

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-51**

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

Application of sales and use tax to an on-line database service.

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] maintains a database which it makes available to its customers via the Internet for a fee. The taxpayer does not provide Internet access. To use the taxpayer's database, the subscriber must have access to the Internet and the World Wide

Web through an unrelated third party Internet access provider. The subscriber uses the Internet to reach the taxpayer's web site and then types in his or her username and password to gain access to the database, which can be searched for the desired information.

For access to this information, the taxpayer charges its customers an annual, non-refundable subscription fee as well as monthly fees based on the amount of use. Additional subscription fees are charged if the subscriber wishes to access the database from multiple sites. No additional charges are made for downloading and printing information which is viewed on the subscriber's computer monitor.

The taxpayer solicits customers through telephone marketing with subsequent visitation by its sales force to potential users who have expressed an interest in its services. If the service is purchased, a provider/license agreement is accepted by the taxpayer at its office in [STATE A - NOT TENNESSEE]. The taxpayer does not maintain an office in Tennessee, nor does it have any equipment located in Tennessee.

ISSUE

Whether the sale of access to the taxpayer's database via the Internet is subject to sales and use tax.

RULING

No, the sale of access to a database via the Internet is not subject to sales and use tax where there is no sale of telecommunication services.

ANALYSIS

Retail sales in Tennessee are subject to sales and use tax under T.C.A. §67-6-101 et. seq. T.C.A. §67-6-102(23)(A) defines a retail sale to include a "taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than resale." Taxpayer sells the information contained in its database. Information does not meet the definition of tangible personal property.¹ See, *Commerce Union Bank v. Tidwell*, 538 S.W.2d 405 (Tenn. 1976).² Nor does providing information constitute one of the services which are specifically taxable under the code. See, T.C.A. §67-6-102(23)(F). Therefore, the sale of information or access to a database from which information can be copied is not taxable.

¹ "Tangible personal property' means and includes personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses." T.C.A. §67-6-102(28).

² In response to the *Commerce Union Bank* case, the legislature defined computer software as tangible personal property for sales and use tax purposes. *Creasy Systems Consultants, Inc. v. Olsen*, 716 S.W.2d 35, 36 (Tenn. 1986). However, under the facts presented in this ruling request, the information sold by the taxpayer is just information, it is not computer software.

Under T.C.A. §67-6-102(23)(F)(iii), the term “sale at retail” is also defined to include the “furnishing, for a consideration, of either intrastate or interstate telecommunication services.” The term “telecommunication” is defined in T.C.A. §67-6-102(29) as follows:

(A) "Telecommunication" means communication by electric or electronic transmission of impulses;

(B) "Telecommunications" includes transmission by or through any media such as wires, cables, microwaves, radio waves, light waves, or any combination of those or similar media;

(C) Except as provided in subdivision (D), "telecommunications" includes, but is not limited to, all types of telecommunication transmissions, such as telephone service, telegraph service, telephone service sold by hotels or motels to their customers or to others, telephone service sold by colleges and universities to their students or to others, telephone service sold by hospitals to their patients or to others, WATS service, paging service, and cable television service sold to customers or to others by hotels or motels;

(D) "Telecommunications" does not include public pay telephone services, television or radio programs which are broadcast over the airwaves for public consumption, coaxial cable television (CATV) which is offered for public consumption, interstate WATS service, private line service, or automatic teller machine (ATM) service, wire transfer or other services provided by any corporation defined as a financial institution under § 67-4-804(a)(9), unless the company separately bills or charges its customers for specific telecommunication services rendered.

The taxpayer does not engage in any of the activities listed in the statute. The compensation he receives is not for the transmission of information, but rather for the information itself. Under the definitions quoted above, Internet access services constitute interstate telecommunications subject to tax. However, under the facts presented, the taxpayer does not provide Internet access.

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APPROVED:

Ruth E. Johnson
Commissioner

DATE: 12/2/97

