

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 97-61**

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 warehouse and material handling equipment.

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 TAXPAYER] is in the business of wholesaling [PRODUCTS]. [THE TAXPAYER] operates warehouse and distribution facilities in [STATE A - NOT TENNESSEE] and Tennessee. [THE TAXPAYER] plans to transfer its entire Tennessee warehouse and distribution operations to [CORPORATION A], a newly formed, wholly owned subsidiary, in a transaction exempt from federal income taxes under Internal Revenue Code § 351. Included within this transfer will be certain warehouse and related handling equipment (“the equipment”) currently at the Tennessee warehouse and distribution facilities in [COUNTY], Tennessee. None of the equipment consists of aircraft, vessels, or motor vehicles subject to registration. This transfer will occur in a single transfer of assets. Following its receipt of the equipment, [CORPORATION A] will provide warehousing and distribution services to [THE TAXPAYER] using the equipment, while [THE TAXPAYER] will retain ownership over its finished product, i.e. the inventory of [PRODUCTS]. [THE TAXPAYER] is not and has never been in the business of selling warehouse and material handling equipment.

ISSUE

Whether sales and use tax applies to the transfer of warehouse and material handling equipment.

RULING

The transaction qualifies as an occasional and isolated sale and is exempt from sales or use 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. . .” The statute includes, however, the occasional and isolated sale of aircraft, vessels, and motor vehicle required to be registered under the state or federal law.

In *Liberty Cash Grocers, Inc. v. Atkins*, 304 S.W. 2d 633 (Tenn. 1957), the Supreme Court interpreted the statute to exclude from tax the sale of fixtures and equipment, including office equipment, used by a grocer in the conduct of his business. The grocer was not in the business of selling such equipment and fixtures, but was making the sale pursuant to a sale of the entire business.

[THE TAXPAYER] is not in the business of selling used warehouse and material handling equipment. The equipment does not include aircraft, vessels, or motor

vehicles required to be registered under state or federal law. Therefore, the sale of the equipment used by [THE TAXPAYER] to [CORPORATION A] is an occasional and isolated sale and accordingly is not subject to sales or use tax. If the equipment were purchased with the intent of selling it to [CORPORATION A], however, the occasional and isolated sale rule would not apply.

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Tax Counsel

APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 12-23-97