

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 11-37**

**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 the sale of firewood, wood pellets, and fire logs.

**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] makes retail sales of firewood, wood pellets, and fire logs for use as a residential heating fuel. All sales take place at the Taxpayer's retail stores; the Taxpayer does not make deliveries of firewood, wood pellets, and fire logs to its customers.

## QUESTION

Are the Taxpayer's sales of firewood, wood pellets, and fire logs exempt for purposes of the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-334(a) (Supp. 2010) when sold directly to the consumer for residential use?

## RULING

No. The Taxpayer's sales of firewood, wood pellets, and fire logs are not exempt for purposes of the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-334(a) (Supp. 2010), because such sales take place over the counter at the location of the Taxpayer.

## 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 sales and use tax.<sup>1</sup> Because firewood, wood pellets, and fire logs are tangible personal property, the retail sale of such items will be subject to the Tennessee sales and use tax unless an exemption from taxation applies.

TENN. CODE ANN. § 67-6-334(a) (Supp. 2010) exempts from the sales and use tax "gas, electricity, fuel oil, coal and other energy fuels sold directly to the consumer for residential use." However, TENN. CODE ANN. § 67-6-334(b)(4) provides that the exemption does not apply to "energy fuels sold over the counter at the location of the seller," except in certain instances involving the sale of propane or kerosene.<sup>2</sup>

Thus, for the exemption to apply to the Taxpayer's sales of firewood, wood pellets, and fire logs, such items must be properly characterized as "other energy fuels" that are sold directly to the consumer for residential use. Additionally, such sales cannot take place over the counter at the location of the Taxpayer.

Regardless of whether firewood, wood pellets, and fire logs are properly considered "other energy fuels" sold directly to the consumer for residential use, the Taxpayer's sales are removed from the scope of the exemption pursuant to TENN. CODE ANN. § 67-6-334(b)(4), which provides that the exemption does not apply to "energy fuels sold over the counter at the location of the seller." The Taxpayer has indicated that all sales of firewood, wood pellets, and fire logs take place at its retail locations in Tennessee; the Taxpayer does not make deliveries of firewood, wood pellets, and fire logs to its customers. Thus, all of the Taxpayer's sales of firewood, wood pellets, and fire logs are made over the counter the location of the seller.

---

<sup>1</sup> The term "retail sale" is defined to include "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent." TENN. CODE ANN. § 67-6-102(79) (Supp. 2010). "Tangible personal property" is defined in pertinent part as "personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses." TENN. CODE ANN. § 67-6-102(92)(A).

<sup>2</sup> Over-the-counter sales that qualify for the exemption include propane sold over the counter in cylinders with a capacity of 100 pounds or more directly to the consumer for residential use and kerosene sold at retail through dispensers that have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank.

Accordingly, the Taxpayer's sales of firewood, wood pellets, and fire logs are not exempt for purposes of the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-334(a), because such sales take place over the counter at the location of the Taxpayer.

Kristin Husat  
Senior Tax Counsel

APPROVED: Richard H. Roberts  
Commissioner of Revenue

DATE: 7/26/11