

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 11-31**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

The application of the Tennessee sales and use tax to the calibration of fuel meters.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

The Taxpayer performs calibration services on fuel meters, which measure fuel being transferred between fuel stations, terminals, pumps, and so on. Calibration is regularly required to ensure that the amount of fuel transferred from the buyer to the seller is accurate and precise. In addition, calibration ensures that delivery regulations and state weight and measurement requirements are met. The calibration involves the use of a piece of equipment owned by the Taxpayer to measure and adjust the meter so that it is accurate. At the time the Taxpayer performs the service, the meter is functional, and no parts or materials are transferred to the Taxpayer's customer.

QUESTION

Are the Taxpayer's calibration services subject to the Tennessee sales and use tax?

RULING

The Taxpayer's calibration services are subject to the Tennessee sales and use tax when performed on fuel meters that are not affixed to realty. However, the Taxpayer's calibration services are not subject to the Tennessee sales and use tax when performed on fuel meters that are affixed to realty.

ANALYSIS

The Taxpayer's calibration services, when performed on fuel meters that are not affixed to realty, constitute repair services that are subject to the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-205(c)(4) (Supp. 2010). However, the Taxpayer's calibration services are not subject to the Tennessee sales and use tax when performed on fuel meters that are affixed to realty.

Retail sales of tangible personal property and specifically enumerated services in Tennessee are generally subject to the sales and use tax under the Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*

Services subject to the Tennessee sales tax include the repair of certain tangible personal property. Specifically, TENN. CODE ANN. § 67-6-205(c)(4) imposes the sales tax on the "performing, for a consideration, of any repair services to any kind of tangible personal property or computer software." "Tangible personal property" is defined in pertinent part as "personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses." TENN. CODE ANN. § 67-6-102(92)(A) (Supp. 2010).

TENN. COMP. R. & REGS. 1320-5-1-.54 (2000) ("Rule 54") further explains and clarifies TENN. CODE ANN. § 67-6-205(c)(4). In particular, Rule 54(2) explains that the terms "repair services" and "repairs" include the following, when provided to a user and consumer: work done to preserve or restore tangible personal property to or near the original condition, made necessary by wear, normal use, wastage, injury, decay, partial destruction, or dilapidation; mending, correction, or adjustment made for any defect or defective portion; refinishing; and any cleaning that is a necessary part of any repair work. However, Rule 54(2) further provides that "[r]epair services and repairs of tangible personal property *shall not include* any maintenance or other work on buildings, or electrical wiring, plumbing, *or fixtures attached to and a part of any real property.*" (Emphasis added.)

Thus, for the Taxpayer's calibration services to be subject to the Tennessee sales tax, the following requirements must be met: 1) the work must constitute a repair service; and 2) the work must be performed on tangible personal property that is not affixed to realty.

The first requirement is met. Calibration of a fuel meter constitutes work done to restore the meter to its original functioning condition, made necessary by wear and normal use. Additionally, calibration can be characterized as an adjustment made to the meter to correct a defect in the accuracy of its measurements. The Taxpayer's calibration services therefore constitute a repair service for Tennessee sales tax purposes.

With respect to the second requirement, fuel meters constitute tangible personal property. Thus, the second requirement is met in the case of fuel meters that are not affixed to realty.¹ However, in the case of fuel meters that are affixed to realty, the second requirement is not met.

Accordingly, the Taxpayer's calibration services, when performed on fuel meters that are not affixed to realty, constitute repair services that are subject to the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-205(c)(4). However, the Taxpayer's calibration services are not subject to the Tennessee sales and use tax when performed on fuel meters that are affixed to realty.

Kristin Husat
Senior Tax Counsel

APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 7/12/11

¹ This revenue ruling does not make a determination as to whether meters serviced by the Taxpayer constitute tangible personal property affixed to realty. The determination of whether an item of tangible personal property becomes part of realty depends upon the application of the law of fixtures to the particular factual circumstances. See, e.g., *Hubbard v. Hardeman County Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993); *Magnavox Consumer Electronics v. King*, 707 S.W.2d 504, 507 (Tenn. 1986); *Harry J. Whelchel Company v. King*, 610 S.W.2d 710, 713-714 (Tenn. 1980); *General Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241 (Tenn. 1974). The determination as to whether an individual meter is affixed to realty must therefore be made on a case-by-case basis, considering all of the facts and circumstances of the particular situation.