

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-16**

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 headquarters credit under TENN. CODE ANN. § 67-6-224(a) (Supp. 2010) for purposes of the Tennessee sales and use tax.

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

[TAXPAYER] is headquartered and bases its [REDACTED] operations in Tennessee, which is located in [COUNTY]. [REDACTED]. At its Tennessee headquarters, the Taxpayer conducts [DESCRIPTION OF ACTIVITIES].

In [YEAR], the Taxpayer began increasing its Tennessee presence through an expansion and remodeling of its corporate headquarters facility (the "Headquarters"). [REDACTED].

As part of this expansion, the Taxpayer filed a business plan and an application to be approved as a headquarters facility.¹ The Taxpayer's business plan was approved by the Department on [DATE], and provides for an investment period of [DATE] through [DATE].

The Taxpayer's total investment has exceeded [DOLLAR AMOUNT] with respect to the expansion and remodeling of its corporate headquarters facility. The Taxpayer forecasts that in [YEAR], it will have met the requirement for 100 additional new, full-time headquarters jobs that meet or exceed 150% of Tennessee's average occupational wage. The jobs added in connection with the qualified headquarters facility are full-time jobs in administration, research and development, sales, information technology, and other corporate areas. [REDACTED].

Purchases for the expansion and construction include, but are not limited to, costs of building materials and installation labor. The furniture to be purchased for the Headquarters expansion includes, but is not limited to, [EXAMPLES]. Planned computer hardware and software purchases include, but are not limited to, [EXAMPLES]. The equipment to be purchased includes, but is not limited to, [EXAMPLES].

QUESTIONS

1. Will the Taxpayer's purchase or lease of tangible personal property and construction expenditures described herein qualify to be included as part of the required capital investment for a qualified headquarters facility as defined under TENN. CODE ANN. § 67-6-224(b) (Supp. 2010), provided that the materials or equipment are purchased or leased during the investment period?
2. Is the Taxpayer entitled to the Tennessee sales and use tax credit set forth under TENN. CODE ANN. § 67-6-224(a) (Supp. 2010), equal to all state sales and use tax paid by the Taxpayer or its contractor on qualified tangible personal property, except tax at the rate of 0.5% on qualified tangible personal property? May this credit be used to offset liability for Tennessee sales and use taxes paid by the Taxpayer on tangible personal property purchased by, or used at, any Taxpayer location in Tennessee?
3. For purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010), does "construction, expansion, or remodeling" include design work? Is the beginning of the investment period evidenced by the engagement of architectural or engineering services?
4. For purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010), will "substantial completion" be evidenced by a certificate of occupancy? Will any delayed build-out of any portion of any building that is part of the Headquarters facility extend the investment period, provided that such extended investment period is not more than the maximum period provided by law?

¹ Tenn. Code Ann. § 67-6-224(d) provides that a "taxpayer seeking this credit shall first submit to the commissioner of revenue an application to qualify as a headquarters facility, together with a plan describing the investment to be made, and, if applicable, documentation verifying employment and wage information."

5. Will the Taxpayer's investment in aesthetic renovations, furniture, computer hardware, and telecommunications systems count toward satisfaction of the "minimum investment" requirement in TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010)?
6. Will a building be considered "remodeled" for purposes of the headquarters credit under TENN. CODE ANN. § 67-6-224(a) (Supp. 2010) if it is altered either structurally or aesthetically, *i.e.*, through the addition of paint, carpet, partitions, lighting, and similar improvements?
7. Will all Taxpayer facilities located in [COUNTY], Tennessee, which operate as part of the same enterprise, be considered a single location for purposes of the qualified headquarters credit under TENN. CODE ANN. § 67-6-224(a) (Supp. 2010)?

RULINGS

1. The Taxpayer's purchase or lease of tangible personal property and the construction expenditures described herein are properly included as part of the minimum investment for a qualified headquarters facility as defined under TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010), provided that the purchases, leases, and expenditures are made during the investment period.
2. Provided that the Taxpayer submits the documentation required under TENN. CODE ANN. § 67-6-224(d) (Supp. 2010), the Taxpayer will be entitled to claim the Tennessee sales and use tax credit set forth under TENN. CODE ANN. § 67-6-224(a). Once earned, this credit may be used to offset Tennessee sales and use taxes paid by the Taxpayer with respect to tangible personal property purchased by, or used at, any Taxpayer location in Tennessee.
3. For purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010), the term "construction, expansion, or remodeling" will include design, architectural, and/or engineering services. The beginning of the investment period may be evidenced by the engagement of such services.
4. For purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010), "substantial completion" of the Headquarters facility will generally be evidenced by the issuance to the Taxpayer of a certificate of occupancy or a temporary certificate of occupancy. The delayed completion of a build-out of a portion of the facility will extend the investment period, but not beyond the six-year limitation imposed by TENN. CODE ANN. § 67-6-224(b)(6).
5. Yes. The Taxpayer's investment in aesthetic renovations, furniture, computer hardware, and telecommunications systems will count toward satisfaction of the "minimum investment" requirement in TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010).
6. Yes. A building will be considered "remodeled" for purposes of the headquarters credit under TENN. CODE ANN. § 67-6-224(a) (Supp. 2010) if it is altered either structurally or aesthetically, *i.e.*, through the addition of paint, carpet, partitions, lighting, and similar improvements.

7. All of the Taxpayer's facilities located in [COUNTY], Tennessee that operate as part of the same enterprise will be considered a single location for purposes of the qualified headquarters credit under Tenn. Code Ann. § 67-6-224(a) (Supp. 2010).

ANALYSIS

Under the Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, the retail sale of tangible personal property in Tennessee is generally subject to the Tennessee sales and use tax. However, a credit is available against a taxpayer's sales and use tax liability for state sales or use taxes paid to the state of Tennessee. Specifically, TENN. CODE ANN. § 67-6-224(a) (Supp. 2010) provides that a taxpayer "who establishes a qualified headquarters facility in this state shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sales or use of qualified tangible personal property."

TENN. CODE ANN. § 67-6-224(b)(11) defines "qualified tangible personal property" as "building materials, machinery, equipment, furniture and fixtures used exclusively in the qualified headquarters facility and purchased or leased during the investment period and computer software used primarily in the qualified headquarters facility and purchased or leased during the investment period."²

TENN. CODE ANN. § 67-6-224(b)(9) defines the term "qualified headquarters facility" as "a headquarters facility where the taxpayer has made the minimum investment during the investment period."³ "Headquarters facility" is in turn defined under TENN. CODE ANN. § 67-6-224(b)(3) as "a facility"⁴ in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees⁵ are located and employed, and

² "Qualified tangible personal property" does not include supplies or repair parts. TENN. CODE ANN. § 67-6-224(b)(11). "Qualified tangible personal property" does not include any payments with respect to leases of qualifying tangible personal property that extend beyond the investment period. *Id.* "Qualified tangible personal property" does not include any materials, machinery, equipment, furniture, or fixtures that replace tangible personal property that previously generated a credit under TENN. CODE ANN. § 67-6-224(a). *Id.*

³ TENN. CODE ANN. § 67-6-224(b)(6) defines "investment period" to mean that "the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility." However, in no event shall the investment period exceed six years. *Id.*

⁴ TENN. CODE ANN. § 67-6-224(b)(1) defines the term "facility" as "a building or buildings, either newly constructed, expanded, or remodeled, housing headquarters staff employees and located in a county or metropolitan statistical area in this state." TENN. CODE ANN. § 67-6-224(b)(1) further provides that a facility "may include parking facilities exclusively for the use of headquarters staff employees and visitors; provided that the parking facilities are built in conjunction with the newly constructed, expanded, or remodeled building or buildings. An expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in this state. The facility must be utilized as a headquarters facility for a period of at least ten (10) years beginning from the date of substantial completion."

⁵ The term "headquarters staff employees" means "executive, administrative, or professional workers performing headquarters-related functions and services." TENN. CODE ANN. § 67-6-224(b)(5).

where the primary headquarters related functions and services⁶ are performed.”

TENN. CODE ANN. § 67-6-224(b)(7)(A) provides that the term “minimum investment” means:

- (i) A minimum investment by the taxpayer and lessor to the taxpayer of fifty million dollars (\$50,000,000) or more in a building or buildings, either newly constructed, expanded, or remodeled; or
- (ii) A minimum investment by the taxpayer and the lessor to the taxpayer of ten million dollars (\$10,000,000) in a building or buildings, either newly constructed, expanded, or remodeled, along with the creation of not fewer than one hundred (100) net new full-time employee jobs⁷ created during the investment period, that pay at least one hundred fifty percent (150%) of the state’s average occupational wage, as defined in § 67-4-2004, for the month of January of the year in which the full-time employee jobs are created.

The minimum investment “may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities and landscaping, but shall not include land or inventory.” TENN. CODE ANN. § 67-6-224(b)(7)(B).

1. Minimum investment

The Taxpayer’s purchase or lease of tangible personal property and the construction expenditures described herein are properly included as part of the minimum investment for a qualified headquarters facility as defined under TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010), provided that the purchases, lease payments, and expenditures are made during the investment period.

TENN. CODE ANN. § 67-6-224(b)(7)(A) provides that the taxpayer’s “minimum investment” must be made in “a building or buildings, either newly constructed, expanded, or remodeled.” The minimum investment “may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities and landscaping, but shall not include land or inventory.” TENN. CODE ANN. § 67-6-224(b)(7)(B).

⁶ “Headquarters related functions and services” means “those functions involving administrative, planning, research and development, marketing, personnel, legal, computer or telecommunications services performed by headquarters staff employees on an international, national, or regional basis.” TENN. CODE ANN. § 67-6-224(b)(4). “Headquarters related functions and services” does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center. *Id.*

⁷ TENN. CODE ANN. § 67-6-224(b)(8) defines “new full-time employee job” to mean “full-time headquarters staff employee jobs that are new to the state of Tennessee and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in Tennessee as a job position of the taxpayer or of another business entity.” The new full-time employee jobs must be created and filled within the investment period. *Id.* An employee in a new full-time employee job may be employed at a temporary location in this state, pending completion of construction or renovation work at the qualified headquarters facility. *Id.*

The Taxpayer has stated that the Headquarters expansion includes additions to [EXAMPLES]. Purchases for the expansion and construction include, but are not limited to, costs of building materials and installation labor. [REDACTED].

All such items are properly characterized as furniture, fixtures, equipment, computer software, labor, and/or building supplies. All such items are located or installed in the Headquarters facility. Labor services are rendered at the Headquarters facility.

According, the Taxpayer's purchase or lease of tangible personal property or computer software and the construction expenditures described herein are properly included as part of the minimum investment for a qualified headquarters facility as defined under TENN. CODE ANN. § 67-6-224(b)(7), provided that the purchases, leases, and expenditures are made during the investment period.

2. Utilization of the credit

Provided that the Taxpayer submits the documentation required under TENN. CODE ANN. § 67-6-224(d) (Supp. 2010), the Taxpayer will be entitled to claim the Tennessee sales and use tax credit set forth under TENN. CODE ANN. § 67-6-224(a). Once earned, this credit may be used to offset Tennessee sales and use taxes paid by the Taxpayer with respect to tangible personal property purchased by, or used at, any Taxpayer location in Tennessee.

TENN. CODE ANN. § 67-6-224(a) provides that a taxpayer "who establishes a qualified headquarters facility in this state shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sales or use of qualified tangible personal property." TENN. CODE ANN. § 67-6-224(b)(11) defines "qualified tangible personal property" as "building materials, machinery, equipment, furniture and fixtures *used exclusively in the qualified headquarters facility* and purchased or leased during the investment period and *computer software used primarily in the qualified headquarters facility* and purchased or leased during the investment period." (Emphasis added.)

Thus, the Taxpayer may claim the credit described under TENN. CODE ANN. § 67-6-224(a) with respect to sales and use taxes paid on sales of qualified tangible personal property purchased or leased during the investment period.

TENN. CODE ANN. § 67-6-224(d)(3) sets forth the requirements for receiving the credit: in order to receive the credit, the taxpayer "must submit a claim for credit, along with documentation as required by the commissioner showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property." The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor, in the case of a leased facility, contractors, and subcontractors on sales or use of qualified tangible personal property. *Id.*

Once earned, the credit may be used to offset Tennessee sales and use taxes paid by the Taxpayer with respect to tangible personal property purchased by, or used at, any Taxpayer location in Tennessee.

3. The investment period and design, architectural, and engineering services

For purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010), the term “construction, expansion, or remodeling” will include design, architectural, and/or engineering services. The beginning of the investment period may be evidenced by the engagement of such services.

TENN. CODE ANN. § 67-6-224(b)(6) defines “investment period” to mean that “the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility.”

The statute does not define the term “construction, expansion, or remodeling.” However, it is difficult to conceive of how a taxpayer could undertake a construction, expansion, or remodeling project without engaging design, architectural, and/or engineering services. Therefore, for purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2009), the construction, expansion, or remodeling of the headquarters facility will include design, architectural, and/or engineering services. Additionally, the beginning of the investment period may be evidenced by the engagement of such services.

4. Substantial completion

For purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010), “substantial completion” of the Headquarters facility will generally be evidenced by the issuance to the Taxpayer of a certificate of occupancy or a temporary certificate of occupancy. The delayed completion of a build-out of a portion of the facility will extend the investment period, but not beyond the six-year limitation imposed by TENN. CODE ANN. § 67-6-224(b)(6).

The headquarters credit under TENN. CODE ANN. § 67-6-224(a) is available with respect to qualified tangible personal property, which is defined in pertinent part as tangible personal property “purchased or leased during the investment period.” TENN. CODE ANN. § 67-6-224(b)(11). Thus, to claim the credit, the Taxpayer’s purchases must be made during the investment period. TENN. CODE ANN. § 67-6-224(b)(6) defines “investment period” to mean that “the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after *substantial completion* of the construction, expansion, or remodeling of the facility.” (Emphasis added.) However, in no event shall the investment period exceed six years. *Id.*

The issuance of a certificate of occupancy, or a temporary certificate of occupancy, by a local government authority will generally indicate that the building in question is substantially completed. A certificate of occupancy is a document issued by a local government agency or building department certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy. *See* TENN. COMP. R. & REGS. 0780-02-03-.10(1) (2005) (requiring a certificate of occupancy before a new building may be occupied). In Tennessee, a temporary certificate of occupancy may be issued for the completed portion of a facility even though another portion still requires completion. TENN. COMP. R. & REGS. 0780-02-03-.10(3).

If the build-out of any portion of a headquarters facility is incomplete, the investment period will be extended until such build-out is completed, but in no case will the six-year limitation imposed by TENN. CODE ANN. § 67-6-224(b)(6) be extended. In other words, the headquarters buildings and the qualified headquarters facility are not considered to be “substantially completed” until the remaining build-out portion of a headquarters building is substantially completed.

Thus, for purposes of determining the investment period defined in TENN. CODE ANN. § 67-6-224(b)(6), “substantial completion” of the Headquarters facility will generally be evidenced by the issuance to the Taxpayer of a certificate of occupancy or a temporary certificate of occupancy. However, the delayed completion of a build-out of a portion the Headquarters facility will extend the investment period, but not beyond the six-year limitation imposed by TENN. CODE ANN. § 67-6-224(b)(6).

5. Aesthetic renovations

The Taxpayer’s investment in aesthetic renovations will count toward satisfaction of the “minimum investment” requirement in TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010).⁸

The Taxpayer’s expenditures related to aesthetic renovations of the Headquarters facility will be included in the minimum investment as well. TENN. CODE ANN. § 67-6-224(b)(7)(A) provides that the taxpayer’s “minimum investment” must be made in “a building or buildings, either newly constructed, expanded, or *remodeled*.” (Emphasis added.) The minimum investment “may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities and landscaping, but shall not include land or inventory.” TENN. CODE ANN. § 67-6-224(b)(7)(B).

The statute does not define the term “remodeled.” The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). The Tennessee Supreme Court has stated that when a statute does not define a term, it is proper to look to common usage to determine the term’s meaning. *See, e.g., Tennessee Farmers Assur. v. Chumley*, 197 S.W.3d 767, 782-83 (Tenn. 2006); *Beare Co. v. Tennessee Dept. of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993).

The term “remodeling” is generally understood to refer to changes to an existing structure, including aesthetic changes. *See, e.g.,* TENN. COMP. R. & REGS. 0780-02-03-.01 (2008) (referring to “remodeling” as an activity that takes place in an existing building). Common sense dictates that a remodeling project may involve structural changes. Additionally, the language of TENN. CODE ANN. § 67-6-224(b)(7)(B) indicates that such changes may be aesthetic. This subdivision states that the minimum investment may include the “purchase price of an existing building” as well as the cost of building materials, labor, fixtures, and landscaping. Each of these items may be used to alter the aesthetic appearance of a facility.

⁸ In Question #5, the Taxpayer also inquired regarding the inclusion in its minimum investment of expenditures related to the acquisition of furniture, computer hardware, and telecommunications systems. The inclusion of these items was addressed in the response to Question #1.

The Taxpayer's investment in aesthetic renovations therefore will count toward satisfaction of the "minimum investment" requirement in TENN. CODE ANN. § 67-6-224(b)(7).

6. Remodeling

A building will be considered "remodeled" for purposes of the headquarters credit under TENN. CODE ANN. § 67-6-224(a) (Supp. 2009) if it is altered either structurally or aesthetically, *i.e.*, through the addition of paint, carpet, partitions, lighting, and similar improvements.

As discussed in the response to Question #5, the Taxpayer's expenditures related to aesthetic renovations of the Headquarters facility will be included in the minimum investment as well. TENN. CODE ANN. § 67-6-224(b)(7)(A) provides that the taxpayer's "minimum investment" must be made in "a building or buildings, either newly constructed, expanded, or *remodeled*."

(Emphasis added.) The minimum investment "may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities and landscaping, but shall not include land or inventory." TENN. CODE ANN. § 67-6-224(b)(7)(B).

Paint, carpet, partitions, lighting, and similar improvements are properly characterized as building materials, furniture, and fixtures. As such, a Headquarters building in which such items are placed, installed, or otherwise used as an improvement will be considered to have been "remodeled" for purposes of TENN. CODE ANN. § 67-6-224.

7. Buildings located in [COUNTY], Tennessee

All of the Taxpayer's facilities located in [COUNTY], Tennessee that operate as part of the same enterprise will be considered a single location for purposes of the qualified headquarters credit under TENN. CODE ANN. § 67-6-224(a) (Supp. 2010).

TENN. CODE ANN. § 67-6-224(b)(9) defines the term "qualified headquarters facility" as "a headquarters facility where the taxpayer has made the minimum investment during the investment period." "Headquarters facility" is in turn defined under TENN. CODE ANN. § 67-6-224(b)(3) as "a facility in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters related functions and services are performed."

TENN. CODE ANN. § 67-6-224(b)(1) defines the term "facility" as "a *building or buildings*, either newly constructed, expanded, or remodeled, housing headquarters staff employees *and located in a county or metropolitan statistical area in this state.*"⁹ (Emphasis added.) An expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in Tennessee. *Id.*

Thus, a headquarters facility may include multiple buildings, provided that all such buildings are used to house the international, national, or regional headquarters of the taxpayer.

⁹ TENN. CODE ANN. § 67-6-224(b)(1) further provides that a facility "may include parking facilities exclusively for the use of headquarters staff employees and visitors; provided that the parking facilities are built in conjunction with the newly constructed, expanded, or remodeled building or buildings.

Here, the Taxpayer's Headquarters buildings are located in [COUNTY], Tennessee. All such buildings that house the Taxpayer's headquarters operations will therefore be considered part of the Headquarters facility for purposes of TENN. CODE ANN. § 67-6-224.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: June 6, 2011