

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 22-06

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 Tennessee sales and use tax to print and electronic magazines, publications, and databases.

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] ("Taxpayer") is a nonprofit, IRC § 501(c)(3) corporation headquartered in [STATE OTHER THAN TENNESSEE]. The Taxpayer provides customers with several products, including subscription access to electronic versions of its portfolio of magazines featuring [REDACTED- SPECIFIC CONTENT]

focused on [REDACTED], as well as print versions of the same (collectively, "Primary Publications"). The Taxpayer's print versions of its Primary Publications are distributed from a location outside of Tennessee on a weekly basis via the U.S. Postal Service as first-class mail. The print versions of its Primary Publications are delivered to the U.S. Postal Service at a location outside of Tennessee and any news gathering and reporting is performed remotely. The Taxpayer does not have any activities in Tennessee. Electronic versions of the Taxpayer's Primary Publications are available daily, by email or through the Taxpayer's website. The Taxpayer also sells advertising space within the print and electronic versions of the Primary Publications.

Additionally, the Taxpayer offers customers with subscription access to electronic versions of its Primary Publications access to other publications and information available electronically through the Taxpayer's website, including: [OTHER PUBLICATIONS AND DATABASES] (collectively, "Other Publications and Databases").

The Taxpayer's [RESEARCH] Library allows subscribers to access the following information: [INFORMATION]. The Taxpayer's [REDACTED] publication allows subscribers to access [REDACTED], amending protocols, documents related to [REDACTED], and news related to [REDACTED]. The [REDACTED] Directory provides information for [REDACTED] professionals, [REDACTED] officials, and [REDACTED] organizations. [REDACTED - INDUSTRY SPECIFIC INFORMATION]. Lastly, the [REDACTED] Manual includes access to [REDACTED] training materials and [REDACTED] training manuals.

Each of the Taxpayer's publications allows subscribers a limited search capacity. Subscribers can search for a specific word solely within the publication that they subscribe to and narrow search results by selecting a specific jurisdiction, subject matter, date, or similar variable.

RULINGS

1. Are subscriptions to the Taxpayer's portfolio of print and electronic versions of its Primary Publications subject to Tennessee sales and use tax?

Ruling: No. Subscriptions to the print and electronic versions of the Taxpayer's Primary Publications are exempt from Tennessee sales and use tax.

2. Are the Taxpayer's sales of advertising included in its print and online publications subject to Tennessee sales and use tax?

Ruling: No. The Taxpayer's sales of advertising space are not subject to Tennessee sales and use tax.

3. Are subscriptions to the Taxpayer's Other Publications and Databases subject to Tennessee sales and use tax?

Ruling: No. Subscriptions to the Other Publications and Databases are not subject to Tennessee sales and use tax because these subscriptions are considered the provision of nontaxable information services.

ANALYSIS

Under the Retailer's Sales Tax Act, the retail sale in Tennessee of tangible personal property, specified digital products,¹ remotely accessed software,² and specifically enumerated services are subject to sales and use tax, unless an exemption applies.

1. SUBSCRIPTIONS TO PRIMARY PUBLICATIONS

Subscriptions to the print and electronic versions of the Taxpayer's Primary Publications are exempt from sales and use tax. Magazines and books are generally subject to Tennessee sales and use tax as sales of tangible personal property; however, TENN. CODE ANN. § 67-6-329(a)(6) (Supp. 2021) provides the following exemption for:

Magazines and books that are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in this state are those activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of the magazines or books, or the maintenance of raw materials with respect to those activities, notwithstanding that the seller or distributor maintains employees in the state solely in connection with the production and quality control of the printing, storage, labeling and/or delivery, or in connection with news gathering and reporting.

The term "magazine" is not defined in Tennessee's sales and use tax laws or regulations; in the absence of a statutory definition the term must be given its natural and ordinary meaning.³ Merriam-Webster defines the word "magazine" as "a print periodical containing miscellaneous pieces (such as articles, stories, poems) and often illustrated."⁴ The Taxpayer's print versions of its Primary Publications meet this definition and would be considered magazines, as its print publications contain [REDACTED- SPECIFIC CONTENT] on [REDACTED]. Additionally, the Taxpayer distributes its Primary Publications through the U.S. Postal Service from outside of this state and has no other in-state activity. Therefore, the print versions of the Taxpayer's Primary Publications are exempt from Tennessee sales and use tax under TENN. CODE ANN. § 67-6-329(a)(6).

Although specified digital products are generally subject to Tennessee sales and use tax, the electronic versions of the Taxpayer's Primary Publications are exempt because electronic magazines are not considered taxable specified digital products. The definition of "specified digital products" includes digital books; however, the definition of "digital books" specifically excludes "newspapers, magazines, periodicals, chat room discussions [and] weblogs."⁵ Tennessee does not separately impose a tax on

¹ TENN. CODE ANN. § 67-6-233 (2018).

² TENN. CODE ANN. § 67-6-231 (2018).

³ See *Beare Co. v. Tenn. Dep't of Revenue*, 858 S.W. 2d 906, 908 (Tenn. 1993).

⁴ *Magazine*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/magazine> (last visited May 16, 2022).

⁵ TENN. CODE ANN. § 67-6-102(31) (Supp. 2021).

digital newspaper and magazine subscriptions. Thus, the Taxpayer's subscriptions to electronic versions of its Primary Publications are not subject to sales and use tax.⁶

2. ADVERTISING SPACE

The Taxpayer sells advertising space to businesses in both its print and electronic versions of its Primary Publications. Under TENN. COMP. R. & REGS. 1320-05-01-.99 (1974), the sale of advertising space, including in newspapers, magazines, billboards, and commercials is not subject to sales and use tax in Tennessee. Thus, the Taxpayer is not subject to Tennessee sales and use tax on its sales of advertising space in both the print and electronic versions of its Primary Publications.

3. OTHER PUBLICATIONS AND DATABASES

The Taxpayer's provision of electronic subscription access to the Other Publications and Databases are information services that are not subject to sales and use tax. Subscriptions to information services are excluded from specified digital products subject to tax under TENN. CODE ANN. § 67-6-233(d) (2018). Furthermore, TENN. CODE ANN. § 67-6-231(b) (2018), which provides for the taxation of remotely accessed software, reiterates that information services are not subject to sales and use tax. Information services are also specifically excluded from the definition of telecommunications services under TENN. CODE ANN. § 67-6-102(96)(B) (Supp. 2021). The Other Publications and Databases are repositories of information. The customer accesses the Other Publications and Databases provided by the Taxpayer for their information content. As such, the Taxpayer's provision of subscription access to the Other Publications and Databases are properly classified as information services that are not subject to Tennessee sales and use tax.

Granted, access to the electronic publications and databases must take place through some software function, and subscribers can perform searches for specific terms within the website; generally, this could be considered the furnishing of taxable computer software.⁷ However, considering the limited functionality of the software, these access and search functions are merely incidental to the information services the customers are accessing. Under the true object test that is used to determine the taxability of a product that involves taxable and non-taxable items, when the non-taxable component is the true object, and the taxable components are merely incidental, the transaction is not subject to sales and use tax.⁸ Therefore, the incidental use of computer software to access the Taxpayer's Other Publications and Databases does not subject the Taxpayer's offerings to the Tennessee sales and use tax.

⁶ The definition of "digital books" works in tandem with TENN. CODE ANN. § 67-6-329(d), which states the "sale at retail, use, distribution and storage for use or consumption in this state of the following specified digital goods is specifically exempted from the tax ... any specified digital good, if the sale, lease, licensing and use of the equivalent in a tangible form is exempt from taxation under this chapter." Because magazines are exempt in tangible form, they are likewise exempt in electronic form.

⁷ Computer software is a set of coded instructions designed to cause a computer to perform a task. TENN. CODE ANN. § 67-6-102(18).

⁸ See *generally* Tenn. Dept. of Rev. Ltr. Rul. 14-10 (Oct. 14, 2014) for an application and full analysis of the true object test.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 8/8/2022