

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #95-41**

**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 sales and use tax to reimbursements made by police officers to the [LOCAL GOVERNMENT] for the cost of providing them police vehicles for approved secondary employment.

**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**

A proposed policy of the [LOCAL POLICE DEPARTMENT] would require "police officers" to reimburse the [LOCAL GOVERNMENT] its cost of providing police

vehicles for their use during approved off-duty secondary employment. Current policy requires participating officers to respond to any circumstances occurring in his/her presence, or within the immediate area, which poses a substantial threat of bodily harm or serious damage or loss of property, even though such a circumstance may not be regarded as a matter of concern by the member's secondary employer. The average cost per day of using a [LOCAL POLICE DEPARTMENT] vehicle for fiscal year 1995-1996 has been calculated to be \$25.

The [LOCAL POLICE DEPARTMENT] has proposed charging its police officers \$25 per day, the equivalent of what it would cost the [LOCAL POLICE DEPARTMENT] to operate a vehicle for a day, if the vehicle is operated in either a moving or sitting capacity during an approved off-duty employment situation. The [LOCAL POLICE DEPARTMENT] has also proposed charging an officer \$5 per day if the vehicle is driven to or near an approved off-duty employment site and parked, but not used, to provide approved off-duty employment services.

The recovery of these costs would be viewed as a return expenditure to the [LOCAL GOVERNMENT]'s operating budget. The [LOCAL GOVERNMENT] does not perceive the recovery of its costs as a fee charged to the public, but rather, as a reimbursement of its cost to provide the vehicle for the police officer.

It is believed that the [LOCAL GOVERNMENT] receives a benefit from having its police vehicles visible, deterring crime when they are used in secondary employment. It is also believed that it is much safer for these officers engaged in secondary employment to have a police vehicle, with its full complement of police equipment, available to the officer in case it is needed in an emergency.

## **QUESTIONS**

Whether the proposed policy constitutes a lease of the police vehicles for purposes of the sales and use tax.

## **RULINGS**

The proposed policy is a lease of the police vehicles subject to sales tax on the gross proceeds.

## **ANALYSIS**

A tax is imposed on "the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto." T.C.A. Section 67-6-204(a). Lease or rental is defined to mean "the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of title of such property." T.C.A. Section 67-6-102(15). This definition for lease

is in accord with *Black's Law Dictionary* 889 (6th ed. 1990), which states that “[w]hen used with reference to tangible personal property, the word ‘lease’ means a contract by which one owning such property grants to another the right to possess, use and enjoy it for a specified period of time in exchange for periodic payment of a stipulated price, referred to as rent.” The essence of a lease agreement “is nothing more than the sale of the right to use a thing for an agreed upon period.” *Dixie Rents, Inc. v. City of Memphis*, 594 S.W.2d 397, 399 (Tenn. App. 1980).

The proposed policy under consideration is a lease or rental of the police vehicles. The proposed policy meets the statutory definition for lease because the [LOCAL POLICE DEPARTMENT] maintains title to the vehicle but grants the police officer the right to possess, use and enjoy the vehicle. In exchange, the police officer provides monetary consideration. The proposed policy is also a lease under case law because the policy amounts to the sale of the right to use the [LOCAL POLICE DEPARTMENT]’s vehicles for an agreed upon period. The conclusion that the proposed policy is a lease of the police vehicles is not undermined by the fact that the [LOCAL POLICE DEPARTMENT] may derive ancillary benefits from leasing its vehicles.

The tax base on the lease of tangible personal property is the gross proceeds. T.C.A. Section 67-6-204(a). Gross proceeds are “everything of value received by the lessor because of the leasing of property.” *Furniture Lease Company v. Tidwell*, 495 S.W.2d 535, 536 (Tenn. 1973). No deduction is allowed for any “expense incident to the conduct of business.” Sales and Use Tax Rule 1320-5-1-.32(1). Under the proposed policy, therefore, the tax base is the gross proceeds, the amount of the monetary payment from the police officer to the [LOCAL POLICE DEPARTMENT] for use of the vehicle.

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APPROVED: Ruth E. Johnson

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