

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-35**

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

Whether the services of an EDGAR filing system provider are subject to 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 [REDACTED INFORMATION], [AN] Electronic Data Gathering Arrangement and Retrieval system ("EDGAR") filer, [REDACTED INFORMATION]. EDGAR is the automated filing system used by the United States Securities and Exchange Commission (the "SEC"). The system "performs automated collection, validation, indexing, acceptance, and

forwarding of submissions by companies and others who are required by law to file forms” with the SEC.¹

The Taxpayer offers an EDGAR-only type service called [SERVICE]. The [SERVICE] includes obtaining financial information, which the customer sends to the Taxpayer in electronic format via email or on a disc; the conversion of such customer furnished information (received in Word, Excel or PowerPoint format) into an HTML SEC compliant electronic file; and submission of the electronic file to the SEC. The conversion of the customer information takes place on and the transmission of the converted document to the SEC is sent from the Taxpayer’s server, which is located outside Tennessee. Prior to the submission, the HTML file is sent to the customer electronically for approval (as a PDF document). Upon customer approval, the file is electronically transmitted to the SEC. Neither the customer nor the SEC obtain any tangible personal property during the filing process. The electronic document is the only item sent to the customer or the SEC. Rather than a lump service fee, the Taxpayer charges the customer a set-up fee and a filing fee for each document filed with the SEC and an alteration fee and a converting fee for each page filed with the SEC.

QUESTIONS

1. Is the Taxpayer’s [SERVICE] subject to the Tennessee sales and use tax?
2. If the Taxpayer’s [SERVICE] is a taxable service under the Tennessee sales and use tax, how is the tax sourced when the Taxpayer provides the service from an out-of-state location to a customer located in Tennessee?

RULINGS

1. Yes. The Taxpayer’s [SERVICE] is a service that is generally subject to the Tennessee sales and use tax as a telecommunication service under TENN. CODE ANN. § 67-6-205(c)(3) (Supp. 2010).
2. If the Taxpayer’s service is performed out-of-state, the sale of the service is sourced out-of-state, even if the customer is located in Tennessee.

ANALYSIS

1. Taxability of the Taxpayer’s [SERVICE]

The Taxpayer’s [SERVICE] is subject to the Tennessee sales and use tax as a telecommunication service under TENN. CODE ANN. § 67-6-205(c)(3) (Supp. 2010).

Under the Retailers’ Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales of tangible personal property and specifically enumerated services 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” includes “the furnishing of any of the things or services taxable” under the Tennessee sales and use tax laws. TENN. CODE ANN. § 67-6-102(81)(D). TENN. CODE ANN. § 67-6-205(c)(3) imposes the sales and

¹ See the official website for the SEC for more information: <http://www.sec.gov/edgar/aboutedgar.htm>.

use tax on retail sales of the service of “furnishing, for a consideration, of intrastate, interstate or international telecommunication services.” “Telecommunications service” is defined as “the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points,” and includes “such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communications commission as enhanced or value added.” TENN. CODE ANN. § 67-6-102(93)(A).

Accordingly, if the Taxpayer’s [SERVICE] comes within the definition of a “telecommunications service” for Tennessee sales and use tax purposes, then the service is subject to the sales and use tax.

As stated above, “telecommunications service” is “the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.” TENN. CODE ANN. § 67-6-102(93)(A). The Taxpayer electronically transmits files containing financial information obtained from its customers to the SEC. This action clearly falls within the plain language of the definition of telecommunications services.

The Taxpayer, however, also converts the financial information submitted by its customers into an SEC compliant format, or “EDGARizes” the information, prior to filing the documents with the SEC. The entire process of transferring and converting information between companies constitutes an electronic data interchange (“EDI”) process.² According to the definition, the classification of a service as an enhanced service is inconsequential with respect to whether the service is considered a telecommunication service.³

² The term “EDI” is defined as “the electronic transfer of business documents between companies in a structured, computer-processed data form.” NATHAN J. MULLER, DESKTOP ENCYCLOPEDIA OF TELECOMMUNICATIONS 306 (3d ed. 2002). EDI is governed by a set of standards and is most commonly used in commerce. The process is classified as an enhanced service by the Federal Communications Commission (“FCC”). See *Inmate Calling Servs. Providers Task Force*, 11 F.C.C.R. 7362 (1996) (in examining its *Computer II* decisions, the FCC listed several examples of “enhanced services,” which included electronic data interchange.) The Tennessee Department of Revenue also elaborates on the term “enhanced services” in Important Notice #05-20, Oct. 27, 2005, www.state.tn.us/revenue/notices/tvtelecom/index.htm. The notice includes EDI and value added non-voice data services as examples of enhanced services.

³ The Tennessee General Assembly enacted Public Chapter 499, Acts of 2005, effective July 1, 2004, which rewrote the sales and use tax provisions pertaining to telecommunications. This revision included *inter alia* the addition of the clause “without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communication commission as enhanced or value added,” to the definition of “telecommunications service.” Prior to the statutory revision, the Tennessee Court of Appeals addressed “telecommunications” in *Prodigy Services Corp v. Johnson*, 125 S.W.3d 413 (Tenn. Ct. App. 2003). In that case, the taxpayer offered an online computer information service. The state deemed the taxpayer’s service to be a taxable telecommunications service. The court, however, distinguished between FCC-regulated basic services and FCC-nonregulated enhanced services, determined that the taxpayer’s services were enhanced services as defined by the FCC, and concluded that “enhanced services” did not come within the definition of “telecommunication services” and were therefore nontaxable. The amended definition of “telecommunications service” clearly intends to include “enhanced services” if such enhanced services otherwise meet the requirements of the definition of “telecommunications service.”

As noted above, TENN. CODE ANN. § 67-6-102(93)(A) includes in the definition of telecommunications service “such transmission, conveyance, or routing *in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission*, conveyance or routing.” (Emphasis added.) The Taxpayer’s filing service is performed entirely electronically. Computers are used to receive the financial information that the Taxpayer obtains from its customers. Computers are then used to convert the information from a Word, Excel, or PowerPoint document into an SEC compliant document. The purpose of this conversion is to create a document that the SEC can receive. Therefore, this conversion process performed by the Taxpayer is also within the parameters of the plain language of the statute. Thus, the Taxpayer’s [SERVICE] constitutes a telecommunications service for purposes of the Tennessee sales and use tax.

Note that the Taxpayer’s service is not considered “data processing” under TENN. CODE ANN. § 67-6-102(93)(B)(i), which excludes from telecommunications services “data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission *to a purchaser, where such purchaser’s primary purpose for the underlying transaction is the processed data or information.*” (Emphasis added.) The purchaser’s primary purpose in using the Taxpayer’s [SERVICE] is not for data processing or retrieval, but rather is to have its financial information converted to an SEC compliant format and electronically transmitted to the SEC. In fact, the purchaser already has all of the data that is filed with the SEC and is not seeking to gain additional data or information; the Taxpayer’s service does not include generating any additional data.

Because the Taxpayer’s [SERVICE] comes within the definition of a “telecommunications service” under TENN. CODE ANN. § 67-6-102(93)(A), it is a taxable service for the purposes of Tennessee sales and use tax under TENN. CODE ANN. § 67-6-205(c)(3).

2. Sourcing of the sale of the Taxpayer’s [SERVICE], where the service is provided outside of Tennessee to a Tennessee customer

If the Taxpayer’s [SERVICE] is performed out-of-state, the sale of the service is sourced out-of-state, even if the customer is located in Tennessee.

TENN. CODE ANN. § 67-6-905 (Supp. 2010) sets forth the sourcing rules for sales of telecommunications services in Tennessee. TENN. CODE ANN. § 67-6-905(b)(2) provides that if the telecommunications service is sold on a call-by-call basis and the call does not originate and terminate in the same location, then the sale is sourced to the jurisdiction where the call “[e]ither originates or terminates and in which the service address is also located.”

The Taxpayer charges its customers fees for each document and each page filed with the SEC. For Tennessee sales and use tax sourcing purposes, the sale of a service on a “per document” or “per page” basis is considered to be a sale on a call-by-call basis. Additionally, the call, or in this case the transmission of the documents to the SEC, does not originate and terminate in the same location. The call originates with the Taxpayer’s server and terminates with the SEC. Therefore, the call is sourced to one of these two locations and not to Tennessee.

Because the Taxpayer's service is performed out-of-state (*i.e.* the call originates and terminates out-of-state), the sale of the [SERVICE] is sourced to a location out-of-state, and thus the Taxpayer's service is not subject to the Tennessee sales and use tax.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 7/22/11