

Other/Miscellaneous:

Tennessee: Items Shipped from In-State Warehouse are Business Tax-Exempt Wholesaler-to-Wholesaler Sales

M2021-01408-COA-R3-CV, Tenn. Ct. App. (2/24/23). In a case involving the assessment of Tennessee business tax (TBT) against a pharmaceutical company that stored and sold its products to specialty distributors from an in-state warehouse, a Tennessee Court of Appeals (Court) affirmed that such pharmaceutical sales were *not* subject to the TBT, because the facts showed they were exempt “wholesaler-to-wholesaler” sales rather than taxable wholesale sales made to retailers. In doing so, the Court reasoned that for it to conclude that the specialty distributors were the “final retailers” in the chain would require it to “ignore the legislative intent as expressed in Tennessee Code Annotated § 67-4-702(a)(23)—that the medical professionals are the final retailers and the patients are the end-users.” Alternatively, the Court held that even if the company’s sales to its specialty distributors are within the scope of the TBT, the Court agreed with the trial court that prescription pharmaceuticals do *not* constitute taxable “tangible personal property” as the term is defined in Tennessee Code Annotated § 67-4-702(a)(23), which exempts products that are “inserted or affixed to the human body” by physicians or “dispensed . . . in the treatment of patients by physicians.” Please contact us with any questions.

URL: <https://tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202021-1408-COA.pdf>

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