

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 10-24**

**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**

The applicability of the Tennessee sales and use tax to market research reports.

**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**

The [TAXPAYER] is a market research company for [TYPE OF BUSINESS]. It collects data on [VARIOUS PARTS OF THIS BUSINESS] and compiles this data into various reports. The Taxpayer provides its clients with reports every [TIME PERIOD]. It also provides its clients

with opportunities for private and group consulting meetings to better explain the data and help them apply the data to their situation. Not all clients will attend one of these meetings.

The Taxpayer also has associates in Tennessee as well as in other states. These associates, who are in business for themselves, collect the data for their area and send it to the Taxpayer. Using this data, the Taxpayer prepares the reports in Tennessee and then ships the reports directly to the associate's clients, who are located both inside and outside Tennessee. The Taxpayer charges the associate for the cost of printing, assembling, and shipping the reports to the clients in addition to a yearly fee. The associate provides consulting services for its own market and invoices its client for the report prepared by the Taxpayer as well as the consulting services provided by the associate (along with sales tax in states where it is applicable).

The Taxpayer will soon launch a website on which certain reports and data will be available, either for viewing on the website only or as a downloadable PDF file, for a subscription fee. The website will be available to the Taxpayer's own clients, the Taxpayer's associates, and the associates' clients. The website will be owned and maintained by the Taxpayer, and access to information or data via the website will only be gained remotely via the Internet. The Taxpayer's clients and associates and the associates' clients will not download any software in order to gain access to information or data via the website.

## QUESTIONS

1. Is the Taxpayer required to collect and remit Tennessee sales and use tax on sales to its Tennessee clients?
2. Is the Taxpayer required to collect and remit Tennessee sales and use tax on sales to its out-of-state clients?
3. Is the Taxpayer required to collect and remit Tennessee sales and use tax on sales to its Tennessee associates?
4. Is the Taxpayer required to collect and remit Tennessee sales and use tax on sales to its out-of-state associates?
5. Are the Taxpayer's out-of-state associates required to collect and remit Tennessee sales and use tax from their own out-of-state clients?
6. Are the Taxpayer's out-of-state associates required to collect and remit Tennessee sales and use tax from their own Tennessee customers if:
  - a. The Taxpayer ships the reports directly to the Tennessee clients of the out-of-state associates on behalf of the out-of-state associates?
  - b. The Taxpayer ships the reports to the out-of-state associates who then distribute the reports to their Tennessee customers?
7. Does the Taxpayer owe Tennessee sales and use tax on the supplies it uses in producing the reports? Do any exemptions apply? Does this affect any of the analyses above?

8. If the Taxpayer is not required to collect and remit sales and use tax on any of its sales, what documentation to this effect, if any, is the Taxpayer required to keep on file?
9. If the Taxpayer's client does not attend a consulting meeting, does this affect the analyses above?
10. Is the Taxpayer required to collect and remit Tennessee sales and use tax on the subscription fee charged for access to information or data via the Taxpayer's website from:
  - a. Tennessee clients?
  - b. Out-of-state clients?
  - c. The Taxpayer's associates?

### **RULINGS**

- 1-4. No. The Taxpayer's sales are sales of nontaxable services and thus are not subject to the Tennessee sales and use tax.
- 5-6. The Tennessee Department of Revenue declines to issue a ruling with respect to the potential Tennessee sales and use tax liability of an unnamed seller that is separate and apart from the Taxpayer.
7. Yes. The Taxpayer owes sales and use tax on its purchases of supplies it uses in the provision of its services.
8. The Retailer's Sales Tax Act does not require that the Taxpayer maintain documentation with respect to its sales of nontaxable services.
9. No. Whether or not a client attends a consulting meeting does not affect the analyses. The Taxpayer's sales are sales of nontaxable services.
10. No. The subscription fee charged to the Taxpayer's in-state clients, out-of-state clients, and associates for access to information or data via the Taxpayer's website is not subject to the Tennessee sales and use tax.

### **ANALYSIS**

#### *1-4. Sales of market research and reports*

The Taxpayer's sales are sales of nontaxable services and thus are not subject to the Tennessee sales and use tax.

Under the Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales of tangible personal property in Tennessee are subject to sales and use tax. TENN. CODE ANN. § 67-6-102(79) (Supp. 2010) defines a "retail sale" as a "sale, lease, or rental for any purpose other than for resale, sublease, or subrent." The term "sale" is defined under the Tennessee sales and use

tax laws in pertinent part as “any transfer of title or possession, or both . . . of tangible personal property for a consideration.” TENN. CODE ANN. § 67-6-102(81)(A). TENN. CODE ANN. § 67-6-102(92)(A) defines “tangible personal property” in pertinent part as “personal property that can be seen, weighed, measured, felt, or touched.”

The Retailers’ Sales Tax Act also imposes the sales tax on certain services. The sales tax does not apply to all services; rather, it only applies to retail sales of those services specifically enumerated by the statute. *Ryder Truck Rental, Inc. v. Huddleston*, No. 91-3382-III, 1994 WL 420911 (Tenn. Ct. App. Aug. 12, 1994).<sup>1</sup>

The Taxpayer’s sales consist of two elements: 1) market research and compilation of data, which is a nontaxable service, and 2) written reports, which are tangible personal property. Historically, the Department has considered a compilation or report prepared for a customer or client to be incidental to the nontaxable service of performing the research. The Tennessee Supreme Court has stated that although tangible personal property may be transferred to the customer incidental to the sale of a service, such incidental property does not transform the otherwise nontaxable sale into a taxable sale of tangible personal property. *Commerce Union Bank v. Tidwell*, 538 S.W.2d 405 (Tenn. 1976).

In other words, the written reports prepared by the Taxpayer for its clients and its associates are incidental to the Taxpayer’s nontaxable service of market research and data compilation, and thus are not subject to the Tennessee sales and use tax.

#### 5-6. *Sales by the Taxpayer’s associates*

The Tennessee Department of Revenue declines to issue a ruling with respect to the potential Tennessee sales and use tax liability of an unnamed seller that is separate and apart from the Taxpayer.

However, the analysis for Questions 1-4 would apply to other taxpayers providing the same service that the Taxpayer provides.

#### 7. *Taxability of Taxpayer’s supplies*

The Taxpayer owes sales and use tax on its purchases of supplies that it uses in the provision of its services.

Under the Retailers’ Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales of tangible personal property in Tennessee are subject to sales and use tax. TENN. CODE ANN. § 67-6-102(79) (Supp. 2010) defines a “retail sale” as a “sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” The term “sale” is defined under the Tennessee sales and use tax laws in pertinent part as “any transfer of title or possession, or both . . . of tangible personal

---

<sup>1</sup> Even if a service is not specifically enumerated by the statute, the service may be subject to the sales tax where charges for the service are included in the sales price of a taxable good or service. Specifically, TENN. CODE ANN. § 67-6-102(82)(A) (Supp. 2010) provides that the sales price of a good or service equals the “total amount consideration . . . for which personal property or services are sold.” Thus, when the sale of a non-enumerated service is part of the sale of a taxable good or service, the charges for the non-enumerated service are included in the sales price of the taxable good or service and as such are subject to taxation.

property for a consideration.” TENN. CODE ANN. § 67-6-102(81)(A). TENN. CODE ANN. § 67-6-102(92)(A) defines “tangible personal property” in pertinent part as “personal property that can be seen, weighed, measured, felt, or touched.” A “sale for resale” is the “sale of the property, services, or taxable item intended for subsequent resale by the purchaser,” and a “resale” is “a subsequent, bona fide sale of the property, services, or taxable item by the purchaser.” TENN. CODE ANN. § 67-6-102(78).

The materials and supplies used by the Taxpayer in printing the written reports are clearly tangible personal property and as such are subject to the Tennessee sales and use tax, unless the Taxpayer intends to resell them. Because the Taxpayer is not selling the written reports, no resale takes place, and the purchase of the materials needed to produce the reports (*i.e.*, paper, ink, etc.) are sales at retail, as defined in TENN. CODE ANN. § 67-6-102(79). The Taxpayer’s vendor should therefore collect sales tax on the sales price of these items. Pursuant to TENN. COMP. R. & REGS. 1320-5-1-.68(3) (2008), the Taxpayer should not purchase these items using a resale certificate. If these items are purchased from vendors who do not collect sales tax from the Taxpayer, the Taxpayer is required to remit use tax on the cost of these materials, as provided in TENN. CODE ANN. § 67-6-203 (Supp. 2010).

#### 8. *Required documentation*

The Retailer’s Sales Tax Act does not require that the Taxpayer maintain specific documentation with respect to its sales of nontaxable services. However, there is a general requirement that each dealer keep records of its sales and purchases. TENN. CODE ANN. § 67-6-523 (2006) generally requires all taxpayers to establish and maintain records that are adequate for auditors to use in determining the correct amount of the taxpayer’s tax liability. The Taxpayer should therefore keep records of its sales and purchases, including copies of invoices and purchase orders. Records of business transactions must be retained for a minimum of three years from December 31 of the year in which the associated Tennessee sales and use tax return was filed.

#### 9. *Attendance at consulting meeting*

Whether or not a client attends a consulting meeting with the Taxpayer does not affect the taxability of the Taxpayer’s sales. The Taxpayer’s sales are sales of nontaxable services and thus are not subject to the Tennessee sales and use tax.

The Taxpayer’s services also include the opportunity for the client to attend a consulting meeting in which the Taxpayer explains the report data and helps the client apply that data. These meetings are optional, and the client may or may not attend. The provision of these consulting meetings is in and of itself a nontaxable service. However, the Taxpayer provides the consulting as part of its entire market research service. As explained in the response to Question #1, the Taxpayer’s services are nontaxable, and this is true whether the client attends a consulting meeting or not.

#### 10. *Website access*

The subscription fee charged to the Taxpayer’s in-state clients, out-of-state clients, and associates for access to information or data via the Taxpayer’s website is not subject to the Tennessee sales and use tax.

As discussed previously, under the Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales of tangible personal property, including computer software, and certain services in Tennessee are subject to the Tennessee sales and use tax. The Taxpayer will charge a subscription fee to access information or data via its website. However, no software will ever be transferred to clients, associates, or clients of associates. Therefore, the subscription fee is for the service of providing access to information or data via a website, which is a nontaxable service, rather than for the transfer of tangible personal property. As such, the subscription fee that the Taxpayer will charge for access to information or data via its website is not subject to the Tennessee sales and use tax. This is the case regardless of whether the data and reports found on the website are downloadable or not.

Elizabeth Henderson  
Tax Counsel

APPROVED: Charles A. Trost  
Commissioner of Revenue

DATE: 11/12/10