

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-22**

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 billing services performed out-of-state.

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] is engaged in the business of providing billing services. The taxpayer is located outside the state, and currently has contracts with companies in

Tennessee. Under these contracts, the taxpayer will produce and mail monthly billing statements on behalf of its customer to the customer's subscribers. The subscribers are located throughout the United States.

To perform this service, the taxpayer receives billing data from its customer via magnetic tape or directly over electronic data transmission lines. The customer is responsible for transmitting the electronic data at its own expense over third party phone lines. No charge from the taxpayer is associated with data sent over transmission lines. The taxpayer then processes the data on computers to create a proper format for printing and to sort the data to ensure maximum postal discounts for its customer. The processed data is then transferred to the taxpayer's laser printers, located within the same facility, for printing. Once the statements are printed, they are mechanically inserted into a sending envelope along with a remittance envelope. On occasion, advertising material may also be included in the mailing. This material may be provided by the customer or printed by the taxpayer. The finished statements, and any advertising material, are then placed in the U.S. Mail in [STATE A - NOT TENNESSEE] for delivery to the customer's subscribers, some of which may be located in Tennessee.

The taxpayer also provides customer support, including periodic status updates as well as a toll-free telephone number for use in answering the customer's questions. A flat fee is charged each month for customer support, based on the number of bills being processed during that month. The fee is not based in any way on the number of times the toll-free telephone number is used.

The taxpayer performs all of its services outside Tennessee.

ISSUES

1. Whether any portion of the taxpayer's charge for its billing service is subject to Tennessee sales and use tax.
2. Whether stating a separate charge for any of the following components of the billing service will change the sales and use tax consequences in Tennessee:
 - a. computer processing
 - b. image printing
 - c. the billing statement
 - d. the sending envelope
 - e. the remittance envelope
 - f. inserting the material
 - g. mailing services
 - h. customer support

RULINGS

1. The taxpayer's charge for its billing service is not subject to Tennessee sales and use tax. This ruling applies only to the taxpayer's services, not to possible tax consequences for other parties.
2. Because no portion of the taxpayer's charge is taxable in Tennessee, separately stating any of these items would have no effect on the sales and use tax consequences in Tennessee.

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." However, specifically taxable services are not subject to tax if performed out-of-state.¹ Also subject to tax are "any services that are a part of the sale of tangible personal property..." T.C.A. § 67-6-102(25). Therefore, a service is subject to tax if it is: 1) a service rendered incident to the sale of tangible personal property, or 2) a specifically taxable service rendered in Tennessee.

Under the facts, the taxpayer produces billing statements, sending envelopes, and remittance envelopes and mails these items, along with advertising material in some cases, from its out-of-state location to the customer's subscribers throughout the United States. The taxpayer performs all of its services outside of Tennessee.

Billing services are listed under Industry 8721 in the Standard Industrial Classification Index (1987 Ed.), Accounting, Auditing, and Bookkeeping Services. The use of tangible personal property such as billing statements and envelopes is an essential component of this service, and does not change its nature as a service. The Tennessee Supreme Court has held that "[w]hen the primary function and purpose of the taxpayer is to provide services, the ownership, use and maintenance of certain types of personal property and equipment are necessary in order to enable it to furnish the services so that the taxpayer, not its customer, is the ultimate user or consumer within the meaning of sales and use tax statutes." *Nashville Mobilphone v. Woods*, 655 S.W.2d 934, 935-37 (Tenn. 1983).

The taxpayer furnishes paper and envelopes necessary to print and send the billing statements and does so incident to the billing service. The Taxpayer's primary purpose in printing the statements is to provide billing services for its customers. The customers do not purchase statements so much as billing services, which include the printing and mailing of billing statements. Consequently, the taxpayer is the user or consumer of the billing statements and envelopes necessary to provide the billing service. The service is not incidental to the sale of tangible personal property.

¹ The use tax formerly levied on services was repealed effective July 1, 1992. 1992 Tenn. Pub. Acts 913, § 8.

A separate statutory provision applies to the use of advertising material. Use tax is imposed on the value of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee. T.C.A. § 67-6-203(b). This tax is to be paid by the “distributor” of such publications. *Id.* Under the facts provided, on occasion advertising material may be included in billing statements produced and mailed by the taxpayer to Tennessee residents. This material may be provided by the customer or printed by the taxpayer. However, T.C.A. § 67-6-203(b) specifically excludes the commercial printer or mailer of any such advertising material from paying or collecting this tax. Consequently, this section does not apply to the taxpayer. Instead, the distributor of this material, which may be the taxpayer’s customer, will be required to pay use tax on the value of any advertising material mailed to residents of Tennessee.

Therefore, the taxpayer’s billing service is subject to tax only if it is specifically listed in the Code as a taxable service and is performed in this state. Under T.C.A. § 67-6-102(23)(F), the following services are subject to tax in Tennessee:

- (i) The sale, rental, or charges for any rooms lodgings or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp
- (ii) Charges for services rendered by persons operating or conducting a garage, parking lot, or other place of business for the purpose of parking or storing motor vehicles . . .
- (iii) The furnishing, for a consideration, of either intrastate or interstate telecommunication services . . .
- (iv) The performing for a consideration of any repair services . . .
- (v) The laundering or dry cleaning of any kind of tangible personal property . . .
- (vi) The installing of tangible personal property which remains tangible personal property after installation . . .
- (vii) The enriching of uranium materials . . .
- (viii) The renting or providing of space to a dealer or vendor without a permanent location in this state . . .
- (ix) Charges for warranty or service contracts . . .

With the possible exception of telecommunication services, discussed below, the taxpayer does not provide these or any other services in Tennessee.

Under the facts, the taxpayer receives data from its customer over electronic data transmission lines. Additionally, the taxpayer provides customer support over the telephone. Therefore, interstate telecommunication does take place in order for the taxpayer to provide its service. Interstate telecommunication is taxable in Tennessee if it is originated or received in this state and is either billed or charged to a service address in Tennessee. T.C.A. § 67-6-102(23)(F)(iii).

With respect to the transfer of data over transmission lines, the facts provide that the customer is responsible for transmitting the electronic data at its own expense over third

party phone lines. No charge from the taxpayer is associated with this transfer. There is clearly no sale of telecommunications by the taxpayer here.

With respect to the toll-free customer support line, the taxpayer does charge for customer support, which includes the toll-free line as well as other services such as status updates. A flat fee is charged each month for customer support, based on the number of bills being processed for the customer during that month. The fee is not based in any way on the number of times the customer uses the toll-free line. The principal purpose of the taxpayer is to provide the billing service. Similarly, it is the billing service, not telecommunications, which the customer seeks to purchase. Telecommunication is only a means incidental to the provision of the taxpayer's service. This is clearly different from a situation in which the telecommunication is one of the primary objectives of the transaction. Accordingly, under these facts there is no sale of telecommunications from the taxpayer to its customer.

Because no portion of the taxpayer's charge for its billing service is taxable in Tennessee, separately stating any portion of the charge would have no effect on the sales and use tax consequences in Tennessee.

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APPROVED:

Ruth E. Johnson
Commissioner

DATE: 5-1-98