

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING # 99-27**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Application of sales and use tax to transfers between a corporation, subsidiary, and limited partnership.

**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**

Company X is a [STATE OTHER THAN TENNESSEE] corporation qualified to do business in Tennessee and has manufacturing operations in Tennessee. Company X is contemplating the formation of a Tennessee limited partnership. To accomplish this, Company X would first form a wholly-owned subsidiary, ("Newco") by contributing cash to Newco in exchange for Newco's stock. Newco would be incorporated under the laws of Tennessee and have a principal place of business in Tennessee.

Subsequent to the formation of Newco, Newco would then form the Tennessee limited partnership ("TLP") with Company X. Company X would contribute 1% of its Tennessee manufacturing operations to TLP in exchange for a 1% general partnership interest. As part of the same transfer of assets, Company X would simultaneously contribute 99% of its Tennessee manufacturing operations on behalf of Newco, with Newco receiving a 99% limited partnership interest in TLP in exchange for the assets contributed on its behalf.<sup>1</sup> (Normally, Company X would contribute its assets directly to the partnership on its own behalf and

---

<sup>1</sup> The assets at issue in this ruling do not include inventory held for sale.

receive a limited partnership interest in exchange, which it would then contribute to Newco. Because of adverse federal tax consequences, Company X will contribute the assets to the partnership on behalf of Newco). TLP would be an operating entity that would own income producing assets (both tangible and intangible), have employees, and conduct business within the state of Tennessee.

### **ISSUE**

Whether there is a taxable transaction for sales and use tax purposes when Company X contributes manufacturing operations to TLP both for itself and on behalf of Newco, with Newco receiving a 99% limited partnership interest in TLP in exchange for the assets contributed by Company X on its behalf.

### **RULING**

The transfer of aircraft, vessels, or motor vehicles would be subject to sales and use tax; the transfer of all other items is exempt from sales and use tax as a casual and isolated sale and/or as the transfer of exempt industrial machinery.

### **ANALYSIS**

Sales and use tax are imposed on the privilege of engaging in business in Tennessee. Tenn. Code Ann. § 67-6-202(a). In relevant part, Tenn. Code Ann. § 67-6-102(2) provides in the definition of “business”:

“Business” does not include 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 the services sold or purchased in such occasional or isolated transaction. “Business” includes occasional and isolated sales or transactions 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. “Business” also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships.

The rule construing this statute provides as follows:

(1) The Sales Tax does not apply to casual and isolated sales by persons who are not, or who have been deemed by the Commissioner not to be engaged in the business of selling tangible personal property or furnishing any of the services subject to the Sales or Use Tax. 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; this exemption, however, does not apply to any sales of tangible personal property or taxable services bought upon a resale certificate for resale by those persons who hold themselves out as engaged in business, notwithstanding the fact that the sales may be few and infrequent. The exemption also does not apply to the casual and isolated sale of aircraft, vessels and motor vehicles which are required to be registered by the State of Tennessee or the U.S. Government.

Tenn. Comp. R. & Regs. 1320-5-1-.09. The transfer during corporate reorganization was discussed in *D. Canale & Co. v. Celauro*, 765 S.W. 2d 736 (Tenn. 1989). The *D. Canale* court held that motor vehicles transferred from a parent corporation to a newly formed subsidiary was subject to sales tax pursuant to the definition of "business" in Tenn. Code Ann. § 67-6-102 with respect to the reorganization of corporations. *D. Canale & Co.*, 765 S.W. 2d at 738.

The transfer of title or possession of tangible personal property for consideration is a sale for sales and use tax purposes. Tenn. Code Ann. § 67-6-102(25)(A). Consideration for the proposed transaction lies in the 1% partnership interest going to Corporation X. As a result of the transfer, Newco will receive a 99% partnership interest which will increase the value of Newco stock held by Corporation X and accordingly provide consideration for the second aspect of the proposed transaction.

Clearly, the transfer of 1% of its operations to TLP is an occasional and isolated sale and is therefore exempt from the sales and use tax, unless included in that 1% are aircraft, vessels, or motor vehicles. Similarly, the transfer of the remaining 99% of its operations is also exempt provided that aircraft, vessels, and motor vehicles are not included. The transfer of aircraft, vessels, and motor vehicles is subject to sales and use tax.

In addition, under the facts provided, the operations transferred from Company X to TLP will consist of manufacturing operations. If TLP qualifies as a manufacturer under Tenn. Code Ann. §§ 67-6-102(13) and 67-6-206(a), the transfer of any industrial machinery (as defined in Tenn. Code Ann. § 67-6-102(13)) will be exempt from sales and use tax. If TLP has multiple locations, its manufacturing status will be determined on a location by location basis.

*Tennessee Farmers' Cooperative v. State Ex Rel. Jackson*, 736 S.W.2d 87, (Tenn. 1987). To receive this exemption, TLP must satisfy all the requirements of Tenn. Comp. R. & Regs. 1320-5-1-1.06.

David A. Gerregano  
Tax Counsel

APPROVED: Ruth E. Johnson  
Commissioner

DATE: 8/20/99