

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #11-57**

**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 sales and use tax to the rental of space for trade shows and similar events.

**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;
- (G) 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 [NAME OF TAXPAYER] (the "Taxpayer") owns and operates an Event Center. The Taxpayer leases space at the Event Center to private parties who hold trade shows and similar events.

The Taxpayer leases space to trade show operators, who in turn contract with exhibitors. The exhibitors set up exhibits at the trade show and sell goods and services to the general public. The Taxpayer also leases space directly to exhibitors who sells goods and services directly to the general public. Alternatively, the Taxpayer at times leases space to trade show operators, who in

turn contract with exhibitors who sell goods and services to wholesalers, with the event closed to the general public.

Additionally, the Taxpayer intends to enter into a contract with a food service company, giving the food service company the exclusive right to serve food at the Event Center in return for payment to the Taxpayer of a percentage of its revenue. The Taxpayer may also enter into contracts with service companies that will provide various services to exhibitors at the Event Center, such as audio/visual services, setting up exhibits, and so on, in return for payment to the Taxpayer of a percentage of the service company's revenue.

## **RULINGS**

1. If the Taxpayer leases space in the Event Center to a trade show operator, who in turn contracts with exhibitors who set up exhibits at the trade show and sell goods and services to the general public, which party is responsible for collection and payment of any Tennessee sales and use tax due on any payments from the exhibitors to the trade show operator?

Ruling: If the Taxpayer leases space in the Event Center to a trade show operator, who in turn contracts with exhibitors who set up exhibits at the trade show and sell goods or services to the general public, the trade show operator has the responsibility to collect and remit any Tennessee sales and use tax due with respect to payments made to the trade show operator by the exhibitors for the use of the space at the Event Center. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such payments.

2. If the Taxpayer leases space in the Event Center to a trade show operator, who in turn contracts with exhibitors who set up exhibits at the trade show and sell goods and services to the general public, which party is responsible for collection and payment of Tennessee sales and use tax on the goods and services sold to the public?

Ruling: If the Taxpayer leases space in the Event Center to a trade show operator, who in turn contracts with exhibitors who set up exhibits at the trade show and sell goods or services to the general public, each exhibitor has the responsibility to collect and remit any Tennessee sales and use tax due with respect to its retail sales of goods or services. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such sales.

3. If the Taxpayer leases space directly to one or more exhibitors who sell goods and services directly to the general public, which party is responsible for collection and payment of any Tennessee sales and use tax on the goods and services sold to the general public?

Ruling: If the Taxpayer leases space directly to one or more exhibitors who sell goods and services directly to the general public, each exhibitor has the responsibility to collect and remit any Tennessee sales and use tax due with respect to its retail sales of goods or services. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such sales.

4. If the Taxpayer leases Event Center space to a trade show operator, who in turn contracts with exhibitors who sell goods to wholesalers, or to others who are purchasing the goods for resale only (with the event not open to the general public), could an out-of-state purchaser use a resale certificate issued by the Tennessee Department of Revenue to make its purchases on a tax-exempt basis?

Ruling: An out-of-state purchaser may use a resale certificate issued by the Tennessee Department of Revenue to make its purchases on a tax-exempt basis. Alternatively, an out-of-state purchaser may present an out-of-state resale certificate; a Tennessee Sales and Use Tax Blanket Certificate of Resale; or a fully completed Streamlined Sales and Use Tax Certificate of Exemption.

5. If the Taxpayer enters into a contract with a food service company that will have the exclusive right to serve food at the Event Center in return for payment to the Taxpayer of a percentage of its revenue, which party is responsible for collection and payment of any Tennessee sales and use tax on the food sold by the food service company?

Ruling: The food service company has the responsibility to collect and remit any Tennessee sales and use tax due with respect to the food service company's retail sales of food. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such sales.

6. If the Taxpayer enters into a contract with a service company that will provide various services to exhibitors at the Event Center, such as audio/visual services, setting up exhibits, etc., in return for payment to the Taxpayer of a percentage of its revenue, which party is responsible for collection and payment of any Tennessee sales and use tax on the services provided by the service company to the exhibitors?

Ruling: The service company has the responsibility to collect and remit any Tennessee sales and use tax due with respect to taxable services that it sells to the exhibitors at retail. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such sales.

## **ANALYSIS**

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

1. Payments to trade show operator for Event Center space

If the Taxpayer leases space in the Event Center to a trade show operator, who in turn contracts with exhibitors who set up exhibits at the trade show and sell goods or services to the general public, the trade show operator has the responsibility to collect and remit any Tennessee sales and use tax due with respect to payments made to the trade show operator by the exhibitors for the use of the space at the Event Center. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such payments.

TENN. CODE ANN. § 67-6-205(c)(8) (2011) imposes the Tennessee sales tax on the “renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis.”<sup>1</sup>

TENN. CODE ANN. § 67-6-501(a) (2011) provides that “[e]very dealer ... furnishing any of the things or services taxable under this chapter, is liable” for the Tennessee sales and use tax. In other words, the dealer is responsible for collecting and remitting any sales tax due with respect to retail sales made by the dealer. The term “dealer” includes, among other things, any person who “[f]urnishes any of the things or services taxable” under the Retailers’ Sales Tax Act. TENN. CODE ANN. § 67-6-102(25)(H) (2011).

As the party who provides Event Center space directly to the exhibitors, the trade show operator is considered the dealer with respect to the furnishing of services to exhibitors under TENN. CODE ANN. § 67-6-205(c)(8).

Thus, when the trade show operator rents or otherwise provides space in the Event Center to an exhibitor who sells goods or services to the public, the charges for such space are subject to the Tennessee sales and use tax unless an exception applies.

Although the Taxpayer did not request a ruling on the issue, the Taxpayer is not required to collect Tennessee sales and use tax under TENN. CODE ANN. § 67-6-205(c)(8) with respect to its own rental of space to the *trade show operator*, if the trade show operator is not itself a dealer making sales of goods and services to the general public on a temporary basis without being registered to collect sales tax at the Event Center location. However, if the Taxpayer itself rents Event Center space *directly to exhibitors*, the Taxpayer is considered the dealer with respect to the furnishing of services to such exhibitors under TENN. CODE ANN. § 67-6-205(c)(8). In that case, the Taxpayer will be the party responsible for collecting and remitting Tennessee sales and use tax due with respect to charges for the rental.

### 2-3. Sales by exhibitors

If the Taxpayer leases space in the Event Center to a trade show operator, who in turn contracts with exhibitors who set up exhibits at the trade show and sell goods or services to the general public, each exhibitor has the responsibility to collect and remit any Tennessee sales and use tax due with respect to its retail sales of goods or services to the public. Similarly, if the Taxpayer leases space directly to one or more exhibitors who sell goods or services directly to the general public, each exhibitor has the responsibility to collect and remit any Tennessee sales and use tax due with respect to its retail sales of goods of services. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such sales.

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<sup>1</sup> Such charges will not be subject to the sales and use tax if the exhibitor renting the space in order to sell merchandise to the public on a temporary basis presents evidence to the trade show operator that it has registered to collect sales tax at the Event Center location. Additionally, TENN. CODE ANN. § 67-6-205(c)(8) does not apply to the renting or providing of space “at conventions, trade shows, or expositions, if the conventions, trade shows, or expositions do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales.” TENN. CODE ANN. § 67-6-205(c)(8) also does not apply to the renting or providing of space to a “craft fair, antique mall, or book fair or gun show, if the book fair or gun show is sponsored by a not-for-profit corporation” or to the renting or providing of space at a flea market.

On an initial note, the exhibitor's responsibility to collect and remit Tennessee sales and use tax due with respect to its retail sales does not depend on whether the exhibitor rents Event Center space directly from the Taxpayer or from a trade show operator. Additionally, the exhibitor's responsibility to collect and remit Tennessee sales and use tax due with respect to its retail sales does not depend on whether the charges for Event Center space are subject to the sales tax under TENN. CODE ANN. § 67-6-205(c)(8).

As discussed above, under the Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales of tangible personal property and specifically enumerated services in Tennessee are subject to sales and use tax. TENN. CODE ANN. § 67-6-501(a) provides that "[e]very dealer making sales, whether within or outside the state, of tangible personal property, for distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter, is liable" for the Tennessee sales and use tax. In other words, the dealer is responsible for collecting and remitting any sales tax due with respect to retail sales made by the dealer. The term "dealer" includes, among other things, any person who "[s]ells at retail, or who offers for sale at retail" tangible personal property or who "[f]urnishes any of the things or services taxable" under the Retailers' Sales Tax Act. TENN. CODE ANN. § 67-6-102(25)(A),(H).

Because the exhibitor is the person making retail sales of goods or services, the exhibitor is considered the dealer with respect to those sales. Thus, the exhibitor renting the space must collect and remit Tennessee sales and use tax with respect to any taxable retail sales that it makes from that location, unless an exemption from taxation or other exception applies.<sup>2</sup>

#### 4. Out-of-state purchasers

An out-of-state purchaser may use a resale certificate issued by the Tennessee Department of Revenue to make its purchases on a tax-exempt basis. Alternatively, an out-of-state purchaser may present an out-of-state resale certificate; a Tennessee Sales and Use Tax Blanket Certificate of Resale; or a fully completed Streamlined Sales and Use Tax Certificate of Exemption.

TENN. CODE ANN. § 67-6-102(77)(A) requires that all "sales for resale" be in strict compliance with the rules and regulations promulgated by the Commissioner of Revenue. A dealer, regardless of location, may register in Tennessee to collect sales and use tax and use a Tennessee resale certificate. TENN. COMP. R. & REGS. 1320-5-1-.68(1) (2008) states that for Tennessee sales and use tax purposes, a dealer must obtain a certificate of resale from a purchaser in order to make an exempt sale for resale of tangible personal property or otherwise taxable services in Tennessee. This rule applies to purchasers who are "duly registered under the provisions of" the Retailers' Sales Tax Act. There is no restriction in the rule that limits the use of Tennessee resale

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<sup>2</sup> For example, under TENN. COMP. R. & REG. 1320-5-1-.63(4) (2000), dealers having average monthly gross sales of \$400 or less and taxable services of \$100 or less may, in the discretion of the Commissioner, be required to pay tax to their suppliers on purchases in lieu of registering for sales and use tax purposes. Additionally, certain sales might qualify as nontaxable "occasional and isolated" sales under TENN. CODE ANN. § 67-6-102(9)(B), which exempts sales of tangible personal property sold directly to consumers, provided that "the tangible personal property is not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis." TENN. COMP. R. & REGS. 1320-5-1-.09(4) (1990) explains this provision, stating that a "temporary sales period occurring on a semiannual or less frequent basis" is one that occurs no more than two times per calendar year. A sales period "shall be presumed to be temporary if it is of 30 consecutive days duration or less." *Id.*

certificates to Tennessee purchasers only. In order to make a purchase using a Tennessee resale certificate, a dealer only need be registered for sales tax in Tennessee, not located in Tennessee.

Additionally, under TENN. COMP. R. & REGS. 1320-5-1-.29(2) (1974), a dealer outside of Tennessee may purchase items or services free of sales and use tax, “provided such a dealer will furnish his vendor in this State with a valid certificate of resale showing that he is a dealer located out of this State and would be entitled to purchase such property upon a resale certificate if he were a dealer in this State.” An out-of-state resale certificate is considered a “valid certificate of resale” for purposes of this rule. An additional example of an acceptable certificate of resale is the Tennessee Sales and Use Tax Blanket Certificate of Resale, which must be completed and signed by the out-of-state purchaser.<sup>3</sup> Similarly, the purchaser may instead present a fully completed Streamlined Sales and Use Tax Certificate of Exemption in lieu of a Tennessee resale certificate.<sup>4</sup>

#### 5-6. Sales by service companies

The food service company has the responsibility to collect and remit any Tennessee sales and use tax due with respect to the food service company’s retail sales of food. Similarly, the service company has the responsibility to collect and remit any Tennessee sales and use tax due with respect to taxable services that it sells to the exhibitors at retail. The Taxpayer is not responsible for collecting and remitting Tennessee sales and use tax due with respect to such sales.

As discussed above, under the Retailers’ Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, retail sales of tangible personal property and specifically enumerated services in Tennessee are subject to sales and use tax. TENN. CODE ANN. § 67-6-501(a) provides that “[e]very dealer making sales, whether within or outside the state, of tangible personal property, for distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter, is liable” for the Tennessee sales and use tax. In other words, the dealer is responsible for collecting and remitting any sales tax due with respect to retail sales made by the dealer. The term “dealer” includes, among other things, any person who “[s]ells at retail, or who offers for sale at retail” tangible personal property or who “[f]urnishes any of the things or services taxable” under the Retailers’ Sales Tax Act. TENN. CODE ANN. § 67-6-102(25)(A),(H).

Because the service company is the person making retail sales of goods or services, the service company is considered the dealer with respect to those sales. Thus, the food service company has

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<sup>3</sup> A copy of the Tennessee Sales and Use Tax Blanket Certificate of Resale may be obtained on the Department’s website at <http://state.tn.us/revenue/forms/sales/f1300701.pdf>. If the dealer is located outside Tennessee, the certificate must indicate where the dealer is registered to collect sales tax, and must include the out-of-state sales tax registration number of the purchaser.

<sup>4</sup> However, with respect to transactions whereby a foreign dealer directs a Tennessee vendor to drop ship tangible personal property to a retail customer in Tennessee, the Tennessee vendor is required to collect sales and use tax from the foreign dealer. TENN. COMP. R. & REGS. 1320-5-1-.96 (1974) (“Rule 96”) provides that, except in cases where specific and satisfactory arrangements are made with the Commissioner of Revenue before sales and deliveries are made, “sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as their (the out-of-state vendor) agent to deliver or ship tangible personal property or taxable services to their (the out-of-state vendor) customer, who is a user or consumer, are subject to the Sales or Use Tax.” The in-state dealer “so acting as agent for the out-of-state vendor must collect the tax involved on the transaction” unless the alternative arrangements referenced above were made.

the responsibility to collect and remit any sales and use tax due with respect to its retail sales of food. The service company likewise has the responsibility to collect and remit any sales and use tax due with respect to taxable services that it sells at retail to the exhibitors.

Although the Taxpayer did not request a ruling on the issue, the Taxpayer is required to collect Tennessee sales and use tax under TENN. CODE ANN. § 67-6-205(c)(8) in instances where it furnishes space to service providers, unless an exception applies.<sup>5</sup> The Taxpayer has indicated that it gives the food service company the exclusive right to serve food at the Event Center in exchange for payment to the Taxpayer of a percentage of its revenue. Similarly, the Taxpayer also enters into contracts with service companies that provide various services to exhibitors at the Event Center, such as audio/visual services, setting up exhibits, and so on, in exchange for payment to the Taxpayer of a percentage of the service company's revenue. The Taxpayer did not indicate whether it also furnishes space to such service providers as part of the contract.

TENN. CODE ANN. § 67-6-205(c)(8) imposes the Tennessee sales tax on the "renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis." In both cases, the Taxpayer allows the dealer to operate at the Event Center in exchange for a payment. If the Taxpayer also provides the dealer with the use of a space at the Event Center, such charges will come within the scope of TENN. CODE ANN. § 67-6-205(c)(8).

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APPROVED: Richard H. Roberts  
Commissioner of Revenue

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<sup>5</sup> See footnote 2, above.