

Income/Franchise:

Tennessee Letter Ruling Addresses Whether Receipts May be Sourced to Ultimate End-Users

Revenue Ruling No. 24-06, Tenn. Dept. of Rev. (7/31/24). Rejecting the taxpayer's request, a Tennessee Department of Revenue (Department) revenue ruling concluded that, based on the provided facts, an out-of-state taxpayer that sold and delivered its product from a third-party in-state facility to various wholesale distributors located both in and outside of Tennessee must source such sales for purposes of calculating its Tennessee franchise and excise tax receipts factor based on the location of the wholesale distributors, rather than the ultimate end-users of the product. Under the facts, the taxpayer:

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/24-06fe.pdf>

- Sold product to the wholesale distributors at a wholesale acquisition cost that matched what the wholesale distributors then charged the ultimate end-users (note: the wholesale distributors earned revenue from the taxpayer through what the taxpayer characterized as payment for distribution services);
- Provided customer service for the ultimate end-users of the product; and
- Received reports of the ultimate end-user locations.

Additionally, due to the product's nature, the product only remained with the wholesale distributors for approximately 14 to 25 days before being sold to the ultimate end-users. In rejecting the taxpayer's request to source such product sales based on the ultimate end-user locations (which included both in-state and out-of-state ultimate end-users), the Department explained that the taxpayer did not ship, or direct shipment of, the product to the ultimate end-users. In fact, in this case, the Department noted that at the time the product was sold from the taxpayer to a wholesale distributor, there was no specific designation of a product to a specific subsequent buyer, and the taxpayer did not control the decision as to where the product would be shipped after it sold the product to the wholesale distributor. In this respect, the Department reasoned that the sales must "unambiguously" be sourced based on the location of the wholesale distributors, and a deviation from the standard apportionment formula was not warranted. Therefore, the Department held that the taxpayer's sales to wholesale distributors located in Tennessee must be sourced to Tennessee, because:

1. Sales of the product to wholesale distributors located in Tennessee constituted sales made in Tennessee;
2. Sourcing sales to the location of the wholesale distributors is part of a fair system of apportionment;
3. Caselaw supporting sourcing sales to ultimate end-users did not apply to the facts of this ruling; and
4. Tennessee contemplates sourcing sales to the location of ultimate end-users in situations that were not applicable to this taxpayer.

Please contact us with any questions.

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