Tennessee Business Tax Manual

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Chapter 1: Introduction

History

The Tennessee General Assembly passed the "Business Tax Act of 1971" (the "Act") as a replacement for a local property tax (commonly referred to as an "ad valorem tax") imposed on business inventories. However, the Tennessee State Constitution required that inventory be "taxed according to its value." Thus, Tennessee courts ruled that the Act could not be applied instead of the ad valorem tax, but instead, it had to be applied *in addition to* the ad valorem tax.

Because this was not the intent of the General Assembly, in 1971, the General Assembly held a Limited Constitutional Convention to amend Article II, Section 28 of the Tennessee State Constitution. This amendment stated the General Assembly "may levy a gross receipts tax on merchants and businesses instead of ad valorem taxes on the inventories of merchandise held by such merchants and businesses." The amendment became effective in 1973.

As described by the Tennessee Court of Appeals in 1979, the General Assembly desired this shift from a local ad valorem tax to a gross receipts tax, in part, because of the following tax disparity:

> It is our opinion that one of the purposes of the Constitutional Amendment of 1973 was to prevent repressive taxation whereby unsold inventories of merchants, who most likely had to borrow funds at substantial interest rates to obtain those inventories, would be taxed on an ad valorem basis while such inventories remained unsold in these merchants' hands...[1]

The Act eliminated this disparity by allowing merchants to pay the business tax (a tax on gross sales) instead of the ad valorem tax. At the time of enactment, the business tax comprised two parts – a county-level tax and a city-level tax. In its original form, the appropriate local governmental body had to adopt the tax. The local governmental body also administered the tax and remitted a portion of the tax collected to the Department of Revenue (the "Department").

Beginning January 1, 2010, in accordance with Public Chapter 530, 2009 Acts, the Department assumed responsibility for administering and collecting the business tax. All businesses subject to the tax were to file tax returns and remit the tax to the Department. However, the general structure of the tax remained the same under the 2009 amendment.

Effective January 1, 2014, per Public Chapter 313, 2013 Acts, the structure of the business tax changed. Significantly, Public Chapter 313 changed the county tax to a uniform state-level tax. While the Department still distributes the state-level tax to the counties where a taxpayer performs business, counties no longer adopt or impose the tax. Local municipalities, however, still must adopt a municipal-level tax.

In 2016, the Revenue Modernization Act (the "RMA") substantially changed the business tax statutes by codifying substantial nexus (see Chapter 2 for more information). After the RMA's passage, the Department updated sixteen different business tax rules and regulations, including three rules that were repealed in their entirety.

Tennessee Works Tax Reform Act of 2023

On May 11, 2023, the Tennessee Works Tax Reform Act of 2023 (the "Act"), Public Chapter 377 (2023), was signed into law. This legislation introduces substantive changes to Tennessee business tax law. The following section provides an overview of the business tax provisions contained in this legislation, including their effective dates. Additional information on these provisions can be found in the relevant sections of this Manual, as indicated below.

1. Filing and Licensing Thresholds

For tax years ending on or after December 31, 2023, the Act raises the filing threshold from $10,000 to $100,000 and changes the business licensing thresholds. The Act also changes how business tax is distributed to the local jurisdictions to hold said jurisdictions harmless from the decreased revenue resulting from the increased filing threshold. These changes are reflected throughout the Manual.

⚠ **Audit Tip: The amount reported on Schedule A, Line 1: Total Gross Sales (i.e., total sales) should be used to determine if the taxpayer meets the $100,000 threshold.**

2. Deemed Location for Contractors

For tax years ending on or after December 31, 2023, the Act raises the "deemed location" threshold for contractors from $50,000 to $100,000. This change is reflected on several pages in the Manual.

3. Classification 5A Tax Rate

The Act lowers the tax rate for Classification 5A taxpayers from 3/10 of 1% to 1/10 of 1% for tax years ending on or after December 31, 2023. This change is reflected on page 66 of the manual.

4. Manufacturing Exemption

The Act changes the application of the manufacturing exemption effective May 11, 2023. Under the Act, to qualify for the exemption, sales of manufactured products may be made from the manufacturing location or a storage or warehouse facility located within a ten-mile radius of the manufacturing location.

Additionally, the Act provides that both in-state and out-of-state manufacturers may qualify for the manufacturing exemption. This change is reflected on page 118.

Brief Business Tax Overview

The business tax statutes are found in Tenn. Code Ann. § 67-4-701 through Tenn. Code Ann. § 67-4-730 [2] and the business tax rules and regulations are found in TENN. COMP. R. & REGS. 1320-4-5-.01 through TENN. COMP. R. & REGS. 1320-4-5-.61.[3]

The business tax is a privilege tax on the privilege of doing business by making sales of tangible personal property and services within Tennessee and its local jurisdictions. While anyone doing business in the state is subject to the state-level business tax, unless specifically exempt, each municipality must adopt the tax to impose it within its city limits.

The business tax applies to taxpayers' gross sales (see Chapter 4 for more information on what constitutes “gross sales”). Taxpayers multiply the gross sales derived from taxable sales per location by the appropriate state and local tax rates to calculate the amount of tax owed per location. There are several different business tax rates. The rates are determined based on the taxpayer’s “dominant business activity” (see Chapter 5 for more information on Classifications) and whether the taxpayer is a wholesaler or a retailer (see Chapter 5 for more information on retailer/wholesalers).

In general, all sales of tangible personal property and services made in Tennessee will be subject to the business tax. However, several exceptions and exemptions are discussed throughout this manual.

Nature of the Business Tax

As stated above, the Tennessee business tax is imposed on the privilege of doing business in the state of Tennessee. Unlike sales tax, which principally applies to retail sales of tangible personal property and certain specifically listed services, business tax applies to all taxable, non-exempt sales of services and tangible personal property. The business tax applies to both retail and wholesale sales. Businesses may invoice the business tax as a separate item and pass it on to their customers, though this amount is included in the sales tax and business tax base.[4]

1. State-Level and Municipal-Level Taxes

Business tax comprises two separate but complementary taxes: a state-level tax and a municipal-level tax. Generally, every entity making sales of tangible personal property and/or services in Tennessee is subject to the state-level tax.[5] Entities may be subject to the municipal-level tax if they have a business location in a municipality that has enacted the tax. The sections below provide a high-level overview of when a business is subject to business tax (see Chapter 2 of this Manual for a more detailed discussion of when a business is subject to business tax by having "nexus" with the state and Chapter 7 for a more detailed discussion on how the tax revenue is distributed).

State-Level Tax

Every person doing business in Tennessee with a physical location or place of business in the state is subject to the state-level business tax unless specifically exempt. For business tax purposes, "person" is defined as an "individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit."[6] The term "person" does not include the United States of America, the State of Tennessee, or any political subdivision of the two; electric membership cooperatives or utility districts.[7]

A person without a physical location or place of business in Tennessee will be subject to the state-level business tax if that person has substantial nexus (see pg. 19) in the state and performs any of the following activities:

- Sells tangible personal property that is shipped or delivered to a location in this state;

- Sells a service that is delivered to a location in this state (see Chapter 4 for more information on services);
- Leases tangible personal property that is located in this state; or
- Makes sales as a natural gas marketer to customers located within this state through the presence in this state of the seller's property, pipeline capacity, or through the presence in this state of the seller's representatives acting on behalf of the seller to solicit orders, provide customer service, or conduct other activities in furtherance of such sales in this state.[8]

Municipal-Level Tax

By passing a resolution or ordinance, each municipality may elect to levy the municipal-level business tax on any business activity conducted within its borders.[9] Currently, 215 municipalities impose the business tax. Unlike the state-level business tax, a person must have a physical location, place of business, or other location[10] in a municipality to be subject to the municipal-level business tax. If a taxpayer's business is located in a municipality that has enacted business tax, the taxpayer must pay both the state-level and municipal-level business tax.

Please see Chapter 11 for special rules that apply to cable, telecom, and other specific industries. If there is any question that the business may not be inside city limits, the taxpayer should contact the municipality or the county assessor.

A list of cities imposing business tax is available here on the Department's website.

If a taxpayer's business location is not included on the list, the taxpayer may still be subject to municipal-level business tax. Many areas in Tennessee are governed by and/or part of adjoining incorporated cities. For example, Antioch, Tennessee, is not a city on the list. However, it is part of Metropolitan Nashville, and the Nashville city business tax is due.

Additionally, a county may have a multi-tiered, municipal-level business tax system. For example, Davidson County has a general services district and an urban services district. The city of Nashville is part of the Davidson County urban services district. Taxpayers can determine if their business is part of an urban services district if they are located in the urban services district for property tax purposes.

Application

1. Doing Business

Business tax is a privilege tax levied upon the privilege of doing business in Tennessee. Business is defined as "any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit, or advantage, either direct or indirect."[11]

Business does not include:

- Occasional and isolated sales (see Chapter 4) by someone not normally engaged in the business of selling the type of property being sold;[12] or
- Utilization of a property management company to manage vacation lodging for overnight property rentals by an individual property owner. However, business tax still applies to the rental of the property. The property management company would be responsible for filing. *See* the section titled Sales or Rentals of Real Property in Chapter 8 of this Manual for more information.

However, business does include any other activity of the individual property owner that is subject to the business tax.

2. Imposition

Business tax is imposed on a business's gross sales of tangible personal property and services. The vocations, occupations, businesses, or business activities listed in Tenn. Code Ann. §§ 67-4-708(1)-(5) are taxable privileges subject to Tennessee's state-level business tax. Tenn. Code Ann. §§ 67-4-708(1)-(4) details the taxable privileges subject to Tennessee's municipal-level business tax.

For information on vocations, occupations, businesses, or activities subject to business tax, please see Chapter 5 of this Manual. For more information on sales and services excluded from business tax and exempted sales, services, or entities, please see Chapter 8 of this Manual.

3. Business Tax Classifications

An entity's business tax classification determines the rate of tax that will apply. Businesses choose their classification for each location based on the "dominant business activity" of the

location. “Dominant business activity” is the activity that produces the most taxable income for the business location.[13]

There are five major business tax classifications and a separate category for antique malls, flea markets, transient vendors, and the like. Some classifications have subcategories that are discussed in more detail in Chapter 5. Business tax classifications are found in Tenn. Code Ann. § 67-4-708. Only one classification is allowed per business location.

The business tax classifications each contain several business activities that businesses must choose to categorize as their dominant business activity. As the classifications increase in number from Classification 1 to Classification 5, the types of business activities change in character from activities that meet basic needs, such as providing food for home preparation in Classification 1, to the relatively small subset of industrial loan and thrift companies in Classification 5.

Businesses engaged in the business activity of selling tangible personal property that is not listed in any other section of Tenn. Code Ann. § 67-4-708 file under Classification 2.[14] Businesses engaged in selling services not otherwise specified file under Classification 3.[15]

A detailed analysis of the business tax classifications is available in Chapter 5 of this Manual.

4. Retailer vs. Wholesaler

Businesses must also determine if they are primarily engaged in retail sales or wholesale sales. The determination of whether a business is a retailer or wholesaler is made on a location-by-location basis. This is important because the business tax rate differs for retailers and wholesalers at a given location. Generally, a business is a retailer if at least 50% of taxable gross sales are retail sales and a wholesaler if more than 50% are wholesale sales.[16] For more information on retailers and wholesalers, please see Chapter 5 of this Manual.

Chapter 2: Who is Subject to Tennessee Business Tax?

Historical Context

As covered in Chapter 1, the Tennessee business tax has undergone numerous statutory changes to adapt to modern business practices and e-commerce. One of the most important changes is the application of "nexus," which describes the connection that must be present before a taxing jurisdiction has the right to impose a tax on a business. An entity must have some contact or connection with a state before the state may constitutionally levy a tax. The question becomes, at what point is that connection sufficient to subject a person to taxation in the state?

1. Pre-2014 Tax Periods

For periods beginning on or before January 1, 2014, Tennessee law provided that making sales by engaging in any vocation, occupation, business, or business activity listed in the business tax statutes is a privilege on which each county or incorporated municipality, or both, may levy a privilege tax.[17]

Furthermore, TENN. COMP. R. & REGS. 1320-04-05-.28(1) (2000) ("Rule 28") stated that the business tax applies to each place, location, or outlet in the state from which business is carried on.

Therefore, the Tennessee business tax applied to a person who made sales or performed services at a place of business or other location in Tennessee.

During this period, the Department considered a taxpayer that did not have a physical place of business in Tennessee but that operated through a warehouse or other location in Tennessee, whether or not the warehouse or other location is owned by the taxpayer, to have a business location where its sales were sourced. This was based on TENN. COMP. R. & REGS. 1320-04-05-.14 ("Rule 14"). Rule 14 states that:

- "[S]ales of tangible personal property and services by a licensed wholesaler or retailer from a central warehouse or other distribution point other than his principal place of business shall be subject to the appropriate wholesale or retail tax, and persons making such sales shall be liable for the business tax for that location."

Accordingly, the Department imposed a business tax on sales of tangible personal property made from a warehouse or other location in Tennessee at which a taxpayer maintained the tangible personal property sold.

The Department also utilized the "sufficient local incidence" test. The United States Supreme Court coined the term "sufficient local incident" to illustrate when a business's in-state activity rose to the level to contribute to the establishment and maintenance of an in-state market. This level of activity was sufficient to satisfy U.S. Constitutional requirements.[18]

In *Westinghouse Electric Corp. v. King*, 678 S.W.2d 19 (Tenn. 1984), the Tennessee Supreme Court established the relevant question of whether a taxpayer is subject to the business tax as whether there is a "sufficient local incident" upon which to base the tax. It concluded that a taxpayer with marketing offices within the state and technical engineers performing work within the state had "sufficient local incident" to Tennessee such that its receipts from its sales to Tennessee customers were subject to business tax.

In *Boeing Equipment Holding Company v. Tennessee State Board of Equalization*, 1987 WL 15202 (Tenn. Ct. App., August 7, 1987), the Tennessee Court of Appeals found an out-of-state taxpayer subject to business tax despite having no offices or employees in Tennessee. To take advantage of an *ad valorem* tax exemption for inventories located in the state, the taxpayer argued it was subject to business tax based on the presence of tangible personal property leased to persons in Tennessee. The court found the taxpayer had a "sufficient local incident" based on the taxpayer owning property in Tennessee and receiving income from leases. It concluded that the taxpayer "engaged in the 'local business of renting [property] located in this state.'"[19]

The Westinghouse and *Boeing cases* both suggested that a taxpayer need not have an office or physical business location in Tennessee to be subject to business tax.

2. Periods Beginning on or after January 1, 2014

The Tennessee General Assembly clarified the application of the business tax to out-of-state businesses with the "Uniformity and Small Business Relief Act of 2013" (the "Act").

Effective for periods beginning on or after January 1, 2014, the law was amended to state the following:

- [T]he making of sales by engaging in any vocation, occupation, business, or business activity listed described, or referred to in § 67-4-708(1)-(5)" (the classifications section of the business tax statute) is subject to the state-level business tax.[20]

- [T]he making of sales by engaging in any vocation, occupation, business, or business activity listed, described, or referred to in § 67-4-708(1)-(4)" (the classifications section of the business tax statute) is subject to the municipal-level business tax.[21]

The Act also added that:

- [A]ny person engaged in any vocation, occupation, business, or business activity listed, described, or referred to in § 67-4-708(1)-(5) **without** establishing a physical location, outlet, or other place of business in the state" is subject to the state-level business tax but **exempt** from the municipal-level business tax.[22]

- For purposes of the state-level business tax, to be engaged in business in this state includes performing a service that is received by a customer in this state.[23]

- Thus, for periods beginning after January 1, 2014, a taxpayer need not have a location in Tennessee to be subject to the state-level business tax but must have a physical location to be subject to the municipal-level business tax.

Present Law

A business entity located in the state will be subject to the state-level business tax if its gross receipts sourced to all its locations within a county are $100,000 or more, and it is not specifically exempt from business tax.[24][25] An entity is also subject to the municipal-level business tax if it is in a municipality that has enacted the tax and its gross receipts sourced to its locations within the municipality are $100,000 or more.[26] (See Chapter 7 for more information on sourcing). Please note that provisions apply to telecommunications and cable providers, vending machine operators, and overnight lodging rentals. These provisions are discussed later in this Manual.

⚠ **Audit Tip: The amount reported on Schedule A, Line 1: Total Gross Sales (i.e., total sales) should be used to determine if the taxpayer meets the $100,000 threshold.**

A business entity that is located *outside* of the state will be subject to the state-level business tax if it has:

- *Substantial nexus* with the state;
- Is *engaged in this state* in one of the activities listed under Tenn. Code Ann.§ 67-4-717(a); and
- Its gross receipts within a county are $100,000 or more.

As stated in Chapter 1, the business tax is comprised of a state-level tax and a municipal-level tax. Out-of-state business entities are exempt from the municipal-level business tax.

> ⚠ **While the business tax is comprised of a municipal-level and state-level tax, the county in which a business is located is relevant for sourcing and nexus purposes.**

1. Substantial Nexus

A business must have substantial nexus with this state to be subject to the business tax. The Revenue Modernization Act ("the RMA") codified the substantial nexus standard in 2015. It became effective for tax years beginning on or after January 1, 2016. Substantial nexus is:

- Any direct or indirect connection of the taxpayer to this state such that the taxpayer can be required under the Constitution of the United States to remit the tax imposed under this part."[27] Such connections include, but are not limited to, the following:
  - The business is organized or commercially domiciled in Tennessee;
  - The business owns or uses its capital in Tennessee;
  - The business has systematic and continuous business activity in Tennessee that has produced gross receipts attributable to customers in Tennessee;
  - The business has a "bright-line presence" in Tennessee, which applies when any of the following metrics are met:

- Total Tennessee business receipts during the tax period exceed the lesser of $500,000 or 25% of the business's total receipts everywhere during the tax period;

- The business's average value of real and tangible personal property owned or rented and used in Tennessee during the tax period exceeds the lesser of $50,000 or 25% of the average value of all the business's total real and tangible personal property; or

- The total amount of compensation paid by the business in Tennessee during the tax period exceeds $50,000 or 25% of the business's total compensation paid by the business.[28]

⚠ **Businesses formed and operating in Tennessee will always have nexus in this state. The question of nexus applies to out-of-state businesses with a limited connection to the state.**

Foreign entities must have effectively connected income with a United States trade or business, as determined by the Internal Revenue Code ("IRC"), to have substantial nexus in this state. If a business treated as a foreign corporation under the IRC has no effectively connected income, it also does not have substantial nexus in Tennessee.

Effective for tax periods beginning January 1, 2016, the RMA's substantial nexus standard expands the number of businesses that might have nexus in Tennessee. Businesses that would have been subject to the business tax before the RMA (and the substantial nexus definition) will continue to be subject to the tax even if they do not meet any bright-line tests. However, under the substantial nexus definition, some out-of-state businesses that previously were not subject to business tax may now be subject to the tax. In other words, the nexus provisions in existence pre-RMA are still in effect. RMA expanded upon those provisions.

⚠ **It is not required that a taxpayer have bright-line presence to have substantial nexus with Tennessee. A taxpayer may have substantial nexus with Tennessee with lesser amounts of property, payroll, and receipts in Tennessee if it has any connection with the state that requires it to remit tax under the United States Constitution, such as performing services in the State.**

Example

Company A is a Georgia corporation that sells laptops. Company A does not have a location in Tennessee. During the period ending December 31, 2023, Company A had gross receipts in the state of $600,000: $300,000 in Davidson County, $150,000 in Williamson County, $75,000 in Sumner County, and $75,000 in Knox County. Company A meets the bright-line presence test because its gross receipts in Tennessee exceed $500,000. Thus, Company A has substantial nexus in Tennessee and is required to file business tax returns with the state.

Company A's total **taxable receipts** for the period ending December 31, 2023, are $450,000 (only gross receipts from counties where it earns $100,000 or more – Davidson County and Williamson County). Sales made in Sumner County and Knox County are exempt pursuant to Tenn. Code Ann. § 67-4-712(d).

Please note that the state does not generally require or issue business licenses to remote sellers (classification 1-3) with no physical locations in Tennessee. Company A is not required to obtain a minimal activity license or a standard license in Sumner County or Knox County.

In-state classification 1-3 taxpayers with $100,000 or more in sales in each jurisdiction are required to register and remit business tax to the Department of Revenue. The bright line nexus test does not apply.

Sales Facilitated Through a Marketplace[29]

The sales and use tax marketplace facilitator legislation established in Public Chapter 759 (2020) does not affect the nexus requirements for business tax.

Those taxpayers considered marketplace sellers for sales and use tax purposes should include receipts from sales facilitated through a marketplace when determining whether they have substantial nexus for business tax purposes. A marketplace facilitator is considered the retailer of sales facilitated through its marketplace solely for sales and use tax purposes.

Marketplace facilitators should include only the commissions or third-party fees and sales of their own goods or services in their gross receipts for business tax purposes.

2. Activities Engaged in this State

In addition to having substantial nexus, a business must also be engaged in one of the activities in Tenn. Code Ann. § 67-4-717(a) before being subject to the business tax. This section states that a business "engaged in this state" in any "vocation, occupation, business, or business activity set forth as taxable under § 67-4-708(1)-(5), the classifications section of the business tax statute, with or without establishing a physical location, outlet, or other place of business in the state, shall be subject to the tax." The phrase "engaged in this state" shall include, but not be limited to, any of the following:

- The sale of tangible personal property that is shipped or delivered to a location in this state;
- The sale of a service that is delivered to a location in this state; or
- The leasing of tangible personal property that is located in this state. [30]

3. Nexus in Tennessee – Other Tennessee Taxes

As mentioned above, nexus describes a connection that must be present before a taxing jurisdiction has the right to impose a tax on an entity's activity. Determining whether a taxpayer has nexus in Tennessee for business tax is a different process than determining whether a taxpayer has nexus for Tennessee sales and use tax and franchise and excise tax. However, all businesses in this state have nexus for sales and use tax, franchise and excise tax, and business tax.

Sales and Use Tax

Out-of-state dealers engaged in the following activities are considered to have nexus in this state:

- Use of employees, agents, or independent contractors to solicit sales in Tennessee;
- Use of third parties in Tennessee to conduct substantial business activities in Tennessee;
- Maintaining inventory in Tennessee and using in-state independent contractors to fulfill Tennessee retail sales of that inventory;

- In-state promotional activity by company personnel, including participation in trade shows;
- Physical Tennessee business presence of a subsidiary that is acting as an agent of the out-of-state dealer or that is conducting activities in Tennessee on behalf of such a dealer (e.g., a retail store that takes returns of purchases made online from parent);
- Use of company-owned trucks or use of contract-carriers acting as an agent for the seller;
- Maintaining a store, office, warehouse, showroom, or other place of business in Tennessee;
- Leasing or renting tangible personal property in Tennessee;
- Repairing, installing, or assembling tangible personal property in Tennessee or the use of an agent or independent contractor to perform those services in Tennessee;
- Providing telecommunication services to subscribers located in Tennessee;
- Providing any taxable service in Tennessee; and
- Using an in-state party to route customers to the out-of-state dealer ("click-through nexus").

Pursuant to the Wayfair decision, out-of-state dealers with no physical presence in Tennessee who made sales that exceeded $100,000 to customers in this state during the previous tax year also have substantial nexus in Tennessee for sales and use tax purposes.

For more information on sales and use tax nexus requirements, see the **Department's Sales and Use Tax Manual**.

Franchise and Excise Tax

A taxpayer without a physical presence in the state may have substantial nexus for franchise and excise tax purposes if it meets the bright-line presence definition of substantial nexus. A taxpayer meets the bright-line presence standard for substantial nexus for franchise and excise tax if a taxpayer has:

- At least $50,000 of property or payroll in the state;
- At least $500,000 of receipts in the state; or
- At least 25% of its total property, payroll, or receipts in Tennessee.

A taxpayer that does not meet the bright-line presence standards may also have substantial nexus in the state if its contact with the state is sufficient. For example:

- A business engaged in systematic and continuous business activity that has produced receipts attributable to Tennessee customers will have substantial nexus with the state.

The **Department's Franchise and Excise Tax Manual** provides more information on nexus for franchise and excise tax.

4. Establishing a Location, Outlet, or Other Place of Business

All persons subject to the state-level business tax and who have a physical location, outlet, or other place of business within a municipality in this state shall also be subject to the municipal-level business tax. Persons who do not have a physical location, outlet, or other place of business within a municipality in this state shall not be subject to the municipal-level business tax.[31]

Persons engaged in the business of selling tangible personal property or services from a central warehouse or distribution point other than their principal place of business are liable for business tax at that location.[32] For example:

- A furniture store is principally located in Nashville, Tennessee. The Nashville location is advertised on its website, and the taxpayer lists this address on its registration documents. This is where the showroom is located. The business also has a warehouse located in Murfreesboro, Tennessee. As new furniture models are introduced, the taxpayer occasionally holds “warehouse sales,” whereby the warehouse is opened to the public to display and sell the overstock merchandise. The taxpayer, therefore, should register and pay business tax for its Murfreesboro location as well.

In the case of an audit, auditors will consider several factors when determining whether a taxpayer has established a location, outlet, or other place of business in Tennessee, including:

- The amount of time a person has engaged in business in Tennessee;
- The regularity in which a person engages in business in Tennessee;
- Whether the business holds itself out as having a location in Tennessee;
- Taxable receipts generated within a jurisdiction;
- Whether or not employees of a business are located in this state;
- Whether or not the business has Tennessee payroll receipts in its franchise and excise tax apportionment factor;
- Whether the business intends to operate at a location in Tennessee on a more than temporary basis; and
- Whether or not a taxpayer leases or owns property in Tennessee.

This is not an exhaustive list of factors. Each business is unique; thus, an auditor may use other facts or circumstances to determine whether a seller of tangible personal property or a service provider has established a location. For example:

- A California information technology ("IT") consultancy firm ("CA IT Company") enters a 2-year contract with a Memphis, Tennessee business. The contract is valued at $5,000,000, and the CA IT Company will have a team of 20 consultants working full-time from the Memphis business headquarters. The consultants will have designated parking spaces, designated office spaces, security access to the headquarters building, and access to the internet network. The CA IT Company has information on its website that it works in numerous states and cities, including Memphis, Tennessee. Under these circumstances, the California IT Company has likely established a business location in Memphis, Tennessee, and should register and pay both state-level and municipal-level Tennessee business tax.

Remote Employee Home Office

Generally, an employee's home office does not constitute a business location for the purpose of determining whether a business is subject to municipal-level business tax in a given jurisdiction. However, compensation paid to such employees is included when determining whether an out-of-state business has substantial nexus in Tennessee.

As discussed in section 1 of this chapter, out-of-state businesses must have substantial nexus in Tennessee to be subject to the state-level business tax. One way to have substantial nexus is if the business has a "bright-line presence" in Tennessee, which applies when any of the following metrics are met:

- Total Tennessee business receipts during the tax period exceed the lesser of $500,000 or 25% of the business's total receipts everywhere during the tax period;

- The business's average value of real and tangible personal property owned or rented and used in Tennessee during the tax period exceeds the lesser of $50,000 or 25% of the average value of all the business's total real and tangible personal property; or

- The total amount of compensation paid by the business in Tennessee during the tax period exceeds $50,000 or 25% of the business's total compensation paid by the business.[33]

Therefore, if an out-of-state business pays an in-state employee more than $50,000 in compensation, the out-of-state business will have substantial nexus in Tennessee and is subject to the state-level business tax. However, if the business's only physical presence in the state is an employee's home office, such office does not constitute a physical location for business tax purposes, which means the business is not subject to municipal-level business tax in the jurisdiction in which the employee's home office is located. In this circumstance, the business should register with the Department as an out-of-state business and pay state-level business tax on its Tennessee gross receipts.

Chapter 3: Registration and Licensing

Registration

Every person subject to state-level and/or municipal-level business tax must register with the Department of Revenue (the "Department") before engaging in business in the state.[34]

The Department registers businesses under *one consolidated business tax account*. For businesses with multiple locations, the Department will register each business location, both in-state and out-of-state (if applicable), by assigning separate profile identifications under the consolidated account to reflect business tax activity at each location.

Businesses with physical locations should use their physical address when registering. If a business is strictly online or home-based, it should use the physical address where the business records are maintained instead of a post office box or post office box alternative.

Providing information for each location is necessary to account for variations in dominant business activity and to ensure the proper distribution of funds to cities and counties. For example:

- A business set up as an LLC may have multiple subsidiaries with different dominant business activities. Taxpayers may review this account information by logging into their Tennessee Taxpayer Access Point ("TNTAP") account.[35]

Taxpayers may have taxable receipts from both in-state and out-of-state locations. Please see Chapter 7 for more information on sourcing sales receipts.

1. In-State Businesses

Businesses with a Tennessee location may register for business tax directly with the Department or through the county clerk in the county where the business is located. Businesses in a city that has enacted the municipal-level business tax may register directly with the Department or through the appropriate city official.[36]

When a taxpayer registers directly with the Department, county and municipal clerks receive registration data regarding the business. Some clerk offices require additional information that can be provided to them electronically or in person via an application. As these requirements are set locally by each county and city clerk, it is recommended that businesses contact the local clerk's offices to verify if any additional information is needed or to remit required license fees.

Industrial loan and thrift companies located in Tennessee must register directly with the Department.[37] They are not required to obtain a business license or register with a city or county.[38]

Businesses may register with the Department through TNTAP.

Multiple In-State Locations

Businesses with multiple locations must register and remit tax for each location.[39] As stated above, the taxpayer will have one consolidated account with a specific identifier for each individual location. If the business is not located in Tennessee, it must register directly with the Department. Taxpayers who extend operations into other counties or cities without establishing an office, headquarters, or other place of business generally do not have to register in such counties.[40] Please see Chapter 2 for more information on activities or actions the Department considers when determining if a business has established a location.

2. Out-of-State Businesses

Businesses that do not have a Tennessee location but are still subject to the business tax must register directly with the Department through TNTAP.

Business License

In addition to registering, generally, every in-state business subject to state-level or municipal-level business tax must also obtain a business license before engaging in business in this state.[41] Businesses meeting specific gross sales thresholds may forego obtaining a standard business license in favor of a minimal activity license.

Businesses must display each respective business license at each of their locations.[42] The licenses vary based on gross sales thresholds per jurisdiction, which are as follows:

- Standard business license: $100,000 or more in gross sales;
- Minimal activity license: More than $3,000 but less than $100,000 in gross sales; and
- Businesses with $3,000 or less in gross sales do not have to obtain a business license. Either a minimal activity license or a standard license may be obtained.

Businesses with a standard business license must file a business tax return with the Department and remit tax for each location. The minimum tax is $22 for each location – $44 if located in a city, as both city and state taxes are due.

> ⚠ **The Department does not issue business licenses. These licenses are issued by the appropriate county clerk or city official. Businesses must contact their local county clerks and city officials if there are issues in obtaining a business license.**

3. Standard Business License

Taxpayers with $100,000 or more in Tennessee gross sales must apply for a standard business license. Each standard business license is $15. Each license is valid for 1 year and expires 30 days after the due date of the taxpayer's return. When the taxpayer files the return and pays the business tax due, the county clerk and/or appropriate city official will automatically renew the license at no additional cost.

How to Obtain a Standard Business License

In-State Businesses

Businesses obtain a standard business license from the county clerk of the county in which they are located. Businesses in a municipality that has enacted the municipal-level business tax must also obtain a standard business license from the appropriate city official.

Multiple In-State Locations

A business with multiple locations must get a standard business license by registering with the county and/or city for each location. Businesses with multiple locations within the minimum activity license range must also obtain such a license for each location.[43] Each minimum activity license is subject to the $15 fee.

Out-of-State Businesses

Although out-of-state businesses must register with the Department and pay the state-level business tax, business licenses are generally not required nor issued by the state. If a business license is not required, the out-of-state business is not required to pay a $15 fee.

Out-of-state contractors with more than $100,000 in gross sales annually in a city or county must obtain a business license in that city or county. Please see the section below titled Contractors.

4. Minimal Activity License

The General Assembly created the minimal activity license to ease the tax compliance burden on small businesses. A business must apply for a minimal activity license from the appropriate county and/or municipality for each location at which its gross sales are more than $3,000 but less than $100,000.[44] Each time a business applies for a minimal activity license, it must pay a required $15 fee to each county and, if applicable, city.

⚠ **Businesses with gross sales of $3,000 or less may obtain a minimal activity license but are not required to do so.**

5. Transferring Licenses

Generally, businesses may not transfer their business license to a different taxpayer or to a different location owned by the same taxpayer. However, a taxpayer may transfer their business license to a different location within the same municipality once per tax year without obtaining a new business license. The taxpayer must notify the appropriate county clerk and city official of this change at least five days before the last day of business at the prior location.[45]

6. Contractors

Special registration and licensing rules apply to contractors. For business tax purposes, a contractor has a "deemed location" in a county and/or municipality based not only on domicile or physical location but also where the contractor has taxable sales of more than $100,000 for work performed in the jurisdiction.[46]

The contractor will need to determine the jurisdiction of each job to file its county and/or city returns correctly. When the charges billed exceed $100,000 for work performed in a deemed location during the tax period, the contractor must register for business tax and pay the one-time standard business license fee of $15 for that location to the county and municipality if within a city's limits. Taxable sales of more than $100,000 received during the tax period will be reported on the return for the deemed location.

Taxable sales of $100,000 or less for compensation from contracts in a county and/or municipality other than the contractor's place of domicile or location must be reported on the return for the county and/or municipality of domicile or location.

Therefore, all taxable receipts for work done in any county will be subject to the state tax. However, where those sales are sourced and which county is apportioned the tax still depends on whether work is done in a deemed location.

For example:

- A Tennessee contractor who normally works in Wilson County is hired to repave I-24 between downtown Nashville and Clarksville and completes the work in one calendar year. The contractor should register for business tax when receiving gross income before beginning work. In this case, the contractor should register for business tax, obtain business licenses, and pay license fees in Metropolitan Nashville, Davidson County, Cheatham County, the City of Pleasant View, Robertson County, the City of Coopertown, Montgomery County, and the City of Clarksville. The revenue should be allocated to these jurisdictions in a manner that reflects the amount of work completed in each jurisdiction, e.g., revenue per number of paved miles.

Closing a Business

Any person liable for any tax, penalty, or interest levied under the business tax who:

- Sells the person's business or stock of goods;
- Changes the legal structure of the business (i.e., from sole proprietor to corporation, corporation to limited liability company, etc.); or
- Closes the business

must file a final return and payment within **15 days** of selling or closing the business.[47]

For example:

- If a contractor finishes a job in a city with no prospect of another job in the same city and would like to close the business tax account in that jurisdiction, the contractor should notify the Department and file a final return.

⚠ **A taxpayer who ceases business activity but does not properly terminate will still be liable for the applicable minimal business tax.**

Businesses holding a minimal activity license should contact the county clerk and city recorder's office to advise them the business is no longer operational.

Taxpayers closing their accounts should also contact the Department. Most account closures can be handled by calling the Department at (800) 342-1003 (Nashville-area and out-of-state: (615) 253-0600).

Successor Liability

The person's successor, successors, or assignees, if any, must withhold enough of the purchase money to cover the taxes, interest, and penalties due and unpaid until the former owner can produce a receipt from the Commissioner of Revenue showing that the taxes have been paid, or a certificate stating that no taxes, interest, or penalties are due.[48]

If the purchaser of a business or stock of goods fails to withhold the purchase money as indicated, the purchaser will be personally liable for the payment of the taxes, interest, and penalties accruing and unpaid on account of the operation of the business by any former owner or operator.[49]

The amount of the purchaser's liability for payment of such taxes, interest, and penalties cannot exceed the amount of purchase money paid by the purchaser to the seller in good faith and for full and adequate consideration in money or money's worth.[50]

"Purchase money" includes cash paid, purchase money notes given by the purchaser to the seller, the cancellation of the seller's indebtedness to the purchaser, the fair market value of the property, or other consideration given by the purchaser to the seller. It does not include the indebtedness of the seller, either taken or assumed by the purchaser when a tax lien has not been filed.[51]

The purchaser shall have no liability for taxes, penalties, and interest if the Department of Revenue releases the former owner, owners, or assigns from the original liability for such taxes, interest, or penalty through payment of the amount due and settlement with the Department.[52]

For example:

- Assume that a purchaser receives, in good faith and without knowledge of any false statement therein, an affidavit from the seller at the time of the purchase. The affidavit states under oath the amount of such taxes, interest, and penalty due and unpaid by the seller to the Department through the date of purchase or a statement from the seller that there are no due and unpaid taxes, interest, and penalties. The purchaser, in good faith, withholds and sets aside from the purchase money to be paid to the seller in an amount sufficient to pay the amount of taxes, penalty, and interest shown to be unpaid by the seller's affidavit.

- If that purchaser tenders a copy of the seller's affidavit by registered or certified mail to the Department's Collection Services Division, the purchaser will be released from any liability over that which is shown on the affidavit for taxes, penalty, and interest unpaid by the previous owner, owners, or assigns.

- That will not be the case, however, if the Commissioner notifies the purchaser of the correct tax liability at the correct return address provided by the purchaser within 15 days of receipt of the affidavit.

Chapter 4: Determining Gross Sales

Gross Sales

The business tax is based on a business's gross taxable sales (also referred to as "gross receipts") per location. A business's gross sales are comprised of all the business location's sales without any deductions unless specifically provided by Tennessee law.[53] Gross sales are multiplied by the appropriate classification rate to calculate the tax owed per location.

Generally, all sales of tangible personal property and services made in Tennessee will be subject to business tax. However, there are several specified exemptions and deductions. For more information on exemptions, see Chapter 8 of this Manual. For information on deductions, please see Chapter 9 of this Manual.

Taxable Sales

Sales include the furnishing of any things or services taxable under the Business Tax Act.[54] To qualify as a sale for business tax purposes, there must be a transfer of title and/or possession in exchange for consideration.[55]

Qualifying transfers may include:

- Exchanges;
- Barters;
- Leases or rentals;
- Conditional transfers;
- Fabrication, where raw materials are furnished by the purchaser;
- Furnishing, repairing, or servicing tangible personal property consumed on the premises of the person furnishing, repairing, or servicing the tangible personal property; and
- Transfers of possession of tangible personal property where the seller retains title as security for payment of the price.

Taxable sales **do not** include:

- Sales specifically exempt or excluded under the Business Tax Act (see Chapter 8 for more information on specific exemptions and exclusions).
- Casual and isolated sales by persons who are not engaged in the business of selling tangible personal property or furnishing any services subject to business tax.[56]
- Sales of tangible personal property or services not normally sold by a wholesaler to a retailer if the property has been used by the wholesaler before sale.[57]
- Transfers of tangible personal property from one wholesaler to another wholesaler or from one retailer to another retailer where the amount paid by the transferee to the transferor does not exceed the transferor's cost, including freight in and storage costs and transportation costs incurred in the transfer from the transferor to the transferee.[58]

1. Casual and Isolated Sales

As mentioned, casual and isolated sales are not subject to business tax. For business tax purposes, a sale is considered casual and isolated when the sale is made by persons who are not engaged in the business of selling tangible personal property or furnishing services subject to business tax.

A sale is not considered a casual and isolated sale if the sale is of tangible personal property or taxable services and:

- Purchased for resale by persons who hold themselves out as engaged in business, although sales may be few and infrequent;
- Sold for use or consumption by a manufacturer, processor, wholesaler, or jobber engaged in the business of distributing personal property or furnishing services subject to business tax;
- Sold by persons regularly engaging in sales of tangible personal property at antique malls, antique shows, flea markets, craft shows, gun shows, and auto shows; or
- Sold regularly by gun shows, antique shows, craft shows, auto shows, flea markets, or antique malls themselves.[59]

In *Hermitage Memorial Gardens Mausoleum and Memorial Chapel, Inc. v. Dunn*, 541 S.W.2d 147 (1976), the Tennessee Supreme Court analyzed the business tax liability of a business that operated memorial gardens and cemeteries and derived more than half of its revenue from the sale of burial lots, which is not subject to business tax. The Court held that business tax statute does not limit the incidence of tax to those entities whose dominant business activity is one of the activities enumerated in Tenn. Code Ann. § 67-4-708.[60] Instead, all entities who make sales by engaging in any of the activities enumerated in Tenn. Code Ann. § 67-4-708 are subject to tax regardless of whether their primary business activities are taxable.[61] It concluded that the mausoleum's other sales of tangible personal property and services were taxable and that the mausoleum owed business tax on those sales.[62]

2. Sales of Services

Generally, each person making sales of services is subject to business tax as a Classification 3 taxpayer (see Chapter 5 for an in-depth discussion of Classifications).[63] Services include every activity, function, or work engaged in by a person for profit or monetary gain. [64] Please note, although sales of services are generally subject to business tax, 16 categories of services are exempt from business tax, which are discussed further in Chapters 5 and 8 of this Manual.

Sales of Services and Tangible Property

Services do not include sales of tangible personal property.[65] A person exempt from paying the tax on sales from services rendered is still liable for tax on the sales of tangible personal property.[66] Persons engaged in the business of selling tangible personal property are liable for business tax even if they refer to their business transactions as services.[67] For example:

- In *Auto Glass Co. of Memphis v. Gerregano*, the Tennessee Court of Appeals determined a company in the business of selling and installing automotive glass and making repairs to damaged automotive glass should file under Classification 1(B) as a person engaged in making sales of glass, for business tax purposes.[68] Although the majority of the company's sales transactions included glass (tangible personal property) and installation of glass (a service), the Appellate Court determined Classification 1(B) was the correct classification, rather than Classification 3, because the sale of glass, not the installation, was the major source of the company's taxable gross sales.[69]

Services for Affiliated Entities

Services provided to an affiliated business entity **at cost with no markup** are not included in the definition of taxable services.[70] As such, services provided by a taxpayer to an affiliated business entity are excluded from gross sales when calculating business tax.

An affiliated entity is:

- An entity in which the taxpayer has more than a 50% ownership interest;
- An entity that has more than a 50% ownership interest in the taxpayer; or
- An entity in which another entity with more than 50% of an ownership interest in the taxpayer has more than a 50% ownership interest.[71]

For example:

- Corporation A is the taxpayer. LLC B owns 60% of Corporation A. LLC B also owns over 50% of LLC C and D. Corporation A has no ownership interest in any of the LLCs.
    - Here, LLC B is an affiliated entity because LLC B owns more than 50% of Corporation A. LLCs C and D are also affiliated entities because LLC B (a person that has more than 50% ownership interest in the other LLC C and D) has more than a 50% ownership in Corporation A.

Sale of a Group of Services

If exempt services are sold simultaneously as taxable services and/or tangible personal property, the otherwise exempt services will only be exempt if they can be purchased separately and are separately itemized on the invoice.

If a group of services is sold together for one lump sum, and the services are not individually sold, the services will be categorized under the Standard Industrial Classification Index of 1972 ("SIC"), including all supplements and amendments that most appropriately describe the group of services as a whole. The most recent amendment to the 1972 SIC was done in 1987. Thus, the 1987 SIC should be used. For example:

- A company offers a suite of services that includes bookkeeping, payroll, legal, management billing, human resources, and public relations for a lump sum. A

customer cannot choose which individual services it will receive. The cost includes all of the services together. Although legal services are exempt, the company's services will most closely fall under SIC Index number 8741, Management Services.

If the SIC does not fall under one of the exempt service categories, then the lump sum for the group of services will be taxable. This is true even if some of the services offered in the group of services would be exempt if sold separately. Therefore, in the example above, because management services are not included in one of the exempt service categories, the lump sum for the suite of services is subject to the business tax.

If services are sold together and cannot be purchased separately, they should be categorized together and only exempted if the entire group falls under one of the exempt service categories.

Sale of Services to State or Local Governments

Services provided to Tennessee state and local governments should be classified as retail sales for Tennessee business tax purposes. Wholesale and retail sales of services are subject to Tennessee business tax under Classification 3 of Tenn. Code Ann. § 67-4-708 but taxed at different rates. As such, it is important to determine whether a taxpayer's sales of services are wholesale or retail sales under Tennessee's business tax statutes. For example:

- A taxpayer that provides temporary staffing services to various businesses, such as manufacturers and government agencies, is classified as a Classification 3 service provider. This taxpayer's sales of staffing services to manufacturers would be classified as wholesale sales, and its sales of staffing services sold to government agencies would be classified as retail sales.

3. Sales of Intangible Personal Property

Taxpayers who buy and sell intangible personal property or real property as part of their normal business activities are not liable for business tax on these sales.[72]

"Tangible personal property" is defined as "personal property that may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses."[73] The definition specifically excludes "stocks, bonds, notes, insurance or other obligations or securities, nor does it include any materials, substances or other items of any nature inserted or affixed to the human body by duly licensed physicians or dentists or otherwise dispensed by them in the treatment of patients."[74]

Examples of non-taxable intangibles include:

- Royalties
- Franchise fees
- Broadcast rights
- Licensing of copyrights
- Transfer of virtual currency
- Software
- Renewable Identification Numbers ("RINs")[75]

Sales of Software, Cloud Hosting, and Cloud-Based Services

Software

Receipts from the sale of software that constitutes intangible personal property are not subject to the business tax.[76] Generally, the treatment of sales or licenses of computer software does not depend on the method of delivery or access. Receipts from software delivered on physical media, downloaded and installed on a customer's equipment, or accessed remotely over the internet are receipts from the sale of intangible personal property and are not subject to business tax.

However, receipts from other taxable software-related services are subject to business tax, unless a specific exemption applies. Examples include computer software support, training, configuration, and consulting services. Receipts from cloud hosting and cloud-based services are also subject to business tax as taxable services. "Cloud hosting" refers to an arrangement in which a taxpayer provides servers and hardware infrastructure to customers on which customers run software.[77] Cloud hosting is a taxable service, not a lease of equipment. Cloud-based services are subject to business tax and sourced to Tennessee when they are delivered to Tennessee customers, such as being accessed electronically from locations in Tennessee. The customer's access location, not the provider's performance location, controls the sourcing determination.

4. Medical Devices

Items "inserted or affixed to the human body by duly licensed physicians" are excluded from the definition of tangible personal property and are not subject to business tax.[78]

"Inserted" and "affixed" are not expressly defined in the Tennessee Code. Therefore, to determine whether a medical device is "inserted" or "affixed" to the human body, the Tennessee Supreme Court has stated that the natural and ordinary meaning of the language in the statute should be used to determine the Legislature's intent.[79] The court has also stated that "[w]hen the statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute's application."[80]

The American Heritage Dictionary provides four definitions for the verb "insert":

(1) to put or set into, between, or among;
(2) to put or introduce into the body of something;
(3) to place into an orbit, trajectory, or stream; and
(4) to put into action.[81]

The American Heritage Dictionary also provides four definitions for the verb "affix":

(1) to secure to something; attach;
(2) to impute; attribute;
(3) to place at the end; append; and
(4) linguistics; to add as an affix.[82]

Based on these definitions, the plain meaning of the phrase "inserted or affixed to the human body" includes products that are put, set into, or introduced into the human body and products that are attached to the human body.

Examples of medical products that may be put, set into, or introduced into the human body and products that are attached to the human body include:

- Catheters inserted into patients
- Implantable heart valves and shunts
- Blood pressure monitoring kits that are applied or inserted into patient vasculature

- Tubing attached to patients for heart bypass procedures

Examples of medical products that are most likely not affixed or inserted into the human body that meet the definition of tangible personal property include:

- Monitoring equipment that connects to tubing that is inserted or affixed to patients
- Cables and cable connectors for monitors
- Stands that hold monitors and cables to monitors that connect to tubing inserted or affixed to patients

5. Installation Sales

Charges for installing tangible personal property in connection with a sale of tangible personal property are subject to business tax if the property continues to be personal after installation.[83]

Property Ordinarily Removed

Personal property is tangible personal property if sold and attached to real property but ordinarily removed by the owner or tenant.[84]

- Examples of personal property include:
    - Air conditioning window units;
    - Curtain and drapery rods; and
    - Gasoline pumps and tanks.

The person selling personal property is responsible for the tax regardless of whether the property is installed by the person selling the property or if another person acting on his behalf installs the personal property.[85]

- Tax should be computed based on the dominant business activity of the person selling the personal property.

- Taxpayers charging for installing personal property apart from selling tangible personal property shall be taxed under Classification 4 of the business tax. For example:

    - A taxpayer purchases flooring and has it installed from a home improvement store. The store subcontracts with individuals to install the flooring. When the store pays business tax, it may deduct the amounts paid to the subcontractors. The subcontractors must be licensed, and the store must provide the Department with the subcontractors' information on Schedule C.

Property Not Ordinarily Removed

Charges made for installing tangible personal property which becomes a part of real property and which is not ordinarily removed by the owner or tenant, such as plumbing, electrical wiring, etc., are deemed to be made by a contractor, and the person installing such property should file and pay the business tax as a contractor.

For more information on business tax for contractors, please see Chapter 11 of this Manual.

6. Sales to Employees

Sales to employees are included in gross sales for business tax purposes. If no specific charge was made to the employee, then either the sales price or the cost of the property or service furnished is included in gross sales.[86]

7. Installment and Credit Sales

Taxpayers making conditional, charge, or installment sales must report the total selling price of such sales and pay the appropriate business tax due in the reporting period in which the sale contracts are entered.[87] See Chapter 9, which is related to bad debts and repossessions.

8. Lay-Away Sales

Layaway, lay-by, or will-call sales are taxable for business tax purposes. Layaway sales should be included in the business tax base for the taxable period in which the delivery of the property is made.[88] If the property is returned to inventory because of nonpayment for the merchandise and any previously made payments are forfeited because the sale was not

completed, the amounts forfeited should be included in the business tax base at that time.[89] For example:

- Store A is a calendar year taxpayer (tax year ends 12/31). Store A sells a layaway to a customer in October 2018 for $500 worth of merchandise. Store A receives $100 payments in October, November, and December 2018 from the customer. The customer made no more payments, and the merchandise was returned to inventory in March due to nonpayment in March 2019.

    - The $300 in payments Store A received should be reported for business tax during the 2019 tax year.

9. Sales of Electricity by Electric Vehicle Charging Stations

Businesses that are engaged in selling electricity via electric vehicle charging stations should include these sales in their gross receipts for business tax purposes. These businesses are not subject to the utilities tax on their gross receipts.

Sales Price

For business tax purposes, "sales price" is defined as the total amount paid for tangible personal property or services rendered without any deduction of the cost of property sold, cost of materials used, labor or services costs, or other expenses.[90] Freight, delivery, or other transportation charges are subject to business tax if the title to the property being transported passes to the vendee at the destination point.[91]

1. Exclusions

The following items are not included in the sales price *if* they are separated on the taxpayer's invoice or bill of sale or if they are billed separately to customers:

- Finance charges;
- Carrying charges;
- Time price differential;

- Interest from credit extended on sales of tangible personal property under installment sales contracts, conditional sale contracts, or other contracts providing deferred payments of the purchase price; and[92]

- Other charges where additional consideration is given by the purchaser for the privilege of making deferred payments.[93]

Sales price does not include:

- Advertising costs paid by a seller to an auctioneer for the purpose of advertising an auction. These advertising costs are not included in the sales price when no portion of the payment is retained as profit by the auctioneer and when the payment has been placed in escrow or a trust account by the auctioneers on behalf of the seller.[94]

- Any amount reasonably allocated as a cost of providing a service when services are sold to an affiliated business entity.[95]

- Additional consideration received by a motor dealer from a lender for the sale or assignment to the lender of a chattel lease or conditional sales contract.[96]

- Freight or other transportation charges when the title to the property being transported passes to the customer at the point of origin.[97]

2. Expenses Passed Through to the Customer

Expenses passed through to the customer are not included in the sales price in *limited circumstances*. In *Aabakus, Inc. v. Huddleston*, the Tennessee Court of Appeals examined the definition of sales price when addressing the business tax liability of a human resource support service. The Court concluded that the fees the agency earned providing personnel management services to small businesses were subject to business tax. The Court also held that expenses that passed through the agency were not subject to business tax because they were funds that the agency was required to pay over to third parties on its client's behalf, and the agency was simply acting as a paying agent.

Example

Company A is a limited liability company with its principal place of business in Tennessee. Company A contracts with businesses ("customers") to provide human resource vendor management services. Company A then contracts with third-party staffing agencies

("suppliers") to meet its customers' workforce needs. Company A compiles all the suppliers' invoices for each customer and sends each customer a consolidated invoice. Customers pay the invoiced amount to Company A, and Company A pays suppliers on each customer's behalf. Company A receives an administrative fee typically equal to four percent of its customer's consolidated invoice.

- Company A is subject to Tennessee business tax on the administrative fees that it retains as compensation.

- Company A is not subject to Tennessee business tax on the amounts it receives from customers that are transferred to suppliers and not ultimately retained by Company A. The invoice payments Company A receives, less Company A's administrative fees, are funds that Company A is required to pay over to third parties, the suppliers, on its customers' behalf for wages, payroll taxes, insurances, and other employment-related charges that are simply passed through Company A.

Reporting Methods

Wholesalers and retailers generally report business tax due on sales for the period the sale is made.[98] However, contractors report business tax on a cash basis. TENN. COMP. R. & REGS. 1320-04-05-.09(2) states that progress payment charges billed under a contract and received by a contractor and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the equipment is operated by the lessor are subject to business tax.

Chapter 5: Classifications

Classifications Generally

Businesses subject to Tennessee business tax must be classified to determine the correct amount of business tax due. Business tax rates vary based on the type of business and, in many cases, whether the business sells wholesale or retail.

Each taxpayer is classified by its "dominant business activity" pursuant to Tenn. Code Ann. § 67-4-708 on a per-location basis. "[D]ominant business activity" is defined as "the business activity that is the major and principal source of taxable gross sales."[99] In other words, the business classification is based on the *activity* that generates the largest portion of a business's taxable sales.

A taxpayer's classification determines its tax rate.[100] There are five different taxable activity classifications and a separate category for antique malls, flea markets, and the like. A taxpayer must choose only one classification per location. Taxpayers should use the Standard Industrial Classification Index of 1987 ("SIC") to determine their business tax classification.

1. Classification 1

Classification 1 activities are subdivided into five distinct groups:[101]

- Classification 1(A) includes sales of food and beer for home preparation and consumption (except for delicatessens and candy at retail) and food brokerage services.

- Classification 1(B) includes sales of lumber, building materials, tools, builders' hardware, paint and glass, electrical supplies, roofing materials, farm equipment, plumbing, heating, and air conditioning equipment, and other basic lines of hardware, and sales by service station operators (except for sales under Classification 1(D)).

- Classification 1(C) includes sales of hay, grain, feed, fertilizer, seeds, bulbs, nursery stock, and other farm, lawn, and garden supplies and tools. Products produced by farmers sold directly from the farm are not included in Classification 1(C).

- Classification 1(D) includes sales of gasoline, diesel fuel, and motor oils at retail.
- Classification 1(E) includes sales of gasoline and diesel fuel at wholesale.

2. Classification 2

Classification 2 activities include the sale of:[102]

- Motor vehicles
- Clothing (excluding custom, made-to-order items)
- Home furnishings (excluding antiques)
- Prescription drugs
- Prepared food (e.g., cooked food meant to be consumed on or off the premises)
- Coal, wood, ice, fuel oil, and liquefied petroleum gas
- Cut flowers
- Advertising specialties
- Vapor Products[103]

⚠ **This classification also includes a "catch-all" for the sale of any tangible personal property that is not specifically classified. Therefore, taxpayers selling products not listed in any other classification will be Classification 2.**

3. Classification 3

Classification 3 includes the sales of more specialized items of tangible personal property. These include, but are not limited to:

- Delicatessens and candy
- Made-to-order clothing, i.e., custom-made clothing

- Antique furniture, furnishings, and art objects
- Artwork
- Books, magazines, stationery (including office supplies and writing supplies), accounting and legal forms, office forms and supplies, pens and pencils, school supplies, and writing supplies
- Sporting goods and equipment, bicycles, bicycle parts, and accessories
- Jewelry
- Tobacco products
- Toys, games, and hobby kits
- Cameras, film, and other photographic supplies
- Fireworks
- Hearing aids
- Luggage
- Artist paints and supplies
- Non-prescription eye-ware
- Pet food
- Above-ground swimming pools (in-ground swimming pools are considered improvements to real property)
- Pawn shops

For a complete list of items, please see Tenn. Code Ann. § 67-4-708(3).

⚠ **Classification 3 also includes the sale of services.**

Sale of Services

Unlike sales and use tax law, the sales of all services are subject to business tax unless specifically exempt. Classification 3 provides 16 different exempt services, which utilize the SIC descriptions to define the service from business tax.[104] Although discussed in more detail later in Chapter 8 of this Manual, below is a brief list of exempt services.

Exempt Services

Receipts derived from the sale of the following services are exempt from business tax:

- Accounting, auditing, and bookkeeping services;
- Architecture;
- Banks, building and loan associations, mortgage bankers, securities, brokers, investment companies, and other similar organizations;
- Camps and trailer parks where charges are made only for rental of real property. Persons who rent trailers to transients or sell tangible personal property or make separate charges for specific services furnished are not exempt;
- Services performed by charitable and religious organizations;
- Domestic services performed in private households;
- Educational services offered by elementary and secondary schools, colleges, universities, professional schools and junior colleges, library and information centers, correspondence schools, vocational schools, and specialized non-degree granting schools;
- Services furnished by educational nonprofit research agencies;
- Engineering;
- Services furnished by insurance companies and holding companies;
- Land surveying;

- Legal services;
- Lessors of agricultural, forestry, mining, oil, public utility, and airport properties;
- Medical, dental, and allied health services to human beings, except services of persons engaged in making dentures and artificial teeth;
- Nonprofit membership organization services that are for the promotion of the interests of the members;
- Operators of residential and non-residential buildings other than hotels, motels, and rooming houses;
- Public utilities as defined in Tenn. Code Ann. § 65-4-101; and
- Veterinary services.

No business license is needed, and no tax is due unless the business also sells tangible personal property and/or other taxable services. Even if a taxpayer qualifies for one of these exemptions, they still must register and pay business tax on any sales that do not qualify for the exemption (e.g., a chiropractor that sells food supplements and ergonomic devices, etc.).[105]

⚠ **Audit Note: Taxpayers should be aware that in the case of a business tax audit, if the business sells a group of services for a lump sum, the taxpayer is not allowed to segregate out nonexempt services. If the business sells the services together and the services cannot be purchased separately, they should be categorized together and only exempted if the entire group falls under one of the exempt service categories.**

Please see Chapter 8 of this Manual for more information on exempt services.

4. Classification 4

Classification 4 activities include all persons contracting, performing a contract, or engaging in the following:

- Constructing or improving real property (e.g., constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing, or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage, or dredging system);

- Installing tangible personal property;

- Providing exterminating services;

- Selling livestock, poultry, or other farm products not exempted under Tenn. Code Ann. § 67-4-712 (discussed in more detail in Chapter 8 of this Manual); and

- Receiving commissions from the sale of farm products belonging to others.[106]

Classification 4 does not include landscaping and lawn care services – these services fall under Classification 3. *See* the subsection titled Landscapers in the section titled Miscellaneous Industry Specific Classifications in this chapter.

5. Classification 5

Classification 5 has two subparts:

- Classification 5(A) includes industrial loan and thrift companies certified and licensed under Title 45, chapter 5. For a current listing of these companies, see the website for the Department of Financial Institutions; and

- Classification 5(B) includes natural gas marketers.[107]

6. Antique Malls, Flea Markets, Gun Shows, Etc.

Antique malls, flea markets, craft shows, antiques, gun, and auto shows are not included under one of the five specified classifications. Instead, any county and/or municipality may impose a fee on such businesses by resolution or ordinance. If the fee is imposed ($1 per booth per day), it must be paid directly to and retained by the county or municipality.[108] This fee is in lieu of any business tax that would have otherwise been due.

The per-day fee does not apply to a business that sells antiques at least five days a week from a permanent location. Such a business will be subject to business tax as a Classification 3 vendor. This also applies to antique malls with separate booths but one common cash

register. Under these circumstances, only the mall operator is subject to the business tax on all receipts from that location.

7. Transient Vendors

Transient vendors are also excluded from the business tax but are subject to a $50 fee paid directly to the county and/or municipality for each 14-day period they are licensed to sell their goods.[109] For example:

- A seller of tangible personal property based in Kentucky comes to Nashville, Tennessee, for a weeklong trade show, where it will display and sell its merchandise. The Kentucky seller must obtain a transient vendor license directly from the local city recorder or county clerk and pay a $50 fee.

Please see Chapter 11 for a more in-depth analysis of transient vendors.

8. Miscellaneous Industry Specific Classifications

Home Healthcare Providers

Businesses engaged in home health services that provide non-medical personal care services to seniors and other people with physical, intellectual, and developmental disabilities are classified as Classification 3.

Non-medical personal care services include but are not limited to homemaker services, monitoring for safety (including providing reminders to take prescription medication), companionship, grocery shopping, meal preparation, hospital sitter services, 24-hour care, light housekeeping, household laundry, bath and grooming assistance, and transportation.

Landscapers

Businesses engaged in landscaping activities such as planting, mulching, mowing, and the like are subject to business tax under Classification 3. However, businesses engaged in installing irrigation systems and hardscapes (such as patios, retaining walls, ponds, or other similar structures) are subject to business tax under Classification 4. Businesses engaged in both activities are classified based on their dominant business activity.

Storage Unit Operators

The rental of storage units is exempt under Tenn. Code Ann. § 67-4-708(3)(C)(xii) as a service provided by an operator of a residential or nonresidential building, and as such, is not subject to the business tax. TENN. COMP. R. & REGS. 1320-04-05-.41 further clarifies that the rental of real property is not taxable.

However, if warehousing and storage services are provided, those services are subject to tax under Classification 3 (see the explanation below). Also, if the storage unit business sells tangible personal property, such as boxes, it should be registered and pay business tax on those sales, even if it is otherwise only leasing space.

Warehousemen

Warehousemen are subject to business tax as Classification 3 service providers. SIC Major Group 42 includes warehousing. Industry number 4226 is "special warehousing and storage, not elsewhere classified" and includes "warehousing and storage of special products, not elsewhere classified, such as household goods..." TENN. COMP. R. & REGS. 1320-04-05-.38 further clarifies that “warehousing and storage of any tangible personal property belonging to others for a charge or fee are rendering services and are taxable under the Business Tax Act.” Such services may involve activities such as handling, securing, and storing goods.

Note that warehousing does not include the lease of designated space within a warehouse with no other services provided.

House Painters

House Painters making improvements to real property are subject to business tax as Classification 4 service providers.

Electrical Inspectors

Electrical inspectors are subject to business tax as Classification 3 service providers. While Classification 4 references testing in the SIC descriptions, SIC code 1731 (electrical work) does not include electrical inspectors.

Home Warranty Companies

Services related to insurance provided by insurance carriers or insurance agents are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(xi). Home warranty companies offer extended warranties, or warranty insurance, on items of tangible personal property

within a home. The SIC indicates that a seller of home warranties is considered an insurance carrier. Major Group 63 is described as "carriers of insurance of all types" and includes Industry Number 6351 Surety Insurance. One of the examples listed under 6351 is Warranty Insurance, Home. Therefore, sales of home warranties are services exempt from business tax.

Photographers

Photographers are subject to business tax as Classification 3 service providers. Although customers may purchase photographs from the photographer upon completion of the service or may receive photographs on a disc from the photographer, the photographer is primarily offering a service. The SIC reiterates this, categorizing photographers under Major Group 72 (Personal Services).

Real Estate Management Companies

If a taxpayer sells or manages real estate it owns, the taxpayer is not subject to business tax on sales or rental income.[110] However, taxpayers selling and managing real estate for others are subject to business tax under Classification 3 as providers of taxable services. Management fees are also subject to tax. Managers of short-term rentals and overnight lodgings are liable for tax on the total amount collected for the rental.

For information on property management companies, see the Sales or Rentals of Real Property section in Chapter 8 of this Manual.

Farrier Suppliers

The sales of farrier supplies (e.g., horseshoes) are subject to business tax as Classification 2, under the catch-all provision as taxpayers making sales of "[t]angible personal property not specifically listed or described elsewhere[.]."[111]

Farriers

Farriers are subject to business tax as Classification 3 service providers if the services the farriers provide are their dominant taxable business activity.

Dentists

Services performed by dentists are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i). However, a dentist's sales of tangible personal property, such as electric toothbrushes, dental water jet oral irrigators (i.e., Waterpik), teeth whitening products,

mouthwash, etc., are subject to business tax as Classification 2, under the catch-all provision. Note that the definition of tangible personal property excludes “any materials, substances or other items of any nature inserted or affixed to the human body by duly licensed physicians or dentists or otherwise dispensed by them in the treatment of patients.”[112]

Radon Testing

Radon testing is subject to business tax under Classification 3, service providers. While the Classification 4 description does include the words “testing” and “building,” radon testing is for the air quality in the building, not the building itself.

Music Lessons, Tutoring, Day Cares/Pre-Ks

Individuals providing music lessons, private tutoring, and daycares/pre-Ks are subject to business tax as Classification 3 service providers.

There is an exemption for "[e]ducational services offered by elementary and secondary schools, colleges, universities, professional schools and junior colleges, library and information centers, correspondence schools, vocational schools, and specialized non-degree granting schools."[113]

Daycares and pre-Ks are not exempt because they are not elementary or secondary schools or one of the others listed. Likewise, individuals who provide instruction of some sort, e.g., individual private tutors and individual piano teachers, do not meet the definition of a school within the statute and are not an establishment within the SIC code. However, an actual music school would qualify for the exemption.

Veterinarians

Services furnished by persons engaged in the practice of veterinary medicine, dentistry, or surgery are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(xiv). If sold by veterinarians, sales of services involving the boarding and lodging of animals are also exempt from business tax. However, veterinarians are liable for business tax on their sales of grooming services and animal food and medicine, collars, leashes, and any other tangible personal property they sell.

Veterinarians should determine their dominant taxable sales for classification purposes. If most of a veterinarian’s taxable sales are pet food or grooming sales, they should pay business tax on all taxable sales as Classification 3 service providers. If most veterinarians' taxable sales are of animal medications, they should pay business tax on all taxable sales as Classification 2 sellers.

Licensed Clinical Social Workers

Psychotherapy services provided by licensed clinical social workers are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i) as medical or allied health services. Sales of these services are classified under SIC Code 8049 as sales of exempt services provided by health practitioners not elsewhere classified. Licensed clinical social workers remain liable for business tax on taxable sales.

Massage Therapists

Massage services provided by licensed massage therapists are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i) as medical or allied health services. SIC code 8049 would treat these sales as sales of exempt services provided by health practitioners not elsewhere classified. However, like other medical service providers, massage therapists may become liable for business tax if they make other types of sales that do not fall within this exemption.

Acupuncturists

Acupuncturists are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i) as medical or allied health services. Such sales would be treated by SIC code 8049 as sales of exempt services provided by health practitioners not elsewhere classified. However, like other medical service providers, acupuncturists may become liable for business tax if they make other types of sales that do not fall within this exemption.

Botox Injections

Botox injections are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i) as medical or allied health services. In general, Botox injections must be administered by a licensed medical professional. According to the state medical board, there is one exception to the rule. If the injections are administered in a doctor's office under the supervision of a licensed doctor, they can be administered by anyone that the doctor has trained. However, because the second scenario must occur in a doctor's office under a doctor's supervision, either scenario would qualify as medical or allied health.[114]

Electrolysis and Laser Spot/Scar Removal

Electrolysis and laser spot/scar removal are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i) as medical or allied health services. Electrolysis must be administered by an electrologist licensed by the Tennessee Electrolysis Health Department board, and laser spot/scar removal must be administered by a licensed medical professional. Such sales

are treated under SIC code 8049 as sales of exempt services provided by health practitioners not elsewhere classified.

Microdermabrasion

There are different levels of microdermabrasion services. Estheticians can administer cosmetic microdermabrasion, which is not an exempt medical or allied health service. Instead, such services are subject to business tax as Classification 3 service providers.

However, licensed medical professionals administer medical-grade microdermabrasion, which is administered in a doctor's office and supervised by a doctor. When microdermabrasion is provided by a licensed medical professional or in a doctor's office, it is exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i) as medical or allied health services. See also SIC code 8049.

Chiropractors

Chiropractors are exempt from business tax under Tenn. Code Ann. § 67-4-708(3)(C)(i) as medical or allied health services. They are also specifically listed under SIC code 8041. Like other medical service providers, chiropractors may become liable for business tax if they make other types of sales that do not fall within this exemption.

Advertising Agencies

The SIC defines advertising agencies and advertising consulting services as "establishments primarily engaged in preparing advertising (writing copy, artwork, graphics, or other creative work) and placing such advertising in periodicals, newspapers, radio and television, or other advertising media for clients on a contract or fee basis." Services provided by advertising agencies are generally subject to business tax as Classification 3 sales of services.

Advertising Agencies Purchasing Media on Behalf of Clients

The amounts that an advertising agency receives for rendering services to plan, budget for, facilitate the purchase of, and verify media placement for the agency's client are subject to business tax. Additionally, any commissions received by the advertising agency from the media outlet for facilitating sales of media placement to the agency's client are also subject to business tax.

However, any amounts that an advertising agency receives from a client that the agency uses to purchase media placement from a media outlet, including newspapers, magazines, billboards, television, radio, and online sites (e.g., social media ads, web banners, pop-up

ads, links to webpages, etc.), are not subject to business tax. The media placement is not a cost of property sold, cost of materials used, labor or service costs, or other expenses of the advertising agency in providing its advertising materials or services.

Therefore, the charge for the cost of the media placement is not part of the sales price of the advertising agency's sale of its advertising services or tangible personal property. Additionally, the advertising agency does not hold itself out as a seller or provider of media placement. Instead, the media outlet provides media placement and retains media control.

Advertising agencies commonly negotiate to purchase media placement on behalf of their clients. Agencies may charge clients for services and the cost of the media placement in different ways.

For example:

- An agency may charge its client only the same amount for which the media placement was purchased. For example, an agency purchases media placement from a media outlet for $1,000, and the agency charges its client $1,000 for the media placement.
- An agency may charge its client a lump sum service fee that includes charges for its services to facilitate the purchase of the media placement and the cost of the media placement. For example, an agency purchases media placement from a media outlet for $1,000, and the agency charges its client a lump sum of $1,200 for the media placement. The agency uses $1,000 of that amount to pay the media outlet, and it retains $200 as a service fee.
- An agency may separately itemize its service fee and the media placement cost in the amount it charges its client. Using the same scenario as the previous example, the invoice the agency gives its client has separate itemized amounts for media placement for $1,000 and a service fee of $200.
- A media outlet may charge the advertising agency a lump sum fee that includes the cost of the media placement and a commission paid to the advertising agency. The advertising agency then charges its client the same lump sum. Once paid over to the media outlet, the media outlet will then pay the commission to the advertising agency. For example, an agency charges its client a lump sum of $1,200 for the media placement. The agency pays the entire $1,200 to the media outlet, which writes a commission check to the agency for $200.

Regardless of how an advertising agency charges its client for the media placement, the portion of the amount charged that the agency uses to pay the media outlet for the media placement is not subject to business tax. In other words, the net amount that the media outlet keeps is not taxable. In each of the examples above, the $1000 that the agency receives from its client for the cost of the media placement is not subject to business tax.[115]

⚠ **To determine the amounts subject to business tax, an auditor may review the agreements between advertising agencies, clients, and media outlets.**

Retailer vs. Wholesaler

Classifications 1-3 each have separate rates for wholesalers and retailers. If a business qualifies as a wholesaler, then it will be subject to the business tax at the wholesale rate for its classification on all its taxable gross sales. Likewise, if a business qualifies as a retailer, then it will be subject to the business tax at the retailer rate for its classification on all its taxable gross sales.[116]

1. Wholesale Sales

A wholesale sale includes the following:[117]

- A sale to a retailer for resale;
- A sale of industrial materials for future processing that becomes component parts of a product that is for resale; For example:
    - A Tennessee aluminum smelter sells ingots (pieces of metal) to a Tennessee auto parts maker.
- Sales of *tangible personal property* to the State, other government agencies, or other institutions exempt from paying sales and use tax under Tenn. Code Ann. § 67-6-322 (sales of *services* to governmental or exempt agencies or institutions are sales at retail); or
- A sale by a franchised motor vehicle dealer to a manufacturer or distributor of motor vehicles or an obligor under an extended service contract of parts or repair services, or both, necessary for repairs performed by the dealer under the

manufacturer's, distributor's, or obligor's warranty, and includes a manufacturer or distributor of the motor vehicle.

A **wholesaler** is any person whose taxable gross sales are more than 50% wholesale sales.[118] An example of a wholesale sale is as follows:

- Paper manufacturers sell their paper to a business-to-business office products company. The business-to-business office products company sells the paper directly to businesses that use the paper in daily operations. Because the business-to-business office product company is reselling to end-users, the office products company is a retailer. As such, the sale to a retailer for resale is a wholesale sale.

As stated below in the Retail Sales section, taxpayers must carefully document and retain such documentation when determining if they qualify as wholesalers for business tax purposes. Such documentation includes, most importantly, the business tax wholesaler/retailer certificate (discussed below). Taxpayers should also retain other certificates that may be relevant to the transaction/purchaser, including sale for resale exemption certificates, industrial machinery exemption certificates, and nonprofit exemption certificates.[119]

Packaging

There is a special regulation that applies to packaging sales. All sales of returnable packaging, regardless of the purchaser, are retail sales. Additionally, all sales of nonreturnable packaging to retailers are retail sales. However, all sales of packaging materials to anyone other than a retailer (i.e., manufacturers, wholesalers, distributors, resellers) are wholesale sales.[120]

2. Retail Sales

A retail sale is any sale that is not a wholesale sale. In retail sales, the purchaser is generally the end-user of the product or service. For example:

- ABC Company sells sporting goods equipment directly to end-users/consumers. These sales are considered retail sales.

Retail sales include sales to contractors because contractors are considered the product's end-user. A **retailer** is any person whose taxable gross sales are at least 50% retail sales.[121] Taxable gross sales refer to Tennessee sales, therefore, sales made in other states are

disregarded in determining whether a business is a retailer. For example:

- Acme Corporation ("Acme") is located in Kentucky, where it has 10 retail stores. Acme also has a distribution center located in Tennessee, where it sells exclusively to Bravo Corporation ("Bravo"), a related business. Bravo has 5 retail stores in Tennessee. Acme generates 70% of its total gross receipts from retail sales in Kentucky and 30% of its gross receipts from wholesale sales in Tennessee. Although more than 50% of its total sales are retail sales, such retail sales are not *taxable* gross sales for Tennessee business tax purposes and thus do not apply when determining whether Acme is a retailer or wholesaler. In this case, Acme is a Tennessee wholesaler and is subject to business tax on its sales to Bravo.

Taxpayers should carefully note who their customers are and how they use the products or services sold. For example, materials and supplies sold to contractors and most industrial materials and supplies sold to manufacturers are retail sales.

Packaging

TENN. COMP. R. & REGS. 1320-04-05-.10 clearly states that sales of returnable packaging to everyone ("to either retailers or to anyone else") are retail sales. However, the rule states that only those sales to retailers are retail sales. Therefore, sales of nonreturnable packaging to anyone other than retailers are wholesale sales.

Sale of Services to Federal, State, Local Governments, or Non-Profit Entities

Services provided to the federal government, Tennessee state, and local governments, or non-profit entities should be classified as retail sales for Tennessee business tax purposes.

3. Sales for Resale

The term "resale" is defined as "a subsequent, bona fide sale of the property, services, or taxable item by the purchaser," and a "sale for resale" is defined as "the sale of the property, services, or taxable item intended for subsequent resale by the purchaser."[122] Sales for resale may be taxable depending on the underlying facts of the transaction.

The price charged by the vendor for tangible personal property or services or the quality of such property or services is immaterial in determining whether a sale is one for resale.[123] The determinative factor is the customer's treatment of his purchase.[124]

Sales for resale include:

- Sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as the out-of-state vendor's agent to deliver or ship tangible personal property or taxable services to the out-of-state vendor's customer, who is a user or customer;[125]
- Sales where a supplier of materials, supplies, equipment, and services makes tangible personal property or services available for further processing as a component part of a product to a legitimate dealer engaged in and reselling or leasing such property or services to a user or consumer;[126] and
- Sales to a manufacturer or processor for future processing, manufacture, or conversion into articles of tangible personal property for resale where such industrial materials become a component part of the finished product.[127]

When Sales for Resale are Considered Wholesale Sales

Sales of tangible personal property and services to a retailer who may make further distributions from a central warehouse or other distribution point to others for resale are considered wholesale sales.

For example:

- Company A contracts with independent sales representatives ("ISRs") that run individual businesses where they purchase cosmetic products from Company A at a discounted wholesale price and resell them to their customers at retail prices. Company A's sales to the ISRs are considered wholesale sales. In this example, the ISRs' customers are the products' end-users.

4. Wholesaler to Wholesaler Sales

Sales made by one wholesaler to another wholesaler (or sales by one retailer to another retailer at cost) are excluded from the "sale" definition and, thus, are not subject to the business tax.[128] This exemption applies even if the sale includes a markup.

Taxpayers, therefore, must determine if their customers are wholesalers or retailers.

Examples

- Paper manufacturer sells its paper to a business-to-business stationery company, a paper distributor. The business-to-business stationery company sells the paper directly to businesses, retail stores, or printers that offer the stationery to end-users.

Because the business-to-business stationery company is reselling to a reseller, they are making a wholesaler-to-wholesaler sale, and the transaction between the paper manufacturer and the business-to-business stationery company, a paper distributor, is not subject to business tax.

- Wholesaler A sells products (100%) to Wholesaler B, who sells these products to retailers (70%) and consumers (30%). Because Wholesaler B's sales are 70% wholesale sales to retailers and 30% sales to consumers, Wholesaler B would be a wholesaler for business tax purposes, and 100% of the sales from Wholesaler A to Wholesaler B would be exempt.

Eisai, Inc. v. Gerregano[129]

Eisai, Inc. is a New Jersey-based pharmaceutical company that develops and sells drugs for neurological and oncology treatment ("Products"). Eisai stored the Products in a warehouse in Tennessee and sold these Products to Tennessee distributors, who then sold the Products to clinics, hospital pharmacies, and similar customers. Medical professionals then used the Products to treat patients. The Department determined that the company's sales to the distributors were taxable wholesale sales because the distributors were considered retailers because the medical professionals the distributors sold to were deemed the end-users of the drugs under Business Tax Rule 20.[130]

Eisai disputed the Department's position. The Tennessee Court of Appeals determined the sales were exempt wholesaler-to-wholesaler sales stating that the Department's argument that the medical professionals were the end-users of the drugs under Rule 20 conflicted with the intent of Tenn. Code Ann. § 67-4-702(23)[131], which was to make the patient, not the medical provider, the end-user of the drug.

5. Retailer to Retailer Sales

Retailer-to-retailer sales are generally subject to business tax. However, transfers of tangible personal property from a retailer to another retailer for consideration that does not exceed the cost of the tangible personal property, including freight and storage costs and transportation costs incurred, are not defined as sales and are not subject to business tax.[132] These types of sales are often accommodation sales. For example:

- A customer at a car dealership in Nashville wants a black car with a black interior. The Nashville dealership only has a white car with a black interior. However, the dealership finds the car at a Memphis dealership. The Memphis dealership sells the

car to the Nashville dealership at cost plus transportation. Both dealerships are retailers, but because the sale was made at cost plus transportation, it is not considered a sale for business tax purposes.

Tax Rates

Each person subject to the business tax as a Classification 1-4 or 5B taxpayer must pay at least $22 per year per location. If the taxpayer does not have a location within the state, it must pay a minimum tax of $22 for all its activity in the state. **This minimum tax applies to every person registered in the state, even if no business activity occurs.**

> ⚠ **Contractors are required to have a registration in the jurisdiction of their domicile. If all a contractor's sales in other jurisdictions in this state exceed the $100,000 threshold amount and the contractor had no sales in its domicile jurisdiction, then the contractor must pay the minimum $22 tax in its domicile.**

Each taxpayer must pay business tax according to its classification at the rates below:[133]

- Classification 1A, 1B, 1C retailer – 1/10 of 1% (0.001);
- Classification 1A wholesaler – 1/40 of 1% (0.00025);
- Classification 1B and 1C wholesaler – 3/80 of 1% (0.000375);
- Classification 1D retailer – 1/20 of 1% (0.0005);
- Classification 1E wholesaler – 1/32 of 1% (0.0003125);
- Classification 2 retailer – 3/20 of 1% (0.0015);
- Classification 2 wholesaler – 3/80 of 1% (0.000375);
- Classification 3 retailer – 3/16 of 1% (0.001875);
- Classification 3 wholesaler – 3/80 of 1% (0.000375);
- Classification 4 – 1/10 of 1 % (of the compensation under the contract or of the

gross commissions, margins, or fees) (0.001);

- Classification 5A – 1/10 of 1%[134] of gross income of the business (interest income, earned discounts, earned lease rentals, commission fees, past due charges, contract earnings, collection charges, loan service fees, late fee income) (0.001); and

- Classification 5B – 1/50 of 1% (0.0002).

If the taxpayer is an operator of coin-operated machines, it is required to pay a minimum tax of $22 only for its principal place of business. Each Class 5A taxpayer must pay a minimum tax of $450 per year but will not be required to pay more than $1,500 annually.[135]

Municipal-Level Tax Rate

Any municipality that elects to levy the municipal-level business tax after January 1, 2014, or that elects to change the tax rate must do so at the same rates listed above. However, if a municipality elected to levy the municipality business tax before this date, it may continue to levy it at its existing rate.[136] *See* the Department's website for a list of municipalities imposing municipal-level business tax.

Wholesaler/Retailer Certificate

To aid in administration, effective January 1, 2023, the Department will make a certificate available to each business tax taxpayer that indicates whether the taxpayer reported the tax due at a specific location at the wholesaler or retailer rate.[137] The certificates will be made available annually to taxpayers through the Department's TNTAP portal upon filing their business tax returns. The certificate is effective from the original due date of the customer's underlying return until the due date of the customer's next return.

When selling a good or service, the vendor can request this certificate from the purchaser, and the vendor can rely upon this certificate to determine its business tax liability. A vendor that receives a certificate from a customer shall not owe additional tax nor be refunded tax based on a retroactive change in the customer's status as a wholesaler or retailer for the period covered by the certificate. Please note, however, that this certificate does not provide a safe harbor against transactions the vendor knows should be classified as either wholesale or retail sales. For example:

- A company sells office supplies, including pens and printer paper, to other businesses (i.e., business-to-business sales). It sells pens and printer paper to the corporate headquarters of a globally known sporting goods wholesaler. The sporting goods wholesaler provides the company with its wholesaler certificate. It is obvious that a sporting goods wholesaler will not resale the pens and printer paper. Instead, the corporate headquarters will use those items in its business. The sale, therefore, is a retail sale. The office supply company cannot rely on the wholesale certificate and classify the sale as a wholesale sale when it is clear to the office supply company that it is a retail sale.

Chapter 6: Filing Requirements

Filing the Return

Every person making sales in Tennessee by engaging in any vocation, occupation, business, or business activity listed in Tenn. Code Ann. § 67-4-708(1)-(5) is subject to business tax and must file an annual return, Form BUS 428. Tennessee has a consolidated filing requirement for business tax purposes. This means that every location of the taxpayer should be included on the same return.

1. Payments

Taxpayers subject to business tax must file their returns and tax payments together. Failure to remit the required tax payment with the return will cause the tax to become delinquent.

Minimum Business Tax

All entities registered to do business in Tennessee under a standard business license must pay at least the minimum business tax.

- The minimum tax for taxpayers in Classifications 1 through 4 is $22.
- The minimum tax for taxpayers in Classification 5A is $450, and the maximum tax for taxpayers in Classification 5A is $1,500.
- For coin-operated vending machines, only the principal place of business is subject to the minimum tax.

2. Electronic Filing

Business tax returns must be filed electronically through the Tennessee Taxpayer Access Point ("TNTAP"), and the appropriate taxes must be paid to the Department of Revenue (the "Department").[138]

To file a business tax return online, follow the steps below:

- Login to TNTAP.

- Select the “Business Tax” link. *(Note: If you do not see your account, you can gain access to your account by contacting the Department's Taxpayer Services Division*
- Click “File Return.”
- On this first screen, upload a CSV file. If you do not use CSV files, click “Next.”
- Upload any supporting documents. Click “Next.”
- You will see all locations available to file along with their respective city and county.
- Select the location ID and enter gross sales at that location.
- Note: If you are a Class 4 or Class 3 cable provider, your location may only be for the city tax, and you will enter your sales on line 7, not line 1.
- Enter in your sales for all locations and then click “Next.”
- Finally, make a payment and submit your return.

3. State-Level and Municipal-Level Filings

Taxpayers Subject to State-Level Business Tax

Taxpayers subject to the state business tax must file a return with the Department.

Taxpayers Subject to Both State and Municipal-Level Business Tax

Taxpayers with a location within the limits of a Tennessee municipality that has enacted the municipal-level business tax must file two returns for that location – one return for the municipal-level business tax and one return for the state-level business tax.

Taxpayers with locations outside of the limits of any Tennessee city or inside the limits of a city that has not enacted business tax must file one business tax return for that location for the state-level tax.

Taxpayers with No Physical Location in Tennessee

Taxpayers who enter Tennessee to conduct business activities but who do not have a physical location, outlet, or other place of business in Tennessee and who generate gross sales of $100,000 or more in any Tennessee county must file a business tax return for the gross receipts received in counties where gross receipts were $100,000 or more.[139]

4. Consolidated Returns

Taxpayers with multiple business locations file a consolidated business tax return for all locations. The consolidated return is filed under one account, regardless of the number of locations the business has in Tennessee.

When a taxpayer files a consolidated tax return, each location's return information must be complete before the return is submitted. Taxpayers can choose to have one person submit the return on behalf of all locations, or taxpayers can identify different employees or tax professionals to report the information for each individual location in TNTAP.

After all locations are reported, someone must submit the return on behalf of all locations. Otherwise, the return will not be submitted to the Department. Any person authorized to enter location filing details may also complete the final submission step for the business. All locations must be complete without errors to submit the return. Ideally, the last person to complete their location details should also complete the final submission. If the final submission is after the due date, the entire balance (sum of all locations) is subject to penalty and interest.

Filing Example for a Business with Multiple Locations

Use the following steps to have multiple individuals file for different locations for a single business in TNTAP. These steps can be repeated regardless of the number of locations a business has.

The business in this example has three locations. Each location is filed by a different person: TNTAP User 1 is responsible for filing location 1, TNTAP User 2 is responsible for filing location 2, and TNTAP User 3 is responsible for filing location 3.

- TNTAP User 1:
    - Log into TNTAP.
    - Go to the account and select the period you wish to file.

- Select the Location ID hyperlink for location 1.
- Enter the location 1 filing details.
- Select the “Save Draft” button.
- Select the “Finish Later” button, and then enter your password as confirmation. At this point, the location details for location 1 are saved.

- TNTAP User 2:
    - Log into TNTAP.
    - Since TNTAP User 1 has entered details to this return, you need to edit the existing saved return. To do so, select the “Submissions” Tab, and then in the “Draft Submissions” section, select the return hyperlink.
    - In the “I Want To” section, select the “Edit Submission” hyperlink.
    - Select the Location ID hyperlink for location 2.
    - Enter the location 2 filing details.
    - Select the “Save Draft” button.
    - Select the “Finish Later” button, and then enter your password as confirmation. At this point, the location details for location 2 are saved.

- TNTAP User 3:
    - Log into TNTAP.
    - Since TNTAP User 2 has entered details to this return, you need to edit the existing saved return. To do so, select the “Submissions” Tab, and then in the “Draft Submissions” section, select the return hyperlink.
    - In the “I Want To” section, select the “Edit Submission” hyperlink.
    - Select the Location ID hyperlink for location 3.
    - Enter the location 3 filing details.
    - Select the “Save Draft” button.
    - Select the “Finish Later” button, and then enter your password as confirmation. At this point, the location details for location 3 are saved.

- Final Submission Steps:
    - Now that all the location details are entered, the return is ready to be submitted.
    - Select the “Next” button.
    - The summary of all locations is displayed. Select the “Submit” button.
    - Enter your password to act as your signature.
    - The confirmation page is displayed. The return has been successfully submitted.

5. Single-Member LLC Filing

Single-member limited liability companies (“SMLLC”) are treated the same for local and state tax purposes as they are treated for federal income tax purposes. When an SMLLC is disregarded for federal income tax purposes, and its single member is a corporation, the SMLLC is disregarded for business tax purposes.

Tennessee law requires persons conducting business in this state to report business tax on a location-by-location basis. Persons with multiple Tennessee locations must register for business tax for each individual location.

SMLLCs making taxable sales from a Tennessee location may register their locations under the consolidated business tax account of its corporate single member to file returns and remit taxes. If a corporate single member and an SMLLC are making sales from the same location, then only one business tax account is required.

An SMLLC may also register separately from its corporate single member. However, while the SMLLC files returns and remits tax under its own accounts, the corporate single member is ultimately responsible for the tax, and the tax liability is determined on the basis that the SMLLC is a division of its corporate single member.

Additionally, the SMLLC must obtain the appropriate business license(s) (see Chapter 3 for more information on when to acquire a business license).

⚠ **If an auditor discovers a SMLLC that is not properly registered for business tax, the auditor may properly register the SMLLC prior to completing the audit.**

Filing Period

The filing period for the business tax return is based on the taxpayer's fiscal year. Unlike a calendar year return, a fiscal year return covers 12 consecutive months. The fiscal year begins on the first day of any month other than January and ends on the last day of the 12th month following (e.g., July 1st through June 30th of the next calendar year). A company with a fiscal year that begins on January 1st and ends on December 31st operates on a calendar year basis.

If a return's due date falls on Saturday, Sunday, or a legal holiday, it is automatically extended until the next business day.[140] Tennessee law states that whenever the due date for filing the return occurs on a weekend or a legal holiday for federal tax purposes, the Commissioner of Revenue may extend the due date to the next business day.

For example:

- Typically, calendar year tax returns are due on April 15. For the tax period ending December 31, 2017 (calendar year 2017), April 15, 2018, fell on a Sunday. Therefore, the calendar year 2017 returns were considered timely if they were filed on or before Monday, April 16, 2018, which was the next business day following the weekend.

Filing Due Dates

1. Due Dates

Business tax returns are due on the 15th day of the fourth month following the end of the taxpayer's fiscal year.[141] For example:

- Businesses whose fiscal year ends on December 31 must file and pay their business taxes on or before April 15th of the following year.

An electronic return is considered timely filed if it was:

- Transmitted on or before the due date;
- Transmitted on or before the due date and subsequently accepted; or
- Rejected by the Department because of a validation rule, corrected by the taxpayer, and retransmitted within a ten-day grace period or "perfection period."

The perfection period is ten calendar days. It begins on the day after the date of the first transmission of an electronic return that is rejected by the Commissioner. Another perfection period occurs after a return is rejected for failing to meet a validation test.[142]

2. Filing Extension

The Department may, upon a showing of good cause, grant one extension of not more than 30 days for a person liable for the business tax to file that person's tax return and pay the tax shown to be due.

Requests for such extensions:

- Must be made in writing;
- Must state why the extension is desired;
- Must be signed; and
- Must be submitted before the delinquent date of the return and tax.

Interest, as provided in Tenn. Code Ann. § 67-1-801 will be added to the amount of tax due, beginning from the statutory due date until the date the tax is paid. No penalty will be assessed if the return is made and the full amount of taxes are paid on or before the extended due date.

Any return and payment made after the extended due date will be subject to penalty and interest from the original statutory due date without regard to the period allowed by the extension.

3. Estimated Assessment

A taxpayer with an open business tax account must file a return even if it had no gross receipts for the tax period. If a taxpayer does not file a return:

- An estimated assessment as a delinquency will be posted to the taxpayer's TNTAP account; and
- The Department will send a notice to the taxpayer.

The estimated tax assessment is based on the best information available to the Department, and the taxpayer bears the burden of showing by clear and cogent evidence that the assessment is incorrect.[143] This is typically accomplished by filing a completed return for the tax period in question. If unresolved (i.e., the taxpayer continues to fail to file a return), the assessment will go to the Collection Services Division for collection.

> ⚠ **If a taxpayer receives an estimated assessment, they should log into their TNTAP account and file a return and pay the applicable tax, even if they are reporting $0 sales. This will resolve the estimated assessment.**

Final Returns

A true final return is the last return filed by an entity that no longer has business or financial activity in the state. Not all returns marked as final by taxpayers are true final returns.

Taxpayers registered for business tax and holding a standard business license received from a city recorder or county clerk are legally obligated to file a final return and pay business tax to the Tennessee Department within 15 days after closing business. This obligation stands regardless of the amount of income earned during the tax year. **Even if no income was earned, minimum tax amounts must be paid.** Taxpayers that close one or more, but not all, of their business locations, are not required to file a final return.

1. Filing Requirements for Final Returns

A taxpayer must file a final return within 15 days of selling or quitting the business. If a taxpayer changes its business location within a municipality more than once in a fiscal year, a final return must also be filed and a new license obtained. Until a final return is filed, the taxpayer must continue to file yearly returns and pay at least the minimum tax for that location.[144]

If a taxpayer closes a location but has other locations remaining in business, it must close the location in TNTAP. The taxpayer will report any tax amounts the closed location owes on its regularly filed annual return.

Closing a TNTAP Account

To close a TNTAP account, taxpayers must submit a "Close Account" request by completing the following steps:

- Log in to TNTAP.
- Select the hyperlink for your business tax account.
- Select the hyperlink for "Close Account" under the "I Want To" section and indicate which location(s) are closing and when the locations are closing.

If a taxpayer's business is not registered for business tax but has a minimal activity business license, the taxpayer is not required to file a return or pay taxes to the Department. However, these taxpayers must contact the county clerk or city recorder to ensure the proper authority knows the taxpayer's business has closed.

If a business is subject to real and/or personal property tax, taxpayers must contact local county or city property tax assessor's offices for instructions on paying final property taxes for their businesses.

2. Tax Clearance

Certificate of Tax Clearance

A Certificate of Tax Clearance declares that all tax returns administered by the Department have been filed and all liabilities have been paid. It is issued to both terminating and ongoing businesses.

The Department may grant Certificates of Tax Clearance for terminations, withdrawals, reinstatements, rescissions, authorizations, and good standing. Businesses often request a Certificate of Tax Clearance to confirm they are in good standing with the Department to complete a large business transaction involving another entity.

To receive a Certificate of Tax Clearance when shutting down a business, a business must file all returns to date and a final business tax return through the date of liquidation or the date the business ceased operations in Tennessee. Furthermore, all outstanding business tax payments must be made.

A checked “final” box on a return is deemed a request for tax clearance for termination and withdrawal. When the Department receives a return marked final, the Department may:

- Automatically issue a Certificate of Tax Clearance;
- Automatically issue a Certificate of Tax Clearance denial letter that explains any shortcomings and instructs the business to call the Department’s Taxpayer Services Division to get the matter resolved so the tax clearance can be issued; or
- Position the taxpayer for an audit.

The Department’s Taxpayer Services Division issues the certificate after reviewing the account and determining that all tax liabilities are satisfied. Unless otherwise specified, the Department mails the certificate to the business’s mailing address. The clearance is valid for 45 days from the date of issuance.

⚠ **Please remember to contact the Secretary of State to properly dissolve the business. The Secretary of State will deny the dissolution or withdrawal documents if the clearance is not received. The same Certificate of Tax Clearance may be issued for several reasons and does not automatically signify that business has terminated.**

3. Events Not Resulting in a Final Return

Taxable entities incorporated, domesticated, qualified, or otherwise registered to do business in this state but that are inactive in this state or whose charter, domestication qualification, or other registration is forfeited, revoked, or suspended without the entity being properly dissolved, surrendered, withdrawn, canceled, or otherwise properly terminated are not relieved from filing a return and paying the business tax.[145]

Overpayments

When a taxpayer has multiple tax type accounts, an overpayment to one tax type account *may* be used to pay/offset a tax liability on another account. Taxpayers should notify the Department if they do not consent to this payment reallocation. Please note, however, that the Department is not responsible for allocating payments to various accounts to avoid penalties or interest from accruing.

The overpayment's received date should be when the overpayment occurred (when the return was filed, creating the overpayment, or when the payment was received, overpaying the tax liability). The overpayment may be used to pay/offset any tax liability before payment of the computed penalty and/or interest liability. Overpayments may also be considered payments when an auditor computes penalties and interest.

Penalties

A penalty is imposed for the late filing of a tax return and for late payment of taxes owed to the state. When a taxpayer fails to submit a timely return and penalties and/or interest are applied, the penalties and interest become part of the tax due. The Commissioner of Revenue may, for good cause, waive the penalty on any tax due.[146]

1. Penalties and Penalty Rates

Delinquency Penalty – Filing or Paying Late

A delinquency penalty will be assessed if a taxpayer does not file its return, files late, or does not timely pay the tax due. The penalty is computed at a rate of 5% per month, or any portion of a month, from the due date until the date taxes are paid.

- The maximum penalty is 25% of the tax amount due.
- The minimum penalty is $15, regardless of the amount of tax due.

Negligence Penalty

Taxpayers are expected to file returns with all required schedules and disclosures and pay the applicable tax based on Tennessee law. Failure to do so may result in the Department assessing a penalty if the Department determines such failure is due to negligence. Negligence includes but is not limited to, any failure to make a reasonable attempt to comply with the law.

If the Department determines that a taxpayer's failure to report and pay the total amount of taxes due is due to negligence, a penalty of 10% of the underpayment may be imposed.[147]

Fraud Penalty

Fraud includes any deceitful practice or willful device resorted to with the intent to evade the tax.[148] If the Department determines a failure to report and pay tax is due to fraud, a penalty

of 100% of the underpayment will be imposed against the taxpayer. Imposition of this penalty is in lieu of all other penalties imposed by the Department, except penalties for dishonored checks or money order payments and penalties imposed in accordance with the Tax Enforcement Procedures Act.[149]

2. Penalty Waivers

The Commissioner is authorized to waive, in whole or in part, penalties that are not the result of gross negligence or willful disregard of the law if such penalties fall within any of the good and reasonable causes for waiver set forth in the law.[150] Thus, the Commissioner does not have the authority to waive properly imposed fraud penalties**. Interest may not be waived under any circumstances, as specifically provided in Tennessee law**.[151]

If a taxpayer fails to pay the full amount of tax due, the following circumstances would be good and reasonable causes for the waiver of the penalty:[152]

- The taxpayer incurred a deficiency because of the taxpayer's good faith reliance on the incorrect interpretation of a law or regulation that was, at the time, unclear and misleading.
- The taxpayer incurred a deficiency because the taxpayer relied on factual, but not legal, misrepresentations made by business associates of the taxpayer, of which the taxpayer had no reason to doubt or question.
- The taxpayer incurred a deficiency because the taxpayer made a factual mistake, but after discovering the mistake, voluntarily and without demand from the Department, remitted the amount of the deficiency plus accrued interest.

If the taxpayer's late filing and payment of tax is no more than 30 days after the due date, the following circumstances would be good and reasonable causes for the waiver of the penalty:[153]

- The return was timely mailed but was not timely received or not received at all, and the taxpayer provides evidence that it was mailed as required.[154]
- The delinquency was caused by an intervening providential cause that occurred before the filing and payment due date, such as a disabling injury, illness, or death of the taxpayer, a member of the taxpayer's immediate family, or the exclusive preparer of the taxpayer's returns.

- The delinquency was caused by the unavoidable absence of the taxpayer or the exclusive preparer of the taxpayer's returns.

- The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

- The taxpayer proves that it requested the proper tax forms from the Department in a timely manner, but they were not sent to the taxpayer in time for the taxpayer to complete and file the return by the due date.

- The taxpayer proves that the taxpayer personally visited an office of the Department before the filing due date to get information or assistance to complete a tax return properly, but through no fault of the taxpayer, was unable to get information or help.

- The delinquency was caused by the taxpayer's failure to include payment with its timely filed return if the taxpayer promptly provides payment when notified by the Department and satisfactorily demonstrates that the payment omission was due to an inadvertent oversight or error.

- The delinquency is discovered only when the taxpayer voluntarily pays the tax, but the Department is legally unable to enforce collection (e.g., the collection would be barred by the statute of limitations or the lack of jurisdiction).

- The taxpayer filed and paid the tax in a timely manner for at least two years preceding the due date of the delinquent return and payment, and the delinquency was not caused by a willful disregard of the law or gross negligence.

The Department may also waive a penalty for good and reasonable cause, even if the cause for the deficiency/delinquency does not match one of the above circumstances. But to do so, the taxpayer must show that it acted reasonably prudently and that the deficiency/delinquency was not caused by a willful disregard of the law or gross negligence.[155]

Any taxpayer that believes it has good and reasonable cause for waiver of any penalty assessed should petition the Commissioner in writing by selecting the "Petition for Penalty Waiver" in their TNTAP account. A Petition for Waiver of Penalty Form is also available on the Department's website under the General Forms section.

Interest

Interest applies to any taxes not paid by the date required by law, even if the Department grants a filing extension. The Department calculates the interest rate each July 1st using a statutorily imposed formula.[156]

> ⚠ **The Department is prohibited by law to waive interest. Tenn. Code Ann. § 67-1-803(a)(2) states that the Commissioner's authority to waive penalties may under no circumstances extend to interest.**

All delinquent or deficient tax payments, whether administered or collected by the Commissioner, begin accruing interest from the date they become delinquent or deficient until they are paid.[157]

- For tax periods prior to the date of assessment, interest accrues at the prevailing rate in effect on the date of the tax assessment, regardless of the tax period involved.
- For periods subsequent to the date of assessment, interest accrues at the prevailing rate in effect on the date of the accrual of such interest.

Assessments

1. Assessment Following an Audit

After reviewing the taxpayer's books and records, the Audit Division will issue the taxpayer a Notice of Proposed Assessment if an auditor determines the taxpayer underpaid business tax. Taxpayers can work with the Audit Division to resolve issues in the assessment. Taxpayers also have the right to request an informal conference with the Commissioner or the Commissioner's designee to discuss proposed assessments.[158] The Notice of Proposed Assessment becomes a Final Assessment on the 31st day after the assessment was issued unless the taxpayer requests an informal conference.

A taxpayer wishing to contest the Final Assessment without making a payment must file suit in chancery court within 90 days. However, if the taxpayer requests an informal conference within 30 days of the date of the Notice of Proposed Assessment, the 90-day period is halted until the conference decision is issued.[159] The 90 days continue after the decision is issued

(please note: the 90 days do not restart; thus, if the taxpayer requested a conference on day 30, the day after the conference decision is issued will be day 31 for the 90-day count).

> ⚠ **The Department has published the Taxpayers' Bill of Rights and information about the informal conference process on the Department's website.**

2. Estimated Assessment

If a taxpayer fails to file a business tax return or files a false or fraudulent return, the Department may issue a Notice of Proposed Assessment based on the best information available to the Department. This type of assessment is commonly referred to as an estimated assessment.

The assessment may be made at any time and is not barred by the statute of limitations.[160] Tenn. Code Ann. § 67-1-1501(c) provides that the tax assessed under Tenn. Code Ann. § 67-1-1501(b) may be collected within the period of limitations provided for in Tenn. Code Ann. § 67-1-1429. Therefore, the Commissioner has six years from the date that any assessment is made to collect a levy or begin a court proceeding to collect such an assessment. For example:

- If the Department assessed a taxpayer for business tax on June 30, 2020, the Department would have until June 30, 2026, to collect or make a levy or begin court proceedings to collect the assessment.

Statutes of Limitations

1. Assessments

The statute of limitations for a business tax assessment is three years from December 31st of the year in which the **return was filed**. This means the Department may only assess additional tax within this period. Assessments may be made at any time if a return is not filed or if a false or fraudulent return is filed with the intent to evade taxation.[161]

2. Refunds

The statute of limitations for refund claims is three years from December 31st of the year in which the **payment was made**. If a taxpayer makes business tax payments and fails to claim

the payments on its return, it will lose the right to claim those payments after three years from December 31st of the year in which the tax return was filed.[162]

Refund Determinations

The Department must decide on a refund claim within six months of receipt. If it does not decide within six months of receipt, the claim is deemed denied. If the Department denies the claim for refund, the taxpayer may request an informal conference or file a lawsuit for refund in chancery court within one year from the date that the claim for refund was filed.[163]

The following are examples of barred refund claims:

- A taxpayer filed its 2014 business tax return with a payment of $3,000 on April 15, 2015. The return and the payment became barred after December 31, 2018.

- On March 20, 2018, a taxpayer paid $10,000 for the 2017 tax period. However, the 2017 return was not filed until April 15, 2021. On the return, the taxpayer computed a tax liability of $100.00 and requested a refund of $9,900. The overpayment of $9,900 qualifies for a refund because the return/request was made within 3 years of December 31 in the year in which the payment was made.

- Using the same facts as directly above, except the taxpayer does not file the 2017 return on April 15, 2021 – instead, it files the return and requests the refund on April 15, 2022. In this case, the refund would be barred because the return requesting the refund was filed beyond the 3-year period.

For purposes of the statute of limitations, the Department considers extension payments to have been made as of the statutory due date or extended due date of the return.

3. Extensions

The Department may enter into a written agreement with the taxpayer to extend the statutory period of limitations upon assessment of taxes payable to, or refundable by, the Department. The Department will provide the taxpayer with a standardized form when extending the statute of limitations during an audit. The waiver form extends both the period for making assessments and the period for requesting refunds.

The taxpayer and the appropriate Department official must sign the waiver agreement before it will be considered a fully executed agreement. Both parties must sign the extension

form before the statute of limitations period has expired. The form cannot be 'back-dated' and signed after the expiration of the statute by either party. Audits will have to be adjusted for expired periods if the waiver is not signed by both parties before the expiration of the statute of limitations. Taxpayers should make a copy of the signed form before returning the form to the auditor.

Record Maintenance and Retention

Any return, if it is open under the statute of limitations, is subject to either a field or office audit. Taxpayers must establish and maintain records that show the gross amount of Tennessee sales tax liability and the amount of gross receipts subject to business tax. The Department can request these records to determine the correct amount of a business's tax liability.[164]

If a taxpayer keeps electronic records, it must provide them to the Department in a standard record format upon request. The Department will use the best information available if a taxpayer does not maintain appropriate records.[165]

Taxpayers must keep records of business transactions for a minimum of three years from December 31 of the year in which the associated business tax return was filed and must include:

- A daily record of all cash and credit sales, including those under a finance or installment plan;
- A record of the amount of all merchandise purchased, including bills of lading, invoices, and purchase orders;
- A record of all exclusions, deductions, and exemptions allowed or claimed; and
- A true and complete yearly inventory of the stock value on hand.[166]

Chapter 7: Sourcing and Distribution

Sourcing

The term sourcing refers to where a specific taxable sale/transaction is considered to take place. Sourcing determines where the collected tax is ultimately distributed (i.e., which county or city receives the distribution). Generally, the sourcing of taxable sales made by taxpayers and the distribution of the state-level and municipal-level business taxes collected depends on the type and location of the taxpayer.

1. In-State Taxpayers other than Video Programmers, Mobile Telecommunications Providers, and Classification 4 Contractors

If the taxpayer is in the state of Tennessee, its sales are sourced to the county and/or municipality where it has a physical location. If an in-state taxpayer does business anywhere else in the state without establishing a place of business in that locality, those sales will also be sourced to the county and/or municipality where it has a physical location.[167] However, special rules apply to specific businesses, such as contractors and video programmers, that are discussed in more detail below. If the municipality where the taxpayer is located has not elected to levy the municipal-level tax or if the taxpayer is located outside of any municipality limits, no municipal-level tax will be due.

If the taxpayer's activities extend into another county or municipality to the extent that the taxpayer establishes an additional location, the taxpayer will also source sales from that location to the additional county or municipality. Please see Chapter 2 for additional information on determining if a business has established a location.

2. Out-of-State Taxpayers other than Video Programmers, Mobile Telecommunications Providers, and Classification 4 Contractors

Sales from a taxpayer without a Tennessee location are sourced to the state and reported on the state Location ID. Such sales are apportioned to the state, and 100% of the state business tax collected on such sales will be distributed to the state general fund. Out-of-state taxpayers are generally exempt (as discussed in Chapter 2 of the Manual) from the municipal-level tax.[168]

3. Taxpayers with both In-State and Out-of-State Locations other than Classification 4 Contractors

Businesses with established locations in Tennessee that also make taxable sales from locations outside of the state should source the sales made from or attributed to the business's in-state location to the applicable city/county. Sales made from or attributed to the business's out-of-state location should be sourced to the state. This means that the business should register for county and, if applicable, city account(s) for its sales made from its in-state location and for a state account for its sales made from its out-of-state location.

For example:

- Company A sells uniforms from three different locations in Tennessee: the city of Nashville (within the urban services district of Davidson County), Spring Hill, and Franklin. It also has a Kentucky location and a Virginia location that sells items to Tennessee customers that it delivers in its own trucks.

- Company A must register each of its Tennessee locations with and obtain a business license from the Nashville, Franklin, and Spring Hill city officials and the Davidson, Williamson, and Maury County clerks. It must also file returns for each location and pay the appropriate city and state taxes.

- Additionally, Company A must register its Kentucky and Virginia locations with the Department (it will have one state account for all its out-of-state locations), file a state tax return, and pay the appropriate state tax based on its total Tennessee sales made from the Kentucky and Virginia locations. It will not get business licenses for these locations.

4. Contractors

If an in-state or out-of-state contractor has sales of more than $100,000 in a county or more than $100,000 in a municipality, then those sales are sourced to the county and/or municipality where the contract work was performed. These are considered deemed locations and are treated the same as a physical location.[169] If the municipality where the work was done has not elected to levy the tax, then those sales will not be subject to the municipality tax.

If an in-state contractor has sales of $100,000 or less in a county or incorporated municipality, then those sales are sourced to the county and/or municipality of the contractor's domicile. If sales of $100,000 or less are earned in an area outside of an incorporated municipality's limits, then those sales will not be subject to the municipality tax.

The tax collected from all such sales is distributed as described for in-state taxpayers to the locations where the sales are sourced.

If the contractor does not have a Tennessee domicile or location and has sales of $100,000 or less in a county, then the contractor is exempt from business tax in that jurisdiction.

5. Video Programmers

If the taxpayer provides video programming services (as defined in Tenn. Code Ann. § 67-6-102 provided below), all its sales from taxable sales of services and tangible personal property are sourced to the county and/or municipality where the services or tangible personal property were received by its customer. This is true even if the taxpayer has no physical location in that locality.[170] The tax is distributed as described for in-state taxpayers, with the county and municipality portions going to the counties and municipalities where the sales are sourced.

"Video programming services" is defined as programming by "a television broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service / multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology." "Video programming services" do not include any of the following:

- Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;
- Audio and video programming services provided by a commercial mobile service provider as defined in **47 U.S.C. § 332(d)** ;
- Audio and video programming services provided as part of, or incidental to, Internet access service, such as, but not limited to, video capable email, provided that the services are not generally considered comparable to programming provided by a television broadcast station; and

- Direct-to-home satellite television programming services.

6. Mobile Telecommunications Service Providers

Mobile (cellular) telecommunications service providers ("providers") who provide mobile telecommunications services to customers in Tennessee must source sales from such sales to the customer's primary place of use in accordance with the Mobile Telecommunications Sourcing Act.[171] Note that this special sourcing rule only includes mobile telecommunications services sales. Sales of cellular equipment (e.g., cell phones, chargers, accessories, etc.) are sourced to the taxpayer's location where the sales were made.

For Example:

- Company X sells mobile telecommunications services, cell phones, and accessories. During the tax year, Company X sold $105,000 of cellphones and accessories from its Chattanooga store location. Company X also made $340,000 in mobile telecommunications services sales to customers with a place of primary use in the following cities in Hamilton County: $105,000 in Chattanooga, $105,000 in East Ridge, $25,000 in Red Bank, $5,000 in Soddy-Daisy, and $100,000 in the unincorporated area of Hamilton County.

- The $105,000 in sales of cellphones and accessories made from the Chattanooga store are sourced and reported for both the city and county under Classification 2 under the store Location ID.

- The mobile telecommunications services are sourced and reported using the Classification 3 rate as follows:

  - $105,000 under the Chattanooga Location ID;
  - $105,000 under the East Ridge Location ID; and
  - $340,000 under the Hamilton County Location ID.

  Because mobile telecommunications services sold to customers at a place of primary use in the city of Soddy-Daisy and Red Bank are less than $100,000, no business tax is reported to Soddy-Daisy and Red Bank. However, the $5,000 and $25,000 are included in sales reported to Hamilton County. The provider is still required to have minimal business activity licenses for the cities of Soddy-Daisy and Red Bank.

For more information on sales of services, see Chapter 4 of this Manual.

Distributions

1. In-state Taxpayer Distributions

State business tax collections from in-state taxpayers are distributed as follows:

- $7.00 per return will be paid to the county clerk in the county in which the taxpayer has a physical location; then
- 5% of the remaining collections will be paid to the county clerk in the county where the taxpayer has a physical location; then
- 42.62% of the remaining collections will be paid into the State's general fund;[172] then
- 1.125% of the remaining collections will be paid to the Department of Revenue to cover administration and collection expenses; then
- The remaining collections will be paid to the county where the taxpayer has a physical location.[173]

2. Municipal-Level Business Tax Collections from In-state Taxpayers

Municipality business tax collections from in-state taxpayers are distributed as follows:

- $7.00 per return will be paid to the appropriate city official in the municipality in which the taxpayer has a physical location; then
- 5% of the remaining collections will be paid to the appropriate city official in the municipality in which the taxpayer has a physical location; then
- 42.62% of the remaining collections will be paid into a fund held by the State to be used for purposes of the municipality in which the taxpayer has a physical location; then
- 1.125% of the remaining collections will be paid to the Department to cover administration and collection expenses; then

- The remaining collections will be paid to the municipality where the taxpayer has a physical location.[174]

3. Fees Levied Under Tenn. Code Ann. § 67-4-710

The county or municipality will retain the fees, penalties, and interest levied by a county or municipality for the exercise of privileges of antique malls, flea markets, craft shows, antique shows, gun shows, auto shows, and transient vendors.[175] An amount equal to 5% of the fee proceeds will be paid to the county clerk if fees are collected by the county or to the municipal business tax official if fees are collected by the municipality.[176]

4. Taxpayers Without Licenses or Locations

The tax, interest, and penalties collected from taxpayers without licenses under Tenn. Code Ann. § 67-4-723(a) or established physical locations, outlets, or other places of business in any county or municipality in Tennessee are earmarked and allocated in entirety to the state's general fund.[177]

5. Audited Taxpayers

As previously stated in this chapter, when the Department audits a taxpayer's books and records and discovers that the taxpayer owes additional tax, penalty, or interest, 100% of the tax, penalty, or interest assessed because of the audit will be earmarked and specifically allocated to the state's general fund.[178]

Chapter 8: Exemptions and Exclusions

Exempt Sales of Services

Generally, sales of services are subject to the business tax. However, Tenn. Code Ann. § 67-4-708(3)(c)(i-xvi) lists 16 types of services that are excluded from taxation. The Standard Industrial Classification Index of 1972 ("SIC" or "SIC Index") provides definitions of business activities that are both taxable and exempt under the Tennessee Code. Taxpayers should use the definitions of the 16 types of services provided in the SIC Index and any supplements and amendments to the SIC to determine if their business activities qualify as exempt under the Tennessee Code. [179]

The SIC Index classifies business establishments by the type of economic activity they perform; SIC classifications are based on the "primary" or "predominant" activity of the subject industries. Not all business types are included in the SIC Index; rather, the SIC Index classifies only those types of business establishments representing a significant part of the economy. [180]

The following 16 services are exempt from business tax:

- Medical, dental, and allied health services to human beings, including convalescent and rest home care, but excluding services by persons engaged in the business of making dentures and artificial teeth;
- Legal services; Educational services offered by elementary and secondary schools, colleges, universities, professional schools and junior colleges, library and information centers, correspondence schools, vocational schools, and specialized non-degree-granting schools;
- Services rendered by nonprofit membership organizations operating on a nonprofit membership basis for the promotion of the interest of the members;
- Domestic services performed in private households;
- Services furnished by nonprofit educational and research agencies;
- Services by religious and charitable organizations;
- Accounting, auditing, and bookkeeping services;

- Public Utilities as defined in Tenn. Code Ann. § 65-4-101;
- Banking services, including brokerage and investment services;
- Insurance services;
- Operation of residential and non-residential buildings except hotels, motels, and rooming houses;
- Leasing of agricultural, airport, forest, mining, oil, and public utility property;
- Veterinarian services;
- Architectural, engineering, and land surveying services; and
- Services provided by farmers to other farmers for the planting or harvesting of agricultural products or for the preparation, improvement, or maintenance of land used to produce agricultural products.[181]

Entities exempt under this provision are exempt only with respect to the services described above. Sales that do not fall within the scope of this exemption remain subject to business tax. For example:

- Public utilities are exempt from business tax only with respect to their utility services. Sales or rental of equipment provided to customers or third parties remain subject to business tax.

1. Medical, Dental, and Allied Health Services

The sales of medical, dental, and allied health services to human beings (SIC Major Group 80), except services of persons making dentures and artificial teeth, are exempt from business tax. This exemption includes, but is not limited to, services offered by:

- Licensed medical professionals
- Dentists
- Licensed massage therapists

- Assisted living facilities
- Acupuncturist
- Audiologists
- Chiropractors
- Optometrists
- Podiatrists

These entities may be liable for business tax if they make other types of sales that do not fall within this exemption. For example:

- Sales of tangible personal property, such as electric toothbrushes or teeth whitening products, by a dentist are subject to business tax.

2. Legal Services

Establishments headed by members of the bar and primarily engaged in offering legal advice or services are exempt from business tax as legal services, according to Industry Group 8111 of the SIC. Exempt legal services do not include court reporter services or services that are not provided by an attorney.[182]

3. Educational Services

Certain educational services are exempt from business tax. These services are exempt if offered by organizations providing academic or technical instruction. Educational services offered by libraries, student exchange programs, and curriculum development programs are also exempt educational services.

Exempt educational services include services offered by:

- Elementary and secondary schools
- Colleges
- Universities

- Professional schools
- Junior colleges
- Libraries and information centers
- Vocational schools
- Specialized non-degree granting schools (e.g., pilot school, driving school, finishing school)

Educational services offered by the following entities are **not** exempt from business tax:

- Schools for the instruction of beauticians, cosmetologists, and barbers;
- Schools providing job training for the unemployed, underemployed, handicapped, and persons with job market disadvantage due to a lack of education, job skill, or experience;
- Individuals providing music lessons or private tutoring services;
- Daycares; and
- Pre-Kindergarten programs.

4. Services Rendered by Nonprofit Membership Organizations

Services rendered by nonprofit membership organizations operating on a nonprofit membership basis to promote the interests of the members are not subject to business tax. However, if nonprofit membership organizations sell food, beverages, or other tangible personal property, these sales are subject to business tax.[183]

Nonprofit membership organizations are delineated as such by federal law and include:

- Business associations
- Professional membership organizations

- Labor unions
- Civil, social, and fraternal associations
- Political organizations
- Religious organizations

5. Domestic Services Provided in Private Households

Domestic services performed in private households are exempt from Tennessee business tax.[184] Private households that qualify for this exemption may employ individuals as cooks, laundresses, maids, sitters, butlers, personal secretaries, managers of personal affairs, and outside workers such as gardeners, caretakers, and other maintenance workers.[185]

This exemption does **not** include:

- Services performed by businesses that hold their services out to the general public, such as home care companies.
- Services performed in the households of farming establishments, amusement and entertainment services, or babysitting and other daycare services.

6. Nonprofit Educational and Research Agencies

Services furnished by nonprofit educational and research agencies are exempt from business tax.[186] According to the SIC Index, educational and research agencies perform noncommercial research that operates primarily on funds from endowments, contributions, and grants. These services are classified in Industry 8733, titled Noncommercial Research Organizations, within Industry Group 873, titled Research, Development, and Educational Research in the SIC Index.[187]

Services furnished by commercial research organizations are not exempt under this section.

The following research activities are exempt from business tax as nonprofit educational and research agencies:

- Archeological expeditions

- Biological research
- Economic research
- Medical research
- Scientific research
- Sociological research

7. Services by Religious and Charitable Organizations

Neither the SIC Index, the Tennessee Code, nor the Tennessee courts have defined the term "charitable organization" for the purposes of Tennessee business tax. The Tennessee Supreme Court stated that when a statute does not define a term, it is proper to look to common usage to determine its meaning.[188] Black's Law Dictionary (8th ed. 2004) defines the term "charitable organization" as a "tax-exempt organization that:

- Is organized and operated exclusively for religious, scientific, literary, educational, athletic, public safety, or community-service purposes;
- Does not distribute earnings for the benefit of private individuals; and
- Does not participate in any way in political candidate campaigns or engage in substantial lobbying."

The Department uses the above criteria to determine whether a taxpayer is classified as a charitable organization and exempt from business tax.

8. Accounting, Auditing, and Bookkeeping Services

Businesses primarily engaged in furnishing accounting, bookkeeping, and auditing services are exempt from business tax.[189] These businesses may use data processing techniques as part of providing their services. However, businesses that are primarily engaged in providing data processing services are not included under this exemption. This exemption does not include businesses providing income tax preparation services without accounting, auditing, or bookkeeping services.

The following services are included under this exemption:

- Accounting services
- Auditing services
- Bookkeeping and billing services
- Services by certified public accountants
- Payroll accounting services

9. Public Utilities

Sales of services by public utilities, as defined in Tenn. Code Ann. § 65-4-101(6)(A), are exempt from business tax.[190]

"Public utility" means every individual, copartnership, association, corporation, or joint stock company, its lessees, trustees, or receivers, appointed by any court whatsoever, that owns, operates, manage or controls, within the state, any interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof.[191]

Public utilities do not include:

- Corporations, agencies, or instrumentalities owned by the United States;
- Counties, municipal corporations, or other subdivisions of Tennessee;
- Corporations, agencies, or instrumentalities of the state;
- Corporations or joint stock companies where more than 50 percent of the voting stock or shares are owned by the United States, the state of Tennessee, or by any other nonutility in Tenn. Code Ann. § 65-4-101(6)(A)(i)-(iii);
- Cooperative organizations, corporations, or associations not organized or doing business for profit;

- Individuals or entities offering domestic public cellular radio telephone services authorized by the Federal Communications Commission;

- Counties, municipal corporations, or subdivisions of states bordering Tennessee to the extent that these entities distribute natural gas to retail customers within the municipal boundaries and/or urban growth boundaries of a Tennessee city or town adjoining the bordering state;

- Any non-utilities acting jointly, in combination with, or through a joint agency or instrumentality;

- Nonprofit Corporations that own and operate wastewater systems primarily for the use of the members of the corporation and which have received a written statement of exemption from regulation as a public utility from the Tennessee Public Utility Commission prior to January 1, 2009;

- Nonprofit homeowners' associations or organizations; or

- Interexchange carriers.

It is important to note that ***sales of services*** by a public utility are specifically exempt from business tax. If a taxpayer meets the statutory definition of a "public utility," the taxpayer may still be subject to business tax on its receipts from sales or leases of tangible personal property rather than from sales of services.[192]

TENN. COMP. R. & REGS. 1320-4-5-.48 (1) states that a person who is exempt under the provisions of Tenn. Code Ann. § 67–4–708, Classification 3, from paying the tax on receipts from services rendered, is liable for the tax on receipts from sales of tangible personal property.

Trucking Companies

Transportation companies carrying or hauling passengers or cargo for consideration are generally subject to business tax on all intrastate receipts.[193] However, Tenn. Code Ann. § 67-4-708(3)(C)(ix) states that persons making sales of services or engaging in the business of a public utility, as defined in Tenn. Code Ann. § 65-4-101, are exempt from the business tax.

Public utility (see Section 9 for the full definition) includes “common carriers.” Unfortunately, the business tax code does not define the term “common carrier.”

Trucking companies historically operated under specific operating authorities issued by the federal and state governments. Such operating authorities were called a “common carrier operating authority” or a “contract carrier operating authority.” Similar to the other services listed in Tenn. Code Ann. § 65-4-101(6), common carriers generally operated to inure to the benefit of the public without the right to choose or discriminate. Contract carriers were not bound to accept business from the general public.

However, the evolution of the trucking industry rendered these distinctions superfluous; thus, federal and state regulations have essentially removed these authorities and instead issued a motor carrier operating authority. Because common carrier operating authorities are no longer issued, the Department no longer relies on operating authorities to administer the business tax.

Therefore, if a trucking company offers its services to the public, it is a common carrier and is exempt from business tax. Even if the trucking company’s services are negotiated by contract and dedicated, and certain vehicles are exclusive to a specific customer, the transportation services are exempt if the trucking company solicits additional business from the public in any way.

If a trucking company only offers its service under continuing agreements with a person or a limited number of persons by dedicating motor vehicles to them for their exclusive use for a continuing period and does not hold itself out to the public as soliciting additional customers, it is not operating as a common carrier, and all its intrastate receipts are subject to business tax.

Finally, transportation companies such as local moving companies, towing companies, taxis, limousines, ride-sharing services, and transportainment companies like the buses and trolleys around town that haul passengers for entertainment purposes are not public utilities for business tax purposes. Therefore, such businesses are subject to business tax.

Transportation Companies

As stated above, public utilities, as defined in Tenn. Code Ann. § 65-4-101 are exempt from the Tennessee Business Tax under Tenn. Code Ann. § 67-4-708(C)(ix). Public utilities include common carriers. The Department considers a transportation company a common carrier if it offers its services to the public. For example:

- If a company has an exclusive contract with two large corporations and transports only their executives and board members, not the public, the company would not be an exempt common carrier. If a company offers its services to the public, it would be a common carrier and therefore a public utility, and the company would not be subject to business tax.

10. Banking and Related Functions

Tennessee law[194] specifically exempts from business tax services furnished by institutions engaged in deposit banking or closely related functions, including:

- Banking services provided by reserve banks, commercial banks, savings institutions, credit unions, and foreign banks;
- Fiduciary activities;
- Services furnished by persons engaged in extending credit or lending money except for persons taxable under subdivision (5);
- Services furnished by establishments engaged in the underwriting, purchase, sale, or brokerage of securities on their own account or on the account of others;
- Services furnished by exchanges, exchanged clearing houses, and other services allied with the exchange of securities and commodities; and
- Services furnished by investment trusts, investment companies, holding companies, and commodity trading companies.

Major Group 61 (Non-depository Credit Institutions) of the 1987 SIC Index includes establishments that extend credit in the form of loans but are not engaged in deposit banking.

State and Federal Credit Unions

State and federal credit unions are exempt from almost all forms of state taxation, including business tax.[195] 12 U.S.C. § 1768 states that "Federal credit unions . . ., their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and tangible

personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed."

Tenn. Code Ann. § 45-4-803 states that "[e]xcept for taxes on property and the credit union fees provided by law, no tax levied by this state, whether privilege, excise, franchise, sales or otherwise, shall be levied upon or be applicable to any credit union chartered under the laws of this state unless and until the same tax may be legally levied upon and be applicable to federally chartered credit unions in this state, in which case the tax shall be levied upon and be applicable to all such state and federally chartered credit unions."

Federal credit unions are exempt from all forms of state taxation, including business tax, except for ad valorem taxation of real and personal property. In the United States Court of Appeals case *United States of America v. State of Michigan*, 851 F.2d 803, 808-09 (6th Cir. 1988), the court determined that federal credit unions are federal instrumentalities and enjoy the immunities of the federal government. State credit unions also are exempt from all state taxation, including business tax, except for ad valorem taxation of real and personal property.

Brokerage Fees or Commissions

Businesses that solicit or broker loans on behalf of and for the benefit of their customers and other mortgage loan companies are included in Industry Group 616 as mortgage bankers and brokers and are exempt from business tax.

11. Insurance Services

Providers of insurance or insurance agents of any type selling or furnishing necessary services related to insurance and insurance adjustors are exempt from business tax. *See* Industry Group 641, titled Insurance Agents, Brokers, and Services within SIC Major Group 64.[196] This exemption also includes independent organizations and businesses that provide insurance services, e.g., insurance research services, insurance loss prevention services, and insurance claim adjusters not employed by insurance companies.

12. Operators of Residential and Nonresidential Buildings

Businesses primarily engaged in the operation of dwellings of apartment buildings, dwellings other than apartment buildings, and nonresidential buildings are exempt from business tax. *See* Industries 6512-6514 within SIC Industry Group 651 titled Real Estate Operators (except

Developers) and Lessors. However, businesses operating hotels, motels, and rooming houses are not exempt from business tax.

Apartment Buildings

The SIC Index defines apartment buildings as buildings containing five or more housing units. See Industry 6513, titled Operators of Apartment Buildings within SIC Industry Group 651. This exemption includes apartment buildings, apartment hotels, residential hotels, and retirement hotels. However, it does not include standard hotels, rooming and boarding houses, camps, and other lodging places for transients.

Dwellings Other Than Apartment Buildings

Dwellings and residential buildings containing four or fewer housing units are considered dwellings other than apartment buildings in the SIC Index. *See* Industry 6514 titled Dwelling Operators, Except Apartments within SIC Industry Group 651. Operators of these buildings are exempt from business tax.

Nonresidential Buildings

The following activities are exempt from business tax:

- Operation of bank buildings;
- Operation of insurance buildings;
- Leasing of piers, docks, and associated buildings;
- Operation of commercial and industrial buildings;
- Property operation of retail establishments;
- Property operation of shopping centers; and
- Ownership and operation of theater buildings.

13. Lessors of Real Property

Businesses primarily engaged in leasing real property, not classified elsewhere in the SIC are exempt from business tax. *See* SIC Industry 6519 titled Lessors of Real Property, Not

Elsewhere Classified within Industry Group 651.[197] This exemption includes leases of the following types of real property:

- Agricultural property;
- Airport property;
- Forested property;
- Property used for mining;
- Property from which oil is extracted; and
- Public utility property.

14. Veterinary Services

Veterinary medical services are exempt from the business tax. Veterinary services include dentistry, surgery, and services involving the boarding and lodging of animals. SIC Industry Group 074 is titled Veterinary Services and provides additional information on the veterinary services included in the exemption. However, the veterinary services exemption does not include sales of non-exempt goods or services. For example:

- Veterinarian Y, in addition to his or her veterinary medical practice, sells pet foods and medications to be administered at home by the owner. Veterinarian Y also provides non-medical grooming services. Veterinarian Y must get a business license and pay the business tax on sales of food, medication, and non-medical grooming services. Veterinarian Y's medical and veterinary services sales would be considered exempt sales of services. The business tax classification will be determined by whichever taxable item sold (pet food, medications, or grooming services) makes up the largest portion of his or her taxable sales.

15. Architecture, Engineering, and Land Surveying Services

Engineering

Establishments primarily engaged in providing professional engineering services as defined in Industry Group 871 of the SIC are exempt from business tax. Establishments providing

and supervising their own engineering staff on temporary contract to other firms are included in this industry.

Businesses providing the following engineering services are exempt:

- Ship, boat, tool, and machine designing;
- Industrial, civil, electrical, and mechanical engineering services;
- Marine engineering services; and
- Petroleum engineering services.

Architecture

Businesses providing the professional architectural services listed below are exempt from business tax.

- Architectural engineering services
- Architectural services
- House designers

Land Surveying

Businesses that provide the professional surveying services listed below are exempt from business tax.

- Photogrammetric engineering services
- Land, water, and aerial surveying

16. Services Provided by Farmers to Other Farmers

Services provided by farmers to other farmers for planting or harvesting of agricultural products or for the preparation, improvement, or maintenance of land used in the production of agricultural products are exempt from business tax.[198]

Other Miscellaneous Exemptions

1. Services Sold for a Lump Sum

If exempt services are sold simultaneously as nonexempt services and/or tangible personal property, they will only be exempt if they can be purchased separately and separately itemized on the invoice.

If a group of services are sold together for one lump sum and are not individually sold, the services will be categorized under the SIC classification that most appropriately describes the group of services as a whole. For example:

- A company offers a suite of services that includes bookkeeping, payroll, legal, management, billing, maintenance oversight, human resources, and public relations services in one lump sum. A customer cannot pick and choose the individual services it will receive. The cost includes all the services together. The company's services will most closely fall under SIC Index number 8741, Management Services.

If the SIC of the group does not fall under one of the exempt service categories, then the lump sum for the group of services will be taxable. Note that any actual pass-through amounts (i.e., amounts transferred to a taxpayer with no markup that the taxpayer is obligated to pay over to a third party on its client's behalf) included in the amount a taxpayer receives from its client should not be included in the amount taxed. Such pass-through amounts could include postage, insurance premiums, or certain taxes.[199] This is true even if some of the services offered in the group of services would be exempt if sold separately. Therefore, in the example above, because management services are not included in one of the exempt service categories, the lump sum for the suite of services is subject to the business tax.

⚠ **Audit Note: A company that sells services for a lump sum may not separate out exempt services from nonexempt services during an audit. If the services are sold together and cannot be purchased separately, they should be categorized together and only exempted if the entire group as a whole falls under one of the exempt service categories.**

2. Services for Affiliated Entities

Services provided to an affiliated business entity at cost without any markup are excluded from the services definition and, thus, are not subject to the business tax.[200] If a taxpayer provides services to an affiliated business entity for a markup, the taxpayer will only owe business tax on the markup amount.[201]

3. Internet Services

Federal law prohibits states or any state division from imposing a tax on internet access.[202] Therefore, receipts that are attributable to the sale of internet services are not subject to business tax. An internet service provider who sells telecommunication services to provide internet access is also exempt from business tax.

> ⚠ **Audit Note: If an auditor discovers that a taxpayer has paid business tax on internet access services during an audit, the taxpayer should be given a credit or refund for the amount paid.**

Taxable Sales by Providers of Exempt Services

Businesses primarily providing services exempt from business tax must still pay business tax on sales of non-exempt tangible personal property and taxable services. These businesses must obtain business licenses and report and pay the business tax on their taxable sales. For example:

- Services provided by deposit banking institutions are exempt from business tax. ABC Bank makes vehicle loans as part of its business activities. However, when a loan on a vehicle goes into default, the bank will repossess the vehicle and then sell the vehicle at auction. ABC Bank must get a business license and pay the business tax on the sales of the vehicles. Because the bank sells new or used vehicles, the bank would be a Classification 2 taxpayer.

Persons/Entities

Business tax does not apply to persons in the following circumstances:

- Any person employed in the capacity of an employee or servant as distinguished

from that of an independent contractor.[203]

- A person who is primarily engaged in the fabrication or processing of tangible personal property for resale and consumption off the premises with respect to the sales of such property made from the manufacturing location or from a storage or warehouse facility that is situated within a ten-mile radius of the manufacturing location.[204]

- Any person operating vending machines who exercises the option of paying the gross receipts tax provided for in Tenn. Code Ann. § 67-4-506.

- Newspaper route carriers and newspaper peddlers.[205]

- Any institution operated for religious or charitable purposes, with respect to any profits that are earned from the sale of items contributed to the institution or articles produced by the institution from contributed items. [206]

- A person who buys and sells intangible personal property as part of the normal business operations. See, for example, **Letter Ruling 17-05**.

- Persons conducting shows, displays, or exhibits sponsored by any nonprofit organization of gun collectors. A person who regularly engages in business as a dealer in guns or who sells guns for future delivery is not exempt.[207]

- Any person residing or located in this state or any governmental entity, nonprofit corporation, institution, or organization that has received and is currently operating under a 26 U.S.C. § 501(c)(3) or (4) exemption from the Internal Revenue Service whose only taxable business activity during the tax period is conducted at the Tennessee state fair or at only one county fair and their affiliates.[208]

- Any person having sales of less than $100,000 within a county or incorporated municipality is exempt from the tax and licensing provisions in Tenn. Code Ann. §§ 67-4-704 and 67-4-723 with respect to sales sourced to the county or municipality under Tenn. Code Ann. § 67-4-717. Any person subject to the tax imposed in Tenn. Code Ann. § 67-4-717(a) and having less than $100,000 in sales in a county will be exempt from the tax levied in Tenn. Code Ann. § 67-4-704 with respect to sales occurring in that county.[209]

- Persons or qualified businesses doing business from a location within an enterprise

zone. This exemption will only be allowed for five years from the date the business is originally certified as a qualified business.

- Persons making sales or rental of real property that belongs to them. Sales and rentals of real property belonging to anyone other than the seller is subject to the business tax, e.g., such as sales by real estate agents.

- Movie theaters are exempt from business tax on all their gross receipts (sales of tickets and concessions).[210] This does not extend to live production theaters.

- Persons who drill, install, and repair wells and are properly licensed annually with the Department of Environment and Conservation are exempt from business tax on those services.[211]

- Out-of-state businesses or employees who are responding to state-declared disasters are exempt from business, franchise, and excise taxes for the income and receipts generated from business conducted in the state during the disaster response period.[212]

1. Persons with Taxable Sales < $100,000

Businesses with less than $100,000 in taxable sales sourced to a county are exempt from the state-level business tax in that county, and businesses with less than $100,000 in taxable sales sourced to a municipality are exempt from the municipal-level business tax in that municipality.[213]

Minimal Activity License

- Counties and municipalities that have enacted business tax will issue minimal activity licenses to any persons exempt from business tax under Tenn. Code Ann. § 67-4-712(d) if the persons have annual sales of more than $3,000 but less than $100,000 per year within the jurisdiction.

No person with sales of more than $3,000 but less than $100,000 per year can engage in business in the jurisdiction without first obtaining the minimal activity license.

Persons with $3,000 or less in annual sales in any incorporated municipality or county may have a minimal activity license but are not required to. Any year a person's gross receipts in the jurisdiction are $100,000 or more, the person will be required to file a regular business

tax return for the tax year.

For more information on licensing, please see Chapter 3 of this Manual.

2. Radio and Televisions Stations

Radio and television stations under the authority of the Federal Communications Commission are not liable for business tax.[214] However, persons who operate cable television services are subject to business tax.[215]

3. Providers of Direct-to-Home Satellite Services

Direct-to-home satellite television programming services providers are specifically excluded from the state-level and municipal-level business tax. This exclusion covers sales of the providers' services as well as sales of any tangible personal property.[216]

4. Publishers or Printers of Newspapers and other Periodicals

Publishers or printers of newspapers and other periodicals are considered manufacturers and are not liable for business tax.[217] However, publishers or printers engaged in any other activity made taxable under the Business Tax Act are liable for tax on that activity.[218] Activities that are incidental to the manufacturing portion of the business are not subject to tax.[219]

5. Qualified Blind Persons and Disabled Veterans

Affidavit Requirement

Any applicant seeking the benefits of a business tax exemption for qualified blind persons or disabled veterans must file an affidavit accessible on the Department's website. The affidavit must be filled out completely and include the applicant's position, financial condition, and the source of the applicant's income. The affidavit must be received and reviewed by the Department before the issuing of the proper business license. Any person making a false affidavit and procuring a free privilege license commits perjury and will be punished under the law.

Qualifying Blind Persons

Any person unable to see because of total blindness qualifies for the exemption if the

following conditions are met. The person:

- Owns property of less than $2,500 after the deduction of encumbrances thereon;
- Is doing business with a capital not exceeding $2,500;
- Is residing within and being a citizen of Tennessee and of the county in which the exemption is claimed; and
- Is the sole beneficiary of the business.[220]

Any institution for the blind engaged in the training and employment of the blind of the state likewise is exempt from paying the business tax without regard to property qualifications.

Individuals must complete this affidavit to qualify for this exemption. **Affidavit may be accessed via this link.**

Disabled Veterans

Certain disabled veterans are exempt from paying the business tax. To qualify for the exemption, the individual must be:

- A disabled veteran of any armed conflict in which the United States has engaged, a former uniformed member of the armed forces, or a peacetime uniformed member of the armed forces who was disabled while in regular service;
- The owner of less than $5,000 of property after the deduction encumbrances thereon;
- In business with a capital stock of no more than $5,000;
- A citizen and resident of Tennessee and of the county in which the exemption shall be claimed; and
- The sole beneficiary of the business.[221]

Only one of the exemptions described above may be claimed by any one person. Any business for which the exemption is claimed will be conducted by the qualifying individual

personally or a member of that person's immediate family who may be assisted by not more than one person, not a member of the family.

For former members of the armed forces operating as peddlers, one vehicle is considered one place of business.

6. Manufacturers

Both in-state and out-of-state manufacturers are specifically exempt from business tax.[222] To qualify for the exemption, a taxpayer must meet each of the requirements listed below.

- A business must qualify for the exemption on a per-location basis.
- The business must be engaged in one of the activities described under Division D of the SIC Index or be otherwise primarily engaged in fabricating and processing tangible personal property for resale and consumption off the premises.[223]
- More than 50% of the business's gross receipts must be derived from manufacturing.
- The sales of the manufactured products must be made from the manufacturing location or a storage or warehouse facility situated within a ten-mile radius of the manufacturing location.[224] Location includes any adjoining buildings and any buildings on the same parcel of land that, combined, make up a manufacturing campus.

If a business qualifies as a manufacturer, sales made from the qualified location or qualified storage or warehouse facility of items not manufactured at that location but incidental to the business's manufacturing sales are also exempt.[225] Furthermore, if the installation of the manufactured product is incidental to the sale of the manufactured product and is done by the manufacturer's employees, then the installation is also exempt.

The performance of installation services does not disqualify a business from the manufacturing exemption, so long as its primary business activity is fabricating tangible personal property for the resale and consumption off premises and the installation services is merely incidental to the sale of fabricated goods. However, if the business charges separately for the installation services and the amount received from those services is at

least 50% of the business's gross receipts, then the business is not "primarily" engaged in manufacturing and thus does not qualify for the exemption.

Qualifying as a Manufacturer

For business tax purposes, a manufacturer is defined as someone who is in the business of any of the activities listed in Division D of the SIC Index or individuals who otherwise qualify as manufacturers or processors of tangible personal property for resale.[226]

Whether a taxpayer is a manufacturer is made on a location basis for both business and sales tax. Like business tax, locations that qualify as manufacturing locations for sales tax purposes are ones where the business primarily fabricates and processes tangible personal property for resale and consumption off the premises.

Therefore, businesses primarily engaged in fabricating or processing tangible personal property for resale and consumption off the premises for sales tax purposes are exempt from business tax on sales of their manufactured product (as well as activities incidental to the manufacturing portion of the business) when made from the manufacturing location or a warehouse or storage facility located within a ten-mile radius of the manufacturing location.

Classification of Select Businesses

While most of the activities listed under each SIC Index manufacturing group are clearly defined and easily understood, some are ambiguous. These activities are listed below.

- Quarries:
  - Generally, quarries are not considered manufacturers for business tax purposes and are included in the SIC Index under Division B: Mining.
  - Certain quarry locations are considered manufacturing locations for business tax purposes if the taxpayer is primarily engaged in fabricating or processing tangible personal property for resale and consumption off the premises at that specific location.
  - If the quarry location qualifies as a manufacturer for sales tax purposes, it is also exempt from business tax on the sales derived from manufactured products (as well as activities incidental to the manufacturing portion of the business) made

from that manufacturing location or a storage or warehouse facility situated within a ten-mile radius of the manufacturing location.

- Dental Labs:
  - Dental labs are not manufacturers for business tax purposes.
  - If the dental lab constructs artificial dentures, bridges, inlays, and other dental restorations according to dentists' specifications, it is classified under Division I: Services, Industry 8072.
  - However, a person manufacturing, in a location other than a dental lab, artificial teeth to be used as instruments by dentists and dental colleges is grouped under Industry 3843 and thus is considered a manufacturer for business tax purposes.
- Recyclers:
  - Generally, it is unlikely a recycler will be considered a manufacturer.
  - If the recycler assembles, breaks up, sorts, and wholesale distributes scrap and waste materials, it is grouped under Industry 5093 and is not a manufacturer for business tax purposes.
  - However, if it is doing something more to the scrap materials, then it may be considered a manufacturer. For example:

    > If a recycler primarily recovers nonferrous metals and alloys from scrap and dross, it would be grouped under Industry 3341 and considered a manufacturer.
- Cabinetry:
  - Generally, a manufacturer of wood cabinets (e.g., kitchen cabinets, bathroom vanities), whether they be for permanent installation or free-standing, is considered a manufacturer under Industry 2434.
  - If the cabinetry is custom-built for individuals, then the fabricator is grouped under Industry 5712 and would not qualify as a manufacturer for business tax

purposes unless the fabricator is also considered a manufacturer for sales and use tax purposes.

- Malt Beverage Breweries:
  - Generally, malt beverage breweries are considered manufacturers under Industry 2082.
  - However, microbreweries often have tap rooms where manufactured malted beverages are sold to the general public for consumption **on the premises**.
  - If dominant sales are made at the tap room to the general public for consumption on the premises, the brewery's primary activity at that location is retail trade. Such locations do not qualify for a manufacturer business tax exemption because they do not meet the "more than 50% test."
  - If the dominant business activity is selling to wholesalers for resale, the brewery is primarily engaged in manufacturing, and thus, the location would qualify for a business tax exemption.
- Qualified Distributions Centers, Data Centers, and Pollution Control Facilities:
  - As noted above, businesses that are otherwise primarily engaged in fabricating and processing tangible personal property for resale and consumption off the premises qualify as manufacturers. This is commonly reflected by having a sales and use tax industrial machinery number.
  - *However*, the industrial machinery sales tax exemption is also granted to those buying exempt industrial machinery for qualified distribution centers, qualified data centers, and pollution control facilities. These are generally contractors, and they are not engaged in "the fabrication or processing of tangible personal property for resale and consumption off the premises." Therefore, they cannot qualify for a business tax exemption on the basis that the location is also exempt from sales tax.

Primarily Engaged in Manufacturing

To qualify as a manufacturer and receive the manufacturing exemption, a person must be "primarily engaged" in manufacturing at a given location. This qualification is met if more

than 50 percent of the manufacturer's revenues at a given location are derived from manufacturing tangible personal property.[227]

Several taxpayers manufacture goods and make nonmanufacturing sales from the same location (e.g., sales of goods purchased to sell, goods manufactured by the taxpayer elsewhere, sales of goods at retail, and services, such as installation of the goods). To determine if a taxpayer qualifies for the manufacturing exemption, auditors may separate a taxpayer's gross sales into two separate columns to determine the percentage of the taxpayer's revenues derived from manufacturing at a location:

- A column for sales of manufactured goods (this includes those that the taxpayer installs, if the installation is included in the sale of the manufactured good); and

- A column for all other sales (separately billed installation sales, sales of non-manufactured goods, etc.).[228]

If the installation is part of the sale of the manufactured good (i.e., the manufactured good and installation of that good are sold for one price) and not a separate sale, then the SIC Index classifies it as a manufacturing activity. The description in the SIC Index under the Division C: Construction 3 heading states that "installation work performed as a service incidental to sale by employees of an establishment manufacturing… prefabricated equipment and materials is classified according to the primary activity in the Manufacturing…Division." For example:

- Company B installs kitchens and makes all its sales from its manufacturing facility. Customers sometimes buy new countertops from Company B. For this, Company B makes and installs granite countertops. Some jobs include countertops, as well as the installation of sinks, cabinetry, etc., that Company B purchases for resale. One-third of Company B's receipts are from the manufacture and installation of the countertops. Two-thirds of the receipts are for the sale and installation of the cabinets, sinks, etc., purchased for resale.

    - Company B would not be considered an exempt manufacturer and would be a contractor under classification 4 because less than 50% of Company B's receipts are from manufacturing.

Sales Made from a Manufacturing Location or a Warehouse or Storage Facility Located within a Ten-Mile Radius

To be considered a manufacturing sale, the sale must occur from the taxpayer's manufacturing location or a warehouse or storage facility located within a ten-mile radius of the manufacturing location. The description in the SIC Code under the Division D: Manufacturing heading states that "[f]abricating operations performed at the site of construction by contractors are not considered manufacturing, but the prefabrication of sheet metal, concrete, and terrazzo products and similar construction materials is included in the Manufacturing Division."

In some cases, the business may meet the qualifications of the manufacturing exemption at the primary business location, but it may also perform installation work akin to contractor work at other locations. For example:

- An asphalt manufacturing plant that qualifies for manufacturing exemption at its primary location lays asphalt for its customers at job site locations. Since the taxpayer's primary business location is not a Class 4 contractor, the taxpayer is not required to register deemed locations in every jurisdiction where its sales exceed $100,000. Other examples where this may occur include, but are not limited to, truss, structural steel, and granite countertop manufacturing locations.

Business tax applies to each individual location, and the exemptions from the business tax also apply on a location-by-location basis. If the manufacturer makes sales from a separate, nonmanufacturing location on a different plot of land that is not a storage or warehouse facility located within a ten-mile radius of the manufacturing location, then those sales will be subject to the tax, even if the goods sold were manufactured by the taxpayer elsewhere. For example:

- Company C fabricates cinder blocks for sale and sells masonry bricks that it purchased for resale. Both products are stored and sold from a warehouse that is twenty miles from Company C's manufacturing facility. Fifty-five percent of its sales are of cinder blocks, and forty-five percent are of bricks.

    - Company C would not be exempt from business tax because the products were not sold from a manufacturing facility or a storage or warehouse facility situated within a ten-mile radius of the manufacturing facility.

Auditing Manufacturers

If an auditor concludes that a business qualifies for the business tax manufacturing exemption, then:

- All sales made at a qualifying location by the manufacturer (any nonmanufacturing sales made at that location by the manufacturer are considered incidental to the manufacturing sales) are exempt and

- The auditor does not need to classify the business further under Tenn. Code Ann. § 67-4-708, the classifications section of the business tax statute.

However, if the auditor determines that the business does not qualify for the manufacturing exemption, then he/she should determine the business's classification by determining the dominant business activity.

Additionally, a business may not qualify for the manufacturing exemption if nonmanufacturing sales account for more than 50% of the taxpayers' sales made from that location. For example:

- A taxpayer manufactures tangible personal property and makes retail sales of tangible personal property from the same location. The taxpayer's retail sales account for 60% of the total sales from that location. This taxpayer would be considered a retailer and not a manufacturer at this location.

7. Persons Making Casual and Isolated Sales

Business is defined as "any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit, or advantage, either direct or indirect."[229] Business does not include casual and isolated sales or sales made by a person not routinely engaged in business.[230] As such, occasional, casual, and isolated sales are not subject to the business tax.

Business tax also does not apply to sales of tangible personal property or services not normally sold by a wholesaler and retailer and tangible personal property if the dealer has used the property before the sale.[231]

- A sporting goods store decides to renovate its sales floor and sell its used sales fixtures (shelves, hangers, racks, etc.). Receipts from the fixture's sale would not be

subject to business tax.

If persons hold themselves out as engaged in business, then they are still liable for sales of tangible personal property or taxable services bought for resale, although the sales may be few and infrequent.[232]

Manufacturers, Processors, Wholesalers, or Jobbers

Manufacturers, processors, wholesalers, or jobbers engaged in the business of distributing tangible personal property or furnishing services subject to business tax are not deemed to be making casual and isolated sales when they sell such tangible personal property or services to purchasers for use or consumption, even though such sales may comprise a small fraction of their total business.[233]

Antique Shows, Flea Markets, Gun Shows, Auto Shows and Craft Shows

Persons regularly engaged in the recurring sale of tangible personal property at antique malls, flea markets, craft shows, antique shows, gun shows, and auto shows and antique malls, flea markets, crafts shows, antique shows, gun shows, and auto shows regularly engaged in the recurring sale of tangible personal property are not considered to be making casual and isolated sales.[234] The businesses and persons making sales have the burden of proving their sales are actually casual and isolated and qualify for exemption.[235]

8. Taxpayers Responsible for Other Privilege Taxes

The following businesses pay privilege taxes and are not subject to business tax on sales on which they pay privilege tax:[236]

- Bottlers and manufacturers of soft drinks;
- Establishments selling mixed drinks or setups;
- Gas, water, and electric companies;
- Miscellaneous public utilities; and
- Individuals who pay recordation tax.

9. School Bus Operators and Drivers

School bus operators and boards of education are not liable for business tax for operating vehicles to transport children to and from school.[237] However, if a vehicle is used for profit in transporting individuals other than school pupils, then the entities operating the vehicle may be subject to business tax.[238]

Additionally, owners and operators of school buses used to transport children to and from school or any activity during the normal school term that is sponsored by or participated in by any public school or its students are not liable for business tax.[239] However, the owners and operators remain liable for registration fees for the buses that they operate.[240]

Exempt Sales

1. Qualified Amusement Activities

Gross proceeds from admissions to amusement or recreational activities conducted, produced, or provided by:

- Nonprofit museums;
- Nonprofit entities which operate historical sites and nonprofit historical societies, organizations, or associations;
- Organizations which have received and currently hold a 26 U.S.C. § 501(c) exemption from the Internal Revenue Service; or
- Organizations listed in Major Group No. 86 of the SIC Index are exempt from business tax. [241] This major group includes organizations operating on a membership basis for the promotion of the interests of their members. Included are organizations such as trade associations, professional membership organizations, labor unions and similar labor organizations, and political and religious organizations. This major group does not include business establishments operated by membership organizations, which are classified according to their primary activity.[242]

This exemption does not apply unless such entities, societies, associations, or organizations promote, produce, and control the entire activity.[243]

2. Agricultural Sales

Tennessee gross sales of livestock, horses, poultry, nursery stock, and other farm products direct from the farm are exempt from business tax, provided that those sales are made directly by the producer, breeder, or trainer. When sales of livestock, horses, poultry, or other farm products are made by any person other than the producer, breeder, or trainer, they will be classified and taxed for business tax as Classification 4. Additionally, catfish farmers and tropical fish farmers are exempt from business tax.[244]

3. Sales of Intangibles

Sales of intangible personal property, such as royalties, copyrights, stocks, bonds, notes, and other securities, are not subject to the business tax. For business tax purposes, "tangible personal property" is defined as "personal property that may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses."[245] Tangible personal property does not include insurance, stocks, bonds, notes, or other obligations or securities."[246]

Non-taxable intangibles include:

- Renewable Identification Numbers;[247]
- Copyright licenses;
- Franchise fees;
- Broadcast rights
- Software; and
- Transfer of virtual currency.

4. Wholesaler to Wholesaler

Sales made by one wholesaler to another wholesaler (or sales by one retailer to another retailer at cost) are excluded from the definition of sale and, thus, are not subject to the business tax.[248]

A wholesale sale or sale at wholesale is the "sale of tangible personal property or services rendered in the regular course of business to a licensed retailer for resale, lease, or rental as tangible personal property in the retailer's regular course of business to a user or a consumer."[249] Wholesale sales are sales from a wholesaler to a retailer. Retailers are persons in the business of making sales at retail or any sales other than wholesale sales.[250]

5. Sales or Rentals of Real Property

Generally, the receipts from selling or renting real property are excluded from business tax.[251] However, the exclusion does not include commissions earned by brokers or agents from selling or renting the real property.

Real Estate Agents or Brokers

Persons receiving commissions, fees, service charges, and other income received for services associated with the sale or rental of real or personal property that belongs to others **are liable for business tax** on their gross receipts.[252] The real estate firms, brokerages, agencies, partnerships, or corporations that own or operate a real estate business, not the individuals that they employ, are the entities liable for business tax on their total gross receipts. Total gross receipts refer to all commissions, fees, or charges collected from the customer regardless of whether a portion of the commission, fee, or charge is passed on to an individual broker or agent.[253]

For example:

- A real estate agency comprises sales representatives hired directly as employees and sales representatives hired as independent contractors. The agency is responsible for business tax on gross receipts earned by the sales representatives employed directly by the agency and the independent contractors.

Additionally, if commissions are split between two brokers from two different agencies, then each agency is responsible for tax on the portion of the commissions received.

6. Short-Term Rentals of Real Property

The short-term rental (180 consecutive days or less for business tax purposes) of vacation lodging, including a person's home, is subject to business tax.

Minimum Requirement for Filing and Registration

A provider of overnight rentals must register and file for business tax if its taxable gross receipts are $100,000 or more in each jurisdiction in which it does business. That means that a property owner or management company will not be subject to business tax in any city and/or county where its total rental property receipts in that city and/or county are not at least $100,000.

Property Management Companies

A "property management company" is defined as "a person who, for consideration, manages a vacation lodging for an individual property owner that provides such lodging for a rental fee to consumers."[254]

If the property owner uses a management company to provide overnight rentals of vacation lodgings, then the management company, rather than the owner, must pay the business tax on the gross receipts from the rentals. The gross receipt from the rental includes all fees collected for the rental, as well as any other money that a consumer must pay to rent the accommodations, such as:

- Non-refundable pet deposits;
- Required cleaning fees; and
- Property damage protection fees.

The property owner or management company must register in the county and city where the property is located as a Classification 3 taxpayer. The owner must pay the business tax if no property management company is used. If the property management company or property owner has multiple units within a jurisdiction, they will only need one license. For example:

- Property management company A ("taxpayer") has 14 rentals in Sevier County. Five of the rentals are in Gatlinburg, three are in Pigeon Forge, three are in Sevierville, and the remaining are outside of a city jurisdiction. The taxpayer needs one license from Sevier County, one license for Sevierville, one in Pigeon Forge, and one in Gatlinburg.

If a property owner conducts any other taxable activity or sales in the state, he will be subject to the business tax on those specific receipts.

Online Advertisers of Vacation Lodging

Online platforms that advertise overnight vacation lodging rentals on behalf of individual property owners are not property management companies for business tax purposes. Therefore, the individual property owners are responsible for filing the business tax return and paying business tax on the gross receipts from the rentals.

Trailer Parks or Camps

Persons operating trailer parks or camps where charges are made only for the rental of real property are exempt from the business tax.[255] However, persons renting trailers to transients for occupancy at the trailer park location for a period of 90 days or less, selling tangible personal property, or making separate charges for specific services furnished are liable for business tax (such as electricity at the campsite).[256]

7. Sales of Items Donated to Religious and Charitable Institutions

Profits earned by institutions operated for religious or charitable purposes from the sale of items donated to them—or from articles produced from items donated—are not subject to business tax.[257]

8. Freight & Delivery Charges

Freight, delivery, or other similar transportation charges are subject to business tax if the title to the property being transported passes to the vendee at the destination point in Tennessee. [258] Deliveries of tangible personal property and services to customers outside the state of Tennessee by a person subject to the business tax or by a common carrier before the customer obtains possession are exempt from the business tax.

Transfer of Title – Location

As stated above, freight and delivery charges are subject to the business tax if the title to the goods passes from the seller to the buyer in Tennessee. The Department relies upon provisions in the Uniform Commercial Code, codified in Title 47 of the Tennessee Code, to determine where title to goods passes.[259] A portion of these provisions are detailed below to provide taxpayers assistance in determining whether freight and delivery charges are subject to Tennessee business tax.

Tenn. Code Ann. § 47-2-401(a) provides three rules that are summarized below for determining when title to goods pass:

1. Title to goods cannot pass under a contract for sale prior to their identification to the contract[260], and unless otherwise explicitly agreed, the buyer acquires by their identification a special property as limited by chapters 1-9 of this title. … Subject to these provisions and to the provisions of the chapter on secured transactions, *title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed to by the parties*.

2. Unless otherwise explicitly agreed, *title passes to the buyer at the time and place at which the seller completes performance* with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

    (a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at the destination, *the title passes to the buyer at the time and place of shipment*; but
    (b) If the contract requires delivery at the destination, *the title passes on the tender there*.

3. Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

    (a) If the seller is to deliver a tangible document of title, *the title passes at the time when and the place where the seller delivers such documents,* and if the seller is to deliver an electronic document of title, the title passes *when the seller delivers the document*; or
    (b) If the goods are identified at the time of contracting and no documents of title are to be delivered, *title passes at the time and place of contracting*.

Tenn. Code Ann. § 47-2-308 further identifies the place for delivery when the buyer and seller have not identified the place for delivery:

Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if the seller has no place of business, his residence; but

(b) in a contract for the sale of identified goods which, to the knowledge of the parties at the time of contracting, are in some other place, that place is the place for their delivery; and
(c) documents of title may be delivered through customary banking channels.

For more assistance in determining where title to goods passes from the seller to the buyer, please see Title 47 of the Tennessee Code.

Exclusions

In addition to the exemptions outlined above, the business tax also contains various exclusions. Receipts of the following entities, persons, and activities are excluded in determining gross sales for the calculation of business tax:[261]

- Persons that are subject to gross receipts tax for engaging in the business of operating as bottlers and manufacturers of soft drinks and soft drink substitutes in Tenn. Code Ann. § 67-4-402;
- Gas, water, and electric current companies;
- Telephone and telegraph companies, except providers of mobile telecommunications services;
- Theaters, motion pictures, and vaudeville shows;
- Establishments selling mixed drinks or setups for mixed drinks;
- Rental of films to theaters that are taxed under Tenn. Code Ann. § 67-6-212;
- Rental of films, transcriptions, and recordings to radio and television stations operating under a certificate from the Federal Communications Commission; and
- Gross handle, as defined in Tenn. Code Ann. § 4-49-102, subject to the sports wagering privilege tax in Tenn. Code Ann. § 4-49-104. Please note that companies engaged in sports wagering may be subject to business tax on their non-gross handle sales.

Various exclusions are also listed as exemptions above; this is specifically authorized in TENN. COMP. R. & REGS. 1320-04-05-.16(2), which states the "[a]ny other amounts attributable to the

exclusions authorized by the Business Tax Act, or rules and regulations pertaining thereto, may also be excluded. (See TENN. COMP. R. & REGS. 1320-04-05-.36)."

Chapter 9: Deductions

Overview

The Tennessee business tax statutes and regulations allow taxpayers to make various deductions that ultimately reduce their tax liability. Deductions differ from exemptions, which must be reflected on the business tax return as amounts deducted from total gross sales. Most of these deductions are provided in Tenn. Code Ann. § 67-4-711.

1. Cash Discounts

Taxpayers may deduct cash discounts allowed and taken on sales from their business tax base.[262] For example:

- A taxpayer offers its customers their vendors cash discounts on credit sales to accelerate collections. The cash discount is indicated on the customer invoice as follows—2/10, net 30—indicating that the customer will receive a 2% discount if it pays the invoice within 10 days; otherwise, payment is due within 30 days. On a $5,000 credit sale for which the customer takes the cash discount, the discount is calculated as follows:

Gross credit sale	$ 5,000	
Less: cash discount	$ (100)	(gross credit sale X 2%)
Net credit sale	$ 4,900	subject to business tax

All taxpayers who claim a cash discount or any of the deductions outlined below from their gross sales must maintain invoices and other documents to substantiate their claims to such deductions; otherwise, the deductions will be disallowed.[263]

2. Returned Items

Taxpayers may deduct from their gross sales proceeds from returned items, if refunded to the customer in cash or credit.[264] If a taxpayer gives credit to a customer for items that the customer voluntarily returns, or the taxpayer gives a credit or allowance to a customer as an adjustment (or otherwise) for a given sale, whether or not the property is returned, the amount of credit or allowance actually given or credited to the customer's account may be deducted from the gross sales subject to business tax.[265] For example:

- A taxpayer sells an appliance to a customer for $250. The customer later returns the appliance, stating that it is faulty, and requests a refund. The taxpayer issues the customer a refund by crediting the customer's credit card. *The taxpayer may deduct the sale proceeds for this returned item from its gross sales.*

3. Trade-In Allowances

Taxpayers may deduct the amount allowed as trade-in value for any article sold.[266]

When an item of tangible personal property is taken in trade as a credit or partial payment on the sale of new or used articles, business tax is calculated on the difference between the sales price of the new or used article sold and any credit given for the used article accepted in the trade.[267] For example:

- A customer purchases a new car from the taxpayer for $30,000. As part of this transaction, the customer trades in its used car for which the taxpayer gives the customer a trade-in value of $9,000. *The taxpayer will report the gross sale of $30,000 on its business tax return and then take a deduction for the $9,000 trade-in value.*

A credit will not be allowed for trade-ins unless the item traded is of a like kind and character of that which is purchased and indicated as a trade-in by model and serial number, where applicable, on an invoice given to the customer.[268]

4. Repossessed Goods

Taxpayers may sell items of tangible personal property, such as motor vehicles, and provide financing for the sale with a security agreement. Under the security agreement, the taxpayer retains a security interest in the property until it is paid in full. The dealer may repossess the property if the purchaser defaults on the required payments. When a taxpayer repossesses property that is sold pursuant to the terms of a security agreement, the taxpayer may take a deduction for the difference between the remaining amount due on the selling price of the repossessed property and $500.[269]

Of the unpaid balance due on the repossessed property, only the amount that constitutes principal is eligible for this deduction; amounts that constitute interest, carrying charges, or similar charges cannot be deducted.[270] Also, amounts that constitute sales and use tax, late fees, repossession fees, towing fees, or any other fees that are added after the original sale may not be deducted. Taxpayers claiming this deduction must maintain adequate documentation to substantiate the sale and subsequent repossession of the item(s) in

question; this documentation should include the following:

- Identity of the parties and items involved;
- Dates of the sale and repossession;
- Amount of original purchase price subject to business tax;
- Terms of the security agreement (recourse/nonrecourse, repayment schedule);
- Detailed list of amounts paid (including down payment, principal, and interest); and
- Itemized list of charges that comprise the loan's outstanding balance (including the unpaid principal balance).

The repossession deduction is available only if the taxpayer holds the note or has transferred the note with *recourse* to another entity. *Recourse* means that the entity receiving the note (generally a financial institution) has the right to demand payment from the taxpayer who made the sale. If the sales contract goes into default, the financial institution returns the financed item to the dealer. The dealer must reimburse the finance company for the unpaid portion of the loan and pay any other fees incurred by the purchaser, such as additional interest, late fees, repossession fees, etc. If the taxpayer transfers the note without recourse to another entity, neither the taxpayer nor the other entity would be entitled to claim the deduction.

If a bank or other financial institution purchases a contract without recourse from a taxpayer, relating to tangible personal property sold by the taxpayer under a security agreement or other title-retained instrument, said bank/financial institution may not take any deduction or credit for any unpaid balances remaining due on such contract following repossession of the property or any action to enforce the lien.[271] In this instance, the taxpayer would not be eligible for the deduction either.

⚠ **Audit Tip: The auditor should verify that the amount of the deduction does not exceed the amount of gross sales originally reported from the sale. If a previously financed amount is combined with a current sale on a security agreement, only the amount that applies to the repossessed item qualifies for the deduction.**

Example – Repossession Deduction

A car is sold for $5,000 and financed by the taxpayer. The customer defaults on the note after remitting a $500 down payment and an installment payment of $2,500 ($500 of this payment is for interest). The taxpayer also charged the customer a $100 doc fee and business tax of $15.30. On the taxpayer's books, the customer's account appears as follows:

Base price of automobile	$	5,000.00	
Doc fee	$	100.00	
Business tax	$	15.30	
State sales tax	$	358.08	
Local sales tax	$	44.00	
State single article	$	44.00	
Total sales price plus tax	$	5,561.38	
Down payment	$	500.00	
Installment payment	$	2,500.00	($500.00 applied to interest)
Loan amount	$	5,061.38	(Total sales price less down payment)
Payment on principal	$	(2,000.00)	(Installment payment less interest)
Late fees	$	250.00	
Towing fees	$	100.00	
Balance owed per taxpayer's records	$	3,411.38	

The repossession deduction permitted for business tax purposes is calculated as follows:

Sales price (excluding sales tax)	$	5,115.30
Less: down payment	$	(500.00)
Less: payment on principal	$	(2,000.00)
Unpaid principal	$	2,615.30
Less: statutory deduction	$	(500.00)
Repossession deduction	**$**	**2,115.30**

5. Subcontractor Payments

Contractors may deduct from their business tax base amounts actually paid during the business tax period to a subcontractor that holds a business license or who is licensed by the state board to license contractors for performing the activities described in Tenn. Code Ann. § 67-4-708(4)(A):

> Persons receiving compensation from rendering exterminating services, from installing personal property, from constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing, or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage, or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, any other improvement or structure or any part thereof.

To claim this deduction, the contractor must complete **Schedule C** of the **Business Tax Return**, which provides information such as the name, address, business license, or contractor's license number of the subcontractor and the amount paid for subcontract work. In addition, the contractor must also maintain in its records a copy of the subcontractor's business license or license issued by the board for licensing contractors.

For example:

- A contractor is building a new home for a client. The contractor entered into an agreement with a well driller, which the contractor would pay the well driller to drill the well for the new home. Here, the contractor could complete Schedule C and deduct the payments made to the well driller as the well driller is making improvements to real property.

Taxpayers holding themselves out to their customers as the provider of a particular service for which the taxpayer then subcontracts with a third party to perform the labor **cannot** take a deduction for the amount paid to the third-party subcontractor.[272] For example:

- A business contracts to repair tangible personal property. The business holds itself out to its customers as the repair service provider. The business then subcontracts with a third party to perform the labor. That business sells a repair service to consumers at retail and cannot deduct the amount paid to the third party.

6. Sales of Services Delivered to a Location Outside Tennessee

The deductibility of the sales of services to locations outside Tennessee has undergone multiple changes. For periods prior to January 1, 2014, Tennessee law provided a business tax deduction for "[s]ales of services substantially performed in other states." Effective January 1,

2014, the language was amended to allow a business tax deduction for "[s]ales of services that are received by customers located outside the state."

Finally, for periods after January 1, 2016 (i.e., current law), taxpayers may deduct from their business tax base the sale of any service that is **delivered to a location outside the state**.[273] This language was amended as part of the Revenue Modernization Act.

Services Performed on Commission

Commissions derived from services performed in Tennessee on behalf of an out-of-state business may not be deducted from business tax, as the commissions are derived from services delivered in Tennessee. For example:

- A Tennessee company is an independent distributor ("the distributor") for a multi-level marketing company that is located outside the state ("MLM"). The distributor does not sell the MLM's products, but rather the distributor receives commissions from the MLM relating to sales of the MLM's products that are made by the distributor's sales network, or "downline distributors," who are located in Tennessee. *Because the distributor is delivering its service in Tennessee on behalf of the MLM, its commissions are subject to Tennessee business tax.*

- A Tennessee telemarketing company ("the company") solicits sales of various tangible personal property from customers in states other than Tennessee. When the customer orders, the company submits the order to a warehouse outside the state. The out-of-state warehouse processes the order and collects the payment; the company does not maintain a stock of merchandise or take title or possession of the products sold. In exchange for the company's services, the company receives a commission from an out-of-state supplier in exchange for the company selling the supplier's products. *The commissions the company receives from the out-of-state supplier are deductible because none of the customers are in Tennessee.*

Examples – Deductible Service Sales

- A Tennessee computer repair company repairs a computer in its Tennessee shop for an Arkansas customer. After the repair is complete, the computer is shipped back to the customer via a common carrier. *The repair sale is deductible.*

- A Tennessee web designer creates websites and advertisement templates in Tennessee that are stored on the designer's server in Tennessee. A California

customer pays the designer a monthly fee to access and use the templates remotely. The software always remains on the Tennessee server. *The sales from the web designer's services provided to the California customer are deductible.*

However, if an out-of-state customer with an out-of-state billing address receives a service in Tennessee (an over-the-counter sale), the sale is subject to the tax.

Example – Non-Deductible Service Sale

- A Georgia trucking company has a truck that breaks down in Tennessee. A Tennessee mechanic repairs the truck in Tennessee and sends the bill to the company's Georgia address. When the truck is repaired, the driver picks up the repaired truck from the mechanic and returns the truck to Georgia. *The repair service is subject to business tax and is **not** deductible from the business tax base.*

7. Sales of Tangible Personal Property in Interstate Commerce

Taxpayers may deduct from their business tax base sales in bona fide interstate commerce.[274]

Deliveries of tangible personal property and services to customers in this state are sales subject to the business tax, regardless of whether the property is later transported outside the state.[275] However, deliveries of tangible personal property or services to customers outside this state by the taxpayer or a common carrier before a customer obtains possession are sales exempt from the business tax.[276]

Examples

- A taxpayer receives commissions for custom artwork through their website from customers located both within and outside the state. Once completed, the taxpayer ships the commissioned artwork to its customers via a common carrier. *The taxpayer may deduct the sales of commissioned artwork that are delivered to customers located outside the state (the taxpayer may **not** deduct the sales to in-state customers).*

- A Tennessee car dealer sold a car to an out-of-state resident. The customer came to the dealer's lot to purchase the car. After the purchase, the customer took possession of the car and drove it off the lot. The customer utilized a 3-day affidavit to purchase the car exempt from sales tax. However, because the customer took possession of the vehicle in Tennessee, the car dealer cannot deduct this sale for business tax purposes.

8. School to Student Sales

The proceeds of selling school supplies and meals made to students and school employees on campus at elementary and secondary schools may be deducted. However, sales of such items made by private independent contractors **cannot** be deducted.[277] For example, proceeds from selling school supplies sold by the school bookstore or meals sold in the school's cafeteria are deductible if the bookstore or cafeteria is run and staffed by the school employees.

9. Bad Debts

Taxpayers may deduct from their gross sales bad debts that arise from sales on which the taxpayer previously paid business tax.[278] For the purpose of calculating this deduction, a "bad debt" is defined by federal statute.[279] However, this amount must be adjusted to exclude the following:

- Interest;
- Financing charges;
- Sales or use taxes charged on the purchase price;
- Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
- Expenses incurred in attempting to collect any debt; and
- Repossessed property.[280]

The bad debts deduction may be taken on the Business Tax Return for the period during which the bad debt is written off as uncollectible in the taxpayer's books and records and is eligible to be deducted for federal income tax purposes. A taxpayer who is not required to file federal income tax returns may also take the bad debts deduction for the period in which the bad debt is written off as uncollectible in the taxpayer's books and records if the taxpayer would be eligible for a bad debt deduction for federal income tax purposes.[281]

If a taxpayer takes a bad debts deduction for business tax purposes and the debt is subsequently collected in whole or in part, the amount collected will be subject to business tax. The taxpayer must report the gross sales from the collection and remit the business tax due on the Business Tax Return filed for the period in which the collection is made.[282]

If the amount of bad debts deduction exceeds the amount of gross sales for the period during which the bad debt is written off, the taxpayer may file a refund claim and receive a refund, pursuant to Tenn. Code Ann. § 67-1-1802. The statute of limitations for filing the refund claim is measured from the due date of the Business Tax Return on which the bad debt could first be claimed.[283]

10. Miscellaneous Federal and State Excise Taxes

In calculating the business tax, the taxpayer may take a deduction for the following taxes; provided that such deductions may be claimed only by the taxpayer who made direct payment to the applicable governmental agency and, in addition, by all subsequent vendees of such taxpayer licensed to do business in the state:[284]

- Federal excise taxes imposed on beer, gasoline, motor fuel, and tobacco products;
- Tennessee gasoline tax;[285]
- Tennessee motor vehicle fuel use tax;[286]
- Tennessee tobacco tax;[287]
- Tennessee beer taxes;[288]
- Special tax on petroleum products;[289] and
- Liquified gas tax.[290]

The taxpayer may gather the information for deduction from their records or the records of their subsequent vendees.

Additionally:

> ⚠ **Tennessee sales and use taxes or liquor by the drink taxes that are required to be passed on to the consumer should be *excluded* from the gross sales reported on the business tax return, but such taxes passed on to the consumer may be *deducted* from the gross sales reported, if such taxes are included in gross sales on the business tax return.**

⚠ **Tennessee bail bond taxes that are required to be collected by a bail bondsman should be *excluded* from the gross sales reported on the business tax return, but such taxes collected by the bail bondsman may be *deducted* from the gross sales reported if such taxes are included in gross sales on the business tax return.**

This deduction does not apply to contractors' use tax on materials they purchase to fulfill their contracts because contractors are not permitted to pass this tax directly on to their customers.

Federal and State Excise Taxes

Fuels	Rate
Federal: Gasoline Tax	$.184 per gallon
State: Gasoline Tax	$.26 per gallon
Federal: Diesel Fuel Tax	$.244 per gallon
State: Diesel Fuel Tax	$.27 per gallon
State: Special Tax - All Petroleum Products	$.01 per gallon
State: Special Tax - Environmental Fee	$.004 per gallon
Federal: Kerosene Tax	$.244 per gallon
Federal: Liquefied Gas for Motor Vehicles (propane)	$.141 per gallon
State: Liquefied Gas for Motor Vehicles (propane)	$.22 per gallon

Cigarettes	Rate
Federal: 4/1/2009 to present	$1.01 per pack
State: 7/1/2007 to present (20 cigarettes per pack)	$.62 per pack
State: 7/1/2007 to present (25 cigarettes per pack)	$.775 per pack

Other Tobacco Products	Rate
State: 7/15/2002 to present	6.6% of wholesale
Federal: Large Cigars (more than 3 pounds per 1000)	$.4026 per cigar
Federal: Small Cigars (3 pounds or less per 1000; pack of 20)	$50.33 per thousand/$1.01 per pack
Federal: Small Cigarettes (standard pack of 20)	$50.33 per thousand/$1.01 per pack
Federal: Large Cigarettes (more than 3 pounds per 1000; 20 pack)	$105.69 per thousand/$2.11 per pack
Federal: Cigarette Papers (less than 6.5 inches)	$.0315 per 50 papers
Federal: Cigarette Tubes (less than 6.5 inches)	$.0630 per 50 tubes
Federal: Smokeless Snuff	$1.51 per pound/$.0944 per 1 oz. tin or pouch
Federal: Chewing Tobacco	$.5033 per pound/$.0315 per 1 oz. tin or pouch
Federal: Roll-Your-Own Tobacco	$24.78 per pound/$1.5488 per 1 oz. tin or pouch
Federal: Pipe Tobacco	$2.8311 per pound/$.1769 per 1 oz. tin or pouch

Beer	Rate
State Beer Barrelage Tax: 7/15/2002 to present	$.1384 per gallon or $4.29 per barrel
State Wholesale Beer Tax: 7/1/2013 to present	$35.60 per barrel
Federal Barrelage Rate	$3.50 per barrel on first 60,000 barrels for brewer producing < 2 million barrels; $16 per barrel on the first six million barrels for all other brewers and all beer importers; $18 per barrel for barrelage over six million

11. Accommodation Sales

Sales receipts from a bona fide accommodation sale are not subject to business tax. They may be deducted from the taxpayer's gross sales in determining their business tax base, provided that such sales have been included in the gross sales reported on the Business Tax Return.

An "accommodation sale" is an *occasional and incidental* sale for resale by a person regularly engaged in the business of making sales of the type of property that is sold for resale to other persons similarly engaged in the business of selling such property.[291] The amount paid by the buyer to the seller for an accommodation sale may include additional charges for freight, storage costs, and transportation costs incurred in the property transfer from the seller to the buyer.[292] For example:

- Dealership A has a purchase order from a customer for a new vehicle with customized specifications. However, Dealership A has no vehicle in stock that meets the customer's requirements. Dealership B does have such a vehicle in stock. Dealership B sells the vehicle to Dealership A at cost, which includes transportation costs incurred by Dealership B. *This transaction qualifies as an accommodation sale, and Dealership B may deduct from its business tax base the proceeds from the sale.*

However, the amount paid by the buyer to the seller cannot exceed the amount paid by the seller to their vendor in acquiring the property and any additional permissible charges for costs incurred by the seller.[293] For example:

- Assume the same facts as in the previous example, except that Dealership B charges Dealership A a markup of 20% in excess of Dealership B's cost for the vehicle. *Because the vehicle's selling price to Dealership A exceeds Dealership B's cost, the sale does **not** qualify as an accommodation sale, and Dealership B may **not** deduct the proceeds from the sale.*

12. Patronage Dividends

The amount of cash and other patronage dividends declared by cooperative selling associations or corporations that are paid to or credited to a member's account from the earnings of such association or corporation may be deducted from gross sales for the tax period in which the distributions and credits are made.[294]

13. Public Warehousing and Storage – Leases

Taxpayers who operate a warehouse but also lease space within the warehouse without furnishing any services to the lessee of the space may exclude the sales for such leases from the gross sales subject to the business tax or deduct them from the gross sales; they are included in the gross sales reported on the Business Tax Return.[295]

14. Motor Vehicle Rentals – Refundable Deposits

Deposits made by customers that are refundable when a motor vehicle, trailer, and/or similar rentals are left at the destination and that are actually refunded to the customer may be deducted by the taxpayer from their gross sales in determining the business tax.[296]

15. Funeral Directors – Cash Advances

In cases where a funeral director makes "cash advances" for opening graves, transportation, newspaper notices, telephone calls, and other similar services, and furnishes items such as flowers and clothing, acting as an agent for their customer and making a charge for reimbursement for the advances without adding any profit to the charges, such charges shall be included in the gross sales of the funeral director but may be deducted on the Business Tax Return in calculating the business tax due and payable.[297]

Chapter 10: Credits

Overview

Tennessee law provides several credits against business tax liability. These credits are generally found in Tenn. Code Ann. § 67-4-713.

> ⚠ **The total business tax credits outlined below and available to a taxpayer in Tenn. Code Ann. § 67-4-713 may not be used to offset more than 50% of the taxpayer's liability.**

Personal Property Taxes

Personal property taxes properly paid under Tenn. Code Ann. Title 67, Chapter 5, Part 5, or Part 13 may be taken as a credit against the total business tax liability of the taxpayer actually paying the personal property taxes.[298] The following conditions apply:

- Personal property taxes are allowable as a credit only to the extent that the property is located at the place of business covered by the business tax return on which the credit is being claimed.[299]
- The property is taxed in the same city or county where the return is filed.
- Personal property taxes are allowable as a credit only for taxes paid either during the tax period covered by the return or before the due date of the return.[300]
- No credit is available for payment of property taxes on real property.
- Only the amount of personal property tax paid to the county will be used to determine the credit for the state business tax purposes.
- Only the amount of personal property taxes paid to the city will be used to determine the credit for the city business tax purposes.

> ⚠ **Payment-in-lieu-of-tax ("PILOT") payments may not be taken as a credit against business tax for property tax paid.**

1. Personal Property Taxes Assessed During Audit

Personal property taxes assessed pursuant to an audit and subsequently paid may be taken as a credit either on the business tax return filed for the year in which the additional personal property tax was paid or on the return covering the immediate previous year.[301] If the credit is taken in the previous year, an amended business tax return must be filed for that year.[302]

2. Taxes Paid on Property Leased or Rented

A taxpayer that leases personal property to a third party but pays property tax on the property may take the credit on its business tax return filed for its business location if the leased property is located in the same jurisdiction receiving the taxpayer's business tax allocation. This would only apply if:

- The property is leased to others by the taxpayer; and
- The taxpayer paid personal property tax on the property.

In cases where a lease or rental agreement provides specifically for payment of personal property taxes by the lessee or renter to the lessor or owner, personal property taxes paid by the lessee to the lessor covering any period of time extending beyond June 1, 1971, arising from assessments made against the lessor or owner may be taken as a credit against the business tax liability.[303] The lessor may not take the credit authorized to the lessee pursuant to Tenn. Code Ann. § 67-4-713(a)(3).[304]

Examples

- Company C, located in Franklin, Tennessee, leases printers to multiple businesses located in Brentwood and Franklin, Tennessee. Company C pays the personal property tax on the printers. Company C reports the receipts from all the leases on its business tax return for the City of Franklin and Williamson County.
    - Company C may take credit for the personal property tax paid on the printers located in Franklin for its city business tax and for the personal property tax paid to Williamson County for state business tax.
    - Company C may *not* take a credit for the Brentwood printers for its city business tax but may do so for business tax sourced to the state.

- Propane Dealer ("PD") is in Chattanooga, Tennessee. PD leases propane tanks throughout Tennessee and pays property tax on all the leased tanks. PD reports the receipts from the tank leases on its Chattanooga and Hamilton County returns.

    - PD may claim a credit for the property tax it paid on the tanks in Chattanooga as part of its city business tax.

    - PD may also claim a credit for state business tax on the property tax it paid to Hamilton County on the tanks located in Chattanooga, East Ridge, Soddy-Daisy, and Red Bank.

    - However, PD may not claim a credit for any property tax it paid outside Hamilton County.

3. Providers of Video Programming Services

Providers of video programming services, as defined in Tenn. Code Ann. § 67-6-102, are allowed the personal property tax credit to the extent that:

- The property is located in a jurisdiction where the taxpayer's receipts are sourced in accordance with Tenn. Code Ann. § 67-4-717; and

- The property is taxed by that jurisdiction.[305]

4. Special School District Taxes

Personal property taxes paid pursuant to a special school district tax levied by a public or private act may be taken as a business tax credit.[306] This credit only applies to special school districts located in Gibson County and Carroll County.

5. Property Transferred to a Government Entity

The amount of Tennessee personal property taxes that a person would normally owe except that, pursuant to an agreement between the person and a local governmental or instrumentality, the person's personal property has been transferred to a local government or instrumentality, may be credited against the business tax liability provided that:

- The person shall be eligible for such credit only to the extent of the tax generated from its receipts for services rendered by such person to an affiliated person.
- Either person directly owns or controls 80% or more of the other, or 80% or more of both persons is directly or indirectly owned or controlled by a common parent.
- The provisions of this section are not affirmatively rejected by a two-thirds vote of the legislative body of the county or municipality exercising jurisdiction over the governmental unit or instrumentality.[307]

Privilege Taxes

A business tax credit may be taken for the pro rata portion of any of the following taxes paid:

- Gross receipts tax for Production Credit Associations,
- Beer taxes,
- Privilege and excise taxes, and
- Property tax, extending past June 1, 1971, and repealed as of that date.[308]

Chapter 11: Industry-Specific Guidance

Contractors

1. Overview

For business tax purposes, a contractor is defined as a person engaged in the business of contracting, performing a contract, or engaging in any of the activities or activities like the following:

- Receiving compensation from rendering exterminating services, installing personal property, constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing, or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, air conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, or any other improvement, structure, or part of thereof.

Contractors are Classification 4 taxpayers. They are liable for business tax regardless of whether their contracts are lump sum or cost-plus.

2. Reporting Sales and Progress Payments

Contractors report sales on a cash basis. TENN. COMP. R. & REGS. 1320-04-05-.09(2) states that progress payment charges billed pursuant to a contract and received by a contractor and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the lessor operates the equipment are subject to business tax.

3. Deemed Location

For business tax purposes, a "deemed location" is a county and/or municipality where a contractor is not domiciled or located but where the contractor earns taxable receipts of more than $100,000 for work performed in the jurisdiction.[309]

Taxable receipts from contracts performed in each deemed location must be reported on the return for the county and/or municipality where the work was performed. The taxable

receipts for a deemed location are not reported on the return for the county and/or municipality of domicile or location.

When the charges billed exceed $100,000 for work performed in a deemed location, the contractor is required to register for business tax and pay the one-time standard business license fee of $15 for that location. Taxable receipts of more than $100,000 received during the tax period will be reported on the return for the deemed location.

- ⚠ **Taxable receipts of $100,000 or less in compensation from contracts in a county and/or municipality other than the contractor's place of domicile or location must be reported on the return for the county and/or municipality of domicile or location.**
- ⚠ **Therefore, all taxable receipts for work done in any county will be subject to the state tax. However, where those receipts are sourced, and which county is apportioned the tax still depend on whether work is done in a deemed location.**

4. In-State Contractors

State-Level Tax

In-state contractors with less than $100,000 in taxable sales during a tax period are exempt from business tax and are not required to file a business tax return.[310] However, if a contractor has more than $3,000 but less than $100,000 in sales in the county of domicile, a contractor must obtain a minimal activity license.

In-state contractors with less than $100,000 in taxable sales in their county of domicile or taxable sales sourced to their county of domicile but with more than $100,000 in taxable sales in another county are exempt from business tax in their county of domicile. However, these contractors are taxable in the county where they generated more than $100,000 in taxable revenue. This other county is considered a "deemed location." As such, the contractor should acquire a standard business license in the county where over $100,000 in sales was generated and a minimal activity license in the county of domicile (if more than $3,000 in sales in the domicile county).

Contractors with more than $100,000 in taxable sales in their domicile county and more than $100,000 in taxable sales in another county in the state are taxable in their domicile county and in the other counties where they had more than $100,000 in taxable sales ("deemed

locations"). These taxpayers should obtain standard business licenses in the domicile county and counties where they have established deemed locations.

Municipal-Level Tax

In-state contractors with less than $100,000 in taxable sales within a municipality are exempt from business tax in that jurisdiction. Contractors with less than $100,000 but more than $3,000 in taxable sales within their domicile municipality should obtain a minimal activity license for their domicile municipality.

In-state contractors with less than $100,000 in taxable sales in a domicile municipality but with more than $100,000 in another municipality are exempt from business tax within their domicile municipality and subject to business tax in the other municipality where they generated more than $100,000 in taxable sales. These taxpayers should obtain a standard business license in the municipalities where they have established deemed locations and a minimal activity license in their domicile municipality (if more than $3,000 in sales in the domicile municipality).

In-state contractors with $100,000 or more in taxable sales within their domicile municipality or sourced to their domicile municipality and more than $100,000 in taxable sales in another municipality are subject to business tax in both jurisdictions. These contractors should obtain standard business licenses in their domicile municipality and municipalities where they have established a deemed location.

Example 1

Johnson Erectors ("Johnson")[311] is domiciled in the City of Clarksville in Montgomery County, Tennessee. For the period beginning October 1, 2023, and ending September 30, 2024, Johnson performed $3,255,000 in total contracts. Johnson performed contracts totaling $1,505,000 within its domicile jurisdiction (Clarksville/Montgomery County).

The following contracts were performed outside of Johnson's domicile:

- City of Jackson/Madison County – $ 110,000
- City of Springfield/Robertson County – $35,000
- Shelby County (outside Memphis City limits) – $1,500,000
- City of Oliver Springs/Morgan County – $105,000

Johnson must obtain the following business licenses and report its gross taxable sales as follows:

Cities	Clarksville (domicile)	Springfield (no filing)	Jackson (deemed location)	Memphis (no filing)	Oliver Springs (deemed location)
Gross Taxable Sales Reported on Return	$1,540,000	$0	$110,000	$0	$105,000
Type of Business License	Standard	N/A[312]	Standard	N/A	Standard

Counties	Montgomery (domicile)	Robertson (no filing)	Madison (deemed location)	Shelby (deemed location)	Morgan (deemed location)
Gross Taxable Sales Reported on Return	$1,540,000	$0	$110,000	$1,500,000	$105,000
Type of Business License	Standard	N/A	Standard	Standard	Standard

Johnson would report the $35,000 in taxable gross sales earned in Springfield/Robertson County under its domicile location returns (Montgomery/Clarksville). This is because Johnson did not meet the $100,000 threshold to have a deemed location in Springfield/Robertson County. Johnson would need standard business licenses in all jurisdictions except for Memphis, Springfield, and Robertson County. Johnson would not need a minimal activity license in either Springfield or Robertson County because it had less than $100,000 in sales in those jurisdictions, therefore those sales would be sourced back to the domicile location (i.e., Johnson is not considered to have made sales within those jurisdictions for purposes of Tenn. Code Ann. § 67-4-723(b)).[313] But please note that local ordinances may require such a license for other reasons. Johnson did not have any sales in Memphis, thus it would not be required to obtain a minimal activity license or a standard business license.

Example 2

Foundation Builders ("Foundation") is domiciled in the City of Lebanon in Wilson County, Tennessee. From October 1, 2023, to September 30, 2024, Foundation performed contracts

totaling $2,040,000. Foundation performed contracts totaling $1,930,000 in contracts within its domicile jurisdiction. Foundation has taxable receipts that are less than $100,000 in each of two municipalities located in the same county all of which are outside of Foundation's place of domicile. The total taxable receipts for the county are more than $100,000.

The following contracts were performed outside of Foundation's domicile:

- City of Smyrna/Rutherford County – $60,000
- City of Murfreesboro/Rutherford County – $50,000

Foundation must obtain the following business licenses and report its gross taxable sales as follows:

Cities	Lebanon (domicile)	Smyrna (no filing)	Murfreesboro (no filing)
Gross Taxable Sales Reported on Return	$2,040,000	$0	$0
Type of Business License	Standard	N/A	N/A

Counties	Wilson (domicile)	Rutherford (deemed location)
Gross Taxable Sales Reported on Return	$1,930,000	$110,000
Type of Business License	Standard	Standard

Foundation is not required to obtain a minimal activity license in either Smyrna or Murfreesboro because it had less than $100,000 in sales in those jurisdictions, therefore those sales would be sourced back to the domicile location (i.e., Foundation is not considered to have made sales within those jurisdictions for purposes of Tenn. Code Ann. § 67-4-723(b)).[314] But please note that local ordinances may require such a license for other reasons. Multiple locations in the same jurisdiction are combined to apply the exemption, deemed location analysis, and filing requirements. Because Smyrna and Murfreesboro are

both located in Rutherford County, the receipts in both locations are combined. When combined, the total taxable sales in Rutherford County equal $110,000. Therefore, Foundation needs a standard business license in Rutherford County and must file a return and remit the tax under a Rutherford County location ID. Because those sales are included on the Rutherford County location ID, they are not reported on the corresponding Wilson County location ID. They are also included on the Lebanon location ID because there is no corresponding municipal-level return in Smyrna or Murfreesboro.

Example 3

Armstrong Home Improvements ("Armstrong") is domiciled in the city of Nashville/Davidson County. For the period beginning October 1, 2023, and ending September 30, 2024, Armstrong performed contracts totaling $2,000,000. A portion of the contracts, totaling $175,000, were performed in the city of Murfreesboro in Rutherford County, Tennessee.

Armstrong must obtain the following business licenses and report the following amounts:

Cities	Nashville (domicile)	Murfreesboro (deemed location)
Gross Taxable Sales Reported on Return	$1,825,000	$175,000
Business License	Standard	Standard

Counties	Davidson (domicile)	Rutherford (deemed location)
Gross Taxable Sales Reported on Return	$1,825,000	$175,000
Business License	Standard	Standard

Armstrong earned more than $100,000 in all jurisdictions where it worked. Therefore, Armstrong must obtain a standard business license and file a business tax return in all jurisdictions.

5. Out-of-State Contractors

A contractor without a location or domicile in Tennessee and with taxable gross receipts in the state of less than $100,000 per county is exempt from the business tax and does not need to register for business tax or obtain a business license.

A contractor without a location or domicile in Tennessee and with taxable gross receipts in any county of $100,000 or more is subject to the state business tax and should register and file a return with the Department.

The contractor should total all its receipts for each county with taxable sales of $100,000 or more and pay the state tax on all such receipts, or at least the $22 minimum tax. The contractor is not required to pay the minimum tax for each county in which it receives compensation. For example:

- Contractor A is domiciled in Kentucky but receives compensation of $10,000 in Davidson County, $121,000 in Williamson County, and $5,000 in Sumner County during a tax period. Because he has receipts of $100,000 or more in at least one Tennessee county, Contractor A should register and file one return with the Department. His total taxable receipts are $121,000 (only the receipts from counties where he earns $100,000 or more).

Deemed Location

If a contractor receives taxable compensation of more than $100,000 during a tax period in any county and/or municipality, the contractor will be deemed to have a location in that county and/or municipality for business tax purposes.[315] Therefore, the contractor must register for and obtain a standard license in that county and/or municipality for that tax period.

The contractor should file a separate return for that county and/or municipality, and the compensation the contractor received in that county and/or municipality will be sourced to that county and/or municipality. The contractor should subtract this compensation from the remainder of its compensation in the state, which is filed on a separate return.

For example:

- Contractor B is domiciled in Georgia but receives compensation of:

- $162,000 in Hamilton County/Chattanooga,
- $112,000 in Bradley County (unincorporated area), and
- $123,000 in Polk County (unincorporated area).

- Because Contractor B performed a service in Tennessee and has receipts of $100,000 or more in at least one Tennessee County, Contractor B should register with the Department. Further, because he received over $100,000 in Hamilton County/Chattanooga, Bradley County, and Polk County, he should also obtain standard business licenses from the Hamilton County Clerk, Polk County Clerk, Bradley County Clerk, and the Chattanooga city official. Contractor B should file a return for Hamilton County reporting his receipts in that county of $162,000 and should file a return for Chattanooga reporting his receipts in that municipality of $162,000. He should also file separate returns reporting receipts of $112,000 in Bradley and $123,000 in Polk County.

Tenn. Code Ann. § 67-4-717(c)(3) provides that if a contractor does not have a domicile or location in the state and receives $100,000 or less in compensation in a municipality during a taxable period (therefore does not have a deemed location), such compensation is not subject to the municipal-level business tax.

6. Subcontractors

Contractors may deduct payments made to subcontractors if:

- The contractor completes Schedule C of the business tax return listing the subcontractor's name, address, business license, and amount paid;

- It keeps a copy of the subcontractor's business license or license issued by the board for licensing contractors; and

- The deductible amounts were made during the business tax period to subcontractors or other persons holding a business license or who are licensed by a state board for licensing contractors for performing activities described in Tenn. Code Ann. § 67-4-708(4)(A), the classifications section of the business tax statute. [316]

Contractors may not reduce their own gross receipts by deducting payments to subcontractors if the subcontractor is not licensed for business tax. Contractors are not required to determine whether their subcontractors have paid business tax. The contractor must only obtain a copy of a subcontractor's business license and report the required

information on Schedule C of the business tax return (Payment to Subcontractor Worksheet).

Services

Payments to subcontractors are deductible if:

- The payments are for Classification 4 services (see Chapter 2 for more information on services); and
- The taxpayer claiming the deduction actually sold those subcontracted services.

Contractors and subcontractors do not need to be primarily in the business of providing Classification 4 services to be eligible for the subcontractor payment deduction.

Subcontractor Not Licensed in Deemed Location

A contractor that receives more than $100,000 from a contract outside of the county or city where they are domiciled must register in the county and/or city where the work is performed. If a taxpayer's subcontractors had $100,000 or less in contracts in a particular county or city, the Department would allow the taxpayer to deduct payments to that subcontractor if the subcontractor held a business license or was licensed by the state board for licensing contractors for work described in Tenn. Code Ann. § 67-4-708(4)(A).

7. Speculative Builders

Persons who build houses or other structures on their own property from their own plans and offer the structures for sale are not subject to business tax, provided no structural changes are made to the initial building plans to suit the contracted buyer. Cosmetic changes, such as paint, flooring, countertops, etc., are not considered structural changes.

If, while constructing a house or other structure, a builder agrees to sell the property and alters the plans to the specifications of the buyer (e.g., extends a room, removes a wall, etc.), the builder will be considered a contractor, and liable for business tax on the total receipts above the price that the property would otherwise be sold.

A builder is subject to business tax in this manner if the builder:

- Contracts to sell a building and lot before completion of the construction of the building, and

- Alters the building plans to the specifications of the buyer.

For example, while constructing a home, a builder decides to sell the property and adds an additional bathroom to the main floor at the buyer's request. The builder sells the home for $360,000, and the value of the land is $60,000. The builder would owe business tax on the $300,000 structure.

Agriculture

1. Agricultural Commodity Brokers

When livestock, horses, poultry, or other farm product sales are made by any person other than the producer, breeder, or trainer, they will be classed and taxed as Classification 4 sales under Tenn. Code Ann. § 67-4-708(4). The business tax shall also include the commissions, fees, margins, or other charges received from sales of livestock, poultry, or other farm products.[317]

2. Agricultural Exemptions

Farmers Providing Services to Other Farmers

Farmers providing services to other farmers for planting or harvesting agricultural products or for preparing, improving, or maintaining land used in the production of agricultural products are exempt from business tax.[318]

Sales Directly from the Farm

Receipts of the producer from sales of livestock, poultry, and other farm products directly from the farm, including receipts from catfish farmers, are excluded from gross sales on business tax returns.[319]

When livestock, horses, poultry, or other farm product sales are made by any person other than the producer, breeder, or trainer, they will be classed and taxed as Classification 4 sales under Tenn. Code Ann. § 67-4-708(4).[320]

Lessors of Agricultural Properties

Persons leasing agricultural, airport, forest, mining, oil, and public utility properties are excluded from business tax for the provision of these services.

Mobile Telecommunications Providers

Mobile telecommunications services sold to customers in Tennessee are subject to business tax. The Federal Mobile Telecommunications Sourcing Act ("MTSA") requires mobile telecommunications services providers ("providers") to source gross receipts from the sale of mobile telecommunications services to the customer's place of primary use. The customer's place of primary use is the street address where the customer primarily uses the service (i.e., the customer's residential or business address). Providers should obtain a business license, register for business tax, and report sales of mobile telecommunications services made in each city and county (i.e., jurisdiction) where they make $100,000 or more in taxable sales during the tax year.

1. Registration and Reporting

Mobile telecommunications services and tangible personal property sold by a provider within a jurisdiction are reported separately. In accordance with the MTSA, providers must register under Classification 3 and report sales of mobile telecommunications services under Location IDs established for the sole purpose of reporting such sales to customers with a place of primary use within a city or county jurisdiction.

Tennessee Taxpayer Access Point ("TNTAP") registration allows providers to select the city or county where they meet the $100,000 threshold instead of registering using a business location address. Providers should first obtain a Location ID to report the sales of mobile telecommunications services at the Classification 3 rate for each city where they meet the $100,000 threshold. When a provider registers in a city, the Department's registration system will automatically create a separate county Location ID to report tax at the Classification 3 rate for the county.

A provider making sales of mobile telecommunications services in multiple cities within a county and the unincorporated area of the county will have a separate Location ID under Classification 3 for each city where it meets the $100,000 threshold. The provider will also have a separate county Location ID under Classification 3 to report all sales of mobile telecommunication services into the county (i.e., all cities and unincorporated areas in the county) if the total sales into the county are $100,000 or more. A provider with a store location in that jurisdiction should continue to report sales of tangible personal property made from the store under the Classification 2 rate using the store Location ID to report sales made from the store for both the city and county.

Example

Company X sells mobile telecommunications services, cellphones, and accessories. During the tax year, it sold $105,000 of cellphones and accessories from its Chattanooga store. It also made $340,000 in mobile telecommunications services sales to customers with a place of primary use in the following cities in Hamilton County: $105,000 in Chattanooga, $105,000 in East Ridge, $25,000 in Red Bank, $5,000 in Soddy-Daisy, and $100,000 in the unincorporated area of Hamilton County.

The $105,000 in sales of cellphones and accessories from the Chattanooga store are sourced and reported for both the city and county under Classification 2 under the store Location ID.

The mobile telecommunications services are sourced and reported using the Classification 3 rate as follows:

- $105,000 under the Chattanooga Location ID;
- $105,000 under the East Ridge Location ID; and
- $340,000 under the Hamilton County Location ID.

Because the mobile telecommunications services sold to customers with a place of primary use in the city of Soddy-Daisy and Red Bank are less than $100,000, no business tax is reported to Soddy-Daisy and Red Bank. However, the $5,000 and $25,000 are included in sales reported to Hamilton County. The provider is still required to have minimal business activity licenses for the cities of Soddy-Daisy and Red Bank.

2. Sales of Phones and Accessories from Outside the State

Providers selling tangible personal property to customers in Tennessee from locations outside Tennessee are only subject to the state-level business tax on those sales. Providers should report such sales under a separate out-of-state Location ID on their consolidated business tax return.

3. Personal Property Tax Credit

A provider may take a credit on its business tax return for the personal property taxes paid to the same jurisdiction during the tax period covered by the return or before the due date of the return. The credit shall be taken first against the business tax due for a store location and then may be taken against the business tax due for the wireless telecommunications

services for the same jurisdiction up to 50% of the provider's business tax liability in that jurisdiction.

4. Sales of Internet Access

Taxable mobile telecommunications services do not include charges for internet access. Sales of internet access are not taxable because of the federal Internet Tax Freedom Act.

Persons providing wireless telecommunications services must register and pay business tax as a Classification 3 service provider in every county and city jurisdiction where those sales of services are received by their customers.

Performance Entities

Performing artists or their business entities (collectively "performance entities") who perform in Tennessee are subject to business tax, and they must pay tax on merchandise sales, as well as ticket sales and commissions.

Performance entities often receive a commission on ticket sales or a portion of the admission receipts to the event from the ticket promoter when performing at any given location. The amounts received are receipts for the sale of services. The performance entities may also sell merchandise, such as souvenirs and T-shirts. There are no exemptions from business tax under the law for either of these types of sales.

1. In-state Performance Entities

In-state and out-of-state performance entities have different licensing requirements. While all ticket and merchandise sales/commissions are subject to business tax if they total $100,000 or more per jurisdiction, there are different reporting and licensing requirements for in-state performance entities versus out-of-state performance entities.

Licensing with the County and City

Performance entities with a Tennessee location (e.g., an office or other place of business) must obtain a county business license from the county of that location if the entity's total state taxable receipts are $100,000 or more.

In-state performance entities must also obtain a city business license from the city of that location if the city has a business tax and the entity's total city taxable receipts are $100,000 or more.

Minimal Activity Licensing

If a performance entity's total state taxable receipts are at least $3,000 but less than $100,000, the entity must get a minimal activity license from the county of its location. If the entity's total city taxable receipts, if applicable, are at least $3,000 but less than $100,000, the entity must get a minimal activity license from the city of its location. If the performance entity's taxable receipts are less than $3,000, it does not have to obtain a license or file a return.

Filing

Performance entities with locations in Tennessee must file a tax return with the Department that includes sales subject to both the state and the city business tax rates.

2. Out-of-State Performance Entities

Performance entities that perform in Tennessee but do not set up an established location in the state must register and file a return with the Department, reporting all sales made in each county that are $100,000 or more. Out-of-state performance entities are not subject to the city business tax. Additionally, these entities are not required to obtain any type of business tax license.

3. Are Touring Artists Transient Vendors?

Performing artists generally do not meet the definition of a transient vendor found in Tenn. Code Ann. § 67-4-702(24) as transient vendors are sellers of merchandise. Sellers of services are not considered transient vendors. If performing artists are only selling tangible personal property, it is possible that these artists may be classified as transient vendors.

Traveling Photographers

A "traveling photographer" is a photographer who makes studio-type photographs or portraits and sells them but does not have an established studio or place of business in the trade area in which such photographs are taken.[321] A traveling photographer is not a photographer who makes photographs to be placed upon articles of identification.[322]

Before a traveling photographer may do any business in a community, the photographer must register with the sheriff or chief of police where the photographer proposes to conduct temporary business.[323] The photographer must provide:

- The photographer's full name and address;
- The name and address of any other person working with the photographer;
- The name and address of the employer of the photographer; and
- Proof that a deposit of $100 has been made with the county clerk and a like amount with the proper municipal tax collector against whatever amount or amounts of business taxes the photographer may owe on account of business done in the county or municipality or both, depending on the case.[324]

Any deposits made will be a credit on the amount of business tax for which such photographer may be liable to any county or municipality.[325] Any balance remaining in the photographer's credit with the respective taxing jurisdictions will be refunded when the taxes are paid.[326]

Lottery Commissions

The 6.5% commission earned on lottery ticket sales is included in gross receipts and subject to business tax. However, receipts from lottery tickets are not subject to business tax or sales and use tax.

Commissions earned from the sales of lottery tickets are considered Classification 3 sales. Because an entity's dominant business activity determines the applicable business tax rate, lottery ticket vendors must determine their appropriate business tax classification based on gross receipts.

Funeral Directors

Funeral directors are liable for business tax depending on how they bill customers.

1. Unit Price

When a funeral director sells goods and services for a "unit price" the transaction is considered a sale of tangible personal property and taxed as a Classification 2 sale.[327]

- For example, if a funeral director sells a casket, burial vault, and all services furnished for one stated price, this sale would be considered a Classification 2 sale of tangible personal property.

2. Itemization

If a funeral director sells goods and services but itemizes the bill (e.g., the price for the casket, burial vault, and other tangible personal property sold and services rendered), the tax rate is determined by the classification that comprises the dominant business activity, either Classification 2 or Classification 3.[328]

- For example, Funeral Home J ("J") sells funeral goods and services to a client. J itemizes the charges on the invoice sent to the client.
  - The charges are as follows:
    - Basic Funeral Service Fee: $ 2,000
    - Vault: $ 1,400
    - Embalming Services: $ 800
    - Casket: $ 2,400
    - Transportation Services: $ 400
  - Because J itemized these sales on the invoice to the client, the items are taxed as Classification 2 sales. J's dominant business activity in this transaction is the provision of tangible personal property (i.e., vault and casket) because the vault and casket totaled $3,800 of the transaction, while services totaled $3,200.

3. Cash Advances

When a funeral director makes cash advances for services and furnishes items such as flowers and clothing to a customer, acts as an agent for the customer, and charges for reimbursement on the advances without adding profit to the charges for himself, the

charges are included in the funeral director's gross sales but may be deducted on the business tax return in computing business tax owed.[329]

Services include:

- Opening graves
- Transportation
- Newspaper notices
- Telephone calls
- Other similar services

Cemeteries and Memorial Gardens

Income derived from interment charges made by cemeteries, memorial gardens, etc., is taxable under the Business Tax Act.[330] In cases where no deed or certificate of ownership is given, charges for burial in lots, crypts, etc., will be deemed to be charges made for the right of sepulcher, and the entire gross income therefrom is taxable without any deduction for amounts set aside for perpetual care.[331] The sale of boxes, urns, markers, vases, plants, shrubs, and other tangible personal property is also taxable under the Business Tax Act.[332]

Municipal Airports

Certain airports or other navigation facilities located outside the territorial limit of the municipality that creates or controls the facility may be taxed under the Business Tax Act by the creating or controlling municipality as though the facility were located within the municipality's territorial limit. Any vocation, occupation, business, or business activity located on the facility's grounds may also be taxed as though it were within the municipality's territorial limit.

Limitations to this authority to tax are defined in Tenn. Code Ann. § 67-4-727(b).

Leased Departments

A person ("lessee") operating a leased department is liable for the business tax and must file business tax returns and pay the minimum tax for that location. [333] A lessee is not permitted to include their tax liability on the returns of the lessor of the department.[334] For example:

- An individual who leases a booth at a hair salon that has his or her own clients and cash drawer must file business tax returns and pay the minimum tax for the location.

Commission Agents

A commission agent or factor, such as an oil company bulk station or any other type of business that does billing in the name of the supplier they represent while using their own employees or agents and their own equipment and supplies in operating their business, is taxable under Classification 3 on its gross commissions.[335] Such persons shall obtain a separate license in their own name even though the principal they represent may have obtained a license for reporting sales made by the commission agent or factor.

Vending Machines

All persons selling tangible personal property through coin-operated vending machines must register with their city and county and pay business tax. However, vending machine taxpayers may elect to pay the gross receipts tax imposed in Item 65(c)(1), T.C.A. § 67- 4-503, in lieu of the business tax.[336]

If a vending machine operator sells tangible personal property by any means other than through vending machines or makes charges for servicing coin-operated machines other than those he owns, he is subject to and must pay the appropriate business tax applicable to such other activities.[337]

A person engaged in a non-coin-operated vending business that incidentally sells merchandise through a vending machine must pay business tax on such sales unless the person elects to pay the Gross Receipts Tax under Tenn. Code Ann. § 67-4-503.

Antique Malls, Flea Markets, Craft Shows, Antique Shows, Gun Shows, and Auto Shows

Antique malls, flea markets, craft shows, antique shows, gun shows, and auto shows that are operated as public facilities where two or more retailers of tangible personal property carry on business are subject to business tax at a rate of $1 per booth per day from each exhibitor at the promotion location.[338] A "flea market booth" is any contiguous space leased by a single vendor to sell tangible personal property.[339]

For casual and isolated antique sales information, see Chapter 4 of this Manual.

1. Fee in Lieu of Business Tax

Exhibitors registered for Tennessee sales and use tax purposes and those registered annually pursuant to Tenn. Code Ann. § 67-6-220 (dealers who make retail sales at flea markets) have the option of either:

- Obtaining a business tax license and remitting the business tax in accordance with the provisions of Tenn. Code Ann. § 67-4-709; or

- Remitting a $1 daily fee per booth for each jurisdiction to the flea market operator. For example, if the flea market is located in a city within a county, the operator would collect $2 per day per booth.

The $1 per day per booth fee is in lieu of any business tax. The owner, manager, operator, or promoter of an antique mall, flea market, craft show, antique show, gun show, or auto show at a location that is not a continuing business must obtain a business license and collect and submit fees to local tax officials with the supporting documents required by those officials, within 72 hours after the closing of the event.

The preceding provision does not apply to exhibitors properly licensed at the promotion location prior to July 1, 1983, until that license expires. The provision also does not apply to promotions conducted by nonprofit associations, corporations, or organizations nor to casual and isolated activities by persons who do not hold themselves out as engaged in business.

Individual Exhibitors

Exhibitors electing to obtain a business tax license must present evidence of the license to the operator before conducting business. Exhibitors who are not registered annually should pay the $1 fee per booth per day to the flea market operators.

Submitting Forms and Payments

Fees collected by the owner, manager, operator, or promoter of an antique mall, flea market, craft show, antique show, gun show, or auto show location that is a continuing business are due and payable monthly, on the first day of each month.

All owners, managers, operators, or promoters must transmit completed forms and tax collected during the preceding month to collecting officials (both city and county, if applicable) on or before the 10th day of each month. Failure to remit the tax by the 10th day of each month will cause the tax to become delinquent.

2. Businesses Selling Antiques at Least 5 Days Per Week

The above information does not apply to any business primarily selling antiques at least 5 days each week in a permanent location. For antique malls selling antiques at least 5 days a week with a common cash register for all sales, only the mall operator must obtain a business tax license and pay on all receipts derived from that location. Individual booths rented at such malls will not be deemed separate places, locations, or outlets in the state where business is conducted.

Transient Vendors

A transient vendor is defined as "any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering the merchandise to the public."[340] "Merchandise" is any consumer item that is or is represented as new or not previously owned by a consumer.

A transient vendor does not include:

- Any person selling goods by sample, brochure, or sales catalog for future delivery to the seller by the owner or occupant of a residence; or
- Any person making sales resulting from the prior invitation to the seller by the owner or occupant of a residence; or

- Any person making sales of services.

1. Temporary Premises

A “temporary premises” is any public or quasi-public place, including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle that is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public.[341]

Premises are not temporary if the same person has conducted business at those premises for more than 6 consecutive months or has occupied the premises as the person's permanent residence for more than 6 consecutive months.

A taxpayer with an established business location (i.e., a location that is more than a temporary premises) in Tennessee is not a transient vendor. If a taxpayer moves to another municipality, that taxpayer is not considered transient. Please see Chapter 2 for additional information on what constitutes a location for business tax.

2. Transient Vendor License Fee

In lieu of paying the business tax on gross receipts, transient vendors pay a 50-dollar business tax license fee for each two-week period the vendors are engaged in business in each county or municipality where they sell or offer to sell merchandise or where they are issued a license.[342]

Transient vendors should pay a fee of **$50** for each 14-day period in each county or municipality or both:

- Where the vendors sell or offer to sell merchandise; or
- Where they are issued a license.

The fee must be paid before the first day of engaging in business. Transient vendors are not liable for the tax levied under Tenn. Code Ann. § 67-4-709.

3. Transient Vendors and Business Tax

A taxpayer who meets the definition of a transient vendor and does not have an established location in Tennessee is not subject to state and local business tax, regardless of whether the taxpayer has substantial nexus in Tennessee. Accordingly, a transient vendor has no receipts to source using the sourcing provisions under Tenn. Code Ann. § 67-4-717(b)(1) because it pays the transient vendor fee and is not liable for state-level or municipal-level business tax. For example:

- Hotel in Nashville, Tennessee, hosted a four-month modern art exhibition where professional artists displayed and sold art.
- Artist 1 came from Kentucky, brought $40,000 worth of art to display and sell at the exhibition, and paid the Nashville clerk $400 (roughly $100/mo. transient vendor fee).
- Artist 1 sold $20,000 in art and returned to Kentucky once the exhibition ended.
- Artist 1 is not subject to Tennessee business tax because it did not establish a location in Tennessee and otherwise met all the requirements as a transient vendor.

Food Trucks

Food trucks must be licensed for business tax in the jurisdiction where they are based (domiciled) and must display their licenses when selling in other jurisdictions.

Food truck operators that pay a fee to utilize commercial kitchen space or a commissary to prepare food are based (domiciled) in the jurisdiction where the commercial kitchen or commissary is located. If the food truck operator continues managing the business from its domicile (such as keeping and managing its books and records, scheduling events, etc.), it must be registered in both its domicile and the jurisdiction where the commercial kitchen or commissary is located.

[1] *Dixie Rents, Inc. v. City of Memphis,* 594 S.W.2d 397, 399-400 (Tenn. Ct. App. 1979).
[2] The Tennessee Code Annotated may be accessed for free at the following link: **https://advance.lexis.com/container?config=014CJAA5ZGVhZjA3NS02MmMzLTRlZWQtOGJjNC00YzQ1MmZlNzc2YWYKAFBvZENhdGFsb2e9zYpNUjTRaIWVfyrur9ud&crid=df4206ac-948a-487a-8a8a-8e2c48b8be80&prid=d4c835c1-112a-44d3-b572-9c4bed4ee970**
[3] The business tax rules and regulations can be found at the following link: **https://publications.tnsosfiles.com/rules/1320/1320-04/1320-04-05.20160926.pdf**
[4] TENN. COMP. R. & REGS. 1320-04-05-.03.
[5] Tenn. Code Ann. § 67-4-704.
[6] Tenn. Code Ann. § 67-4-702(a)(13).
[7] TENN. COMP. R. & REGS. 1320-04-05-.35.
[8] Tenn. Code Ann. § 67-4-717(a).
[9] Tenn. Code Ann. §§ 67-4-704 and 705.
[10] Please see Chapter 11 for special rules that apply to cable, telecom, and other specific industries.
[11] Tenn. Code Ann. § 67-4-702(a)(2).
[12] Tenn. Code Ann. § 67-4-702(a)(2).
[13] Tenn. Code Ann. § 67-4-702(a)(5).
[14] Tenn. Code Ann. § 67-4-708(2)(F).
[15] Tenn. Code Ann. § 67-4-708(3).
[16] Tenn. Code Ann. §§ 67-4-702(a)(16) and (25).
[17] Tenn. Code Ann. § 67-4-704.
[18] *General Motors Corp. v. Washington*, 377 U.S. 436 (1964).
[19] *Boeing Equipment Holding Company v. Tennessee State Board of Equalization*, 1987 WL 15202 (Tenn. Ct. App., August 7, 1987).
[20] Tenn. Code Ann. § 67-4-704.
[21] Tenn. Code Ann. § 67-4-705.
[22] Tenn. Code Ann. § 67-4-717(a).
[23] Tenn. Code Ann. § 67-6-717(a)(1).
[24] Please note that Rule 14 is still in effect and helps make this determination.
[25] Public Chapter 377 (2023) increased the filing threshold from $10,000 to $100,000, effective May 11, 2023. This applies to tax years beginning on or after December 31, 2023.
[26] Please note that there are provisions that apply to telecommunications and cable providers, vending machine operators, and overnight lodging rentals. These are discussed later in this Manual.
[27] Tenn. Code Ann. § 67-4-702(a)(22)(A).
[28] Tenn. Code Ann. § 67-4-702(a)(22)(A)(i)-(iv)(c).
[29] TENN. COMP. R. & REGS. 1320-04-05-.07.
[30] Tenn. Code Ann. § 67-4-717(a)(1)(A)-(C). Please note the following activity is also covered under this code section: "making sales as a natural gas marketer to customers located within this state through the presence in this state of the seller's property, through the holding of

pipeline capacity by the seller on pipelines located in this state, or through the presence in this state of the seller's employees, agents, independent contractors, or other representatives acting on behalf of the seller to solicit orders, provide customer service, or conduct other activities in furtherance of such sales. For purposes of this subdivision (a)(1)(D), the phrase "presence in this state of the seller's property" shall include property owned by the seller in this state during delivery to the customer, whether in a pipeline or otherwise."

[31] Tenn. Code Ann. § 67-4-717(a)(2).
[32] TENN. COMP. R. & REGS. 1320-04-05-.14.
[33] Tenn. Code Ann. § 67-4-702(a)(22)(A)(i)-(iv)(c).
[34] Tenn. Code Ann. § 67-4-706.
[35] TNTAP may be accessed at **https://tntap.tn.gov/eservices/_/**
[36] Tenn. Code Ann. § 67-4-706(a).
[37] Tenn. Code Ann. § 67-4-706(c).
[38] Tenn. Code Ann. § 67-4-723(a)(6).
[39] TENN. COMP. R. & REGS. 1320-04-05-.28(1).
[40] TENN. COMP. R. & REGS. 1320-04-05-.28(2).
[41] Tenn. Code Ann. § 67-4-723(a).
[42] Tenn. Code Ann. § 67-4-723(c).
[43] Tenn. Code Ann. § 67-4-723(b)(1).
[44] *Id*.
[45] Tenn. Code Ann. § 67-4-721(e). TENN. COMP. R. & REGS. 1320-04-05-.57.
[46] Tenn. Code Ann. § 67-4-709(4)(A)(i).
[47] Tenn. Code Ann. § 67-4-721(a).
[48] Tenn. Code Ann. § 67-4-721(b).
[49] Tenn. Code Ann. § 67-4-721(c)(1).
[50] Tenn. Code Ann. § 67-4-721(c)(2).
[51] Tenn. Code Ann. § 67-4-721(c)(2).
[52] Tenn. Code Ann. § 67-4-721(c)(3).
[53] Tenn. Code Ann. § 67-4-702(a)(7).
[54] Tenn. Code Ann. § 67-4-702(a)(15)(B).
[55] Tenn. Code Ann. § 67-4-702(a)(18)(A)(i).
[56] TENN. COMP. R. & REGS. 1320-04-05-.05 and 1320-04-05-.53.
[57] *Id*.
[58] Tenn. Code Ann. § 67-4-702(a)(18)(B).
[59] TENN. COMP. R. & REGS. 1320-04-05-.05.
[60] *Hermitage Memorial Gardens Mausoleum and Memorial Chapel, Inc. v. Dunn*, 541 S.W.2d 147, 149 (1976).
[61] *Id*.
[62] *Id.*
[63] Tenn. Code Ann. § 67-4-708(3)(c).
[64] Tenn. Code Ann. § 67-4-702(a)(21).

[65] *Id*.
[66] TENN. COMP. R. & REGS. 1320-04-05-.48(1).
[67] TENN. COMP. R. & REGS. 1320-04-05-.48(2).
[68] *Auto Glass Co. of Memphis v. Gerregano*, No. W2018-01472-COA-R3-CV, 2019 WL 1343987 at *5 (Tenn. Ct. App. 2019). Tenn. Code Ann. § 67-4-702(19), (21).
[69] *Id*.
[70] TENN. COMP. R. & REGS. 1320-04-05-.48(2).
[71] Tenn. Code Ann. § 67-4-702(a)(1).
[72] TENN. COMP. R. & REGS. 1320-04-05-.02(3).
[73] Tenn. Code Ann. § 67-4-702(a)(23).
[74] *Id*.
[75] *See* Ruling 17-05.
[76] *See SAP America, Inc. v. Gerregano*, No. M2024-01399-COA-R3-CV (Tenn. Ct. App. May 13, 2026).
[77] *Id*.
[78] Tenn. Code Ann. § 67-4-702(a)(23).
[79] *Carson Creek Vacation Resorts, Inc. v. State Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn.1993).
[80] *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004)
[81] The American Heritage® Dictionary of the English Language, Fifth Edition copyright ©2022 by HarperCollins Accessed online at **https://www.ahdictionary.com/**
[82] *Id*.
[83] TENN. COMP. R. & REGS. 1320-04-05-.21(1).
[84] *Id*.
[85] *Id*.
[86] TENN. COMP. R. & REGS. 1320-04-05-.49.
[87] TENN. COMP. R. & REGS. 1320-04-05-.22.
[88] TENN. COMP. R. & REGS. 1320-04-05-.23.
[89] *Id*.
[90] Tenn. Code Ann. § 67-4-702(a)(19).
[91] TENN. COMP. R. & REGS. 1320-04-05-.18.
[92] TENN. COMP. R. & REGS. 1320-04-05-.08.
[93] Tenn. Code Ann. § 67-4-702(a)(19).
[94] *Id*. These advertising costs are not included in the sales price when no portion of the payment is retained as profit by the auctioneer, and when the payment has been placed in escrow or a trust account by the auctioneers on behalf of the seller.
[95] *Id*.
[96] Tenn. Code Ann. § 67-4-702(a)(19).
[97] TENN. COMP. R. & REGS. 1320-04-05-.18.
[98] TENN. COMP. R. & REGS. 1320-04-05-.08(2).
[99] Tenn. Code Ann. § 67-4-702(a)(5).
[100] *Aabakus, Inc. v. Huddleston*, 1996 WL 548148 at 2 (Tenn. Ct. App. Sept. 25, 1996).
[101] Tenn. Code Ann. § 67-4-708(1).

[102] Tenn. Code Ann. § 67-4-708(2).
[103] Though vapor products are taxed under the tobacco tax law, vapor products are separate and distinct from tobacco products included in Tenn. Code Ann. § 67-4-708(3) that fall under Classification 3.
[104] Tenn. Code Ann. §§ 67-4-708(3)(C)(i)-(xvi).
[105] *Hermitage Memorial Gardens Mausoleum and Memorial Chapel, Inc. v. Dunn*, 541 S.W.2d 147 (Tenn. 1976).
[106] Tenn. Code Ann. § 67-4-708(4).
[107] Tenn. Code Ann. § 67-4-708(5).
[108] Tenn. Code Ann. §§ 67-4-710 and 67-4-705(c).
[109] Tenn. Code Ann. § 67-4-710(a)(2).
[110] TENN. COMP. R. & REGS. 1320-04-05-.41(1).
[111] Tenn. Code Ann. § 67-4-708(2)(F)).
[112] Tenn. Code Ann. § 67-4-702(a).
[113] Tenn. Code Ann. § 67-4-708(3)(C)(iii).
[114] See also SIC Code 8049.
[115] See Letter Ruling 18-01 for further examples.
[116] Tenn. Code Ann. § 67-4-709.
[117] Tenn. Code Ann. § 67-4-702(a)(26). TENN. COMP. R. & REGS. 1320-04-05-.20, 1320-04-05-.47 and 1320-04-05-.50.
[118] Tenn. Code Ann. § 67-4-702(a)(27).
[119] *See Bearing Distributors, Inc. v. Gerregano*, 2002 WL 40008 (Tenn. Ct. App. 2022).
[120] TENN. COMP. R. & REGS. 1320-04-05-.10.
[121] Tenn. Code Ann. § 67-4-702(a)(17).
[122] Tenn. Code Ann. § 67-4-702(a)(15).
[123] TENN. COMP. R. & REGS. 1320-04-05-.47(4).
[124] *Id*.
[125]Tenn. Code Ann. § 67-4-702(a)(15).
[126] TENN. COMP. R. & REGS. 1320-04-05-.47(1).
[127]*Id*.
[128] Tenn. Code Ann. § 67-4-702(a)(18)(B). *Pfizer v. Johnson*, 2006 WL 163190 (Tenn. Ct. App. Jan. 23, 2006).
[129] *Eisai, Inc. v. Gerregano* 2023 WL 2193450 (Tenn. Ct. App. 2023).
[130] Rule 20 states: Hospitals and persons rendering allied health services to human beings, including convalescent and rest home care, render services, and are the users and consumers of products sold to them. Sales to the State, other governmental agencies, and institutions exempt from paying Sales and Use Tax under the provisions of T.C.A. § 67-6-322 are deemed wholesale sales. Sales to all other institutions, etc., not otherwise exempt from sales and use tax under T.C.A. § 67-6-322, are deemed retail sales.
[131] Tenn. Code Ann. § 67-4-702(23) states, in pertinent part, that tangible personal property does not include materials, substances, or other items of any nature inserted or affixed to

the human body by duly licensed physicians or dentists or otherwise dispensed by them in the treatment of patients.

[132] Tenn. Code Ann. § 67-4-702(a)(18)(B).

[133] Tenn. Code Ann. § 67-4-709.

[134] Public Chapter 377 (2023) lowered the tax rate for Classification 5A taxpayers from 3/10 of 1% to 1/10 of 1%, effective May 11, 2023. This applies to tax years beginning on or after December 31, 2023.

[135] Tenn. Code Ann. § 67-4-714(a).

[136] Tenn. Code Ann. § 67-4-705(b).

[137] Public Chapter 683 (2022).

[138] Tenn. Code Ann. § 67-4-715. TENN. COMP. R. & REGS. 1320-04-05-.53.

[139] Public Chapter 377 (2023) increased the sales threshold from $10,000 to $100,000, effective May 11, 2023. This applies to tax years ending on or after December 31, 2023.

[140] Tenn. Code Ann. § 67-1-107.

[141] Tenn. Code Ann. § 67-4-715(g). TENN. COMP. R. & REGS. 1320-04-05-.30.

[142] Tenn. Code Ann. § 67-2-107(f)(1)(A).

[143] Tenn. Code Ann. § 67-1-114(b).

[144] Tenn. Code Ann. §§ 67-4-721 and 67-4-714(b).

[145] Tenn. Code Ann. § 67-4-714.

[146] Tenn. Code Ann. § 67-1-802.

[147] Tenn. Code Ann. § 67-1-804(b)(1).

[148] Tenn. Code Ann. § 67-1-804(c)(2).

[149] Tenn. Code Ann. §§ 67-1-804(c) and 67-1-1400-1445.

[150] Tenn. Code Ann. § 67-1-803(c)-(d).

[151] Tenn. Code Ann. § 67-1-803.

[152] Tenn. Code Ann. §§ 67-1-803(c)(1)(A)-(E).

[153] Tenn. Code Ann. §§ 67-1-803(d)(1)(A)-(I).

[154] Tenn. Code Ann. § 67-1-107.

[155] Tenn. Code Ann. § 67-1-803.

[156] Tenn. Code Ann. § 67-1-801(a)(1)(B).

[157] Tenn. Code Ann. § 67-1-801(a)(2).

[158] Tenn. Code Ann. § 67-1-1438.

[159] Tenn. Code Ann. § 67-1-1801.

[160] Tenn. Code Ann. §§ 67-1-1501(b)(1)-(2).

[161] Tenn. Code Ann. § 67-1-1501(b).

[162] Tenn. Code Ann. § 67-1802(a)(1)(A).

[163] Tenn. Code Ann. § 67-1-1802(b)(1).

[164] Tenn. Code Ann. § 67-4-722.

[165] Tenn. Code Ann. § 67-1-113.

[166] TENN. COMP. R. & REGS. 1320-04-05-.42.

[167] Tenn. Code Ann. §§ 67-4-717(b)(1) and (c)(1).

[168] Tenn. Code Ann. § 67-4-724(c).

[169] Tenn. Code Ann. § 67-4-709(4)(A)(i).
[170] Tenn. Code Ann. §§ 67-4-717(b)(2) and (c)(2).
[171] 4 U.S.C.A. § 117(b).
[172] Tennessee Works Tax Act (2023) changed the distribution to the general fund from 43% to 42.62%.
[173] Tenn. Code Ann. § 67-4-724(a).
[174] Tenn. Code Ann. § 67-4-724(b).
[175] Tenn. Code Ann. § 67-4-724(d).
[176] *Id*.
[177] Tenn. Code Ann. § 67-4-724(c).
[178] *Id*.
[179] Tenn. Code Ann. § 67-4-708(3)(C). TENN. COMP. R. & REGS. 1320-04-05-.16.
[180] *See Aabakus, Inc. v. Huddleston*, 1996 WL 548148 at *3 (Tenn. Ct. App. 1996).
[181] Tenn. Code Ann. §§ 67-4-708(3)(C)(i)-(xvi).
[182] *Hershey v. Knowles*, 1991 WL 191633 (Tenn. 1991).
[183] TENN. COMP. R. & REGS. 1320-04-05-.12(1)(g).
[184] Tenn. Code Ann. § 67-4-708(3)(C)(v).
[185] *See* SIC Major Group 88 titled Private Households.
[186] Tenn. Code Ann. § 67-4-708(3)(C)(vi).
[187] These services are classified in Industry 8733 titled Noncommercial Research Organizations within Industry Group 873 titled Research, Development, and Educational Research in the SIC Index.
[188] See, e.g., *Tennessee Farmers Assur. v. Chumley*, 197 S.W.3d 767, 782-83 (Tenn. 2006); *Beare Co. v. Tennessee Dept. of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993).
[189] *See* SIC Industry 8721 within Industry Group 872 titled Accounting, Auditing, and Bookkeeping Services.
[190] Tenn. Code Ann. § 67-4-708(3)(C)(ix).
[191] Tenn. Code Ann. § 65-4-101(6)(A).
[192] TENN. COMP. R. & REGS. 1320-04-05-.48(1). *Najo Equip. Leasing, LLC v. Comm'r of Revenue*, 477 S.W.3d 763, 770–71 (Tenn. Ct. App. 2015).
[193] TENN. COMP. R. & REGS. 1320-04-05-.58.
[194] Tenn. Code Ann. §§ 67-4-708(3)(C)(i)-(xvi).
[195] Tenn. Code Ann. § 45-4-803. 12 U.S.C. § 1768.
[196] *See* Industry Group 641 titled Insurance Agents, Brokers, and Services within SIC Major Group 64.
[197] *See* SIC Industry 6519 titled Lessors of Real Property, Not Elsewhere Classified within Industry Group 651.
[198] Tenn. Code Ann. §§ 67-4-708(3)(C)(i)-(xvi).
[199]Note that, as also stated in *Aabakus, Inc. v. Huddleston*, any actual pass-through amounts (i.e., amounts transferred to a taxpayer with no mark-up that the taxpayer is obligated to pay over to a third party on its client's behalf) included in the amount received by a taxpayer

from its client should not be included in the amount taxed. Such pass-through amounts could include postage, insurance premiums, or certain taxes.

[200] Tenn. Code Ann. § 67-4-702(a)(21).

[201] Tenn. Code Ann. § 67-4-702(a)(19).

[202] Internet Tax Freedom Act, 47 U.S.C.A. § 151, note § 1101(a).

[203] Tenn. Code Ann. § 67-4-712(b)(1).

[204] Tenn. Code Ann. § 67-4-712(b)(2).

[205] Tenn. Code Ann. § 67-4-712(b)(4).

[206] Tenn. Code Ann. § 67-4-712(b)(5).

[207] Tenn. Code Ann. § 67-4-712(b)(6).

[208] Tenn. Code Ann. § 67-4-712(b)(7).

[209] Tenn. Code Ann. § 67-4-712(d).

[210] Tenn. Code Ann. § 67-6-309(b).

[211] Tenn. Code Ann. § 69-10-102(b).

[212] Tenn. Code Ann. § 58-2-204(c)(5).

[213] Tenn. Code Ann. § 67-4-712(d).

[214] TENN. COMP. R. & REGS. 1320-04-05-.40(1).

[215] TENN. COMP. R. & REGS. 1320-04-05-.40(2).

[216] Tenn. Code Ann. §§ 67-4-704(b) and 67-4-705(d).

[217] TENN. COMP. R. & REGS. 1320-04-05-.39(1).

[218] TENN. COMP. R. & REGS. 1320-04-05-.39(2).

[219] TENN. COMP. R. & REGS. 1320-04-05-.39(3).

[220] Tenn. Code Ann. § 67-4-712(a)(1).

[221] Tenn. Code Ann. § 67-4-712(a)(2).

[222] Tenn. Code Ann. § 67-4-712(b)(2).

[223] TENN. COMP. R. & REGS. 1320-04-05-.13(9) and 1320-04-05-.29(3).

[224] TENN. COMP. R. & REGS. 1320-04-05-.29(3)-(4).

[225] TENN. COMP. R. & REGS. 1320-04-05-.16(1)(c).

[226] https://www.osha.gov/pls/imis/sic_manual.html.

[227] *Tenn. Farmers' Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 91-92 (Tenn. 1987).

[228] This analysis is different than that for sales tax, which requires three separate categories (sales of manufactured goods alone, sales of manufactured goods that are also installed, and all other sales).

[229] Tenn. Code Ann. § 67-4-702(a)(2).

[230] *Id*. TENN. COMP. R. & REGS. 1320-04-05-.05(1).

[231] TENN. COMP. R. & REGS. 1320-04-05-.05(1).

[232] *Id*.

[233] TENN. COMP. R. & REGS. 1320-04-05-.05(2) and 1320-04-05-16(1)(c).

[234] TENN. COMP. R. & REGS. 1320-04-05-.05(3).

[235] *Id*.

[236] Tenn. Code Ann. § 67-4-712(b)(3).

[237] Tenn. Code Ann. § 49-6-2112(a).

[238] *Id*.
[239] Tenn. Code Ann. § 49-6-2112(b).
[240] *Id*.
[241] Tenn. Code Ann. § 67-4-712(e).
[242] **https://www.naics.com/standard-industrial-code-divisions/?code=86**.
[243] *Id*.
[244] Tenn. Code Ann. § 67-4-712(c)(2).
[245] Tenn. Code Ann. § 67-4-702(a)(23).
[246] *Id*.
[247] *See* Letter Ruling 17-05.
[248] Tenn. Code Ann. § 67-4-702(a)(18)(B).
[249] Tenn. Code Ann. § 67-4-702(a)(19).
[250] Tenn. Code Ann. § 67-4-702(a)(16).
[251] TENN. COMP. R. & REGS 1320-04-05-.16(1)(g).
[252] TENN. COMP. R. & REGS. 1320-04-05-.41(2).
[253] TENN. COMP. R. & REGS. 1320-04-05-.41(3).
[254] Tenn. Code Ann. § 67-4-702(a)(14).
[255] TENN. COMP. R. & REGS. 1320-04-05-.56.
[256] *Id*.
[257] Tenn. Code Ann. § 67-4-712(b)(5).
[258] TENN. COMP. R. & REGS. 1320-04-05-.18.
[259] "If a sale is governed by the Uniform Commercial Code, one must consult the Code, including Tenn. Code Ann. § 47-2-401. See *Eusco Inc. v. Huddleston*, 835 S.W.2d 576, 579 (Tenn. 1992) (citing Uniform Commercial Code to determine place where title transferred)." Tenn. Op. Atty. Gen. No. 02-087 (Aug. 20, 2002). In *Eusco*, the court was asked to decide whether the plaintiff's sales of truck bodies to out-of-state customers were taxable as retail sales "in this state." And that depended on where the title to the truck bodies passed. In making that determination, the court relied on the Uniform Commercial Code as codified by the
State of Tennessee: "For Tennessee sales tax purposes, the place where title to tangible personal property is transferred to the buyer is determined under the applicable provisions of the Uniform Commercial Code." *Id*.
[260] Tenn. Code Ann. § 47-2-501.
[261] TENN. COMP. R. & REGS. 1320-04-05-.16.
[262] Tenn. Code Ann. § 67-4-711(a)(1).
[263] TENN. COMP. R. & REGS. 1320-04-05-.12(3).
[264] Tenn. Code Ann. § 67-4-711(a)(2).
[265] TENN. COMP. R. & REGS. 1320-04-05-.45.
[266] Tenn. Code Ann. § 67-4-711(a)(3).
[267] TENN. COMP. R. & REGS. 1320-04-05-.54(1).
[268] TENN. COMP. R. & REGS. 1320-04-05-.54(2).
[269] Tenn. Code Ann. § 67-4-711(a)(4).

[270] TENN. COMP. R. & REGS. 1320-04-05-.44(2).
[271] TENN. COMP. R. & REGS. 1320-04-05-.44(3).
[272] *See* **Revenue Ruling 18-01**.
[273] Tenn. Code Ann. § 67-4-711(a)(6).
[274] TENN. COMP. R. & REGS. 1320-04-05-.12(1)(f).
[275] TENN. COMP. R. & REGS. 1320-04-05-.33(1).
[276] TENN. COMP. R. & REGS. 1320-04-05-.33(2).
[277] Tenn. Code Ann. § 67-4-711(a)(7).
[278] Tenn. Code Ann. § 67-4-711(a)(8).
[279] *See* 26 U.S.C. § 166.
[280] Tenn. Code Ann. § 67-4-711(a)(8)(B).
[281] Tenn. Code Ann. § 67-4-711(a)(8)(C).
[282] Tenn. Code Ann. § 67-4-711(a)(8)(D).
[283] Tenn. Code Ann. § 67-4-711(a)(8)(E).
[284] Tenn. Code Ann. § 67-4-711(b).
[285] Compiled in *Tennessee Code Annotated* Title 67, Chapter 3.
[286] *Id.*
[287] Compiled in *Tennessee Code Annotated* Title 67, Chapter 4, Part 10.
[288] Compiled in *Tennessee Code Annotated* Title 57, Chapters 5 and 6.
[289] Compiled in *Tennessee Code Annotated* Title 67, Chapter 3, Part 9.
[290] Compiled in *Tennessee Code Annotated* Title 67, Chapter 3, Part 11.
[291] TENN. COMP. R. & REGS. 1320-04-05-.01(1).
[292] *Id.*
[293] *Id.*
[294] TENN. COMP. R. & REGS. 1320-04-05-.34.
[295] TENN. COMP. R. & REGS. 1320-04-05-.38(2).
[296] TENN. COMP. R. & REGS. 1320-04-05-.31(3).
[297] TENN. COMP. R. & REGS. 1320-04-05-.19(2).
[298] Tenn. Code Ann. § 67-4-713(a)(2).
[299] Tenn. Code Ann. § 67-4-713(a)(2)(A).
[300] Tenn. Code Ann. § 67-4-713(a)(2)(B).
[301] Tenn. Code Ann. § 67-4-713(a)(2)(C).
[302] *Id*.
[303] Tenn. Code Ann. § 67-4-713(a)(4).
[304] *Id*.
[305] Tenn. Code Ann. § 67-4-713.
[306] Tenn. Code Ann. § 67-4-713(a)(4).
[307] Tenn. Code Ann. § 67-4-713(a)(5).
[308] Tenn. Code Ann. § 67-4- 713(a)(1).
[309] Tenn. Code Ann. § 67-4-709(4)(A)(ii).
[310] Tenn. Code Ann. § 67-4-712(d)(1).
[311] All company names contained in the examples are fictional.

[312] Please note, the business tax statutes do not require a minimal activity license in this instance, however, local ordinances may require such a license for other purposes (such as to obtain a building permit).
[313] Tenn. Code Ann. § 67-4-717(b)(3).
[314] *Id*.
[315] Tenn. Code Ann. § 67-4-709(4)(A)(ii).
[316] Tenn. Code Ann. § 67-4-711(a)(5)(A).
[317] Tenn. Code Ann. § 67-4-708(4)(B).
[318] Tenn. Code Ann. § 67-4-708(3)(C)(xvi).
[319] TENN. COMP. R. & REGS. 1320-04-05-.16(d).
[320] Tenn. Code Ann. § 67-4-712(c)(1).
[321] Tenn. Code Ann. § 67-4-729(a).
[322] *Id*.
[323] Tenn. Code Ann. § 67-4-729(b)(1).
[324] Tenn. Code Ann. § 67-4-729(b)(2).
[325] Tenn. Code Ann. § 67-4-729(b)(3).
[326] *Id*.
[327] TENN. COMP. R. & REGS. 1320-04-05-.19(1)(a).
[328] TENN. COMP. R. & REGS. 1320-04-05-.19(1)(b).
[329] TENN. COMP. R. & REGS. 1320-04-05-.19(2).
[330] TENN. COMP. R. & REGS. 1320-04-05-.06.
[331] *Id*.
[332] *Id*.
[333] TENN. COMP. R. & REGS. 1320-04-05-.25.
[334] *Id*.
[335] TENN. COMP. R. & REGS. 1320-04-05-.07.
[336] *Id*.
[337] TENN. COMP. R. & REGS. 1320-04-05-.59.
[338] Tenn. Code Ann. § 67-4-710(a)(1)(A).
[339] Tenn. Code Ann. § 67-4-710(a)(1)(B).
[340] Tenn. Code Ann. § 67-4-702(a)(24).
[341] *Id*.
[342] Tenn. Code Ann. § 67-4-710(a)(2).