

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 13-24**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of the qualified headquarters facility credit under TENN. CODE ANN. § 67-6-224 (Supp. 2010) for purposes of the Tennessee sales and use tax.

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

In [YEAR], [TAXPAYER] (the "Taxpayer"), [REDACTED], established a qualified headquarters facility (the "Facility") pursuant to TENN. CODE ANN. § 67-6-224. The Facility consists of one location in the [STATE OF TENNESSEE]. The Taxpayer provides a wide range of [SERVICES]. [CUSTOMERS] are serviced by [BUSINESS CENTERS] in [CITY], Tennessee, [AND OTHER LOCATIONS OUTSIDE OF TENNESSEE]. The [BUSINESS CENTER] in [TENNESSEE] is a part of the Facility.

The Taxpayer plans to invest additional capital into the Facility, estimating a total capital investment between [DATE], and [DATE] (the “Investment Period”) of over \$50,000,000 (the “Investment”). This Investment will accomplish two goals. First, it will consolidate the operations of the Taxpayer’s [BUSINESS CENTERS] into one [BUSINESS CENTER] located in [CITY], Tennessee. The operations at the Taxpayer’s [BUSINESS CENTERS] in [LOCATIONS OUTSIDE TENNESSEE] will be shut down or downsized, and moved to [CITY IN TENNESSEE]. Second, the Investment will expand the Facility in [CITY IN TENNESSEE].

A significant portion of the Investment will consist of purchasing, leasing, or licensing computer software and hardware related to a new and expanded enterprise resource planning system (“ERP System”), as well as other information technology systems in connection with the expansion of the [TENNESSEE BUSINESS CENTER]. The Taxpayer will house the global ERP System software and hardware in its Facility located in [TENNESSEE]. The Taxpayer will also purchase, lease, or license HVAC equipment, communications equipment, furniture, fixtures, and labor as part of the Investment.

The Taxpayer predicts that it will retain the current job headcount of [NUMBER] at the Facility as of [THE DAY BEFORE THE INVESTMENT PERIOD BEGINS], and that it will create at least 100 net new full-time jobs during the Investment Period that pay at least 150% of Tennessee’s average occupational wage. These jobs will include full-time customer service positions, call center positions, administrative support positions, information technology positions, finance positions, and management and other professional positions.

[THE TAXPAYER FILED ITS APPLICATION AND INVESTMENT PLAN WITH THE DEPARTMENT OF REVENUE PRIOR TO JULY 1, 2011].

RULINGS

1. Is the Taxpayer eligible for the Tennessee sales and use tax credit under TENN. CODE ANN. § 67-6-224(a) (Supp. 2010)?

Ruling: Yes, provided that the Taxpayer establishes a “qualified headquarters facility” in Tennessee, as discussed in the responses to subsequent questions.

2. Will the Taxpayer’s proposed expansion of the Facility through the consolidation of the operations of its [BUSINESS CENTERS] qualify as a “qualified headquarters facility” for the purposes of this Investment Period?

Ruling: Yes, provided that the Taxpayer makes the statutorily required minimum investment during the Investment Period.

3. Will the Taxpayer’s purchase, lease, or license of HVAC equipment, communications equipment, computer hardware, computer software, furniture, fixtures, and labor for its Facility be included in the calculation of the “minimum investment” as set forth in TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010)?

Ruling: Yes.

4. With respect to the Taxpayer's Facility, are the HVAC equipment, communications equipment, computer hardware, computer software, furniture, and fixtures considered "qualified tangible personal property" as defined in TENN. CODE ANN. § 67-6-224(b)(11) (Supp. 2010)?

Ruling: Yes.

5. Will full-time customer service, call center, administrative support, information technology, finance, management and other professional positions constitute "headquarters staff employees" as defined in TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010)?

Ruling: The administrative support, information technology, finance, and management positions constitute "headquarters staff employees" as defined in TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010), but the customer service and call center positions do not.

ANALYSIS

Under the Retailers' Sales Tax Act,¹ the retail sale in Tennessee of tangible personal property is subject to the sales tax, unless an exemption applies.²

The qualified headquarters facility sales tax credit is available to qualifying taxpayers, however, to offset sales or use taxes paid to the state of Tennessee with respect to certain purchases of tangible personal property. TENN. CODE ANN. § 67-6-224(a) (Supp. 2010)³ provides that a taxpayer "who establishes a qualified headquarters facility in this state shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sales or use of qualified tangible personal property."⁴

¹ Tennessee Retailers' Sales Tax Act, ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts 22, 22-54 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2013)).

² TENN. CODE ANN. § 67-6-202(a) (2013) imposes the tax on the retail sale of tangible personal property. "Tangible personal property" includes "property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses." TENN. CODE ANN. § 67-6-102(89)(A) (2013). Most exemptions to the sales tax can be found in TENN. CODE ANN. §§ 67-6-301 to -396 (2013).

³ The General Assembly amended the qualified headquarters facility credit provisions and the qualified headquarters facility relocation expense credit provisions in 2011. The amendments apply only to written proposals received by the Department of Revenue or the Department of Economic and Community Development after July 1, 2011. *See* Act of May 21, 2011, ch. 508, §§ 1, 8-9, 2011 Tenn. Pub. Acts. Because the Taxpayer filed its application and investment plan with the Department of Revenue prior to July 1, 2011, the law in effect prior to the 2011 amendments governs.

⁴ TENN. CODE ANN. § 67-6-224(b)(11) (Supp. 2010) defines "qualified tangible personal property" as "building materials, machinery, equipment, furniture and fixtures used exclusively in the qualified headquarters facility and purchased or leased during the investment period and computer software used primarily in the qualified headquarters facility and purchased or leased during the investment period." There are a number of exclusions from this definition, however. "Qualified tangible personal property" does not include supplies or repair parts. *Id.* "Qualified tangible personal property" also does not include any payments with respect to leases of qualifying tangible personal property that extend beyond the investment period. *Id.* Finally, "qualified tangible personal property" does not include any materials, machinery, equipment, furniture, or fixtures that replace tangible personal property that previously generated a credit under TENN. CODE ANN. § 67-6-224(a). *Id.*

1. QUALIFIED HEADQUARTERS FACILITY CREDIT ELIGIBILITY

The Taxpayer will be eligible for the qualified headquarters facility sales and use tax credit if it establishes a “qualified headquarters facility” in Tennessee, as discussed below.⁵

2. QUALIFIED HEADQUARTERS FACILITY

The Taxpayer’s Facility will be considered a qualified headquarters facility for purposes of TENN. CODE ANN. § 67-6-224(a) (Supp. 2010) and for purposes of this Investment Period, provided the requirements discussed below are met.

A “qualified headquarters facility” is “a headquarters facility where the taxpayer has made the minimum investment during the investment period.”⁶ Thus, the Taxpayer’s proposed expansion will qualify as a “qualified headquarters facility” for purposes of TENN. CODE ANN. § 67-6-224(a) (Supp. 2010) if: 1) the expansion is of a headquarters facility; 2) the Taxpayer has made the required minimum investment; and 3) such investment occurs during the Investment Period.

The Taxpayer’s proposed expansion meets the first requirement of being a “headquarters facility.” A “headquarters facility” is “a facility in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters related functions and services are performed.”⁷ “Facility” is defined as “a building or buildings, either newly constructed, expanded, or remodeled, housing headquarters staff employees and located in a county or metropolitan statistical area in this state.”⁸ In addition, “[a]n expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in this state.”⁹

The Taxpayer established its national headquarters in Tennessee in [YEAR] at the Facility, and the Taxpayer now proposes to expand the Facility by consolidating [BUSINESS CENTER] operations at that location. Since the Facility has already been designated a qualified headquarters facility, and such designation requires the location to be a “headquarters facility,” any expansion of the Facility would also qualify as a headquarters facility.

The second requirement will be met if the Taxpayer makes the required minimum investment. TENN. CODE ANN. § 67-6-224(b)(7)(A) (Supp. 2010) provides that the term “minimum investment” means:

⁵ See TENN. CODE ANN. § 67-6-224(a) (Supp. 2010).

⁶ TENN. CODE ANN. § 67-6-224(b)(9) (Supp. 2010).

⁷ TENN. CODE ANN. § 67-6-224(b)(3) (Supp. 2010).

⁸ TENN. CODE ANN. § 67-6-224(b)(1) (Supp. 2010).

⁹ *Id.*

(i) A minimum investment by the taxpayer and lessor to the taxpayer of fifty million dollars (\$50,000,000) or more in a building or buildings, either newly constructed, expanded, or remodeled; or

(ii) A minimum investment by the taxpayer and the lessor to the taxpayer of ten million dollars (\$10,000,000) in a building or buildings, either newly constructed, expanded, or remodeled, along with the creation of not fewer than one hundred (100) net new full-time employee jobs¹⁰ created during the investment period, that pay at least one hundred fifty percent (150%) of the state's average occupational wage, as defined in § 67-4-2004,¹¹ for the month of January of the year in which the full-time employee jobs are created.

The minimum investment “may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities and landscaping, but shall not include land or inventory.”¹²

The Taxpayer proposes to invest more than \$50 million in addition to creating at least 100 net new full-time employee jobs. Provided that the Taxpayer actually invests \$50 million on the items specified above, or invests at least \$10 million and creates 100 net new full-time jobs meeting the criteria in TENN. CODE ANN. § 67-6-224(b)(7)(A)(ii) (Supp. 2010), the Taxpayer will meet the minimum investment for purposes of TENN. CODE ANN. § 67-6-224(a) (Supp. 2010).

Finally, the Taxpayer will meet the third requirement if it makes the minimum investment during the “investment period.”

TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010) defines “investment period” to mean that “the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility.” In no event shall the investment period exceed six years.¹³

Although the Taxpayer estimates that the total capital investment will occur between [DATE], and [DATE], as illustrated above, the investment period for purposes of TENN. CODE ANN. § 67-6-224(a) (Supp. 2010) starts one year prior to the start of construction, expansion, or remodeling, and ends one year after substantial completion of the same.

¹⁰ TENN. CODE ANN. § 67-6-224(b)(8) (Supp. 2010) defines “new full-time employee job” to mean “full-time headquarters staff employee jobs that are new to the state of Tennessee and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in Tennessee as a job position of the taxpayer or of another business entity.” The new full-time employee jobs must be created and filled within the investment period. *Id.* An employee in a new full-time employee job may be employed at a temporary location in this state, pending completion of construction or renovation work at the qualified headquarters facility. *Id.*

¹¹ TENN. CODE ANN. § 67-4-2004(3) (Supp. 2010) defines “average occupational wage” as “the average wage for all industries as reported by the department of labor and workforce development in the most recent annual quarterly census of employment and wages super sector date for the state, aggregate of all ownerships.”

¹² TENN. CODE ANN. § 67-6-224(b)(7)(B) (Supp. 2010).

¹³ TENN. CODE ANN. § 67-6-224(b)(6) (Supp. 2010).

If the Taxpayer makes the required minimum investment during the period beginning one year prior to the start of construction, expansion, or remodeling, and ending at the earlier of six years later or one (1) year after the substantial completion of construction, expansion, or remodeling, then the Taxpayer will meet the third requirement.

Consequently, the Taxpayer's proposed expansion will qualify as a qualified headquarters facility, provided that the Taxpayer makes the necessary minimum investment and such investment occurs during the investment period.

3. MINIMUM INVESTMENT – ITEMS PURCHASED, LEASED, OR LICENSED

The Taxpayer's purchase, lease, or license of HVAC equipment, communications equipment, computer hardware, computer software, furniture, fixtures, and labor for its Facility will be included in the calculation of the minimum investment as set forth in TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010).

As explained above, the "minimum investment" is generally a threshold level of investment by the taxpayer in "a building or buildings, either newly constructed, expanded, or remodeled,"¹⁴ and "may include, but is not limited to, the purchase price of an existing building and the cost of building materials, *labor, equipment, furniture, fixtures, computer software*, parking facilities and landscaping."¹⁵ "Minimum investment" does not, however, include "land or inventory."¹⁶

Several of the items that the Taxpayer intends to purchase, lease, or license are enumerated in the statute, such as computer software, fixtures, and furniture. The only non-enumerated items are computer hardware, HVAC equipment, and communications equipment, but those items are properly considered equipment for purposes of TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010).

Consequently, all of the HVAC equipment, communications equipment, computer hardware, computer software, furniture, fixtures, and labor that the Taxpayer purchases, leases, or licenses for its headquarters will be included in the calculation of the Taxpayer's minimum investment under TENN. CODE ANN. § 67-6-224(b)(7) (Supp. 2010).

4. QUALIFIED TANGIBLE PERSONAL PROPERTY

With respect to the Taxpayer's Facility, the HVAC equipment, communications equipment, computer hardware, computer software, furniture, and fixtures are properly considered "qualified tangible personal property" as defined in TENN. CODE ANN. § 67-6-224(b)(11) (Supp. 2010).

"Qualified tangible personal property" is defined as "building materials, machinery, *equipment, furniture* and *fixtures* used exclusively in the qualified headquarters facility and purchased or leased during the investment period and *computer software* used primarily in the qualified

¹⁴ TENN. CODE ANN. § 67-6-224(b)(7)(A) (Supp. 2010).

¹⁵ TENN. CODE ANN. § 67-6-224(b)(7)(B) (Supp. 2010) (emphasis added).

¹⁶ *Id.*

headquarters facility and purchased or leased during the investment period.”¹⁷ The definition excludes, however, supplies and repair parts, payments with respect to leases of qualifying tangible personal property that extend beyond the investment period, and materials, machinery, equipment, furniture, or fixtures that replace tangible personal property that previously generated a credit under TENN. CODE ANN. § 67-6-224(a).¹⁸

Several of the items that the Taxpayer intends to purchase or lease are enumerated in the statute, such as computer software, fixtures, and furniture. The only non-enumerated items are computer hardware, HVAC equipment, and communications equipment, but those items are properly considered equipment for purposes of TENN. CODE ANN. § 67-6-224(b)(11) (Supp. 2010).

Consequently, all of the HVAC equipment, communications equipment, computer hardware, computer software, furniture, and fixtures the Taxpayer purchases or leases for its Facility will qualify as qualified tangible personal property, provided that the Taxpayer purchases, leases, or licenses the items during the investment period, the items are not being purchased to replace tangible personal property that previously generated a credit under TENN. CODE ANN. § 67-6-224(a), and, with respect to leased property, applies only as to lease payments made during the investment period.

5. HEADQUARTERS STAFF EMPLOYEES

All employee positions that the Taxpayer proposes to create, except for the customer service and call center positions, are considered headquarters staff employee positions within the meaning of TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010).

“Headquarters staff employees” means “executive,¹⁹ administrative,²⁰ or professional workers²¹ performing headquarters-related functions and services.”²² “Headquarters related functions and services” in turn is defined to mean “those functions involving administrative, planning, research and development, marketing, personnel, legal, computer or telecommunications services

¹⁷ TENN. CODE ANN. § 67-6-224(b)(11) (Supp. 2010) (emphases added). In 2011, the General Assembly amended the law to add a new requirement that the items used in the qualified headquarters facility be “directly related to the creation of the new full-time employee jobs” in order to be considered qualified tangible personal property. *See* Act of May 21, 2011, ch. 508, §§ 1, 9, 2011 Tenn. Pub. Acts (codified at TENN. CODE ANN. § 67-6-224(b)(11) (2013)). This change is not relevant for the Taxpayer’s proposal in question as it only applies to “any written proposal by the department of economic and community development or the department of revenue on or after [July 1, 2011].” *Id.* at § 34.

¹⁸ TENN. CODE ANN. § 67-6-224(b)(11) (Supp. 2010).

¹⁹ “An executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise.” TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010).

²⁰ “An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations.” *Id.*

²¹ “A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study.” *Id.*

²² *Id.* (footnotes added).

performed by headquarters staff employees on an international, national, or regional basis.”²³ The definition of “headquarters related functions and services” specifically excludes, however, “functions involving . . . operating a call center.”²⁴

The Taxpayer intends to create a number of employee positions that are enumerated in the statute, such as administrative and management positions. Other positions the Taxpayer intends to create also fall within the statute, though not named. Examples of those types of positions include finance and information technology jobs, which are executive and professional positions.

But some of the positions the Taxpayer intends to create are explicitly excluded from the definition of “headquarters staff employees.” By definition, call center employees cannot perform “headquarters related functions and services.”²⁵ Customer service positions are similarly excluded because they cannot be properly considered executive, administrative, or professional positions within the meaning of TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010).

In summary, the full-time administrative support, information technology, finance, and management positions created or relocated by the Taxpayer in connection with the headquarters facility expansion meet the definition of headquarters staff employees under TENN. CODE ANN. § 67-6-224(b)(5), but customer service and call center positions do not.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: December 20, 2013

²³ TENN. CODE ANN. § 67-6-224(b)(4) (Supp. 2010).

²⁴ *Id.*

²⁵ *Id.*