

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING 95-13**

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: Taxability of solid waste incinerator project for [COMPANY X].

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: [COMPANY Y] is the prime contractor for a project involving the repairing and upgrading of an existing solid waste incinerator system, as well as the addition of new pollution control equipment at [COMPANY X] in Tennessee. [COMPANY X] is owned and operated by [A TENNESSEE CITY AND COUNTY] County [TYPE OF BUSINESS] Authority, a governmental entity created by Chapter [NUMBER], Tennessee Private Acts of [YEAR]. The equipment presently in place is licensed by the [A TENNESSEE CITY AND COUNTY] Air Pollution Control Bureau, but only on the condition that two identical incineration systems cannot be operated at the same time. The project which is the subject of this ruling is mandated in order to obtain a permit from the [A TENNESSEE CITY AND COUNTY] County Air Pollution Control Bureau allowing both incinerators to operate simultaneously. The disposal of solid waste in the incinerator will generate steam for use by [COMPANY X].

ISSUE: (1) Are the construction materials and equipment installed in this facility in [COMPANY Y]'s project exempt under the provisions of T.C.A. § 67-6-209(e)?

(2) If the project is not exempt under T.C.A. § 67-6-209(e), is the credit for pollution control equipment authorized by T.C.A. § 67-6-346 available?

RULING: (1) Materials and equipment installed in the facility are tax exempt under the provisions of T.C.A. § 67-6-209(e).

(2) Since the exemption of T.C.A. § 67-6-209(e) is applicable, it is unnecessary to address the question of the credit authorized by T.C.A. § 67-6-346.

ANALYSIS: The relevant portion of T.C.A. § 67-6-209(e) provides that:

(e) There is hereby exempt from the provisions of this chapter the sale or use of materials and equipment purchased or used for construction or installation, by a contractor, subcontractor or otherwise, of, in or as a part of ... any resource recovery facility where steam or electric energy is produced ... owned or operated by ... the state of Tennessee or any agency or political subdivision thereof.

The term “resource recovery facility” is not defined in T.C.A. Title 67. However, the term is defined elsewhere in the Tennessee Code. Two definitions describe facilities which handle recyclables and are clearly not applicable to the facility contemplated by T.C.A. § 67-6-209(e).¹ The other definition, T.C.A. § 68-211-902(7), states in pertinent part:

"Resource recovery facility" means land, rights in land, buildings, facilities and equipment suitable or necessary for the recovery or production of energy or energy producing materials in any form resulting from the controlled processing or disposal of solid waste (emphasis supplied).

Steam, a form of energy, is produced in this facility through the processing and disposal of solid waste. T.C.A. § 67-6-209(e) mandates the production of either steam or electricity in order to qualify for the exemption.

The application of T.C.A. § 67-6-209(e) is limited to facilities owned or operated by the federal government or “the state of Tennessee or any agency or political subdivision thereof.” [COMPANY X] is owned and operated by the [A TENNESSEE CITY AND COUNTY] County [TYPE OF BUSINESS] Authority. This entity was created by a Private Act of the Tennessee General Assembly. When reviewing an Act which created an authority, the Tennessee Supreme Court concluded that “this authority is such a subdivision of the state and county” as to apply a statute affecting the state, counties, and municipalities. *Johnson v. Chattanooga-Hamilton County Hospital Authority*, 749 S.W.2d 36 (Tenn. 1988). Therefore, the facility in question qualifies for the exemption because it is owned and/or operated by a political subdivision of the state of Tennessee.

The facility meets all the conditions of the statute and qualifies as a resource recovery facility for purpose of exemption for construction materials and equipment to be installed in it.

Due to the resolution of the first question, it is unnecessary to address the second question.

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¹ The other definitions are in T.C.A. §§ 68-211-401(10) and 68-211-501(4).

APPROVED: Ruth E. Johnson, Commissioner

DATE: 4/4/95