

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 95-18**

**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 Tennessee sales and use tax to a provider of telecommunications paging service.

**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**

\_\_\_\_\_ is a telecommunications company located in Tennessee whose principal business activities are providing one-way paging service and selling paging service devices and equipment. \_\_\_\_\_ desires a ruling indicating which of the following charges are subject to sales or use tax in Tennessee.

1. One-way Paging Service -- One of three base charges provided to customer for monthly access to the paging system.
2. Customer Start-up Charge -- Charge to initiate customer access to paging system.
3. Sale of Pager to Direct Customer -- Charge for outright sale of pager to be utilized on paging system.
4. Sale of Parts -- Sale of pager replacement parts to customer.
5. Sale of Pager to Resale Customer -- Charge for sale of pager to reseller of " \_\_\_\_\_ " pagers.
6. Rental of Pager -- One of three base charges provided to customer for monthly rental of pager.
7. Maintenance Agreement Charge (Optional) -- One of three base charges provided to customer for monthly maintenance of pager.
8. Maintenance Agreement Charge (Mandatory) -- One of three base charges provided to customer for monthly maintenance of pager.
9. Pager Protection Charge -- Optional monthly charge to protect customer in case pager is lost or stolen. Not underwritten by an insurance company.
10. Pager Protection Deductible -- Amount charged under protection plan agreement when pager is lost or stolen. Deductible is not refundable to subscriber should the subscriber locate the lost pager.

### **QUESTIONS**

Whether the above-listed charges are subject to Tennessee sales and use tax.

### **RULINGS**

The charges are subject to Tennessee sales and use tax as follows:

1. One-way Paging Service is subject to sales and use tax.
2. Customer Start-up Charge is subject to sales and use tax.
3. Sale of Pager to Direct Customer is subject to sales and use tax.
4. Sale of Parts is subject to sales and use tax.
5. Sale of Pager to Resale Customer is not subject to sales and use tax.

6. Rental of Pager is subject to sales and use tax.
7. Maintenance Agreement Charge (Optional) is subject to sales and use tax.
8. Maintenance Agreement Charge (Mandatory) is subject to sales and use tax.
9. Pager Protection Charge is not subject to sales and use tax.
10. Pager Protection Deductible is not subject to sales and use tax.

All charges subject to tax are taxed at the state rate of six percent (6%). Counties, cities or towns are authorized to levy an additional tax not to exceed two and three-fourths percent (2 3/4%) of the first \$1,600 on the sale or use of any single article of personal property. The single article cap does not apply to sales of taxable services. All the above charges which are subject to the state sales tax will also be subject to the local option sales tax.

## **ANALYSIS**

### **Telecommunication Services**

Telecommunication services are subject to sales and use tax in Tennessee. T.C.A. Section 67-6-102(23)(F)(iii) defines a taxable retail sale to include "[t]he furnishing, for a consideration, of either intrastate or interstate telecommunication services." Telecommunications are specifically defined to include paging service under T.C.A. Section 67-6-102(29)(C). Paging service is therefore subject to the Tennessee sales tax on telecommunications.

Charges for one-way paging service are thus subject to sales and use tax. The customer start-up charge is also subject to sales and use tax. The start-up charge is to initiate access to the paging service which is explicitly taxed under T.C.A. Section 67-6-102(29)(C).

### **Sales of Tangible Personal Property**

The transfer of tangible personal property for a consideration is a sale subject to sales tax under T.C.A. Section 67-6-102(24)(A). The sale of a pager to a customer who does not resell the pager is thus subject to sales tax. The sale of pager replacement parts is also subject to sales tax for the same reasoning.

The sale of a pager to a customer who resells the pager is not subject to sales tax so long as the sale for resale is in strict compliance with rules and regulations promulgated by the commissioner. T.C.A. Section 67-6-102(23)(A). The dealer shall require certificates of resale or else the dealer will be held liable for the tax. Tenn. Sales and Use Tax Rule 1320-5-1-.68. A dealer shall also be held liable for the tax if he sells tangible personal property or taxable services free of sales tax on a resale certificate "when he knows, or

should know in the use of ordinary care, that the property or service which he is selling is not for resale by the purchaser, but is for the purchaser's own use or consumption." Id.

## Rentals

T.C.A. Section 67-6-204 imposes a tax at the rate of six percent (6%) on the gross proceeds of all leases and rentals of tangible personal property in this state. Therefore, the rental of pagers would be subject to sales tax as a rental. It should be noted, however, that if \_\_\_\_\_ only provides pagers to customers subscribing to its telecommunications service, then the provision of the pagers will not be considered a rental but rather a use by \_\_\_\_\_ as part of its telecommunications service. The charge made to the customer for the use of the pager will be subject to sales tax as a telecommunications charge and \_\_\_\_\_ will also be subject to a use tax on the acquisition cost of the pager. *Nashville Mobilphone Co. v. Woods*, 655 S.W.2d 1934 (Tenn. 1983).

## Maintenance Agreements

Mandatory maintenance agreement charges and optional maintenance agreement charges are both subject to sales tax. T.C.A. Section 67-6-102(23)(F)(ix) provides that a taxable retail sale includes

"[c]harges for warranty or service contracts warranting the repair or maintenance of tangible personal property; provided, that any repairs to the extent covered by the contract shall not also be subject to tax." Maintenance agreement charges are thus explicitly subject to sales tax. These charges are taxed whether the charge is mandatory or optional.

## Pager Protection Fees

The pager protection charge is an optional charge which protects the customer in case a pager is lost or stolen. This charge is not subject to sales and use tax.

The pager protection deductible must be paid by the customer when the pager is lost or stolen. This charge is not subject to sales and use tax.

## Local Option Tax

All charges subject to tax under this ruling are subject to state sales tax at the rate of six percent (6%) whether the tax is levied on the sale of tangible personal property, T.C.A. Section 67-6-202, the lease or rental of tangible personal property, T.C.A. Section 67-6-204, or taxable services, T.C.A. Section 67-6-205.

Counties, cities or towns are authorized to levy an additional local option tax on the same privileges subject to state sales and use tax. T.C.A. Section 67-6-701 et. seq. The local

option tax may not exceed two and three-fourths percent (2 3/4%), and the tax shall apply to only the first one thousand six hundred dollars (\$1,600) on the sale or use of any single article of personal property. T.C.A. Section 67-6-702(a)(1). The tax will apply to the same privileges subject to the state sales tax, subject to the cap cited above. The rate will depend on the rate imposed in the municipality and/or county.

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APPROVED: Ruth E. Johnson, Commissioner

DATE: 6/2/95