

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 02-24**

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

Application of sales and use taxes to the operation of a portable, [DESCRIPTION] plant.

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 registered for sales and use tax purposes. Last year, the Taxpayer purchased a portable, [DESCRIPTION] plant. The plant was purchased for the Taxpayer's own use in the manufacturing of [PRODUCT]. However, a customer who wishes to obtain the use of the portable plant has contacted the Taxpayer. Pursuant to the

proposed agreement with this customer, the plant will be erected at the customer's job site. The customer will supply all the raw materials needed to make the [PRODUCT] as well as the [TRANSPORTATION EQUIPMENT] that will be loaded with the [PRODUCT]. The Taxpayer will maintain control of the plant and furnish the personnel to operate it. The Taxpayer will be compensated based upon an agreed upon price per [UNIT] for each [UNIT] of [PRODUCT] manufactured. At the completion of the job the portable plant will be returned to the Taxpayer's facilities. For purposes of this ruling, it is assumed the customer is the consumer and user of the [PRODUCT] produced. The Taxpayer believes the transaction may be excluded from application of the sales tax by Tenn. Code Ann. § 67-6-204(b).

QUESTION

Will the Taxpayer's receipts from the transaction described be excluded from sales taxes by application of Tenn. Code Ann. § 67-6-204(b)?

RULING

No. The Taxpayer is selling tangible personal property, and the sales tax applies to the total proceeds from the sale. The Taxpayer is not providing a nontaxable service pursuant to Tenn. Code Ann. § 67-6-204(b).

ANALYSIS

Tenn. Code Ann. § 67-6-102(25)(A) defines a "sale" that is subject to the sales tax. This statute provides in relevant part:

"Sale" ...includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the material used in fabrication work...

Id. Also, the rules of the Department of Revenue address the fabrication of tangible personal property by persons using materials supplied by their customers:

Where persons contract to fabricate articles of tangible personal property from material selected or furnished by customers, the total proceeds from the sale are subject to the Sales or Use Tax. Such persons may not deduct labor or service charges of fabrication or production, notwithstanding that such charges may be separately billed to customers apart from charges for materials....

TENN. COMP. R. & REGS. 1320-5-1-.41.

The portable plant will be controlled and operated by the Taxpayer to produce [PRODUCT] from materials supplied by the customer. Pursuant to their agreement, the customer will pay the Taxpayer for each [UNIT] of [PRODUCT] produced. Application

of the statute and the rule cited clearly indicate this transaction is a sale of tangible personal property. This sale only differs from more typical sales of tangible personal property in that the customer supplies the materials used to produce the [PRODUCT]. However, both the statute and the rule contemplate that the fabrication of tangible personal property (for a consideration) from materials supplied by the customer also constitutes a sale of tangible personal property. Therefore, the Taxpayer's sale to the customer/consumer is subject to the sales tax on the total proceeds received by the Taxpayer. There is no indication from the facts presented that any statutory exemption or exclusion from the tax may apply except one possible exception raised by the Taxpayer.

The Taxpayer has cited Tenn. Code Ann. § 67-6-204(b) that provides:

If the owner of the property maintains continuous supervision over the personal property being leased or rented, and furnishes an operator or crew to operate such property, the owner is rendering a service, and the same is not subject to sales or use tax. On the other hand, if the owner does not furnish the crew or operator, but merely rents the property, and the lessee operates it personally for a stated consideration or price, either by the day or week or month, in such case, the sales or use tax would apply as the lessee has the possession, use and control of the property. If the owner of the property furnishes flight training, the owner is rendering a service, and the property used therein shall not be subject to sales or use tax.

This provision clarifies the application of the sales tax to the lease or rental of tangible personal property pursuant to Tenn. Code Ann. § 67-6-204. A taxpayer is not leasing or renting tangible personal property when the taxpayer maintains continuous control over the tangible personal property and furnishes a crew to operate the tangible personal property. Instead, the taxpayer is rendering a service that is not subject to the sales or use tax. However, if Tenn. Code Ann. § 67-6-204(b) applies to exclude application of the sales tax to the transaction described by the Taxpayer, it is in conflict with Tenn. Code Ann. § 67-6-102(25)(A).

Tax statutes must be interpreted to the extent possible in a manner that will not place them in conflict with each other. The Tennessee Supreme Court has said:

It is the duty of the Court in construing statutes to avoid a construction which will place one statute in conflict with another, and the Court should resolve any possible conflict between the statutes in favor of each other, whenever possible, so as to provide a harmonious operation of the laws.

Parkridge Hospital, Inc. v. Woods, 561 S.W.2d 754 (Tenn. 1978). As applied to the facts presented, Tenn. Code Ann. § 67-6-204 indicates there is no taxable lease or rental of the portable [PRODUCT TYPE] plant. On the other hand, Tenn. Code Ann. § 67-6-102(25)(A) and Rule 41 clearly provide that the charges made for the [PRODUCT] produced by the Taxpayer's operation of the portable [PRODUCT TYPE] plant are subject to the tax. Since it is not the lease of the equipment, but the fabrication of

tangible personal property for a consideration that is taxed by Tenn. Code Ann. § 67-6-102(25)(A) and Rule 41, there is no apparent conflict with Tenn. Code Ann. § 67-6-204(b). Tenn. Code Ann. § 67-6-204(b) does not prevent application of the tax.

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APPROVED: Ruth Johnson
Commissioner

DATE: 7/19/02