

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #95-37**

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 the sales and use tax to the sale of satellite television service through sales agents.

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 his detriment.

FACTS

[THE TAXPAYER] is a national direct broadcast satellite service provider. In order to solicit sales of its services, [THE TAXPAYER] has authorized dealers to solicit and take orders for such services. These dealers do not provide any of the services nor do they

represent [THE TAXPAYER] in any capacity other than soliciting for sales. The dealers are compensated through commissions based on orders taken.

Typically, [THE TAXPAYER] will bill its customers monthly and collect and remit all applicable Tennessee sales and use taxes. In some instances, however, the dealers, on behalf of [THE TAXPAYER], will collect payment for the initial period of services directly from the customers. For sales tax collection purposes, the dealers will act on behalf of [THE TAXPAYER] as agents. These collections will then be forwarded to [THE TAXPAYER]. All subsequent billings and collections will be handled by [THE TAXPAYER]. At all times [THE TAXPAYER] is the service provider. Further, the purchaser of such services is aware that [THE TAXPAYER], not the dealer, is the seller of such services.

It is [THE TAXPAYER]'s objective to have the Tennessee Commissioner of Revenue accept the following alternatives with regard to the collection and remittance of Tennessee sales and use tax.

ALTERNATIVE ONE:

In some instances, the dealer will collect the payment for the initial period of services as well as the applicable sales and use taxes on behalf of [THE TAXPAYER]. All collections, including sales and use taxes, will be forwarded by the dealer to [THE TAXPAYER]. The sales tax will then be reported and remitted to the Tennessee Commissioner of Revenue with [THE TAXPAYER]'s timely filed Tennessee sales and use tax return.

Additionally, [THE TAXPAYER] has an agreement in place with its dealers whereby [THE TAXPAYER] accepts all responsibility for Tennessee sales and use taxes incident to the sales of [THE TAXPAYER]'s programming. This agreement is conditioned on the agent's adherence to all of [THE TAXPAYER]'s policies and procedures with respect to the collection of the correct amount of sales tax. Included in the agreement is a provision that [THE TAXPAYER] contractually accepts responsibility to be the primary party to whom the state will address all sales and use tax issues. The [THE TAXPAYER] recognizes that a contract between it and its agent is not binding on the state. It is [THE TAXPAYER]'s desire to be the primary party to whom the state addresses all sales and use tax issues relative to these sales of programming services.

ALTERNATIVE TWO:

[THE TAXPAYER] will be contracting with several well known and established multistate retail corporations. These retailers will represent [THE TAXPAYER] as a dealer in the same manner as described above. These retailers are registered and are filing sales and use tax returns in Tennessee. It is the desire of these experienced retailers to remit all collected sales and use tax directly to the state, rather than to [THE TAXPAYER]. These retailers request that they be primarily responsible for the

remittance of sales and use tax which they have collected on these sales. It should be noted that in all cases, the service provider is [THE TAXPAYER]. The retailer is not a retailer of [THE TAXPAYER]'s services, rather only a dealer.

[THE TAXPAYER] will have an agreement in place with such retailers, wherein the retailer accepts the primary responsibility for remitting the sales and use tax directly to the state. [THE TAXPAYER] recognizes the fact that this will not necessarily relieve [THE TAXPAYER] of full responsibility. It is the desire of [THE TAXPAYER] and the retailer that [THE TAXPAYER] be the primary responsible party for the collection and remittance of all sales and use taxes. Accounting policies and procedures will be adhered to whereby the state will have a clear audit trail to ensure that the proper amount of sales and use tax has been collected and remitted.

ISSUE

Whether tax can be remitted as contemplated by Alternatives One and/or Two.

RULING

Tax can and should be remitted under the arrangement described in Alternative One. Tax should not be remitted under the arrangement described in Alternative Two. For the facts set out in Alternative Two, tax should be remitted just as described in Alternative One.

ANALYSIS

Tennessee defines as a taxable retail sale the furnishing, for a consideration, of telecommunication services. T.C.A. § 67-6-102(22)(F)(iii). Interstate telecommunication is taxable if it originates or is received in Tennessee and is charged or billed to a service address in Tennessee. *Id.*

Sales made by an agent acting on behalf of a known principal are taxable to the principal. *See, e.g.,* Sales and Use Tax Rule 1. Under the facts of both alternatives, sales are made by agents clearly acting on behalf of [THE TAXPAYER]. Therefore, for both alternatives, regardless of the other contractual arrangements between the parties, [THE TAXPAYER] bears the legal incidence of the sales tax and should be reporting and remitting the sales tax through its own sales tax registration. The sales and use tax law does not make any provision for a retailer/agent to report and pay tax through its own account on sales made as an agent, since that account would be denominated for sales taxable to the retailer and not sales made as an agent for a known principal.

Steven Thomas
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APPROVED: Ruth Johnson, Commissioner

DATE: 11-3-95