

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-62**

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 investment in warehouse and distribution facility.

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 in the business of wholesaling [PRODUCTS] in Tennessee and elsewhere. [THE TAXPAYER] operates certain warehouse and distribution facilities in [COUNTY], Tennessee. Effective [DATE PRIOR TO THE EXPIRATION OF THE TAXPAYER'S INDUSTRIAL MACHINERY AUTHORIZATION CERTIFICATE], [THE TAXPAYER] plans to transfer its entire Tennessee warehouse and distribution

operations to [CORPORATION A], a wholly owned subsidiary, in a transaction exempt from federal income taxes under Internal Revenue Code § 351. Following this transfer, [THE TAXPAYER] will continue to own inventory in Tennessee and [CORPORATION A] will provide distribution services to [THE TAXPAYER] with respect to such inventory.

In [YEAR], [THE TAXPAYER] decided to increase its warehouse facilities and distribution operations in [COUNTY], Tennessee, by constructing and equipping [NUMBER] new warehouses, each containing [NUMBER] square feet of space. [THE TAXPAYER] has heretofore applied for and been issued an Industrial Machinery Authorization Certificate (“certificate”) from the Department exempting the purchase and use of material handling equipment from Tennessee sales and use tax pursuant to Tenn. Code Ann. § 67-6-102(12)(H)(i)(b). The certificate was issued by the Department to become effective for [THE TAXPAYER]’s tax year beginning [TWO YEAR PERIOD].

The project was planned in three phases, all commencing after [THE EFFECTIVE DATE OF THE CERTIFICATE]. Phase 1 was the construction of the new warehouses which involved an expenditure by [THE TAXPAYER] as owner of the facility of approximately [OVER \$10,000,000], plus installation of material handling equipment at a cost of approximately [AMOUNT]. Construction of the new warehouses started [DATE AFTER THE EFFECTIVE DATE OF THE CERTIFICATE], and was substantially completed, with a few items remaining to be finished, on or about [DATE WITHIN THE TWO YEAR PERIOD COVERED BY THE TAXPAYER’S CERTIFICATE]. The equipment has been installed, and the new facility is in use. Phase 2 involved the purchase and installation of additional material handling equipment at a cost of approximately [IN EXCESS OF \$10,000,000]. Phase 2 has been completed and the equipment is in use.

Phase 3 will involve the purchase and installation in the newly constructed facilities of additional material handling equipment at a cost of between [IN EXCESS OF \$10,000,000], or more. It is contemplated that Phase 3 will take place [WITHIN THE TWO YEAR PERIOD COVERED BY THE TAXPAYER’S CERTIFICATE], and that the purchase and use of the material handling equipment would be by [CORPORATION A].

ISSUE

Whether the purchase and use by [CORPORATION A] of material handling equipment acquired and to be used by it before [THE EXPIRATION OF THE TAXPAYER’S CERTIFICATE], are exempt from sales and use tax under the certificate issued to [THE TAXPAYER].

RULING

[CORPORATION A] must apply for a certificate in its name; once [CORPORATION A] has the certificate, it may continue to purchase the material handling equipment exempt from sales and use tax if purchased within one year after substantial completion of the facility.

ANALYSIS

Tenn. Code Ann. § 67-6-102(12)(H) provides an exemption from sales and use tax for the purchase of

(i) [m]aterial handling equipment and racking systems . . . in a qualified, new or expanded warehouse or distribution facility, which are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility,. . . A qualifying facility must also be:

(a) [a] warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars (\$10,000,000) by the taxpayer, and/or a lessor of the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building(s) and/or equipment of the facility; or

(b) [a]n expansion to an existing warehouse or distribution facility, previously qualified under subdivision (H)(i), through an additional investment in excess of ten million dollars (\$10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building(s) and the purchase of new equipment in the expanded facility. . . .

(ii) . . . However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest which would otherwise have been due; . . .

[THE TAXPAYER] has met the requirements of Tenn. Code Ann. § 67-6-102(12)(H) and has been authorized by the Department to purchase the material handling equipment exempt from sales or use tax. Part of the investment has been made, but there is still a significant amount of equipment and building improvements that are part of the plan for the new facility. The facility was substantially completed on or about [DATE WITHIN THE TWO YEAR PERIOD COVERED BY THE TAXPAYER'S CERTIFICATE].

[CORPORATION A] is a wholly owned, newly formed subsidiary of [THE TAXPAYER], and plans to continue the investment currently being made by its parent company. As stated above, [CORPORATION A] plans to invest at least [IN EXCESS OF \$10,000,000] for additional equipment and improvements to the facility. Although [THE TAXPAYER]'s certificate does not expire by its own terms until [DATE], the

statute provides that the exemption does not extend beyond one year from the substantial completion of the construction or expansion. Tenn. Code Ann. § 67-6-102(12)(H)(i). Accordingly, the expiration of the exemption is one year from substantial completion of the expansion, which [THE TAXPAYER] states was on or about [DATE WITHIN THE TWO YEAR PERIOD COVERED BY THE TAXPAYER'S CERTIFICATE].

The investment in the new facility planned and substantially started by [THE TAXPAYER] that will be continued by [CORPORATION A] is the type of business activity that was intended to be encouraged through this exemption. Because [CORPORATION A] is a newly formed, wholly owned subsidiary and will continue the substantial work previously begun by [THE TAXPAYER], a qualifying facility, it appears that the aim of the statute is clearly met by allowing [CORPORATION A] to qualify for the exemption. It is important to note that this is an ongoing, single project, and [CORPORATION A] is not receiving an extension of the time period during which the exemption is permitted.

Because [THE TAXPAYER] will no longer make purchases in its own name, [CORPORATION A] should apply to the Department to receive its own authorization certificate to continue the investment into the new facility. The certificate will expire upon the end of the original statutory period of one year after substantial completion of the project. After the transfer of assets from [THE TAXPAYER] to [CORPORATION A] and the granting of a certificate to [CORPORATION A], the original certificate given to [THE TAXPAYER] will be void.

Caroline R. Krivacka
Tax Counsel

APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 12-23-97