

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 20-05**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of an exemption from the Tennessee sales and use tax to equipment and materials purchased for the expansion of a wastewater treatment plant owned and operated by [A GOVERNMENTAL ENTITY].

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 [MUNICIPALITY] (the "Municipality") is a Tennessee municipality. The Municipality owns and operates the [WASTEWATER TREATMENT FACILITY] (the "Facility"). The Municipality intends to enter into a contract for the expansion of the Facility ("Facility Expansion") and will contract with unrelated contractors (the "Contractors") to construct the Facility Expansion. In the course of expanding the Facility, the Contractors will purchase materials required to construct the Facility Expansion and

equipment to be used in the expanded Facility. The equipment and materials will consist of (i) processing equipment, including pumps, tanks, piping, and related equipment necessary to process sewage, (ii) concrete, reinforcing materials, and other building materials necessary for the construction of the foundations and enclosures necessary for the processing equipment, (iii) building materials (masonry, steel, roofing, doors, and mechanical and electrical components) necessary for the construction of the buildings needed to operate the Facility, and (iv) site materials, including asphalt, crushed stone and other materials required to construct roadways, walkways, and vehicle parking at the Facility.

RULING

Are the purchases of materials by the Municipality's Contractors for the construction of the Facility Expansion, and the purchase of equipment to be used in the expanded Facility both exempt for purposes of the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-209(c) (Supp. 2019)?

Ruling: Yes, the purchase of materials by the Municipality's Contractors for the construction of the Facility Expansion and the purchase of equipment to be used in the expanded Facility are both exempt from the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-209(c).

ANALYSIS

Under the Retailers' Sales Tax Act,¹ the retail sale in Tennessee of tangible personal property and specifically enumerated services are subject to the sales and use tax, unless an exemption applies.² The Retailers' Sales Tax Act also imposes the use tax at the same rate as the sales tax on "the purchase price of each item or article of tangible personal property that is not sold, but is used, consumed, distributed, or stored for use or consumption in this state; provided that there shall be no duplication of the tax."³ "Use" is defined broadly to include "the exercise of any right or power over tangible personal property incident to the ownership thereof."⁴

TENN. CODE ANN. § 67-6-209(b) states that where a contractor or subcontractor defined as a "dealer"⁵ uses tangible personal property in the performance of a contract, or to fulfill contract or subcontract

¹ Tennessee Retailers' Sales Tax Act, Ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts Ch. 22, §§ 22-54 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2018 & Supp. 2019)).

² TENN. CODE ANN. § 67-6-102(76) (Supp. 2019) defines a "retail sale" as "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent." A "sale," is defined in pertinent 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(78)(A). "Tangible personal property" includes "property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses." TENN. CODE ANN. § 67-6-102(89)(A).

³ TENN. CODE ANN. § 67-6-203(a) (Supp. 2019).

⁴ TENN. CODE ANN. § 67-6-102(94)(A).

⁵ TENN. CODE ANN. § 67-6-102(23)(K) defines a "dealer" in pertinent part as one who "uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid."

obligations “such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property.” Consequently, under Tennessee law, a contractor is generally liable for the “contractor’s use tax” when the contractor uses tangible personal property in the performance of a contract, unless an exemption applies.⁶

One such exemption is found in TENN. CODE ANN. § 67-6-206(a) (Supp. 2019). TENN. CODE ANN. § 67-6-206(a) exempts “industrial machinery” from the sales and use tax. “Industrial machinery” is defined in pertinent part as

[m]achinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, . . . or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one’s principal business, . . . or such use by a county, municipality, or water and wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 6, or a contractor pursuant to a contract with the county, municipality, or water and wastewater treatment authority for use in water pollution control or sewage systems.⁷

Under TENN. CODE ANN. § 67-6-209(c), this exemption applies to contractors installing industrial machinery.

As the language above reflects, Tennessee’s exemption for industrial machinery expressly extends to “pollution control facilities.” “Pollution control facilities” are broadly defined as including the following:

any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person’s principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest.⁸

A similar definition of pollution control facilities is used in the franchise and excise tax section and the property tax section of the Tennessee Code, providing consistency among tax types.⁹

⁶ TENN. CODE ANN. § 67-6-209(c).

⁷ TENN. CODE ANN. § 67-6-102(44)(A)(i).

⁸ TENN. CODE ANN. § 67-6-102(44)(A)(ii).

⁹ TENN. CODE ANN. § 67-5-604 and 67-4-2108(a)(5).

By expressly defining “pollution control facilities” the Legislature extended the industrial machinery exemption as applied to such facilities to include systems, improvements and structures primarily used in the reduction, prevention, treatment, and disposal of waste. In contrast, the standard industrial machinery exemption applies to “machinery, apparatus and equipment with all associated parts, appurtenances and accessories...necessary to and primarily for” processing tangible personal property for resale.¹⁰ Accordingly, although included under the definition of “industrial machinery,” the exemption for “pollution control facilities” is broader in scope than the exemption as applied to manufacturers generally.

For purposes of this analysis, the broader definition of “pollution control facilities” applies. Thus, the Municipality’s Contractors may purchase any system, method, improvement, structure, device, or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing, or reducing water pollution tax exempt. Under this broader definition, materials for the construction of the buildings necessary to operate the Facility are included within the scope of the exemption. Materials for the construction of roadways, walkways, and vehicle parking at the Facility are also included within the scope of this exemption.¹¹

A contractor installing qualified industrial machinery for the Municipality may apply to the Tennessee Department of Revenue for its own industrial machinery authorization number. Such an industrial machinery authorization number will enable the Contractor to purchase the industrial machinery for the Facility Expansion exempt from the Tennessee sales and use tax.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 6/16/2020

¹⁰ TENN. CODE ANN. § 67-6-102(44)(A).

¹¹ The definition of “pollution control facilities” was added to the law in 1991. The legislative history of 1991 Tenn. Pub. Acts Ch. 503 indicates a legislative intent to create a tax exemption to offset the cost of pollution control requirements imposed by federal law. *See*, comments of Representative Kisber before the House Conservation Committee on March 6, 1991, relative to House Bill 771. Further, on May 29, 1991, before the Fiscal, Ways and Means Committee, Senator Dunnavant specifically cites a municipal sewage system as an example of the kind of system to be affected by the bill. Finally, Representative Hillis, before the House Conservation Committee on March 6, 1991, relative to House Bill 771, specifically mentions access roads as intended to be within the scope of the exemption; *see, e.g.*, Tenn. Dept. of Rev. Letter Ruling 96-00, November 17, 2000.