

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #97-12**

**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**

Applicability of sales tax to charges for shipping tangible personal property.

**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

[THE TAXPAYER] manufactures and sells [TANGIBLE PERSONAL PROPERTY] (collectively “the Product”) from approximately [NUMBER] locations in Tennessee. Some of the Taxpayer’s sales are made at its plant when the customer picks up the Product at the plant. The Taxpayer collects and remits sales tax on all such sales. Occasionally, the Taxpayer will deliver the Product in its own trucks, in which case sales tax is paid both on the cost of the Product and the cost of transportation. The Taxpayer’s involvement in these sales ends with the delivery or pickup of the product. The Taxpayer does not install the product sold to customers under the facts presented.

In all other cases, deliveries are made by third-party contract haulers, who make such deliveries in their own trucks and by use of their own employees. Such contract haulers at all times retain control and possession of the equipment used to haul the Product, as well as the right to hire, fire and direct the drivers. They are solely responsible for the wages and expenses of the drivers, driver helpers, laborers, and other employees as well as for all social security, unemployment, and other payroll taxes applicable thereto. In addition, they provide their own worker’s compensation and other insurance. The third-party contract haulers are not under exclusive contract with the Taxpayer but also transport goods for other parties.

Historically, the Taxpayer added the cost of such transportation to the invoice submitted to the customer, collected the freight charges from its customers, and paid the third-party contract haulers on at least a monthly basis. In those cases where title to the Product did not pass until delivery, or where the contract and/or invoice did not provide for passage of title, the Taxpayer has paid sales taxes on the cost of transportation as well as the cost of the Product.

With some of its customers, the Taxpayer has written contracts for the supply of Product, while other customers buy upon purchase order or invoice. In the past, the Taxpayer’s contracts, invoices, and purchase orders have been silent as to the time of passage of title to the Product. The Taxpayer now wishes to give its customers the option of taking title at the Taxpayer’s plant, assuming the risk of loss at such time. All invoices, purchase orders, and contracts will set forth the cost of transportation separately, which will be the same amount paid to the independent third-party contract hauler therefor. In addition, the contract or invoice will contain the following language:

Unless otherwise specified in writing by the purchaser, all deliveries will be f.o.b. the Taxpayer’s plant. Unless delivery is to be made by Taxpayer’s trucks, title and risk of loss to the product shall pass to the purchaser at the Taxpayer’s plant and at the time the product(s) is loaded onto the purchaser’s truck or a truck owned by an independent contract hauler at the Taxpayer’s plant shall constitute deliver to the purchaser.

Transportation charges will be invoiced separately to the purchaser and paid by the Taxpayer. Sales tax for non-exempt sales will be paid on the sales price of the Product and on the price of the transportation where delivery is made in trucks owned by the Taxpayer or where the purchaser chooses to take title at its jobsite. If the purchaser chooses to accept title and risk of loss at the Taxpayer's plant, no tax would be charged on the cost of transportation.

### **ISSUE**

Whether sales tax is due on the cost of transportation when a customer chooses to take title and accept the risk of loss at the Taxpayer's plant, and delivery of the Product is made by an independent third-party contract hauler.

### **RULING**

Sales tax is not due on the cost of the transportation when transfer of title or possession occurs at the point of shipment.

### **ANALYSIS**

It is declared to be a taxable privilege to engage in the business of selling tangible personal property at retail in this state. Tenn. Code Ann. § 67-6-201. The tax is imposed upon the "sales price" of each item or article of tangible personal property sold. Tenn. Code Ann. § 67-6-202.

Tenn. Code Ann. § 67-6-102(25) defines "sales price" as

the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expense whatsoever . . .

TENN. COMP. R. & REGS. 1320-5-1-.71 provides, in relevant part, that

Freight, delivery, or other like transportation charges are subject to the Sales and Use Tax if title to the property being transported passes to the vendee at the destination point. *Where title to the property being transported passes to the vendee at the point of origin, the freight or other transportation charges are not subject to the Sales or Use Tax.* It is immaterial whether the vendor or vendee actually pays for any charges made for transportation, whether the charges are

actually paid by one for the other, or whether a credit or allowance is made or given for such charges.

(Emphasis added).

The determinative factor in the Rule is when title passes to the purchaser. Based on the facts provided, the contracts specifically state that title will pass to the purchaser at the Taxpayer's plant. These facts as presented are clearly within the purview of the Rule and the freight or transportation charges are not subject to sales tax.

Caroline Krivacka  
Tax Counsel

APPROVED: Ruth E. Johnson

DATE: 5/2/97