

# Tennessee Business Tax Guide



January 2015

## BUSINESS TAX

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Dear Tennessee Taxpayer,

This business tax guide is intended as an informal reference for taxpayers who wish to gain a better understanding of Tennessee business tax requirements. It is not an all-inclusive document or a substitute for Tennessee business tax statutes or rules and regulations. The information in this guide is current as of the date of publication. Tax laws, their interpretation, and their application can change due to legislative action, reviews, and court decisions.

Periodically, registered taxpayers are mailed information letters with updates on tax laws and policies. Be sure to read any letter you receive carefully; this information may save you time and money. Informational publications are also available for specific industries. Contact the Taxpayer Services Division to obtain these publications.

The Department of Revenue offers a toll-free tax information line for Tennessee residents. The number is (800) 342-1003. If calling from Nashville or outside Tennessee, you may call (615) 253-0600. The Department of Revenue also offers a telecommunications device for the deaf (TDD) line at (615) 741-7398.

If you have questions, please do not hesitate to contact any of the offices listed below.

Sincerely,

Taxpayer Services Division

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Taxpayer Services Division  
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## **BUSINESS TAX**

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### **CHANGES:**

There was one change enacted to the Business Tax law during the 2014 session of the Tennessee General Assembly that has been included in this version of the Business Tax Guide.

- (1) Classification 5 (Page 9) – Added “Natural Gas Marketers” to Classification 5 as Classification 5(B).
- (2) Business Tax Rates (Page 12) – Announces the tax rate for Natural Gas Marketers in Classification 5(B).

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## BUSINESS TAX

### THE BUSINESS TAX

Engaging in any vocation, occupation, business, or business activity listed in Tenn. Code Ann. Section 67-4-708(1) – (5) is a taxable privilege subject to a state business tax. The tax shall not apply to gross receipts generated from any sales of services or tangible personal property made by a provider of direct-to-home satellite television programming services. [Tenn. Code Ann. Section 67-4-704]

Engaging in any vocation, occupation, business, or business activity listed in Tenn. Code Ann. Section 67-4-708(1) – (4) is a taxable privilege subject to a municipal business tax that may be levied by ordinance of the municipal governing body. The tax shall not apply to gross receipts generated from any sales of services or tangible personal property made by a provider of direct-to-home satellite television programming services. [Tenn. Code Ann. Section 67-4-705]

Engaging in this state in any vocation, occupation, business, or business activity listed in Tenn. Code Ann. Section 67-4-708(1) – (5) without establishing a physical location is a taxable privilege subject to a state business tax, but is not subject to a municipal business tax. The tax shall not apply to gross receipts generated from any sales of services or tangible personal property made by a provider of direct-to-home satellite television programming services. [Tenn. Code Ann. Section 67-4-717]

The term “engaged in this state” is limited to the following activities [Tenn. Code Ann. Section 67-4-717]:

- + Performing any service in Tennessee where the service is received by a customer located in Tennessee.
- + Leasing tangible personal property that is located in Tennessee.
- + Delivering tangible personal property to a buyer in Tennessee when delivered by the seller in the seller’s own vehicle.
- + Purchasing and subsequently selling tangible personal property in Tennessee in a wholly in-state transaction where the purchase and subsequent sale are accomplished through the presence in Tennessee of the seller’s employees, agents, or independent contractors acting on behalf of the seller.
- + Making sales as a natural gas marketer to customer’s located in Tennessee through the presence of the seller’s property in Tennessee, the seller’s pipeline capacity on pipelines located in Tennessee, or the seller’s employees, agents, indendent

contractors, or other representatives in Tennessee who are acting on behalf of the seller by soliciting orders, providing customer service, or conducting other activities in furtherance of the sales.

Engaging in any vocation, occupation, business, or business activity listed in Tenn. Code Ann. Section 67-4-710 is a taxable privilege subject to a privilege tax that may be levied by ordinance of the governing body of any county or incorporated municipality, or both. [Tenn. Code Ann. Section 67-4-705]

On August 19, 2003, the Attorney General issued an opinion that levy of the business tax by different levels of government jurisdiction does not constitute impermissible double taxation because (a) the taxing jurisdictions are not the same and (b) double taxation is not prohibited when the legislature intended that result.

The tax imposed under the Business Tax Act may be collected in addition to any other applicable privilege taxes established by law. The tax will be in lieu of any or all ad valorem taxes on the inventories of merchandise held for sale or exchange by persons taxable under this law. [Tenn. Code Ann. Section 67-4-701]

#### Registration

Prior to engaging in business, every person taxable under the Uniformity and Small Business Relief Act of 2013 must register with the Commissioner of Revenue or the county clerk, in the case of businesses located within a county, and/or with the Commissioner of Revenue or the appropriate city official in the case of businesses located in an incorporated municipality.

Any person subject to the tax levied by Tenn. Code Ann. Section 67-4-704 that does not have an established physical location, outlet, or other place of business in Tennessee and who generates as much as \$10,000 in annual gross receipts in any Tennessee county must register with the Commissioner of Revenue. Persons described in Tenn. Code Ann. Section 67-4-708(5) and taxable under Tenn. Code Ann. Section 67-4-709(5) must also register with the Commissioner of Revenue prior to engaging in any business. [Tenn. Code Ann. Section 67-4-706]

Taxpayers may contact the Department of Revenue or the respective county or city official for registration information and forms.

## **BUSINESS TAX**

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### **THE BUSINESS TAX** *(continued)*

#### **Obtaining the Business License** [Tenn. Code Ann. Section 67-4-723]

No person described in Tenn. Code Ann. Section 67-4-708(1)-(4) shall conduct business in Tennessee without first acquiring the appropriate business licenses required. The fee for each new business license is \$15 and must be paid at the time the application is submitted.

Upon receipt of the application and payment of the \$15 fee, together with any other information reasonably required, the county clerk, for taxpayers located within the county, and the appropriate city official, for taxpayers located within the incorporated municipality, are required to issue a business license to the taxpayer.

If the taxpayer has more than one location within the county or the incorporated municipality, a separate business license and \$15 license fee payment is required for each location.

Annually thereafter, upon notification from the Department of Revenue that the taxpayer has filed the required business tax return and remitted the amount of tax due, the licensing entity will renew the taxpayer's business license for another year. There is no additional fee for annual business license renewal.

Each license issued will expire thirty days after the date that the taxpayer's annual business tax return is due for that license/jurisdiction.

Any county or incorporated municipality may enter into an agreement with the Commissioner of Revenue under which the Department of Revenue will issue new or renewal business licenses, or both, on behalf of the county or incorporated municipality. This would be a voluntary decision by the county or city.

The taxpayer must exhibit the license in the taxpayer's place of business.

If a taxpayer's character of business changes in a manner that causes the taxpayer to fall under a different business tax classification, the taxpayer must notify the appropriate licensing officials. The taxpayer must also file a final business tax return in the previous classification within 15 days of the change in classification. The taxpayer will then be placed into the proper business tax year based on the new classification.

#### **Minimal Activity License**

Any municipality that has enacted the business tax and every county will issue a minimal activity license to any person that is exempt from business tax under Tenn. Code Ann. Section 67-4-712(d) if the person has annual sales of more than \$3,000 but less than \$10,000 per year within the jurisdiction.

The minimal activity license will be issued upon receipt of an application prescribed by the Department of Revenue and payment of a \$15 fee. On the application, the applicant must attest that the applicant is engaged in business within the county or incorporated municipality and has sales of less than \$10,000 per year within the jurisdiction.

Any county or municipality may voluntarily enter into an agreement with the Department of Revenue under which the department will issue the minimal activity licenses.

No person with sales of more than \$3,000 but less than \$10,000 per year can engage in business in the jurisdiction without first obtaining the minimal activity license.

If a person has more than one location in the jurisdiction, a separate minimal activity license and \$15 fee is required for each location. Any person obtaining a minimal activity license must display the license in the person's place of business.

Every county and incorporated municipality that issues minimal activity licenses will provide the Department of Revenue, upon request, with the identity of each licensee and any other information reasonably required by the Department of Revenue to verify the licensee's compliance.

Persons with \$3,000 or less in annual sales in any incorporated municipality or county may, but are not required to, have a minimal activity license.

Each minimal activity license will expire thirty days after the end of what would be the taxpayer's filing period if the person were filing a business tax return. Each year, a new minimal activity license must be obtained for each of the person's locations if the person will meet the qualifying gross receipts criteria; another \$15 license fee must be paid for each new minimal activity license.

## **BUSINESS TAX**

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### **THE BUSINESS TAX** *(continued)*

In any year in which a the person's gross receipts in the jurisdiction are \$10,000 or more, the person will be required to file a regular business tax return for the tax year.

Any regular business license in effect on January 1, 2014 will continue to be valid until the original renewal date of the license. At that time, a qualifying person can then obtain the initial minimal activity license. [Tenn. Code Ann. Section 67-4-723]

#### **Bond**

Persons in Classification 4(A) domiciled outside Tennessee, must, when applying for a business tax license, execute a bond or establish an escrow account with the county or municipality in which they are applying. This bond will be executed by two good and sufficient sureties approved by the county or municipal clerk or by a surety company duly authorized to do business in this state. This bond or escrow account will be in an amount sufficient to pay that person's anticipated business tax liability for the balance of the tax period for which such license applies, as determined by the county or municipal clerk. The bond may be called by the state in the event of failure by the person to pay its business tax liability. [Tenn. Code Ann. Section 67-4-707]

Effective January 1, 2014, a county or municipality may, but is not required to, enter into an agreement with the Commissioner of Revenue under which the bond or escrow account will be filed with the Department of Revenue rather than with the county or municipality. [Tenn. Code Ann. Section 67-4-707(b)]

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### CATEGORIES OF BUSINESS

[Tenn. Code Ann. Section 67-4-708]

#### Business Tax Classifications

Businesses, vocations, and occupations that are taxable are described in the following classifications.

Each person shall be classified according to the dominant business activity (the activity comprising the largest proportion of taxable gross sales of the business):

##### Classification 1: Persons making sales of:

- + (A) Food or beer generally destined for home preparation and consumption, except persons engaged in the business of selling delicatessens and candy at retail and services performed by food brokers.
- + (B) Lumber, building materials, tools, builders' hardware, paint and glass, electrical supplies, roofing materials, farm equipment, plumbing, heating and air conditioning equipment, other basic lines of hardware, and sales of tangible personal property by persons operating service stations, except sales covered by (D).
- + (C) Hay, grain, feed, fertilizer, seeds, bulbs, nursery stock and other farm, lawn, and garden supplies, and tools.
- + (D) Gasoline, diesel fuel, and motor oils sold at retail.
- + (E) Gasoline and diesel fuel sold at wholesale.

##### Classification 2: Persons making sales of:

- + (A) New or used motor vehicles, parts and accessories, tires, batteries, motor boats and other watercraft, marine supplies, outboard motors, mobile homes and campers, motorcycles, and go-carts.
- + (B) Clothing, shoes, hats, underwear, and related articles for personal wear and adornment, except retail sales of clothing to individual order.
- + (C) Home furnishings, including retail sales of radios, television sets, record players, high fidelity and sound reproducing equipment, musical instruments, phonograph records, pianos, and sheet music, household furniture, floor coverings and related products, draperies, curtains, upholstery, china, glassware and metalware for kitchen and table use, miscellaneous home furnishings, such as brooms, brushes, lamps and shades, electric and gas refrigerators, stoves, and other household appliances.
- + (D) Prescription drugs and patent medicines.
- + (E) Coal, wood, ice, fuel oil, and liquefied petroleum gas.

- + (F) Tangible personal property not specifically enumerated or described elsewhere.
- + (G) Prepared food and drinks, including alcoholic beverages, for consumption on and/or off the premises.
- + (H) Cut flowers and growing plants.
- + (I) Advertising specialties.

##### Classification 3: (A) Persons making these sales:

- + (i) Delicatessens and candy.
- + (ii) Clothing made to individual order.
- + (iii) Antique furniture, furnishings, and art objects;
- + (iv) Books and magazines, stationery, accounting and legal forms, office forms and supplies, pens and pencils, school supplies, and writing supplies.
- + (v) Sporting goods and equipment, bicycles, and bicycle parts and accessories.
- + (vi) Any combination of the lines of jewelry, such as diamonds and other precious stones mounted in precious materials, as rings, bracelets and brooches, sterling and plated silverware, watches, and clocks.
- + (vii) Cigars, cigarettes, tobacco, and smoking supplies.
- + (viii) Toys, games, and hobby kits, and supplies.
- + (ix) Cameras, films, and other photographic supplies and equipment.
- + (x) Gift and novelty merchandise, souvenirs, and miscellaneous small art goods, such as greeting cards and holiday decorations.
- + (xi) Architectural supplies, artists' paints and supplies, artificial flowers, awnings, baby carriages, bait, banners, binoculars, coins, electric razors, fireworks, flags, gemstones, hearing aids, leather goods, luggage, optical supplies except for prescription eyewear (including eyeglasses, contact lenses and other related tangible personal property) dispensed by an ophthalmologist or optometrist in conjunction with professional services rendered to patients, orthopedic and artificial limbs, pet foods, pets, piers and floats, rock and stone specimens, rubber stamps, stamps, swimming pools, telescopes, tents, theatre programs, trophies, trunks, typewriters, toupees, wiglets and wigs.
- + (xii) Persons making sales from the operation of pawnshops.
- + (xiii) Persons making sales of services or engaging in the business of furnishing or rendering services except those professional services described below.

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### CATEGORIES OF BUSINESS *(continued)*

**NOTE: While not subject to the sales and use tax, services are subject to business tax except for the services listed below.**

Sales of these services are not included in business classification 3:

- + Medical, dental, and allied health services to human beings, including sanatorium, convalescent, and rest home care, but not including 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 nondegree-granting schools.
- + Services rendered by nonprofit membership organizations operating on a nonprofit membership basis for the promotion of the interest of the members.
- + Domestic service 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.
- + Services furnished by institutions which are engaged in deposit banking or closely related functions, including fiduciary activities, services furnished by persons engaged in extending credit or lending money, except persons taxable under Classification 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, exchange clearing houses, and other services allied with the exchange of securities and commodities; services furnished by investment trusts, investment companies, holding companies, and commodity trading companies.
- + Insurance carriers or insurance agents of any type selling or furnishing necessary services related to insurance, and insurance adjusters.
- + Operators of residential and nonresidential buildings except hotels, motels, and rooming houses.
- + Lessors of the following properties: agricultural, airport, forest, mining, oil, and public utility.
- + Services furnished by persons engaged in the practice of veterinary medicine, dentistry, or surgery, including services involving the boarding and lodging of animals.

- + Services furnished by persons engaged in the practice of architecture, engineering, or land surveying.
- + 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.

Classification 4: Each person engaged in the business of contracting, performing a contract, or engaging in any of these activities, or similar activities, for monetary gain:

- + (A) 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, 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.
- + (B) Each person engaged in the business of selling livestock, poultry, or other farm products not exempted under Tenn. Code Ann. Section 67-4-712.

Classification 5:

- + Industrial loan and thrift companies required to obtain a certificate and a license under Tennessee Code Annotated, Title 45, Chapter 5.
- + Natural gas marketers that are not regulated by the Tennessee Regulatory Authority, that provide natural gas and ancillary services to customers located in Tennessee, and that are required by the Federal Energy Regulatory Commission to take title to the natural gas in connection with the sale of such gas to customers. [Tenn. Code Ann. Section 67-4-708(5) as amended by Public Chapter 942, Acts of 2014]

## BUSINESS TAX

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### DEFINITIONS

[Tenn. Code Ann. Section 67-4-702]

In order to understand this tax, it is important to understand the terms defined below.

#### Business

“Business” includes any activity engaged in by any person with the object of gain, benefit, or advantage, either directly or indirectly. “Business” does not include occasional and isolated sales or transactions by a person who is not routinely engaged in business.

Occasional and isolated sales, also known as casual and isolated sales, are sales made by persons not in the business of regularly selling the type of property being sold.

“Business” does not include an individual property owner that utilizes a property management company to manage vacation lodging for overnight rentals.

#### Dominant Business Activity

“Dominant business activity” means the business activity that is the major and principal source of taxable gross sales of the business.

#### Gross Sales

“Gross sales” means the sum total of all sales, without any deduction whatsoever of any kind or character, except as provided in this act.

#### Resale

“Resale” means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. “Sale for resale” means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sale for resale must be in strict compliance with rules and regulations established by the Commissioner of Revenue.

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 consumer, are sales for resale.

#### Retail Sale

“Retail sale” or “sale at retail” means any sale other than a wholesale sale.

#### Retailer

“Retailer” means any person primarily engaged in the business of making retail sales. “Primarily” means that at least 50% of the taxable gross sales of the business are retail sales.

#### Sale

“Sale” means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, of tangible personal property for a consideration. “Sale” includes the fabrication of tangible personal property for consumers who furnish, directly or indirectly, the materials used in fabrication work, and the furnishing, repairing, or servicing, for a consideration, of any tangible personal property consumed on the premises of the person furnishing, preparing, or servicing such tangible personal property.

A transaction in which the possession of property is transferred but the seller retains title as security for the payment of the price is deemed a sale.

“Sale” includes the furnishing of any of the things or services taxable under the Business Tax Act.

“Sale” does not include the transfer of tangible personal property from one wholesaler to another wholesaler (an accommodation sale) 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.

#### Sales Price

“Sales price” means the total amount for which tangible personal property or services rendered is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise. Sales price includes any amount for which credit is given to the purchaser by the seller, without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost, losses, or any other expense whatsoever.

“Sales price” does not include any advertising cost paid by a seller to an auctioneer for the purpose of

## BUSINESS TAX

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### DEFINITIONS *(continued)*

advertising an auction, when the auctioneer retains no portion of that payment as profit, and when that payment has been placed in an escrow or a trust account by the auctioneers on behalf of the seller.

[Tenn. Code Ann. Section 67-4-702]

#### **Transient Vendor**

“Transient vendor” means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public.

“Transient vendor” does not include any person selling goods by sample, brochure, or sales catalog for future delivery, or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence.

For purposes of this definition, “merchandise” means any consumer item that is, or is represented to be, new or not previously owned by a consumer, and “temporary premises” means 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 which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six consecutive months or has occupied the premises as the person’s permanent residence for more than six consecutive months.

#### **Wholesale Sale**

“Wholesale sale” or “sale at wholesale” means any sale to a retailer for resale.

“Wholesale sale” or “sale at wholesale” includes the sale of industrial materials 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. The provisions of this section do not apply to raw or unprocessed agricultural products.

“Wholesale sale” includes the sale by a wholesaler of tangible personal property to the state of Tennessee, or any county or municipality or subdivision thereof, or the sale to any religious, educational, or charitable institution as defined as exempt from the sales or use tax in Tenn. Code Ann. Section 67-6-322.

“Wholesale sale” includes the 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 and/or repair services necessary for repairs performed by the dealer under the manufacturer’s, distributor’s, or obligor’s warranty, and also includes predelivery inspection charges paid to a franchised motor vehicle dealer by a manufacturer or distributor of the motor vehicle.

#### **Wholesaler**

“Wholesaler” means any person primarily engaged in the business of making wholesale sales. “Primarily” means that more than 50% of the taxable gross sales of the business are wholesale sales.

#### **Services Rendered by Affiliated Entity**

[Tenn. Code Ann. Sections 67-4-702(1), (18) and (20)]

For tax periods for which returns are required to be filed on or after January 1, 2001, taxable services for profit or monetary gain do not include those services rendered by a person for an affiliated business entity if the services are accounted for as allocations of cost incurred in providing the service without any markup whatsoever.

Also, the business tax definition of “sales price” for services rendered by a person for an affiliated business entity does not include, and the tax does not apply to, any amount that is accounted for as a reasonable allocation of cost incurred in providing the service. If the charge to the affiliated business entity is in excess of the cost incurred in providing the service, the amounts in excess of the cost (markup) are included in the sales price and are taxable.

An affiliated company is one in which the taxpayer has more than 50% ownership interest, one that has more than 50% ownership interest in the taxpayer, or one in which the taxpayer’s parent company has more than 50% ownership interest.

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### BUSINESS TAX RATES

[Tenn. Code Ann. Section 67-4-709]

#### Tax on the Dominant Business Activity

[Tenn. Code Ann. Section 67-4-709]

All persons will pay the taxes imposed by Tenn. Code Ann. Sections 67-4-704 and 67-4-705 according to the dominant business activity Classification as indicated.

The rates of tax are:

##### Classification 1:

- + One tenth of one percent of all sales by a retailer classified under Classifications 1(A), (B), and (C).
- + One fortieth of one percent of all sales by a wholesaler classified under Classification 1(A).
- + Three eightieths of one percent of all sales by a wholesaler classified under Classifications 1(B) and (C).
- + One twentieth of one percent of all sales by a retailer classified under Classification 1(D).
- + One thirty-second of one percent of all sales by a wholesaler classified under Classification 1(E).

##### Classification 2:

- + Three twentieths of one percent of all sales by a retailer.
- + Three eightieths of one percent of all sales by a wholesaler.

##### Classification 3:

- + Three sixteenths of one percent of all sales by a retailer.
- + Three eightieths of one percent of all sales by a wholesaler.

##### Classification 4:

- + One tenth of one percent of the compensation entitled to under the contract, whether in the form of a contract price, commission, fee, or wage, for persons in Classification 4(A). If contracts during the taxable period do not bring the taxpayer \$50,000 or more in any locale other than the locale of domicile, all tax will be paid for the locale of domicile. Persons who, during any taxable period, receive more than \$50,000 in compensation from contracts in a jurisdiction other than the home jurisdiction of domicile, will be deemed to have a business location in such jurisdiction and must file a business tax return for the jurisdiction in which such work was performed for the tax period in which the work was performed. Gross receipts reported on a deemed location return will not be reported on the

business tax return for the business's permanent domicile.

- + One tenth of one percent of the gross commissions, margins, fees, or other charges by persons in Classification 4(B).

##### Classification 5:

- + Three tenths of one percent of the gross income of the business classified under classification 5(A).
- + "Gross income of the business" means all interest income, earned discounts, earned leased rentals, commission fees exclusive of insurance commissions, past due charges, contract earnings or charges, collection charges, loan service fees, late fee income, and all other income, without any deduction, except as provided.
- + One fiftieth of one percent of all sales within the state of a person classified as a natural gas marketer. [Amended by Public Chapter 942, Acts of 2014]

#### The Minimum Tax

For taxpayers included in Classifications 1 through 4, the minimum business tax per location is \$22 each year after applying all deductions and credits available in Tenn. Code Ann. Section 67-4-711 and Tenn. Code Ann. Section 67-4-713.

For coin-operated vending machines, only the principal place of business will be subject to the minimum tax.

For persons described in Classification 5 the minimum amount of tax is \$450 per year after applying all deductions and credits available in Tenn. Code Ann. Section 67-4-711 and Tenn. Code Ann. Section 67-4-713. No person in this classification will pay more than a maximum of \$1,500 per year after applying credits and deductions. [Tenn. Code Ann. Section 67-4-714]

A taxable entity that is incorporated, domesticated, qualified, or otherwise registered to do business in Tennessee but is, or has become, inactive in Tennessee, or whose charter, domestication, qualification, or other registration is forfeited, revoked, or suspended without the entity being properly dissolved, surrendered, withdrawn, cancelled, or otherwise properly terminated, will not be relieved from filing a return and paying the business tax. The amount of tax will be no less than the minimum tax amount established for the business's classification.

## **BUSINESS TAX**

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Persons subject to the business tax that have no established physical location, outlet, or other place of business in this state will register with the Tennessee Department of Revenue for state business tax if such persons generate \$10,000 or more in annual gross receipts in any Tennessee county. Such persons will be subject to one minimum tax payment for all taxable gross receipts received in Tennessee. [Tenn. Code Ann. Section 67-4-717]

## BUSINESS TAX

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### RETURNS AND PAYMENTS

#### Filing the Return

[Tenn. Code Ann. Section 67-4-715]

Persons subject to business tax must file a return with the Tennessee Department of Revenue. The return form will be prescribed, prepared, and furnished by the department.

Effective January 1, 2014, business tax reporting periods correspond to each business' fiscal year. Businesses in Classifications 1 through 5 will file a transitional business tax return for each location for the date following their last 2013 filing through the last day of their business' fiscal year in 2014. In subsequent years, each business will always file its business tax return for a twelve-month period ending on the last day of their fiscal year.

Returns and tax payments must be filed no later than the fifteenth day of the fourth month following the end of the business' fiscal year. For instance, businesses whose fiscal year ends on December 31 must file and pay their business taxes on or before April 15th of the following year.

A taxpayer with a location within the limits of a Tennessee city that has enacted the business tax must file two returns for that location – one return for the city and one return for the county.

A taxpayer with a location outside the limits of any Tennessee city, or inside the limits of a city that has not enacted the business tax, must file one business tax return for that location for the county.

Taxpayers who enter Tennessee to conduct business activities but who do not have a physical business location in Tennessee and who generate gross sales of \$10,000 or more in any Tennessee county must file one state business tax return for the gross receipts received in counties where gross receipts were \$10,000 or more.

The return and tax payment must be filed together. Failure to remit the required tax payment with the return will cause the tax to become delinquent.

Effective January 1, 2014, the Commissioner of Revenue determined that all business tax taxpayers are required to file returns and remit the associated tax payments electronically.

If this requirement creates a hardship on any taxpayer subject to this requirement, the taxpayer can request permission to continue to file using paper return forms. The Commissioner can require that any paper return be accompanied by a manual handling fee of \$25 to account for the additional cost of preparing, printing, receiving, reviewing, and processing the paper return. [Tenn. Code Ann. Section 67-1-115(a)]

The taxpayer must also file a final business tax return in the previous classification within 15 days of any change in classification. The taxpayer will then be placed into the proper business tax year based on the new classification.

#### Filing Date

If the due date for a return falls on Saturday, Sunday, or a holiday, the due date is automatically extended until the next business day. [Tenn. Code Ann. Section 67-1-107]

#### Assessment in the Absence of a Return

[Tenn. Code Ann. Section 67-4-716]

If a person fails to file any form, statement, report, or return required to be filed with the Commissioner of Revenue, the Commissioner is authorized to determine the tax liability of that person from whatever source of information may be available.

The provisions relative to collection of delinquent taxes in Tenn. Code Ann. Title 67, Chapter 1, will apply to any delinquent business tax administered and collected by the Commissioner of Revenue.

#### Extension

[Tenn. Code Ann. Section 67-4-718]

The Commissioner of Revenue 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.

## **BUSINESS TAX**

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### **RETURNS AND PAYMENTS** (continued)

Interest, as provided in Tenn. Code Ann. Section 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 subsequent to 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.

#### **Penalties and Penalty Waivers**

A penalty is imposed for the late filing of a tax return and for late payment of taxes owed the state. The penalty is computed at a rate of 5% per month, or any portion of a month, from the due date until the date the taxes are paid. The maximum penalty is 25% of the tax amount due; the minimum penalty is \$15. [Tenn. Code Ann. Section 67-1-804(a)(1)]

When a taxpayer fails to submit a timely return and penalties and/or interest are applied, the penalties and interest become a part of the tax due. The Commissioner of Revenue may for good cause waive payment of penalty on any tax due. [Tenn. Code Ann. Section 67-1-802]

#### **Interest**

Interest is imposed on any taxes not paid by the date required by law even though a filing date extension has been granted. The Department of Revenue has no discretion to refund or waive any interest charges. The interest rate applicable to any deficient tax payment is established each July 1st. [Tenn. Code Ann. Section 67-1-801]

## **BUSINESS TAX**

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### **DEDUCTIONS**

[Tenn. Code Ann. Section 67-4-711]

In computing the amount of business tax liability, the following items may be deducted from the measure of the tax.

#### **Cash Discounts**

Cash discounts allowed and taken on sales.

#### **Returned Merchandise**

The proceeds of the sale of goods, wares, or merchandise returned by the customer when the sale price is refunded either in cash or by credit.

#### **Trade-ins**

The amount allowed as trade-in value for any article sold.

#### **Repossessions**

Amounts representing the difference between the remaining amount due on the selling price of tangible personal property sold on a security agreement and \$500, when the wholesaler or retailer actually repossesses the property sold pursuant to the terms of the security agreement.

#### **Contractor Payments to Subcontractors**

Amounts actually paid during the business tax period by a contractor to a subcontractor holding a business license or who is licensed by the state board for licensing contractors for performing activities described in Tenn. Code Ann. Section 67-4-708(4)(A).

Those activities include rendering exterminating services, for installing personal property, for 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, or any other improvement or structure or any part thereof.

For a contractor to be eligible to claim the deduction, the contractor must provide, on the appropriate form provided by the Commissioner of Revenue, the name, address, and business license or contractor's license number of the subcontractor and the amount subcontracted. 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.

This provision applies only to new contracts issued on or after September 1, 2009. Contracts issued before that date are subject to the provisions of Tenn. Code Ann. Section 67-4-711(a)(5) that existed immediately prior to June 25, 2009.

#### **Services Received by Customers in Other States**

Sales of services that are received by customers located outside the State of Tennessee.

#### **School Sales**

The proceeds of the sale of school supplies and meals to students and school employees on campus by elementary and secondary schools. The proceeds of all sales of such items by private independent contractors shall not be deducted.

#### **Bad Debts**

A deduction from gross receipts is available for bad debts arising from receipts on which business tax was paid. The deduction for bad debts will not include any charge attributable to interest on such debt.

A "bad debt" is defined in 26 U.S.C. Section 166. The amount calculated pursuant to 26 U.S.C. Section 166 will be adjusted to exclude:

- + finance charges or interest,
- + 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.

The bad debt deduction will be deducted 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.

## BUSINESS TAX

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### DEDUCTIONS *(continued)*

[Tenn. Code Ann. Section 67-4-711]

A taxpayer that is not required to file a federal income tax return may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the taxpayer was required to file a federal income tax return.

If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected will be paid and reported on the return filed for the period in which the collection is made.

If the amount of bad debt exceeds the amount of gross receipts for the period in which the bad debt is written off, the taxpayer may file a refund claim and receive a refund. The statute of limitations for filing the claim is measured from the due date of the return on which the bad debt could first be claimed.

### Other Taxes Paid

In computing the tax due, these taxes may be deducted from the measure of tax. These deductions may be claimed only by the taxpayer who made direct payment to the applicable governmental agency and, by all vendees of that taxpayer licensed under this chapter to do business in the state.

Taxes, which may be deducted from the measure of the tax, are:

- + Federal excise taxes imposed on beer, gasoline, motor fuel, and tobacco products.
- + Tennessee gasoline tax.
- + Tennessee motor vehicle fuel use tax.
- + Tennessee tobacco tax.
- + Tennessee beer taxes.
- + Special tax on petroleum products.
- + Taxes that are required to be passed on to the consumer by the provisions of the Retailers' Sales Tax Act, or by the provisions of Tennessee Code Annotated, Title 57, relative to sale of alcohol for on-premises consumption. These taxes 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.
- + Liquified gas tax.

## BUSINESS TAX

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### EXEMPTIONS

[Tenn. Code Ann. Section 67-4-712]

#### Qualifying Blind Persons

Any person, unable to see because of total blindness, owning property of less than \$2,500 after the deduction of encumbrances thereon, doing business with a capital not exceeding \$2,500, residing within and being a citizen of Tennessee and of the county in which the exemption is claimed, and being the sole beneficiary of a business, is exempt from the payment of the business tax.

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

#### Qualifying Veterans

A disabled veteran of any armed conflict in which the United States has engaged and who formerly was a uniformed member of the armed forces, or a peacetime uniformed member of the armed forces who was disabled while in regular service, who owns less than \$5,000 of property after the deduction encumbrances thereon, who is doing business with a capital stock of not exceeding \$5,000, who is a citizen and resident of Tennessee and of the county in which the exemption shall be claimed, and is the sole beneficiary of the business, is also exempt from the payment of the business tax.

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.

With respect to former members of the armed forces operating as peddlers, one vehicle shall be considered as one place of business.

#### Affidavit Required

Any applicant who wishes to seek the benefits of the business tax exemptions provided must file an affidavit setting out the applicant's disability, the applicant's financial condition, and the source of the applicant's income before the license can be issued. Any person making a false affidavit and procuring a free privilege license as a result commits perjury and will be punished under the law.

#### Farm Exemptions

[Tenn. Code Ann. Section 67-4-712(c)]

Tennessee gross sales of livestock, horses, poultry, nursery stock, and other farm products direct from the farm are exempt from the 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 classed and taxed under the provisions of Tenn. Code Ann. Section 67-4-708(4) (Classification 4). This provision does not apply to catfish farmers.

Also exempt from business tax are farmers providing services to other farmers for planting or harvesting agriculture products or for the preparation, improvement, or maintenance of land used for the production of agricultural products. [Tenn. Code Ann. Section 67-4-708(3)(C)]

#### Qualified Amusement Activities

Gross proceeds derived 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; by organizations which have received and currently hold a 26 U.S.C. Section 501(c) exemption from the Internal Revenue Service; or by organizations listed in Major Group No. 86 of the Standard Industrial Classification Manual of 1972, as amended, prepared by the Office of Management and Budget of the federal government are exempt. This exemption does not apply unless such entities, societies, associations, or organizations promote, produce, and control the entire activity.

#### Other Exemptions

##### Receipts Excluded in Determining Gross Sales

The following types of transaction receipts may be excluded from gross sales on the business tax return [Tenn. Comp. R. & Regs. 1320-4-5-.16]:

- + Medical and allied health services, except services of persons making dentures and artificial teeth.
- + Religious, charitable, legal, educational, domestic, accounting services, architecture, engineering, surveying, and veterinary services.

## BUSINESS TAX

### EXEMPTIONS *(continued)*

[Tenn. Code Ann. Section 67-4-712]

- + Services rendered by nonprofit membership organizations for the promotion of the interest of the members.
- + Educational and research agencies.
- + Public utilities as defined under Tenn. Code Ann. Section 65-4-101.
- + Banks, building and loan associations, mortgage bankers, and other similar organizations.
- + Insurance companies and holding companies.
- + Operators of residential and non-residential buildings other than hotels, motels, or rooming houses.
- + Persons operating camps and trailer parks where charges are made for rental only of real property are exempt from the tax. Persons renting trailers to transients, or selling tangible personal property, or making separate charges for specific services are not exempt.
- + Lessors of agricultural, forestry, mining, oil, public utility, and airport properties.
- + 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.
- + 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. Section 67-6-212.
- + Rental of films, transcriptions, and recordings to radio and television stations operating under a certificate from the Federal Communications Commission.
- + 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.
- + A person who, as part of the normal business operations, buys and sells intangible personal property.
- + 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.
- + Any person residing or located in this state or any governmental entity, nonprofit corporation, institution or organization which has received, and is currently operating under, a 26 U.S.C. Section 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.
- + Any person having sales of less than \$10,000 within a county or incorporated municipality is exempt from the tax and licensing provisions in Tenn. Code Ann. Sections 67-4-704 and 67-4-723 with respect to sales sourced to the county or municipality under Tenn. Code Ann. Section 67-4-717. Any person subject to the tax imposed in Tenn. Code Ann. Section 67-4-717(a) and having sales of less than \$10,000 in a county will be exempt from the tax levied in Tenn. Code Ann. Section 67-4-704 with respect to sales occurring in that county. [Tenn. Code Ann. Section 67-4-712.]
- + 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 are subject to the business tax.

### Persons to Whom Business Tax is Not Applicable

The business privilege tax also does not apply to persons in the following circumstances [Tenn. Code Ann. Section 67-4-712]:

- + Any person employed in the capacity of an employee or servant as distinguished from that of an independent contractor.
- + Any person primarily engaged in the manufacture of goods, wares, merchandise, or other articles of value from a location or outlet subject to ad valorem taxation under other provisions of state law.
- + Any person operating vending machines who exercise the option of paying the gross receipts tax provided for in Tenn. Code Ann. Section 67-4-506.
- + Newspaper route carriers and newspaper peddlers.

### Sales, Freight, and Destination Charges

When title to property being transported passes to the vendee at the point of origin, the freight or other transportation charges are not subject to the business tax. When the title passes to the vendee at the destination point, the freight or transportation charges are subject to the business tax. [Tenn. Reg. 1320-4-5-.18]

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.

## BUSINESS TAX

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### CREDITS

Certain credits are available to persons subject to the business tax outlined in the law. They include:

#### Personal Property Taxes

Personal property taxes properly paid under Tenn. Code Ann. Title 67, Chapter 5, Part 5 or Part 13 can be taken as a deduction against the total business tax liability of the taxpayer actually paying the personal property taxes. 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 deduction is being claimed and the property is taxed in the same city or county for which the return is being filed.

Personal property taxes are allowable as a credit only for taxes paid either during the tax period covered by the return or prior to the due date of the return.

There is no credit available for payment of property taxes on real property.

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 immediately previous year. If the credit is taken in the previous year, an amended business tax return must be filed for that year. [Tenn. Code Ann. Section 67-4-713(a)(2)(C)]

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. The lessor may not take the credit authorized to the lessee by this section. [Tenn. Code Ann. Section 67-4-713(a)(4)]

Providers of video programming services, as defined in Tenn. Code Ann. Section 67-6-102, are allowed the credit to the extent that the property is located in a jurisdiction to which the taxpayer's receipts are sourced in accordance with Tenn. Code Ann. Section 67-4-717 and the property is taxed by that jurisdiction. [Tenn. Code Ann. Section 67-4-713 as amended by Public Chapter 313, Acts of 2013.]

#### Certain Special School District Taxes

Personal property taxes paid pursuant to a special school district tax levied by public or private act may be taken as a business tax credit. This credit will only apply in any county having a population of not less than 28,250 nor more than 28,300 or not less than 49,400 nor more than 49,500 according to the 1980 federal census or any subsequent federal census. [Tenn. Code Ann. Section 67-4-713(a)(4)]

#### Property Transferred to a Government Entity

The amount of personal property taxes that a person would normally owe under Tennessee Code Annotated, Title 67, Chapter 5, Part 5, except that, pursuant to a lawful agreement between the person and a local governmental unit or instrumentality, the person's personal property has been transferred to a governmental unit or instrumentality maybe 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. [Tenn. Code Ann. Section 67-4-713(a)(5)]

#### Privilege Taxes

The pro rata portion of any privilege tax paid under the provisions of Tennessee Code Annotated, Title 56, Chapter 4, Part 4, the gross receipts tax for Production Credit Associations; Title 57, Chapter 5, the beer taxes; or Title 67, Chapters 4 and 5, the privilege and excise taxes or the property tax, extending past June 1, 1971, and repealed as of that date, may be taken as a credit against the business tax. [Tenn. Code Ann. Section 67-4-713(a)(1)]

#### Limitation of Credit

In no case shall the total credits available in Tenn. Code Ann. Section 67-4-713 be used to offset more than 50% of the taxpayer's liability as calculated in Tenn. Code Ann. Section 67-4-709. [Tenn. Code Ann. Section 67-4-713(b)]

## BUSINESS TAX

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### LOCAL TAX COLLECTIONS

[Tenn. Code Ann. Section 67-4-710]

#### Multi-vendor Sales Locations

[Tenn. Code Ann. Section 67-4-710]

By resolution, any county or incorporated municipality is authorized to impose a fee on the exercise of privileges described in this section. Every county or incorporated municipality imposing the fee in this section as of the effective date of the Uniformity and Small Business Relief Act of 2013 is deemed to have made an effective election to continue imposition of the fee, and no additional resolution is required. The fee should be paid to the county clerk for activity carried on within the county.

In the case of antique malls, flea markets, craft shows, antique shows, gun shows, and auto shows, operated as public facilities from which business is carried on by two or more retailers of tangible personal property, the owner, manager, operator, or promoter of the facility must obtain a business license and collect and submit to local tax officials a \$1 fee per day per booth from each exhibitor at the promotion location.

The preceding provision does not apply to exhibitors properly licensed at the promotion location prior to July 1, 1983, until such time as that license expires. It shall also 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.

However, in the case of a flea market, those exhibitors registered for Tennessee sales and use tax purposes and those who register annually pursuant to Tenn. Code Ann. Section 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. Section 67-4-709, or remitting the \$1 fee per day per booth to the flea market operator.

Those exhibitors not registered annually shall pay the \$1 fee per booth per day to the flea market operators. Those exhibitors electing to obtain a business tax license must present evidence of the license to the operator before conducting business.

The fee described will be in lieu of any business tax otherwise provided for by law.

In the case of an antique mall, flea market, craft show, antique show, gun show, or auto show in which the location is not a continuing business, the fees collected by the owner, manager, operator, or promoter shall be submitted to local tax officials, together with such supporting documents as the tax collector may require, within 72 hours after the closing of the event.

In the case of an antique mall, flea market, craft show, antique show, gun show, or auto show in which the location is a continuing business, the fees collected by the owner, manager, operator, or promoter shall be due and payable monthly, on the first day of each month.

For purposes of preparing the supporting documents that the tax collector may require, all owners, managers, operators, or promoters must, on or before the 10<sup>th</sup> day of each month, transmit to the collecting official the forms prescribed, prepared, and furnished by the official, together with the amount of tax collected during the preceding month. Failure to remit the tax by the 10<sup>th</sup> day of each month will cause the tax to become delinquent.

This provision does not apply to any business that is primarily engaged in 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 will be required to obtain a business tax license and pay on all receipts derived from that location. Individual booths rented at such malls will not be deemed to be separate places, locations, or outlets in the state from which business is conducted.

“Flea market booth” means any contiguous space leased by a single vendor to sell tangible personal property.

#### Transient Vendors

Transient vendors shall pay a fee of \$50 for each 14-day period in each county and/or municipality in which such vendors sell or offer to sell merchandise or for which they are issued a business license. Transient vendors will pay their tax liability prior to the first day of engaging in business. Transient vendors shall not be liable for the tax levied under Tenn. Code Ann. Section 67-4-709.

## **BUSINESS TAX**

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### **LOCAL TAX COLLECTIONS** *(continued)*

[Tenn. Code Ann. Section 67-4-710]

#### **Taxation of Municipal Airports**

[Tenn. Code Ann. Section 67-4-727]

Certain airports or other navigation facilities, located outside the territorial limit of the municipality that either created or controls the facility, may be taxed, under the Business Tax Act, by that 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 grounds of the facility may also be taxed as though it were located within the territorial limit of the municipality.

There are specific restrictions to which this taxation authority is not applicable defined in Tenn. Code Ann. Section 67-4-727(b). Consult the statute for explanation of those restrictions.

#### **Taxation of Traveling Photographers**

[Tenn. Code Ann. Section 67-4-729]

As used here, "traveling photographer" means 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. It does not include a photographer who makes photographs to be placed upon articles of identification.

Before a traveling photographer may do any business in a community, the photographer must first register with the sheriff or chief of police where the photographer proposes to temporarily conduct business. The photographer will give full name and address, the name and address of any other person working with the photographer, the name and address of the employer with which the photographer is connected, and must furnish 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, as the case may be.

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. When the taxes are paid, any balance remaining to the photographer's credit with the respective taxing jurisdictions will be refunded.

#### **Property Management Companies**

[Tenn. Code Ann. Section 67-4-730]

When an individual property owner utilizes a property management company to manage vacation lodging for overnight rentals, the property owner is not considered to be in the business of property management, even though any other of that person's activities could be considered business subject to the business tax. In such a case, the property management company will be liable for the payment of the business tax on the business of renting the properties. The tax will be based on the gross proceeds from the overnight rentals and any other source of gross income subject to the business tax.

## **BUSINESS TAX**

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### **SETTLEMENT UPON TERMINATION OR TRANSFER OF BUSINESS**

[Tenn. Code Ann. Section 67-4-721]

If any person liable for any tax, penalty, or interest levied hereunder sells out 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 quits the business, the person will make a final return and payment within 15 days after the date of selling or quitting the business.

The person's successor, successors, or assigns, if any, will withhold a sufficient amount 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.

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.

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.

"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 property or other consideration given by the purchaser to the seller. It does not include indebtedness of the seller either taken or assumed by the purchaser when a tax lien has not been filed.

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.

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 stating 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 penalty, and 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 Revenue Enforcement Division, the purchaser will be released from any liability, in excess of that which is shown on the affidavit, for taxes, penalty, and interest unpaid by the previous owner, owners, or assigns unless 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.

#### **Relocating a Business in the Same Municipality**

The above provisions applicable to termination or transfer of a business do not apply to any licensee transferring a business from one location to another, within the same municipality, on a one-time basis during any annual taxable period.

In this event, a licensee shall notify the local tax collector at least five days prior to the last day of business at the old location, submitting information and payment of the proper fee for transferring the license to the new location.

Succeeding transfers by the same licensee, within the same annual taxable period, shall be subject to a final return and payment within 15 days, and a new business license must be obtained for the new location. [Tenn. Code Ann. Section 67-4-721(e)]

## BUSINESS TAX

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### GENERAL INFORMATION

#### Taxpayer's Records

[Tenn. Code Ann. Section 67-4-722]

Each person required to pay the business tax must maintain records showing the gross amount of tax owed to the state, the amount of that person's gross receipts taxable under the business tax, and other books of account as may be necessary to determine the amount of tax liability. All of the taxpayer's records will be open to inspection at all reasonable hours to the Commissioner of Revenue or any person duly authorized by the commissioner. The taxpayer will maintain all books and records for a period of 3 years from December 31 of the year in which the associated return was filed.

Other than the name and address of any present or former owner or operator of any trade or business, as appearing on any business or occupation license or application, all tax returns, tax information, and tax administration information relative to business tax is subject to the confidentiality provisions of Tenn. Code Ann. Title 67, Chapter 1, Part 17.

#### Sourcing Tax Collections [Tenn. Code Ann. Section 67-4-717]

For purposes of distribution of the state business tax provided for in Tenn. Code Ann. Section 67-4-704, receipts will be sourced to the county in which the person's established physical location, outlet, or other place of business is located. Receipts from sales made by persons operating from an established physical location, outlet, or other place of business in one county who extend their operations into other counties without establishing a physical location, outlet, or place of business in the other counties will be sourced to the county in which the person's established physical location, outlet, or place of business is located.

If the person has no established physical location, outlet, or other place of business in the state, the receipts will be sourced to the state and will be earmarked for the state's general fund.

Receipts from all taxable sales of any services or tangible personal property by a provider of video programming services will be sourced to the county where the property or service is received by the customer regardless of whether or not the provider has a physical location, outlet, or other place of business in that county.

Compensation of more than \$50,000 from contracts performed in one county by a contractor described in Tenn. Code Ann. Section 67-4-708(4)(A) will be sourced to that county and the tax from such contracts will be distributed to that county. Compensation of \$50,000 or less from contracts performed in one county by such person will be sourced to the county of the person's domicile or location. If the person does not have a domicile or location in Tennessee, such compensation will be earmarked and allocated to the state's general fund.

For purposes of distribution of the municipal business tax provided for in Tenn. Code Ann. Section 67-4-705, receipts will be sourced to the municipality in which the person's established physical location, outlet, or other place of business is located. Receipts from sales made by persons operating from an established physical location, outlet, or other place of business in one municipality who extend their operations outside the boundaries of the municipality without establishing a physical location, outlet, or place of business outside the boundaries of the municipality will be sourced to the municipality in which the person's established physical location, outlet, or other place of business is located.

If the person has no established physical location, outlet, or other place of business in the state, then such receipts will not be subject to the municipal business tax.

Receipts from all taxable sales of any services or tangible personal property by a provider of video programming services will be sourced to the municipality where the property or service is received by the customer regardless of whether or not the provider has a physical location, outlet, or other place of business in that municipality.

Compensation of more than \$50,000 from contracts performed in one municipality by a contractor described in Tenn. Code Ann. Section 67-4-708(4)(A) will be sourced to that municipality and the tax from such contracts will be distributed to that municipality. Compensation of \$50,000 or less from contracts performed in one municipality by such person will be sourced to the municipality of the person's domicile or location. If the person does not have a domicile or location in Tennessee, such compensation will not be subject to the municipal business tax.

## BUSINESS TAX

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### GENERAL INFORMATION *(continued)*

#### **Distribution of Tax Collections** [Tenn. Code Ann. Section 67-4-724]

(1) An amount equal to \$7 per return will be paid to the county clerk with respect to each tax return filed by a taxpayer either located within the county or who otherwise obtains a license for that county. Of this amount, \$3 will be earmarked for computer hardware purchases or replacement, but may be used for other usual and necessary computer related expenses at the discretion of the county clerk.

The amount will be reserved for these purposes and will not revert to the general fund at the end of a budget year if unexpended.

(2) An amount equal to \$7 per return will be paid to the appropriate city official for each tax return filed by a taxpayer either located within the city or who otherwise obtains a license for the city.

(3) After the distributions listed in (1) and (2), an amount equal to 5% of the remaining proceeds of the tax collected will be paid to the county clerk in the case of returns filed by taxpayers located or licensed in the county and to the appropriate city official, in the case of returns filed by taxpayers located or licensed in the municipality.

(4) After the distributions listed in (1) – (3), 43% of the remaining proceeds of the state tax collected by the commissioner will be earmarked to the state's general fund and 43% of the municipal tax collected by the commissioner will be earmarked and allocated to a fund held by the state to be used for purposes of the municipality that levied the tax.

This portion of the municipal tax will be reserved for these purposes and will not revert to the general fund at the end of a budget year if unexpended.

(5) After the distributions listed in (1) – (4), an administration fee of 1.125% of the remaining proceeds of the taxes will be allocated to the Department of Revenue to cover the expenses of administration and collection.

(6) After the distributions listed in (1) – (5), the remaining proceeds from the state tax collected will be distributed to the county in which the taxpayer established a physical location, outlet, or other place of business from which the sales were made.

The remaining proceeds from the municipal tax collected will be distributed to the municipality that levied the tax.

Items (1) – (6) notwithstanding, 100% of the tax, interest, and penalty collected from a taxpayer that does not have either a license or an established physical location, outlet, or other place of business in any county or municipality in the state will be earmarked and allocated specifically to the state's general fund. Additionally, 100% of the tax, interest, and penalty collected from a taxpayer described in Tenn. Code Ann. Section 67-4-708(5) also will be earmarked and allocated specifically to the state's general fund.

When the Department of Revenue audits a taxpayer's books and records and discovers that the taxpayer owes additional tax, penalty, and interest, 100% of the tax, penalty, and interest assessed as a result of the audit will be earmarked and specifically allocated to the state's general fund.

The fee levied by a county or municipality under Tenn. Code Ann. Section 67-4-710, including any associated penalty and interest, will be retained by the county or municipality that levied the fee. An amount equal to 5% of the proceeds of the fee will be paid to the county clerk, in the case of such fees collected by the county, or to the municipal business tax official, in the case of such fees collected by a municipality.

#### **Audits and Assessments**

All tax returns filed with the Department of Revenue undergo some type of office audit or examination to ensure that the correct tax has been paid. This audit could be a computer math audit, a manual examination by a trained auditor, or both. The taxpayer will be contacted if additional information is needed to complete the audit. The taxpayer will receive written notification if any adjustments are made to the return.

Any taxpayer selected for a field audit will be contacted by the Department of Revenue to set up a convenient time for the audit. The taxpayer will receive advance notification on which records will be needed for the audit. A field audit generally involves

## BUSINESS TAX

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### GENERAL INFORMATION *(continued)*

tax returns filed for the previous three years. At the completion of the audit, the auditor will leave the taxpayer a written report for review. Once the auditor has made any necessary changes to the report, the notice of assessment for any underpaid taxes will be issued. [Tenn. Code Ann. Section 67-1-1301]

#### **Right to a Conference**

[Tenn. Code Ann. Section 67-1-1801]

Taxpayers are entitled to an informal conference to discuss an assessment. If this request is made in writing within 30 days from the date of the Notice of Proposed Assessment, the conference will be granted. If made after 30 days, the conference may be granted at the Commissioner's discretion.

If the taxpayer timely requests an informal conference, the proposed assessment will become final after the informal conference process concludes.

Taxpayers wishing to contest a final assessment without making payment have 90 days to file suit in chancery court, as provided by statute. Interest will continue to accrue at the prevailing rate until payment is received. A lien may be filed against the taxpayer's property during this 90-day period.

If the taxpayer does not file suit within the 90 days of the assessment becoming final, the taxpayer may pay the final assessment, request a refund, and then file suit in chancery court if the refund is not paid following the procedures set forth in the law (Tenn. Code Ann. Section 67-1-1802). You are not required to request an informal conference before contesting a final assessment in court.

## **BUSINESS TAX**

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### **THE TAXPAYER BILL OF RIGHTS**

You, as a taxpayer, have certain rights that are protected by state law.

#### **TAXPAYER RIGHTS [Tenn. Code Ann. Section 67-1-110]**

##### **Tennessee guarantees that you, the taxpayer, have the right to:**

- Receive fair and courteous treatment from all Department of Revenue employees;
- Receive tax forms and information written in plain language;
- Receive prompt and accurate responses to all questions and requests for tax assistance;
- Request public records;
- Be assured that the Department will keep confidential the financial information you give it;
- Know the Department's policies with respect to use and retention of personally identifiable information;
- Receive tax notices that provide an explanation of the amount being billed;
- Receive a clear set of rules and procedures to resolve tax problems that arise from the interpretation and administration of Tennessee's tax laws;
- Dispute any proposed assessment by filing a timely request for an informal conference;
- Know that the Department's employees are not paid or promoted as a result of money billed to or collected from taxpayers;
- Suggest ideas about how the Department of Revenue can better serve you;
- Prompt notification by the Department of any refund to which you are entitled;
- Attend annual meetings held by the Department of Revenue in convenient locations to voice your suggestions;
- A 10-day notice before a levy on assets is enforced;
- A 30-day notice before seized assets are liquidated;
- A speedy, informal and inexpensive review of a proposed assessment in an informal conference with an impartial representative of the Department and to be represented by an attorney, certified public accountant or other representative; and
- Any other rights the Commissioner of Revenue deems necessary and appropriate.

#### **TAXPAYER'S RIGHT TO A CONFERENCE [Tenn. Code Ann. Section 67-1-1801]**

Taxpayers are entitled to an informal conference to discuss a proposed assessment. If this request is made in writing within 30 days from the date of the Notice of Proposed Assessment, the conference will be granted. If it is made beyond the 30 days, the conference may be granted within the discretion of the Commissioner.

Requests for conferences may be sent to:

Administrative Hearing Office  
Tennessee Department of Revenue  
500 Deaderick Street, Suite 11.451  
Nashville, TN 37242  
Phone (615) 741-3810  
Fax (615) 741-6463  
[DORConference.Request@tn.gov](mailto:DORConference.Request@tn.gov)

If you request an informal conference in a timely manner, the proposed assessment will become final after the informal conference process concludes. If the Commissioner does not allow an adjustment, the proposed assessment will become final as of the date of the Commissioner's written decision. If the Commissioner allows an adjustment, a written determination will be issued stating the amount of tax due, and that amount will be the final assessment.

## **BUSINESS TAX**

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If you do not request an informal conference, or if you make an untimely request for an informal conference, that proposed assessment will automatically become a final assessment on the 31<sup>st</sup> day after the date of the notice of proposed assessment. If you cancel your timely informal conference, the proposed assessment will become a final assessment on the date you notify the Department in writing of the cancellation or on the 31<sup>st</sup> day after the date of the notice of proposed assessment, whichever is later.

If you wish to contest an assessment without making payment, you have 90 days to file suit in chancery court, either in Davidson County or in the Tennessee county where you reside or principally conduct business. Interest will continue to accrue at the prevailing rate until payment is received. A lien may be filed against your property during this 90-day period.

If you do not file suit within 90 days of the assessment becoming final, you may pay the final assessment, request a refund, and then file suit in chancery court if the refund is not paid, following the procedures set forth in the law (See Tenn. Code Ann. Section 67-1-1802). You are not required to request an informal conference before contesting a final assessment in court.