

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 11-51**

**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**

The application of the Tennessee sales and use tax to auction sales held by a nonprofit organization.

**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 a national nonprofit organization whose mission is [REDACTED].<sup>1</sup> Under the provisions of TENN. CODE ANN. § 67-6-322, the Taxpayer is granted authority from the Tennessee Department of Revenue (the "Department") to make purchases, without payment of sales or use tax, of tangible personal property or taxable services to be used or consumed by the Taxpayer itself or to be given away.

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<sup>1</sup> The Taxpayer is exempt for federal income tax purposes under I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3).

The Taxpayer has multiple office locations in Tennessee, each of which is operated directly by the Taxpayer (*i.e.*, not through a subsidiary or other affiliated entity). Each office location has its own respective sales and use tax exemption certificate. Each office holds no more than two auction sales per year in which tangible personal property is sold to the public (the “Auction Events”). The various Auction Events occur at different times throughout the year. No single Auction Event exceeds a period of thirty days.

## QUESTION

Are the Taxpayer’s sales of tangible personal property at the Auction Events exempt from the Tennessee sales and use tax as “occasional and isolated” sales under TENN. CODE ANN. § 67-6-102(9)(B) (Supp. 2010)?

## RULING

No.

## ANALYSIS

The Taxpayer’s sales of tangible personal property at the Auction Events are not exempt from the Tennessee sales and use tax as “occasional and isolated” sales under TENN. CODE ANN. § 67-6-102(9)(B) (Supp. 2010). Rather, the Taxpayer’s sales of tangible personal property are subject to the sales and use tax.

Under the Retailers’ Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales<sup>2</sup> of tangible personal property in Tennessee are generally subject to the sales and use tax. Here, the Taxpayer makes retail sales of tangible personal property at its various Auction Events in Tennessee. Accordingly, the Taxpayer’s sales are subject to the sales and use tax, unless an exemption from taxation applies.

Based on the facts presented, the only exemption that potentially applies in the Taxpayer’s case is the exemption for occasional and isolated sales found under TENN. CODE ANN. § 67-6-102(9)(B).<sup>3</sup>

TENN. CODE ANN. § 67-6-202(a) (Supp. 2010) imposes the sales and use tax on the “privilege of engaging in the *business* of selling tangible personal property at retail” in Tennessee. (Emphasis added.) However, TENN. CODE ANN. § 67-6-102(9)(B) provides that the term “business” does not include certain “occasional and isolated” sales. Thus, sales that qualify as occasional and isolated sales are exempt for purposes of the Tennessee sales and use tax.

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<sup>2</sup> TENN. CODE ANN. § 67-6-102(79) (Supp. 2010) defines a “retail sale” as a “sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” The term “sale” is defined in part as “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration.” TENN. CODE ANN. § 67-6-102(81)(A).

<sup>3</sup> Note that this statement is based on the information provided. Other exemptions may apply, depending on what types of items the Taxpayer sells. For example, provided certain requirements are met, TENN. CODE ANN. § 67-6-348(a) (2006 & Supp. 2010) exempts retail sales of used clothing by an organization that is exempt for federal income tax purpose under I.R.C. § 501(c)(3).

In particular, TENN. CODE ANN. § 67-6-102(9)(B) states the term “business” does not include sales of tangible personal property sold directly to consumers, provided that “the tangible personal property is not regularly sold by the person or is regularly sold<sup>4</sup> by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis.” Rather, such sales are considered nontaxable occasional and isolated sales. TENN. COMP. R. & REGS. 1320-5-1-.09(4) (1990) (“Rule 9(4)”) further explains this provision. Rule 9(4) clarifies that a “temporary sales period occurring on a semiannual or less frequent basis” is one that occurs no more than two times per calendar year. A sales period “shall be presumed to be temporary if it is of 30 consecutive days duration or less.” *Id.*

Thus, sales made at the Taxpayer’s Auction Events will be considered nontaxable occasional and isolated sales if, with respect to a specific taxable year, the following requirements are met: 1) the Taxpayer’s sales are made directly to consumers; 2) the Taxpayer makes sales only during temporary sales periods that year; 3) no more than two temporary sales periods occur that year; and 4) no single sales period exceeds thirty consecutive days in duration.

Based on the facts as presented, the third requirement is not met. The Taxpayer stated that it has multiple office locations in Tennessee, and each office holds up to two Auction Events per year.<sup>5</sup> Importantly, each office holds its Auction Event(s) at different times throughout the year. Thus, the Taxpayer makes sales during multiple sales periods each year. Because the Taxpayer’s sales are not limited to two temporary sales periods per year, the third requirement is not met.

Accordingly, the Taxpayer’s sales of tangible personal property at the Auction Events are not exempt from the Tennessee sales and use tax as occasional and isolated sales under TENN. CODE ANN. § 67-6-102(9)(B). Rather, the Taxpayer’s sales of tangible personal property are subject to the sales and use tax.

Note, however, that the Taxpayer’s sales would qualify as occasional and isolated sales under TENN. CODE ANN. § 67-6-102(9)(B) if, in the taxable year at issue, the Taxpayer were to hold all of its Auction Events during the same one or two temporary sales periods. In that case, each of the requirements discussed above would be met.

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APPROVED: Richard H. Roberts  
Commissioner of Revenue

DATE: 09/21/2011

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<sup>4</sup> The Taxpayer has indicated that it engages in several Auction Events each year; the Taxpayer is therefore considered a person that regularly sells tangible personal property.

<sup>5</sup> Because the Taxpayer operates the offices directly, the Taxpayer (and not the individual office) is considered the person making sales at each of the Auction Events.