

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #99-24**

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

Whether a “manufacturer’s incentive” paid by a manufacturer to a dealer of the manufacturer’s products under a particular program is to be included in the sales price of products sold.

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

[TAXPAYER] is engaged in the sale of [PRODUCTS]. The taxpayer sells these products to a purchaser (a [BUSINESS], which is affiliated with a group of [BUSINESSES], either a member of a “purchasing group” or a [BUSINESS]

chain) at a price negotiated by the purchasing group or chain. This negotiation is not with the taxpayer but with the manufacturer of the products. The process is more completely set forth below.

The purchasing group (hereinafter “group”) negotiates directly with the manufacturer to obtain what the ruling request describes as manufacturer-provided incentives (hereinafter “incentives”)¹. In exchange for these incentives, the group makes a commitment to use the manufacturer’s product.

The group then directs its member (hereinafter “customer”) to negotiate with the manufacturer’s authorized dealer of its product² (the taxpayer) for the purchase of the manufacturer’s product by the customer. The ruling request states that this negotiation is separate and apart from the negotiation between the group and the manufacturer. The taxpayer is free to set its sales price based upon desired sales margins within the range between dealer net and the manufacturer’s suggested list price, based on the taxpayer’s desired margin. The difference between the manufacturer’s suggested list price and the negotiated price is referred to as “dealer discount.”

The customer purchases product from the taxpayer. The price is the negotiated sales price as described in the previous paragraph. The taxpayer’s invoice shows the manufacturer’s suggested list price less any dealer discount.

The taxpayer agrees to provide the manufacturer with a copy of taxpayer’s invoice to the customer. When the invoices are provided, the manufacturer calculates any incentive due under its contract with the group. The incentive is remitted to the taxpayer in the form of a credit to the taxpayer, earmarked for the customer. The taxpayer in turn credits the customer account for the exact amount of the incentive.

In effect, the amount the taxpayer receives is the manufacturer’s suggested list price less whatever discount has been negotiated between the customer and the taxpayer. This amount consists of both the amount received from the customer and the credit received from the manufacturer as a result of the sale to the customer.

QUESTION PRESENTED

What is the proper sales tax treatment of the credit received by the taxpayer as a “manufacturer incentive”?

¹ While the taxpayer refers to this amount in the ruling request as “incentives” the term “support credits” is used in a manufacturer’s description of the process which is appended to the ruling request.

² The customer selects which of the manufacturer’s authorized dealers it will purchase from.

RULING

The “manufacturer incentive” is part of the sales price, and, therefore, sales tax is due thereon.

ANALYSIS

T.C.A. § 67-6-202 levies a sales tax on “the privilege of engaging in the business of selling tangible personal property at retail in this state.” The tax is levied by applying the tax rate to the “sales price of each item or article of tangible personal property when sold at retail in this state.”

“Sales price” is defined in T.C.A. § 67-6-102(26) as follows:

"Sales price" means 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, valued in money, whether paid in money or otherwise, and includes **any amount for which credit is given to the purchaser by the seller**, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expense whatsoever; provided, that cash discounts allowed and taken on sales shall not be included; provided, that "sales price" does not include any additional consideration given by the purchaser for the privilege of making deferred payments, regardless of whether such additional consideration shall be known as interest, time price differential on conditional sales contracts, carrying charges or any other name by which it shall be known; provided, that "sales price" does not include any federal retail excise tax imposed by §§ 4051-4053 of the Internal Revenue Code of 1954, as amended, or as such tax may be amended hereafter; and provided further, that "sales price" does not include federal excise tax on diesel fuel purchased for off-road use as provided in title 67, chapter 3, whether or not such tax is required by law to be passed on to the ultimate consumer;

(Emphasis added.)

Nowhere in the definition of “sales price” is there a provision excluding amounts received by the vendor from a party other than the purchaser; in fact, the second emphasized phrase in the quote above appears to contemplate the possibility of someone other than the purchaser paying a part of the sales price.

A good, although not exact, analogy is found in the Department’s long-standing treatment of amounts received by a vendor when a purchaser presents a

manufacturer's coupon. The amount of the coupon is properly included in the sales price and sales tax is due thereon. The dealer grants a discount from his usual price, when he accepts the coupon, with the expectation of receiving additional consideration from the manufacturer when the dealer presents the coupon for reimbursement. Here, an amount received from the manufacturer is deducted from the customer's billing when the manufacturer is apprised, through the receipt of invoice copies, of the sale to a customer who is a part of a group for which the manufacturer has agreed to issue these rebates.

The scenario presented in the ruling request is distinguishable from the "dealer incentive programs" conducted by manufacturers such as automobile manufacturers. In these programs, all the dealer needs to do to receive an incentive credit is to sell the product. Unlike the program described in the ruling request, such incentives are not based on a sale to a particular customer and are not necessarily directly deducted from the price paid from the customer in order for the dealer to qualify to receive them.

Referring back to the definition of "sales price" previously quoted, a plain reading of the statute reveals the only deductions permitted from "sales price" are cash discounts, amounts paid for the privilege of making deferred payments, and certain Federal excise taxes. It is clear the amounts at issue here are none of the above.

In light of the above analysis, the manufacturer-provided incentives should be included in the sales price and are subject to sales tax. Therefore, the amount shown on the invoice (consisting of the manufacturer's suggested list price less the "dealer discount") is subject to tax.

Owen Wheeler
Tax Counsel 3

APPROVED: Ruth E. Johnson

DATE: 7/15/99