this Department on the purchase price paid to [TAXPAYER].

Questions 15. - 18., 21., and 23. - 24.

Metal tracking systems and carrier systems from which cubical curtains are hung, and the cubical curtains themselves, remain tangible personal property when installed. When such items are installed by [TAXPAYER] pursuant to a contract with a general contractor or a non-exempt building owner, [TAXPAYER] must collect and remit to this Department Tennessee sales tax from the purchaser on the sales price and installation charges.

In the situation described above, [TAXPAYER] may purchase the metal tracking systems and carrier systems from which cubical curtains are hung, and the cubical curtains themselves, without payment of Tennessee sales and use tax by using a resale certificate.

Questions 19. - 20. and 22.

An entity exempt from Tennessee sales and use taxes may present [TAXPAYER] with an exemption certificate, or exemption letter, as provided by Tenn. Code Ann. § 67-6-322(e) and Tenn. Comp. R. & Regs. 1320-5-1-.51(3), and purchase metal tracking systems and carrier systems from which cubicle curtains are hung, and/or the cubicle curtains themselves, including all installation charges, exempt from Tennessee sales and use taxes.

In the situation described above, [TAXPAYER] may purchase the metal tracking systems and carrier systems from which cubical curtains are hung, and the cubical curtains themselves, without payment of Tennessee sales and use tax by using a resale certificate.

ANALYSIS

Applicable Statutes, Rules and Regulations, and Case Law

The Status of a Building, Whether a Single or Multi-Family Dwelling, or a Commercial, Non-Commercial, New, Existing or Remodeled Building, Does not Determine Whether Tennessee Sales and Use Taxes are Applicable to Tangible Personal Property Installed Therein

For purposes of determining whether an item is to be treated as realty or as tangible personal property for Tennessee sales and use tax purposes, Tenn. Code Ann. § 67-6-101 et seq. and applicable Tenn. Comp. R. & Regs. make no distinction with regard to whether the item is installed in a single or multi-family dwelling, a commercial building, a non-commercial building, a new building, an existing building, or a remodeled building.

Curtain and Drapery Rods and the Curtains From Which they are Hung, and Metal Tracking Systems and Carrier Systems from which Cubicle Curtains are Hung, and the Cubicle Curtains Themselves, are Treated as Tangible Personal Property When Installed and are Subject to Sales and Use Tax

Tenn. Comp. R. & Regs. 1320-5-1-.27(1), which is set forth below in pertinent part, clearly states that “. . . curtain and drapery rods . . . shall be deemed to be personal property and the installation charges therefore shall be subject to the sales or use tax.” Although charges for installing tangible personal property that becomes a part of real property when installed are not subject to sales or use tax, the person or entity installing such property is liable for sales or use tax on the property when it is purchased and/or used.

Charges for installing tangible personal property, whether made as a part of and in connection with the sale of tangible personal property, or whether made for installing tangible personal property which has been sold in a separate bona fide transaction when the property remains tangible personal property when installed are subject to sales and use tax. The tax is due from the dealer, regardless of whether the dealer, or someone acting for him, installs the property. Tangible personal property which is sold and attached to real property, but which will ordinarily be removed by the owner or tenant, such as . . . curtain and drapery rods, . . . shall be deemed to be personal property and the installation charges therefore shall be subject to sales or use tax. (Underline emphasis added.)

Since curtain and drapery rods are deemed to remain tangible personal property when installed, it follows that curtains and draperies hung from such rods also remain tangible personal property when installed.

In view of Tenn. Comp. R. & Regs. 1320-5-1-.27, curtain and drapery rods, drapes, valances and other soft window treatments, including cloth covered boards that may be attached above them, are considered by this Department to remain tangible personal property (“chattels”) when installed. Likewise, metal tracking systems and carrier systems from which cubicle curtains are hung, and the cubicle curtains themselves, remain tangible personal property when installed. Blinds and shades that are not custom made also remain tangible personal property when installed.

Custom Made Blinds and Shades are Treated as Real Property When Installed and the Installer is Subject to Sales Tax on their Purchase or to the Contractor’s Use Tax Upon their Use

In *General Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241 at 243 (Tenn. 1974), the Tennessee Supreme Court, cited the language used in *Savage & Mayfield*, 11 S.W.2d 855 (Tenn. 1928), which quoted in part from *Union Bank v. Wolf*, 86 S.W. 310 (Tenn. 1905) and *Cannon v. Hare*, 1 Tenn.Ch. 22 (1872), stating that:

The tendency of modern decisions is to make the rights of the parties to fixtures and buildings depend, not on the manner in which they are attached to the freehold, but upon the character of the parties, the intention in erecting the improvements, and the uses to which they are put.

Modern authorities all agree that the most controlling test of the question whether property connected with real estate is to be deemed realty or a mere chattel, removable at the pleasure of the owner, is the intention and purpose of the erection . . . [.]

The Court concluded carpet installed by the ‘tackless’ strip method, which allowed easy removal, was intended to remain for the length of its useful life, becomes a part of realty and thus is a “fixture” rather than a “chattel” when installed. Accordingly, the court held that the carpet, which was installed by a contractor in buildings of various tax-exempt institutions, was subject to the contractor’s use tax, which is currently levied by Tenn. Code Ann. § 67-6-209(b).

Consistent with *General Carpet Contractors, Inc. v. Tidwell*, this Department has considered custom made blinds and shades to be an improvement to real property (“fixtures”) when installed. Blinds and shades that are custom made generally cannot be used in windows that are substantially different than those for which the blinds and shades were custom made. Custom made blinds and shades are intended to remain as installed for the length of their useful life.

The Contractor’s Use Tax

Tenn. Comp. R. & Regs. 1320-5-1-.27(2), set forth below, states that charges for installing tangible personal property that becomes a part of real property when

installed are not subject to sales or use tax. The person or entity installing such property is liable for sales or use tax on the property bought and/or used.

Charges made for installing tangible personal property which becomes a part of real property, are not subject to the sales or use tax. The person so installing the property shall be liable for any sales or use tax that may be due, if any, on the property bought and/or used in making the installation.

The provisions of the contractor's use tax found in Tenn. Code Ann. § 67-6-209(b), set forth below in pertinent part, apply to custom made blinds and shades that become realty upon installation:

Where a contractor or subcontractor defined in this chapter as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for in this subsection (b) for private nonprofit colleges or universities shall apply only to the state portion of the sales tax.

As a result of the provisions of Tenn. Code Ann. § 67-6-702(a)(1), Tenn. Code Ann. § 67-6-209(b) also applies for local sales and use tax purposes.

Tenn. Code Ann. § 67-6-209(c) makes the following provisions with regard to the contractor's use tax:

The tax imposed by this section shall have no application where the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter. However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale, except as provided in § 67-6-102(39), and the contractor shall not be permitted on this basis to obtain the benefit of any exemptions or reduced tax rates available to manufacturers under § 67-6-102(47)(E) or § 67-6-206. Each location of a taxpayer will be considered separately in determining whether the taxpayer qualifies or is disqualified as a manufacturer at that location.

In accordance with Tenn. Code Ann. § 67-6-209(b) and (c) and Tenn. Comp. R. & Regs. 1320-5-1-.27(2), the installer of tangible personal property that becomes real property upon installation is liable for state and local use tax on the purchase

price of such property unless such property has previously been subjected to Tennessee sales tax. In addition to other applications, this applies to installations of tangible personal property that become real property upon installation for nonprofit entities and exempt entities including [EXAMPLES].

Contractor's Use Tax Exception for Tangible Personal Property Installed on Property Owned by a Church or a Private Nonprofit College or University When the Construction is for Church or Private Nonprofit College or University Use

Tenn. Code Ann. § 67-6-209(b) makes an exception when tangible personal property that becomes real property upon installation is purchased by a church or a private nonprofit college or university and installed on property owned by the church or a private nonprofit college or university and the construction is for church or private nonprofit college or university use¹.

The exemption provided by Tenn. Code Ann. § 67-6-209(b), does not apply when the installer of tangible personal property used to fulfill its contract with a church, private nonprofit college or university is the purchaser and title holder of the tangible personal property installed. In such a situation, the installer is the user and consumer of the tangible personal property installed and is liable for state sales or use tax on the purchase price of such property.

However, if a church or private nonprofit college or university, rather than the installer, is the purchaser of the materials used to custom make blinds and shades that become real property upon installation, the church or private nonprofit college or university, as an exempt entity, is not subject to sales and use tax on such a purchase or on charges for installation. Because of the exemption provided for in Tenn. Code Ann. § 67-6-209(b) for churches, the installer is not subject to the contractor's use tax when such property is installed for church construction and use. But, where a private nonprofit college or university is the purchaser and the property is for private nonprofit college construction or use, the exemption applies only to the state portion of the tax and the installer is subject to the local portion of the contractor's use tax.

Sales to Exempt Entities

Tenn. Code Ann. § 67-6-322 provides a sales and use tax exemption for churches, schools, colleges, universities and not-for-profit organizations enumerated therein.

¹ For example, the exemption would not apply to tangible personal property installed in an orphanage owned by a church because the orphanage is not used as a church. In such a situation, Tenn. Code Ann. § 67-6-209(c) treats the installer as the user and consumer of the tangible personal property used to custom make blinds and shades that become real property upon installation. In such a case, the installer must pay sales or use tax on the purchase price of the property.

Tenn. Code Ann. § 67-6-308 makes the following provisions concerning sales to the federal government:

Notwithstanding § 67-6-501(a), no sales or use tax shall be payable on account of any direct sale or lease of tangible personal property or services to the United States, or any agency thereof created by congress, for consumption or use directly by it through its own governmental employees.

Tenn. Code Ann. § 67-6-329(a)(4) states that “[a]ll sales made to the state or any county or municipality within the state . . .” are exempt for Tennessee sales and use taxes.

Sales of property and/or services to exempt entities must be made directly to the exempt entity in order to qualify for exemption from Tennessee sales and use tax. Installation of tangible personal property for an exempt entity in fulfillment of a contract with a general contractor is not exempt because the sale is made directly to the general contractor rather than the exempt entity.

“Purchase Price” Defined

Tenn. Code Ann. § 67-6-102(75) states that the term “purchase price” shall have the same meaning as “sale price,” which is defined as follows by Tenn. Code Ann. § 67-6-102(82).

- (A) “Sales price” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
- (i) The seller's cost of the property sold;
 - (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
 - (iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
 - (iv) Delivery charges;
 - (v) Installation charges; and
 - (vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" does not include:

- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;
- (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- (iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

- (i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;
- (ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (iv) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or

on a coupon, certificate or other documentation presented by the purchaser[.]

Contractors and Subcontractors who purchase materials and supplies to use in fulfillment of their contracts must pay sales or use tax on the purchase price of such materials and supplies.

Contractors and Subcontractors that are Unable to Segregate Purchases of Materials and Supplies that will be Sold at Retail from those that will be Used or Consumed to Fulfill their Contracts

Tenn. Comp. R. & Regs. 1320-5-1-.08 makes the following provisions concerning dealers that are contractors or subcontractors:

- (1) Contractors and sub-contractors engaged in the business of erecting, building or otherwise improving, altering and repairing real property for others, and also engaged in the business of selling building materials and supplies to other contractors, consumers, and users, and who may not be able to segregate that portion of the materials and supplies that they will use or consume in the fulfillment of their contracts from that portion of the materials and supplies that they will sell at retail, may give a resale certificate to the seller of the materials and supplies.
- (2) Contractor-dealers making sales of tangible personal property shall report all sales made, and all withdrawals from inventory for use as a contractor each month, and pay any applicable Sales or Use Tax due. Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use, either in or out of the state.
- (3) Suppliers making sales of materials and supplies to contractor-dealers and delivering such materials and supplies to a job site for use, or tagging or marking particular materials and supplies for a particular job being performed by the contractor-dealer, shall collect the applicable Sales or Use Tax on those sales.

Tenn. Comp. R. & Regs. 1320-5-1-.08 allows a contractor or subcontractor to purchase materials or supplies on a resale certificate without paying sales or use tax if, at the time of purchase, it is not known whether the materials and supplies will be sold at retail or used and consumed in the fulfillment of contracts. When such materials and supplies are removed from inventory for use or consumption in the fulfillment of a contract, the contractor or subcontractor must pay use tax on them. If the materials and supplies are sold at retail, the contractor or subcontractor must collect sales tax on the sale price of such items and remit it to this Department unless an exemption applies.

Charges for Installation of Tangible Personal Property that Remains Tangible Personal Property Upon Installation

In addition, Tenn. Code Ann. § 67-6-205(c)(6), set forth below, requires payment of Tennessee sales tax on charges made for installation of tangible personal property that remains tangible personal property upon installation.

(c) The retail sale of the following services are taxable under this chapter:

- (6) The installing of tangible personal property that remains tangible personal property after installation . . . where a charge is made for installation, whether or not the installation is made as an incident to the sale of tangible personal property . . . and whether or not any tangible personal property . . . is transferred in conjunction with the installation service[.]

Blinds and shades that are not custom made, curtain and drapery rods, drapes, valances and other soft window treatments, including cloth covered boards that may be attached above them and metal tracking systems and carrier systems from which cubicle curtains are hung, and the cubicle curtains themselves, remain tangible personal property when installed. The seller of such property must collect Tennessee sales tax on the sale price, including any installation charges, from the purchaser and remit it to this Department unless an exemption applies.

If the items described in the above paragraph are to be resold by the purchaser, the seller may accept the purchaser's resale certificate.

Sales for Resale for which a Resale Certificate may be Accepted

Tenn. Code Ann. § 67-6-102(78), set forth in pertinent part below, makes the following provisions concerning sales for resale;

- (A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner. Sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as the out-of-state vendor's agent to deliver or ship tangible personal property or taxable services to the out-of-state vendor's customer, who is a user or consumer, are sales for resale;
- (B) (i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not

limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

- (a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;
- (b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property[.]

Sales Without Installation

When curtain and drapery rods, drapes, valances and other soft window treatments, including cloth covered boards that may be attached above them are sold in Tennessee to a customer without installation, the seller must collect sales tax from the purchaser and remit it to this Department. Likewise, when custom and non-custom made blinds and shades, cubicle curtains and metal tracking systems and carrier systems from which the cubicle curtains are hung are sold in Tennessee without installation, the seller must collect sales tax from the purchaser and remit it to this Department unless an exemption applies. In such situations, Tenn. Code Ann. § 67-6-202(a), set forth below, levies the state portion of the sales tax and a local sales tax may be levied under the provisions of Tenn. Code Ann. § 67-6-702(a)(1).

For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of seven percent (7%). There is levied an additional tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars (\$1,600), but less than or equal to three thousand two hundred dollars (\$3,200), on the sale or use of any single article of personal property as defined in § 67-6-702(d). The tax levied at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars (\$1,600), but less than or equal to three thousand two hundred dollars (\$3,200), on the sale or use of any single article of personal property shall be in addition to all other taxes and shall be a state tax for state purposes only. No county or municipality or taxing district

shall have the power to levy any tax on the amount in excess of one thousand six hundred dollars (\$1,600), but less than or equal to three thousand two hundred dollars (\$3,200), on the sale or use of any single article of personal property.

We now turn to the questions presented in the request for this Letter Ruling.

The Status of a Building, Whether a Single or Multi-Family Dwelling or a Commercial, Non-Commercial, New, Existing or Remodeled Building, Does Not Determine Whether Tennessee Sales and Use Taxes are Applicable to Tangible Personal Property Installed Therein

As previously noted, with regard to all questions presented by [TAXPAYER], the status of a building, whether a single or multi-family dwelling, or a commercial, non-commercial, new, existing or remodeled building, does not determine whether Tennessee sales and use taxes are applicable to tangible personal property installed therein.

Contractors and Subcontractors that are Unable to Segregate Purchases of Materials and Supplies that will be Sold at Retail from those that will be Used or Consumed to Fulfill their Contracts

It should also be noted that, in all of the situations described in this analysis, if at the time [TAXPAYER] purchases materials and supplies, [TAXPAYER] does not know whether they will be used and consumed by [TAXPAYER] in the performance of a contract or sold at retail, Tenn. Comp. R. & Regs. 1320-5-1-.08 permits [TAXPAYER] to purchase such materials and supplies on a resale certificate without paying Tennessee sales tax. If the materials and supplies so purchased are later taken from inventory to be used and consumed by [TAXPAYER] in the fulfillment of a contract, Tenn. Code Ann. § 67-6-209(b) and Tenn. Comp. R. & Regs. 1320-5-1-.08 require [TAXPAYER] to pay use tax on their “purchase price,” as defined by Tenn. Code Ann. § 67-6-102(75) and (82).

QUESTIONS ONE THROUGH THIRTEEN

Custom Made Blinds and Shades are Real Property when Installed

Consistent with *General Carpet Contractors, Inc. v. Tidwell* 511 S.W.2d 241 at 243 (Tenn. 1974), this Department has considered custom made blinds and shades to be an improvement to real property (“fixtures”) when installed. Blinds and shades that are custom made for specific windows generally cannot be used in windows that are substantially different than those for which the blinds and shades were custom made. Custom made blinds and shades are intended to remain as installed for the length of their useful life.

[TAXPAYER] is Subject to Tennessee State and Local Sales or Use Tax on the Purchase Price of Custom Made Blinds and Shades that it Installs in a Building Pursuant to a Contract or Subcontract

[TAXPAYER] is subject to state and local Tennessee sales or use tax on the purchase price of custom made blinds and shades that it installs pursuant to a subcontract with a general contractor, or a contract directly with a residential contractor, an interior design firm or other vendor, or the owner or landlord of the building in which they are installed.

In accordance with Tenn. Code Ann. § 67-6-209(b) and Tenn. Comp. R. & Regs. 1320-5-1-.27(1), the installer of tangible personal property that becomes real property upon installation is liable for state and local use tax on the purchase price of such property unless the property has previously been subjected to Tennessee sales tax. Under the provisions of Tenn. Code Ann. § 67-6-209(b), [TAXPAYER] is the user and consumer of materials and supplies purchased to custom make blinds and shades that become real property upon installation and must pay sales or use tax on their purchase price.

[TAXPAYER] is Subject to Tennessee State and Local Sales or Use Tax on the Purchase Price of Custom Made Blinds and Shades that it Purchases and Installs in a Building Owned by an Exempt Entity

If [TAXPAYER] is the purchaser and title holder of tangible personal property that becomes real property upon installation on property owned by an exempt entity, Tenn. Code Ann. § 67-6-209(b) treats [TAXPAYER] as the user and consumer of the tangible personal property. In such a case, [TAXPAYER] must pay sales tax on the purchase price of the materials and supplies that it purchases. The exempt entity itself is not subject to sales and use taxes.

[TAXPAYER] is Subject Only to the Local Use Tax on the Purchase Price of Custom Made Blinds and Shades Purchased by a Private Nonprofit College or University for Private Nonprofit College or University Construction and Use and Installed by [TAXPAYER] in a Building Owned by a Private Nonprofit College or University

If a private nonprofit college or university, rather than [TAXPAYER], the installer, is the purchaser and title holder of the materials and supplies used to custom make blinds and shades that become real property upon installation, the private nonprofit college or university, as an exempt entity, is not subject to sales or use tax on such a purchase. However, because the exemption provided for in Tenn. Code Ann. § 67-6-209(b) for private nonprofit colleges or universities applies only to the state portion of the sales tax, [TAXPAYER] is subject to the local contractor's use tax on the private nonprofit college or university's purchase price of the materials and supplies used to custom make blinds and shades that become real property upon installation.

If the materials and supplies purchased are not for private nonprofit college or university construction and use, [TAXPAYER] is liable for sales and use tax on their purchase price under the provisions of Tenn. Code Ann. § 67-6-209(b).

[TAXPAYER] is not Subject to State or Local Sales or Use Tax on the Purchase Price of Custom Made Blinds and Shades Purchased by a Church for Church Construction and Use and Installed by [TAXPAYER] in a Building Owned by a Church

If a church is the purchaser of materials and supplies used to custom make blinds and shades that become real property upon installation and such materials and supplies are for church construction and use, the exemption provided for in Tenn. Code Ann. § 67-6-209(b) applies to both the state portion and local portion of the tax and [TAXPAYER] has no sales or use tax liability under Tenn. Code Ann. § 67-6-209(b).

If the materials and supplies purchased are not for church construction and use², [TAXPAYER] is liable for sales and use tax on their purchase price under the provisions of Tenn. Code Ann. § 67-6-209(b).

No Tennessee Sales or Use Tax Should Be Collected by [TAXPAYER] from a General Contractor, Residential Contractor, Interior Design Firm or Exempt Entity Building Owner When [TAXPAYER] Supplies and Installs Custom Blinds and Shades for an Exempt Entity

If [TAXPAYER] has a subcontract with a general contractor or residential contractor, an interior design firm or a contract with the exempt entity owner of a building to supply and install custom blinds and shades for an exempt entity, no Tennessee sales tax should be collected by [TAXPAYER] from the general contractor or residential contractor, the interior design firm or the exempt entity building owner because, as discussed above, [TAXPAYER] is either exempt from the tax, or has already paid the Tennessee sales or use tax for which it is liable under Tenn. Code Ann. § 67-6-209(b) on the purchase price of the tangible personal property used to custom make the blinds and shades installed for the exempt entity.

² For example, a church might purchase tangible personal property to be installed in an apartment complex owned by the church. In such a situation, the exemption provided by Tenn. Code Ann. § 67-6-209(b) would not apply because the apartment complex is not used as a church. In this example, Tenn. Code Ann. § 67-6-209(c) would treat the installer as the user and consumer of the tangible personal property used to custom make blinds and shades that become real property upon installation. In such a case, the installer must pay sales or use tax on the purchase price of the property.

QUESTION FOURTEEN

[TAXPAYER] Must Collect Tennessee Sales Tax on Over-The-Counter Sales Unless the Sale is to an Exempt Entity or is a Sale for Resale

When [TAXPAYER] sells custom or non-custom made blinds, shades, and other window treatments in Tennessee to customers over-the-counter at retail without installation, Tenn. Code Ann. § 67-6-502 requires the sales tax to “. . . be collected by the retailer from the consumer . . . [,]” unless an exemption applies. Tenn. Code Ann. § 67-6-202(a) requires [TAXPAYER] to collect sales tax from the purchaser and remit it to this Department unless the sale is for “resale,” as the term is defined by Tenn. Code Ann. § 67-6-102(78), and the customer presents [TAXPAYER] with a valid resale certificate under the provisions of Tenn. Comp. R. & Regs. 1320-5-1-.08. If the customer tenders a valid resale certificate to [TAXPAYER], the customer will be responsible for collection of Tennessee sales tax upon selling the merchandise at retail in Tennessee. If [TAXPAYER]’s customer uses or consumes the merchandise purchased from [TAXPAYER] in fulfillment of a contract, the customer will be responsible for remitting use tax to this Department on the purchase price paid to [TAXPAYER].

An entity exempt from Tennessee sales and use taxes under the provisions of Tenn. Code Ann. §§ 67-6-322, 67-6-308, or 67-6-329(a)(4) may present [TAXPAYER] with an exemption certificate, or exemption letter, as provided by Tenn. Code Ann. § 67-6-322(e) and Tenn. Comp. R. & Regs. 1320-5-1-.51(3) and purchase metal tracking systems and carrier systems from which cubicle curtains are hung, and/or the cubicle curtains themselves, including all installation charges, exempt from Tennessee sales and use taxes.

[TAXPAYER] Cannot Accept a Resale Certificate for Over-The-Counter Sales to a General Contractor Unless the Purchases are for Resale in the General Contractor’s Retail Hardware or Builders Supply Store

In this regard, it should be noted that Tenn. Code Ann. § 67-6-209(c) states that “. . . the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale . . .”³ for purposes of the Tennessee sales and use tax. Thus, [TAXPAYER] cannot accept a resale certificate from a general contractor under such circumstances.

However, if the general contractor also operates a retail hardware or builders supply store and is purchasing custom or non-custom made blinds, shades, and other window treatments to sell at retail in the hardware or builders supply store

³ Except as provided in Tenn. Code Ann. § 67-6-102(39), which does not apply to the situations addressed in this Letter Ruling.

that it operates, then [TAXPAYER] may accept a resale certificate from the general contractor who makes such purchases.

If the customer tenders a valid resale certificate to [TAXPAYER], the customer will be responsible for collection of Tennessee sales tax upon selling the merchandise at retail in Tennessee. If [TAXPAYER]'s customer uses or consumes the merchandise purchased from [TAXPAYER] in fulfillment of a contract, the customer will be responsible for remitting use tax to this Department on the purchase price paid to [TAXPAYER].

[TAXPAYER] may Use a Resale Certificate to Purchase Custom or Non-Custom Window Treatments for Retail Sale Without Installation to Over-the-Counter Customers

In the situations described above, if Tenn. Code Ann. § 67-6-102(78) applies, [TAXPAYER] may purchase custom or non-custom made blinds, shades, and other window treatments, and/or materials and supplies to make such custom and non-custom window treatments, with a resale certificate under the provisions of Tenn. Comp. R. & Regs. 1320-5-1-.08 without payment of Tennessee sales and use tax, provided that the window treatments are for sale to customers over-the-counter at retail without installation.

QUESTIONS FIFTEEN THROUGH TWENTY FOUR

Curtain and Drapery Rods and Metal Tracking Systems, Carrier Systems, and the Curtains, Draperies and Cubical Curtains from which they are Hung Remain Tangible Personal Property Upon Installation and [TAXPAYER] Must Collect Tennessee Sales Tax on their Sale Price Plus Installation Charges

As previously noted, Tenn. Comp. R. & Regs. 1320-5-1-.27(1) clearly states that “. . . curtain and drapery rods . . . shall be deemed to be personal property and the installation charges therefore shall be subject to the sales or use tax.” Since curtain and drapery rods are deemed to remain tangible personal property (“chattels”) when installed, it follows that curtains and draperies hung from such rods also remain tangible personal property when installed. Likewise, metal tracking systems and carrier systems from which cubicle curtains are hung, and the cubicle curtains themselves, remain tangible personal property when installed.

Tenn. Code Ann. § 67-6-205(c)(6) and Tenn. Comp. R. & Regs. 1320-5-1-.27(1) require [TAXPAYER] to collect and remit to this Department sales tax from a general contractor or non-exempt building owner on the “sales price,” as defined by Tenn. Code Ann. § 67-6-102(82), of metal tracking systems, carrier systems and/or cubicle curtains and also on the charges made for their installation.

[TAXPAYER] May Accept an Exemption Certificate or Letter from an Exempt Entity for the Purchase of Curtain and Drapery Rods and Metal Tracking Systems, Carrier Systems, and the Curtains, Draperies and Cubical Curtains from which they are Hung

An entity exempt from Tennessee sales and use taxes under the provisions of Tenn. Code Ann. §§ 67-6-322, 67-6-308, or 67-6-329(a)(4) may present [TAXPAYER] with an exemption certificate, or exemption letter, as provided by Tenn. Code Ann. § 67-6-322(e) and Tenn. Comp. R. & Regs. 1320-5-1-.51(3) and purchase metal tracking systems and carrier systems from which cubicle curtains are hung, and/or the cubicle curtains themselves, including all installation charges, exempt from Tennessee sales and use taxes.

[TAXPAYER] May Use a Resale Certificate to Purchase Materials and Supplies to Supply and Install Metal Tracking Systems, Carrier Systems and Cubicle Curtains

In the situation described above, if Tenn. Code Ann. § 67-6-102(78) applies, [TAXPAYER] may purchase materials and supplies to supply and install metal tracking systems and carrier systems from which cubical curtains are hung, and the cubical curtains themselves, with a resale certificate under the provisions of Tenn. Comp. R. & Regs. 1320-5-1-.08 without payment of Tennessee sales and use tax.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED: Richard H. Roberts, Commissioner

DATE: 9-13-11