

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-40**

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 application of the Tennessee business tax to sales of travel and amusement packages.

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

[TAXPAYER] is located in [CITY A], Tennessee, and is in the business of selling [TYPES OF ITEMS] to tourists visiting the [AREA IN TENNESSEE]. The Taxpayer is one of several

businesses owned and operated by the [NAME OF GROUP]. All items sold by the Taxpayer are purchased from other companies under resale contracts.

The Taxpayer makes sales under the following scenarios:

- Scenario #1. The Taxpayer makes a sale of a travel package over the telephone from its [CITY A] location. The customer pays by credit card. The package consists of the following: 1) one night's lodging at a hotel in [CITY B], Tennessee; 2) two adult tickets to Theater A in [CITY A], Tennessee; 3) two adult tickets to Theater B in [CITY C], Tennessee; and 4) dinner for two at a restaurant in [CITY A], Tennessee. To determine the price of the package, the Taxpayer applies a markup of 10% to the total amount that it pays to the suppliers of the items included in the package.

- Scenario #2. The Taxpayer makes a sale of a travel package over the Internet to a customer located outside Tennessee. An electronic voucher is delivered to the customer over the Internet, and the sale is paid for over the Internet using the customer's credit card. The package consists of the following: 1) one night's lodging at a hotel in [CITY B]; 2) two adult tickets to Theater A in [CITY A], Tennessee; 3) two adult tickets to Theater B in [CITY C], Tennessee; and 4) dinner for two at a restaurant in [CITY A], Tennessee. To determine the price of the package, the Taxpayer applies a markup to the total amount that it pays to the suppliers of the items included in the package.

- Scenario #3. The Taxpayer rents lobby space from a restaurant in [CITY B], Tennessee. An employee of the Taxpayer is stationed at a booth in the lobby space and makes sales from the booth. The customer is issued vouchers that are redeemable at the hotel and selected theaters. The customer's credit card is processed through the Taxpayer's primary ticketing system at its location in [CITY A], Tennessee. To determine the price of the package, the Taxpayer applies a markup to the total amount that it pays to the suppliers of the items included in the package.

- Scenario #4. The Taxpayer makes a sale of a travel package over the telephone from its [CITY A] location. The customer pays by credit card. The package consists of the following: 1) one night's lodging at a hotel in [CITY B], Tennessee; 2) two adult tickets to Theater A in [CITY A], Tennessee; 3) two adult tickets to Theater B in [CITY C], Tennessee; 4) dinner for two at a restaurant in [CITY A], Tennessee; and 5) two adult admission tickets to the [ATTRACTION NAME] in [STATE – NOT TENNESSEE]. The Taxpayer's contract with [ATTRACTION NAME] provides that [THE ATTRACTION] will collect and remit all [STATE – NOT TENNESSEE] taxes due. To determine the price of the package, the Taxpayer applies a markup of 10% to the total amount that it pays to the suppliers of the items included in the package.

In each scenario, the Taxpayer advertises and charges a single lump sum price for the package.

QUESTIONS

1. For purposes of the Tennessee hotel occupancy tax, what tax rate should be applied to the markup?

2. With respect to each scenario described above, must the Taxpayer remit all municipal gross receipts taxes to [CITY A], or must the Taxpayer split such taxes between [CITY A], [CITY C], and [CITY B]?
3. With respect to each scenario described above, must the Taxpayer obtain a business license and remit Tennessee business tax in [CITY A], [CITY C], and [CITY B]?

RULINGS

1. The Tennessee Department of Revenue does not administer the Tennessee hotel occupancy tax, and therefore declines to rule on this issue.
2. The Tennessee Department of Revenue does not administer municipal gross receipts taxes, and therefore declines to rule on this issue.
3. The Taxpayer must obtain a business license and remit Tennessee business tax in every local jurisdiction where the Taxpayer has established an office, headquarters, or other place of business.

ANALYSIS

1. Markup

The Tennessee Department of Revenue does not administer the Tennessee hotel occupancy tax, TENN. CODE ANN. § 67-4-1401 *et seq.*, and therefore declines to rule on the issue of what tax rate must be applied to the markup. The Taxpayer should contact the particular county or municipality for information on the administration of hotel occupancy taxes in that jurisdiction.

2. Local gross receipts taxes

The Tennessee Department of Revenue does not administer municipal gross receipts taxes,¹ and therefore declines to rule on the issue of whether the Taxpayer must remit all such taxes to [CITY A], or split the taxes between [CITY A], [CITY C], and [CITY B]. The Taxpayer should contact the particular municipality for information on the administration of its local gross receipts, amusement, and hotel occupancy taxes.

3. Business taxes

The Taxpayer must obtain a business license and remit Tennessee business tax in every local jurisdiction where the Taxpayer has established an office, headquarters, or other place of business.

The Tennessee Business Tax Act, TENN. CODE ANN. § 67-4-701 *et seq.*, is a component of Tennessee's scheme of privilege and excise taxes. TENN. CODE ANN. § 67-4-704 (Supp. 2010)

¹ The Taxpayer has confirmed that this question involves only municipal gross receipts taxes such as the [CITY A LOCAL TAX]. This question does not refer to the Tennessee business tax or any other state tax.

allows counties and incorporated municipalities to tax the privilege of making sales by engaging in any business activity described in TENN. CODE ANN. § 67-4-708(1)-(4).²

TENN. CODE ANN. § 67-4-706(a) (Supp. 2010) provides that, prior to engaging in business, a taxpayer must register with the county clerk, in the case of businesses located within a county, and with the city official designated as the register by city charter or ordinance, in the case of businesses located within a municipality.³ The business tax is applicable to “each place, location or outlet in the state from which business is carried on.” TENN. COMP. R. & REG. 1320-4-5-.28(1) (1974) (“Rule 28”). Thus, a person must obtain a separate business license, and pay Tennessee business tax, in each municipality and county in which the person does business. However, Rule 28(2) provides that persons subject to the business tax “operating from an established place of business in one county who extend their operations into other counties and/or municipalities without establishing an office, headquarters or other place of business therein shall not be subject to the Business Tax in such other counties and/or municipalities.” In such cases, the business tax on total receipts from all taxable sales “shall be due to the county and municipality, if any, in which the established place of business is located.” *Id.*

The Taxpayer has stated that it has an established place of business in the city of [CITY A], which is located in [COUNTY], Tennessee. Accordingly, the Taxpayer must obtain business licenses and remit business taxes in those city and county locations. Likewise, the Taxpayer must obtain a business license and remit business taxes in any other local jurisdiction where the Taxpayer has established an office, headquarters or other place of business. The Taxpayer has indicated that it also rents restaurant lobby space in at least one other location in Tennessee, from which it makes sales. The rental of lobby space constitutes the establishment of a place of business for purposes of the business tax. Accordingly, the Taxpayer is required to obtain a business license and remit business taxes in any location where it rents lobby or similar space.

Note that the Taxpayer is not considered to be doing business in a location simply because it sells tickets, vouchers, and similar items that a customer will use in that location. Rather, the Taxpayer is subject to taxation only in jurisdictions where it has a place of business from which it makes sales or conducts other business activities. For purposes of the business tax, the term “business” is defined to include “any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit, or advantage, either direct or indirect.” *See* TENN. CODE ANN. § 67-4-702(a)(2) (Supp. 2010). In other words, to be subject to taxation in a particular local jurisdiction, the Taxpayer must make sales, or conduct other business activities, from that location.

² The Business Tax Act was amended by 2009 Tenn. Pub. Acts, Chapter 530. Effective July 1, 2009, the Commissioner of Revenue is responsible for the collection and administration of all business taxes levied by local governments. *See* TENN. CODE ANN. § 67-4-703 (Supp. 2010).

³ Pursuant to TENN. CODE ANN. § 67-4-723(a) (Supp. 2010), the local official shall issue a business license to the taxpayer upon receipt of the prescribed application and payment of fifteen dollars. Additionally, under TENN. CODE ANN. § 67-4-723(b), the issuing official shall renew the license upon notification from the Department of Revenue that the taxpayer has filed the required business tax return and remitted the amount shown to be due on the return. There is no fee charged for the renewal of an existing license. *Id.*

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 08/09/11