

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 95-28**

**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 collection and remittance of sales tax on vehicle leases.

**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 but 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 his detriment.

**FACTS**

The taxpayer requesting this ruling is [THE TAXPAYER] a wholly owned subsidiary of [COMPANY X] Credit Union. [THE TAXPAYER] is located in [NAME] County, Tennessee. [THE TAXPAYER] is not a tax-exempt organization. [THE TAXPAYER] will provide lease services to [COMPANY X] Credit Union member credit unions which are located in various Tennessee counties. [THE TAXPAYER] will retain title to all

leased vehicles. The following is a condensed summary of the step-by-step process for a credit union customer to lease an automobile:

- The credit union and the customer will agree to lease terms and notify [THE TAXPAYER]. The credit union will also place an order to [THE TAXPAYER] for the purchase of the vehicle.
- [THE TAXPAYER] will purchase the automobile from dealer stock or order it from the manufacturer. The exact vehicle cost as well as the delivery date will be provided to the credit union. The automobile will be titled by [THE TAXPAYER].
- [THE TAXPAYER] will handle the lessee's trade-in if the lessee is satisfied with the quoted price.
- [THE TAXPAYER] will transfer the money for the vehicle and handle title, registration and delivery. [THE TAXPAYER] will verify that the member has secured insurance.
- [THE TAXPAYER] will secure insurance for residual and gap.
- Credit union customer makes a security deposit and/or down payment at the credit union.
- The credit union's account at [COMPANY X] Credit Union is debited for the purchase price and security deposit.
- The vehicle is delivered to the credit union for customer pick up.
- The customer provides the monthly payment to [THE TAXPAYER] through the credit union via payroll deduction, automatic account debit, payment to a lock box or over the counter.
- At the end of each month, [THE TAXPAYER] provides documentation for all journal entries for month-end accounting, as well as any late collections to the credit union.
- [THE TAXPAYER] handles all facets of lease termination, including having the vehicle appraised by an agent of [THE TAXPAYER] to determine any fees for excess wear and use and for picking up and disposing of the leased vehicle.
- [THE TAXPAYER] returns any security deposit to customer via an account credit.

Also provided and attached as an addendum to this ruling is copy of the lease agreement between the customer and [THE TAXPAYER] and also a copy of the Leasing Program Agreement between [THE TAXPAYER] and the customer's credit union. Both agreements anticipate assignment of the lease by [THE TAXPAYER] to the credit union. The Leasing Program Agreement provides as follows:

**5. Prearranged Assignment of Leases by the Credit Union.** Immediately upon [THE TAXPAYER]'s acquisition of a Vehicle, [THE TAXPAYER] will assign the Lease of the Vehicle to the Credit Union and the Credit Union shall remit to [THE TAXPAYER] an amount equal to the full price of the Vehicle as quoted by [THE TAXPAYER]. [THE TAXPAYER] will obtain the required funds by debiting the account of the Credit Union. The title to the Vehicle will remain in [THE TAXPAYER]'s name and will note the Credit Union as first lienholder. [THE TAXPAYER] will deliver to the Credit Union the Vehicle title and a power of attorney sufficient to allow the Credit Union to register the Vehicle in its own name at any time.

#### **ISSUE**

How should [THE TAXPAYER] register and pay local option sales tax on the vehicle leases?

#### **RULING**

[THE TAXPAYER] should register and pay local option sales tax at its location in [NAME] County.

#### **ANALYSIS**

Under the facts provided, [THE TAXPAYER] is engaged in the leasing of vehicles. [THE TAXPAYER] assigns these leases to the customers' credit unions while retaining title to the vehicles. This is an assignment of the dealer's rights under the lease. A mere assignment to a third party of its right to receive payment under a lease would not relieve the dealer of sales tax liability incurred on the privilege of leasing vehicles in Tennessee. Courts in other jurisdictions similarly imposing a sales tax on leases have held that the assignment of a lease does not relieve the assignor of sales tax liability incurred by virtue of the lease. *E.g., Chesapeake Industrial Leasing Company, Inc. v. Comptroller of the Treasury*, 628 A.2d. 234, 237-38 ( Md. 1993). Therefore, the only issue is the question of which local jurisdiction(s) should receive local option sales tax on the leases.

T.C.A. Section 67-6-701 et seq. authorizes counties and municipalities to adopt a local sales and use tax on the same privileges subject to the state sales and use tax at a rate not to exceed two and three quarters percent (2 3/4 %). In the case of *Pidgeon-Thomas Iron Co. v. Garner*, 495 S.W.2d 826 (Tenn. 1973), the Tennessee Supreme Court considered

the question of where a dealer should report local option sales tax when making sales delivered to purchasers outside the county and/or municipality of the seller's place of business. The Court observed that the sales tax, although measured by sales, is imposed on the privilege of doing business rather than the sale itself. The Court concluded that the local option sales tax must therefore be reported to the city and/or county in which the sellers place of business is located rather than the location of the sale or of the purchaser's residence. [THE TAXPAYER] should therefore register and pay local option sales tax in [NAME] County. If located within a municipality also imposing the local option sales tax, [THE TAXPAYER] would also register and pay local option sales tax to the municipality.

Steven Thomas  
Deputy General Counsel

APPROVED: Ruth Johnson, Commissioner

DATE: 7/7/95