

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 96-18**

**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 local sales tax to paging services.

**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 his detriment.

**FACTS**

[THE TAXPAYER] is a telecommunications company that provides paging services to customers in Tennessee. [THE TAXPAYER] has sales and service offices located in

Tennessee. The majority of [THE TAXPAYER'S] sales are at retail, and state and local tax has been and is currently being collected and remitted on the sale of paging services.

ISSUE

Which locality is authorized to impose the local option tax when paging services are sold?

## RULING

Paging services are subject to the local option sales tax in the locality to which the bills are sent.

## ANALYSIS

Charges for paging service are subject to the sales tax on telecommunications, T.C.A. Section 67-6-102(29)(C), if the telecommunication is originated or received in Tennessee and if charged to a service address in Tennessee. T.C.A. Section 67-6-102(23)(F)(iii). Service address, in the case of paging systems, means “the location of the consumer’s primary use of the telecommunication equipment as defined by the telephone number, authorization codes, or location in Tennessee where bills are sent.” T.C.A. Section 67-6-102(26).

The Local Option Revenue Act authorizes counties and incorporated towns and cities to impose sales and use taxes “on the same privileges subject to this chapter as the same may be amended, which are exercised within such county, city or town.” T.C.A. Section 67-6-702(a)(1). Local taxes are thus authorized to be imposed on the same transactions and in the same manner as state taxes are imposed. As a result, paging services are also subject to local sales tax.

At issue is which locality may impose the local tax. The incidence of the local option tax is upon the privilege of engaging in retail sales. Pidgeon-Thomas Iron Company v. Garner, 495 S.W.2d 826, 830 (Tenn. 1973). Taxable sales are thus generally subject to local tax in the locality in which the taxpayer’s place of business is located, regardless of whether the sales were technically made inside or outside of that locality. Id.

A specific provision of the Local Option Revenue Act provides an exception to the general rule. T.C.A. Section 67-6-702(a)(4) reads as follows:

For the purpose of this part, persons engaged in the business of selling water or telephone service shall be considered to be exercising a taxable privilege at the place where the tangible personal property or service is delivered to the purchaser. Telephone service is deemed to be delivered at the location of the telephone being charged for the service.

Under the general rule, the locality of the taxpayer’s place of business is authorized to impose the local option tax. Under the exception to the general rule, the locality of the telephone being charged for the service is authorized to impose the local option tax. A specific provision of a particular statute controls a general provision of the same statute. Valley Fid. Bank & Trust Co. v. Ayers, 861 S.W.2d 366, 369 (Ct. App. 1993); Strader v. United Family Life Ins. Co., 218 Tenn. 411, 403 S.W.2d 765, 768 (1966). The exception to the general rule therefore applies if pager service is a telephone service.

The definition for “telecommunications” separately lists telephone service and paging service as services included within the scope of telecommunications, creating an inference that telephone service and paging service are different services. T.C.A. Section 67-6-102(29)(C). This definition for telecommunications became effective on June 1, 1989. 1989 Tenn. Pub. Acts 312. Before enactment of the sales tax on telecommunications, sales tax applied to the furnishing of “telephone service.” T.C.A. Section 67-6-102(13)(F)(iii) (repealed 1989). The Supreme Court of Tennessee has held that paging service was “telephone service” under the former law. South Central Bell Telephone Co. v. Huddleston, No. 01-S-01-9203-CH-00042 (Tenn. 1993). Thus, prior to June 1, 1989, paging service was a telephone service under Tennessee law.

T.C.A. Section 67-6-702(a)(4), which provides that telephone services is subject to the local option tax at the location of the telephone being charged for the service, was passed by the legislature on March 28, 1988, and became effective on July 1, 1988. 1988 Tenn. Pub. Acts 684. The Act was passed while paging service was a telephone service under Tennessee law, so paging service was subject to the local option tax at the location of the paging system being charged for the service when T.C.A. Section 67-6-702(a)(4) was enacted. This result is not altered by a subsequent change in a different statute -- the sales tax on telecommunications -- which separately lists telephone service and paging service as telecommunications services but does not compel a holding that paging service is not a telephone service.

Therefore, charges for paging service are subject to the local option tax at the location of the paging system being charged for the service. Paging systems, which may not occupy a defined location, are deemed to be located where bills are sent. T.C.A. Section 67-6-102(26).

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