TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 05-14

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of business tax to durable medical equipment (DME) leased by hospitals to patients who have been discharged from the hospital.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

The taxpayer is a hospital which, in addition to providing standard medical services, leases DME to patients for their use after they have been discharged from the hospital. The taxpayer derives approximately 1.5% of its revenues from renting DME. The taxpayer does not pay business tax on the standard medical services it provides.

QUESTION

Is the taxpayer's rental of DME to discharged patients subject to the business tax found in Tenn. Code Ann. § 67-4-701 et seq.?

RULING

Yes.

ANALYSIS

The Business Tax Act, Tenn. Code Ann. § 67-4-701 et seq., is a component of Tennessee's privilege and excise taxes. It allows counties and incorporated municipalities to tax the privilege of engaging in any of the business activities enumerated in the Act. Tenn. Code Ann. § 67-4-

704(a); *Westinghouse Electric Corp. v. King,* 678 S.W.2d 19, 23 (Tenn. 1984). Businesses are classified in Tenn. Code Ann. § 67-4-708 according to their dominant taxable business activity, and these statutory classifications determine the rate and due date of the tax. *Hermitage Memorial Gardens Mausoleum and Memorial Chapel, Inc. v. Dunn*, 541 SW2d 147 (Tenn. 1976). Once the classification is established for rate and due date purposes, the tax base is determined by the total amount of sales made by the business. Tenn. Code Ann. § 67-4-709(b).

Under Tenn. Code Ann. § 67-4-708(3)(C), all services other than fifteen specific exceptions are subject to business tax. One of those exceptions is medical services provided to human beings. If the rental of tangible personal property represents only 1.5% of the taxpayer's revenues, those rentals are not generally the taxpayer's dominant business activity. The taxpayer's dominant business activity of providing medical services to human beings is specifically excluded from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i).

Nonetheless, the Tennessee Supreme Court has made it clear that business tax applies to any business activity included under the act. *Hermitage Memorial Gardens Mausoleum and Memorial Chapel, Inc.,* 541 S.W.2d at 149. The Court stated as follows:

> There is no language limiting the incidence of the tax to those entities whose dominant business activity is one of the activities enumerated in § 67-5805 (now § 67-4-708), no language excluding entities whose dominant business activity is one not enumerated in § 67-5805. All entities who make sales by engaging in any of the business activities enumerated in § 67-5805 are subject to tax. *Id.*

Accordingly, any entity that engages in an activity subject to business tax is required to remit the tax. Its application is not limited to those businesses whose dominant activity is subject to tax. *Id*.

Classification 2 applies the tax to sales of tangible personal property not specifically enumerated or described in the statute. Tenn. Code Ann. § 67-4-708(2)(F). "Sale" is defined in Tenn. Code Ann. § 67-4-702(a)(15) to include lease or rental. Thus, revenues generated by the taxpayer from renting the DME are subject to business tax under the provisions of Classification 2.

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