Sales and Use Tax Manual

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TN Department of Revenue

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Chapter 1: Introduction

General Overview

The Tennessee General Assembly enacted the Tennessee Retailers' Sales Tax Act (the "Act") in 1947. The Act imposed a sales tax on the privilege of engaging in the business of selling tangible personal property.[1] The Act also imposed a complementary use tax that applies when a taxable product is used, consumed, distributed, or stored in this state and the seller did not collect sales tax on the product brought or shipped into Tennessee at the time of sale.[2] Sales tax was first imposed on certain services in 1955.[3]

Tennessee sales tax serves as the primary source of state tax revenue and makes up approximately 60% of all tax collections. Sales and use tax have two parts: a state portion and a local option portion. The local option portion is imposed by city and/or county governments and was first enacted under the 1963 Local Option Revenue Act.

Current sales and use tax laws are found in Tenn. Code Ann. §§ 67-6-101 *et seq*., and the local option sales and use tax laws are found in Tenn. Code Ann. §§ 67-6-701 *et seq*. Rules and regulations may be found in TENN. COMP. R. & REGS. 1320-05-01-.01 *et seq*. and TENN. COMP. R. & REGS. 1320-05-02-.01 *et seq*. Links to the Tennessee code, rules, and regulations may be found on the Tennessee Department of Revenue's (the "Department") website under the Tax Resources page.[4]

1. Administration

The Department administers both the state and local sales and use taxes. Taxpayers file all sales and use tax returns and make payments directly to the Department, who then distributes the local tax proceeds minus administrative fees to the counties and municipalities. Generally, all dealers are liable for collecting sales tax from their customers and remitting the tax to the Department.[5] All Tennessee residents and businesses must pay use tax when sales tax was not collected by the seller on otherwise taxable products brought or shipped into Tennessee.

2. Transactions Subject to Sales & Use Taxes

Sales and use taxes are transactional taxes applied to sales or purchases. Sales tax generally applies to the retail sales of any business, organization, or person engaged in making retail sales, including selling, leasing, or renting tangible personal property and selling certain taxable services, amusements, software, and digital products specified in the law.[6] Use tax applies to all items otherwise subject to sales tax except for certain services and amusements.[7]

Sales and use tax apply in various ways:

- Sales tax on the in-state retail sale of a taxable product;[8]
- Use tax on the out-of-state retail sale of a taxable product shipped to Tennessee consumers by an out-of-state retailer who is not required to register in Tennessee;[9]Use tax on the importation of taxable products for use, consumption, storage for use, and distribution in this state; [10] and
- Use tax on a contractor's use of tangible personal property in the performance of a contract where no sales and use tax was paid on the retail purchase.[11]

3. Rates and Impositions

State Sales and Use Tax

The state sales tax and use tax are each calculated by using the same basis (sales price/purchase price) and share the same tax rate.[12] The general state sales tax rate for most tangible personal property, taxable services, and other taxable products is currently **7%**. However, the select products and services below are taxed at different state tax rates.

- Food and Food Ingredients – 4.0%[13]
- Aviation Fuel – 4.25%[14]
- Industrial Water for Manufacturers – 1.0%[15]
- Industrial Energy Fuel for Manufacturers – 1.5%[16]
- Electricity for Qualified Data Centers – 1.5%[17]
- Interstate and International Telecommunications Sold to Businesses – 7.5%[18]
- Manufactured Homes – 3.5%[19]
- Video Programming Services (Cable TV Monthly Charges of $15.00 to $27.50) – 8.25%[20]
- Direct-to-Home Satellite Television Services – 8.25%[21]
- Qualified Common Carriers Direct pay the sales tax on Tennessee Purchases of Tangible Property that is used Outside the State – 3.75%[22]

A portion of the above items are also taxed at different local tax rates. Special local tax rates can be found in Tenn. Code Ann. § 67-6-712. For more information on local sales and use tax and different rates, see Chapter 8 of this manual titled Local Sales and Use Tax Imposition.

Single Article

An additional state single article tax at a rate of 2.75% is applied to any single item of tangible personal property sold with a sales price in excess of $1,600 but less than $3,200.[23] Single article is discussed in more detail in Chapter 9.

Local Option Tax

Any county or incorporated city, by resolution or ordinance, may levy a local sales and use tax on the same privileges that are subject to the state sales or use tax.[24] Every local jurisdiction in Tennessee that has enacted a local sales and use tax has its own respective tax rate.

The local option sales and use tax rates vary from 1.50% to 2.75%. The local option tax rate may not exceed 2.75% and must be a multiple of .25.[25] The local sales tax rate and local use tax rate in a specific location are the same. Local sales tax rate charts, tables, boundary databases, and other local tax resources are available on the Department's website HERE.[26] The local option tax is discussed in more detail in Chapter 8.

4. Credits

Credits are tax incentives that offset tax liabilities. Depending on the type of credit and the year, a credit may offset both sales and use tax or just one of the taxes.

To prevent multi-state taxation, Tennessee taxpayers are allowed credit for sales and use tax legally paid in another state against use tax owed in Tennessee.[27] Credit is only allowable if the tax paid was a properly imposed tax and may not exceed the amount of use tax due in Tennessee.[28]

Credits are discussed in more detail in Chapter 21.

5. Exemptions

Generally, the sale of all tangible personal property and specifically enumerated services are subject to sales tax, unless a statutory exemption applies. Sales and use tax exemptions may generally be divided into three categories: entity-based exemptions, product-based exemptions, and use-based exemptions. However, some exemptions can be entity-based and use-based, such as the agricultural exemption.

Entity-based Exemptions

Entity-based exemptions are available depending on who the purchaser is or what the purchaser does. For example, qualified farmers and qualified manufacturers can make purchases of certain items tax free or at a discounted tax rate. Most entity-based exemptions require a special exemption certificate while most product-based exemptions do not.

Product-based Exemptions

Product-based exemptions are available depending on the product purchased. For example, gasoline, textbooks, school meals, and several healthcare products are not subject to sales and use tax. If taxpayers sell exempt products, they should not collect tax on the sales.

Use-based Exemptions

Use-based exemptions are available when certain types of tangible personal property or services are put to a specific exempt use. For example, concrete is generally subject to sales tax. However, if the concrete is purchased for use to construct an electric generating plant (such as a dam), the concrete is tax exempt.[29] Most use-based exemptions require a special exemption certificate, such as a pollution control exemption certificate.

Sales and use tax exemptions are generally found in Tenn. Code Ann. § 67-6-301 through Tenn. Code Ann. § 67-6-396. Exemptions are discussed in more detail in Chapters 18 and 19.

Tennessee Works Tax Act

On May 11, 2023, Governor Lee signed into law the Tennessee Works Tax Act ("TWTA"), Public Chapter 377 (2023). The TWTA made several Tennessee sales and use tax changes to modernize the sales and use tax provisions and bring the state in further compliance with the Streamlined Sales and Use Tax Agreement. These provisions are effective July 1, 2024. These changes are incorporated throughout this version of the sales and use tax manual.

1. Use Tax on Services to Tangible Personal Property and Computer Software

The TWTA amended Tenn. Code Ann. § 67-6-203 to state that the following services are subject to Tennessee use tax if such services occur outside of Tennessee and the serviced tangible personal property or computer software is delivered to a purchaser inside Tennessee for use or consumption. Such services include:

- Repairing tangible personal property or computer software;
- Laundering or dry-cleaning tangible personal property;
- Installing tangible personal property that remains tangible personal property after installation; and
- Installing computer software.

For example, a Portland, Tennessee resident sends a motorcycle to a repair shop in Bowling Green, Kentucky. The repair shop repairs the motorcycle and delivers it to the customer in Portland. Beginning on July 1, 2024, the resident must remit Tennessee use tax to the Department on the repair service.

2. Magazine and Book Distribution Exemption

The TWTA deleted a provision that provided an exemption from sales and use tax for magazines and books that are distributed and sold to consumers by mail or common carrier, where the seller only had certain activities in Tennessee, such as printing, storing, labeling, and/or delivering to the mail or common carrier of the magazines or books, or the maintenance of raw materials with respect to those activities. This provision is currently codified in Tenn. Code Ann. § 67-6-329(a)(6). This exemption is eliminated effective July 1, 2024.

3. Cooperative Direct Mail Advertising

The TWTA deleted an exemption currently found in Tenn. Code Ann. § 67-6-344 for the sale or use of cooperative direct mail advertising materials (i.e., combined mailings of discount coupons and advertising leaflets for multiple businesses) that are distributed in Tennessee from outside Tennessee by a person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

4. Sourcing Provisions

The TWTA adopted a majority of the sourcing provisions in the Streamlined Sales and Use Tax Agreement ("SSUTA") and elected origin-based sourcing for sales within Tennessee. These provisions bring the state into better compliance with the SSUTA.

Tenn. Code Ann. §§ 67-6-901 – 903

These code sections are sourcing provisions to determine whether a transaction is sourced to Tennessee, how to source the retail sale, lease, or rental of products imported into Tennessee; how to source sales of products made from a place of business within Tennessee; how to source recurring periodic lease or rental payments where the primary property location of the property is no longer in Tennessee; and how to source the sale of repair, cleaning, and installation services on tangible personal property that remains tangible personal property after installation and repairing and installation of computer software where the serviced property of software is shipped out of state.

Direct Mail Sourcing – Tenn. Code Ann. § 67-6-904

This section provides Changes for sales made of both advertising and promotional direct mail and other direct mail from a place of business in Tennessee that is distributed to direct mail recipients outside Tennessee.

Telecommunication Definitions and Prepaid Calling Services – Tenn. Code Ann. § 67-6-905

This section provides Tennessee's sourcing rule for sales of prepaid calling services and prepaid wireless calling services.

Chapter 2: Nexus

Historical Overview

Tennessee, like most states, taxes the retail sale of tangible personal property and specifically enumerated services in the state. Retailers are generally required to collect sales tax from their customers on their taxable sales. If an out-of-state retailer does not collect sales tax, the consumer must pay the corresponding consumer use tax on taxable purchases imported from out-of-state. A state's ability to require a retailer to collect state and local sales tax is based on "nexus." When a business has "nexus" with a given state, or in other words a connection (physical or economic) with the state, the state can constitutionally exercise authority to require the business to collect and remit the tax.

The specific United States Constitutional principles that apply to making a nexus determination are the Commerce Clause and Due Process Clause. Two seminal United States Supreme Court decisions, *National Bellas Hess, Inc. v. Department of Revenue of Ill.*[30] and *Quill Corp. v. North Dakota*[31] first interpreted these constitutional principles and stated that if a retailer did not have *physical presence* in a state, it was not required to collect that state's sales tax. In other words, the business did not have nexus in the state; thus, the state could not force the business to collect sales tax from its in-state customers.

Many states challenged the Court's interpretation and sought to require retailers to collect sales tax because consumer use tax compliance rates are notoriously low.[32] This issue also became more prevalent as electronic commerce fundamentally altered how businesses make sales.

In 2018, the Court overturned its decisions in *Bellas Hess* and *Quill* when issuing its decision in *South Dakota v. Wayfair*.[33] The Court ruled, in part, that the physical presence requirement was illogical on its face, that it was contrary to the realities of the modern marketplace, and that it served to promote tax evasion. Using this reasoning, the Court overturned the physical presence requirement as the sole basis of determining nexus; thus, states may now require out-of-state retailers to collect sales tax on sales made in their respective states if certain economic factors are present (i.e., the business has "economic presence" in the state). These economic factors are discussed in more detail below.

Tennessee Nexus Requirements

All in-state businesses have nexus in Tennessee and must collect sales tax from their customers and remit the tax to the Department. Out-of-state retailers must register with the Department and obtain a certificate of registration and collect and remit sales or use tax if they have "nexus" with Tennessee. The following list contains activities that would require retailers to register and collect sales tax in Tennessee:

- 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.[34]
- 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.
- Use of an in-state party to route customers to the out-of-state dealer (commonly known as "click-through nexus").[35]

1. Out-of-State Dealers with no Physical Presence in Tennessee

Out-of-state taxpayers with a physical presence in Tennessee have substantial nexus with this state.[36] Furthermore, pursuant to the *Wayfair* decision, out-of-state dealers with no physical presence in Tennessee that make sales that **exceed $100,000** to customers in this state during the previous tax year also have substantial nexus in this state.[37]

> ⚠ **Effective October 1, 2020, the threshold was reduced from $500,000 to $100,000.**

If an out-of-state taxpayer has no physical presence in Tennessee and meets the $500,000 threshold after July 31, 2019, or the $100,000 threshold after October 1, 2020, it is required

to register and begin collecting sales and use tax on the first day of the third month following the month in which it meets the threshold. For example:

- If an out-of-state dealer meets the threshold on January 15, 2020, the dealer is required to register, collect, and remit sales tax beginning on April 1, 2020, for any sales made on or after April 1, 2020.

Please note that the requirement to register as a result of meeting the threshold does not apply retroactively. If an out-of-state dealer has no physical presence in Tennessee and does not meet the threshold, it is not required to register or collect sales and use tax. However, the Department encourages all dealers to voluntarily register and collect sales and use tax as a convenience to their customers.

For purposes of meeting the threshold, dealers should include all retail sales, including exempt retail sales but should exclude sales for resale.

This information may also be found on the Department's website in Important Notice 19-04 – Post-*Wayfair* Collection by Out-of-State Dealers and Important Notice 20-14 – New Filing Threshold for Out-of-State Dealers.

2. Local Sales Tax Reporting by Out-of-State Dealers

Out-of-state dealers who collect and remit sales and use tax must report their sales based on the shipped to or delivered to address of the customer. Out-of-state dealers may have one location ID in the Department's tax system for reporting all sales into Tennessee but should report the sales by the shipped to or delivery destination in the local tax schedule on the sales tax return (Schedule B). Out-of-state dealers must apply the specific local sales tax rate in effect for the city or county jurisdiction into which the sale was shipped or delivered.[38] For example:

- A customer that lives in Franklin, Tennessee purchases a guitar on the internet from a California retailer. The California retailer does not have any locations in Tennessee, but it makes over $200,000 in sales to Tennessee customers every year. The California retailer ships the guitar to the customer's home address in Franklin. The retailer should collect the 7% state sales tax rate and the 2.75% local option sales tax rate in effect in Franklin and report such sale on Schedule B of the sales and use tax return.

⚠ **Please note that taxpayers may no longer use a uniform local rate of 2.25%. They must collect the applicable local sales tax rate.**

All local sales tax collected and remitted by out-of-state dealers will be distributed to the local jurisdiction into which the sale is shipped or delivered. Out-of-state dealers must report

the actual jurisdiction into which the sale is shipped or delivered when filing their sales and use tax returns so that the Department can make the proper distribution to local jurisdictions.[39]

Sales shipped or delivered to an address within an incorporated municipality must be reported separately from sales shipped or delivered to an address in the unincorporated area of a county. For example:

- Sales shipped to customers in Chattanooga must be reported and taxed as Chattanooga sales on the local tax schedule of the sales tax return, not as Hamilton County tax.

Dealers and certified software providers may use the boundary database available HERE on the Department's website to determine the local sales tax rate for each of the jurisdictions in Tennessee. For more information on local sales tax, please see Chapter 8.

Chapter 3: Administrative Requirements

This chapter will provide an overview of the following administrative topics:

- Registering with the Department of Revenue (the "Department")
- Filing and paying sales and use tax
- Requesting refunds of sales and use tax remitted to the Department
- Statute of limitations
- Penalties
- Interest
- Records maintenance requirements
- What to do if upon the sale or closure of a business
- Successor liability
- Responsible person liability

Registration Generally

Any "person" that manufactures, distributes, sells, rents, or leases tangible personal property or provides taxable services in Tennessee must obtain a Certificate of Registration ("certificate") by registering with the Department before conducting business in Tennessee.

This requirement applies to all "persons," which is broadly defined and includes individuals, sole proprietorships, partnerships, LLCs, corporations, and numerous other entity types.[40]

Persons from other states that maintain a physical location in Tennessee, whether temporary or permanent, must hold a certificate. Furthermore, persons from other states who meet the economic nexus thresholds discussed in Chapter 2 must hold a certificate.[41]

> ⚠ **Please note that a business that has more than one location must hold a certificate for each business location.**

Registration Process

Applications for registration are available online through the Tennessee Taxpayer Access Point ("TNTAP"). To register, taxpayers should select the link titled "Register a New Business" in the Registration section of our TNTAP website.[42]

Taxpayers should have the following information available to complete registration:

- The name, address, and phone number of the business, all owners, officers, or partners, and the person making the application.
- The Social Security Number(s) of all owners, partners, or officers.
- The Federal Employer Identification Number issued by the United States Internal Revenue Service.
- A description of the business, the type of ownership, a brief explanation of the nature of the business.
- If the business is a corporation, the date of incorporation is needed.
- If the business was purchased, the name and address of the previous owner is needed for registration.
- The signature on the paper application of the sole proprietor, a partner, or an officer of a corporation.

Upon registering, the entity will receive a certificate and should begin collecting and remitting sales tax.

⚠ **Taxpayers should note that registration for a sales and use tax account is not registration for a business tax account or the application for a business license. For information on how to apply for a business license or register for a business tax account, taxpayers should reference the Department's Business Tax Manual and the Department's website.**

1. Consumers or Business Users

When a user of tangible personal property, computer software, and certain digital products does not pay sales tax to a dealer, the user becomes personally liable for the use tax. Generally, this occurs when a user purchases goods from an out-of-state dealer that is not registered for Tennessee tax. Purchases made from outside the state may include, but are not limited to, mail-order catalog purchases, purchases made on the internet, over-the-phone purchases, and purchases made from a store located in another state.

Business users importing tangible personal property, computer software, or certain digital products that do not pay sales or use tax to the out-of-state dealer must register for purposes of paying use tax. Consumers (usually individuals) that owe small amounts of use tax are encouraged to pay the use tax via the Consumer Use Tax HERE on the Department's website rather than registering.[43] The following links on the TNTAP page: "Returns" – "View Return Links" – "File Consumer Use Tax Return."

2. Flea Market Operators & Dealers

Flea market operators are responsible for ensuring that all dealers making sales at the flea market are properly registered with the Department for sales and use tax purposes. The flea market operator is authorized to accept applications for registration and collect registration fees from flea market dealers who are not already registered for Tennessee sales and use tax.

A flea market dealer who does not register is subject to a penalty of $10.00 per booth per day. The Department also may impose a penalty on the flea market operator of $10.00 per booth per day, up to a maximum fine of $100 per day, at any location where the Commissioner determines that the flea market operator was negligent in allowing dealers to operate without proper registration.[44]

All flea market dealers in the state are required to register and collect sales tax on their sales. Flea market dealers that are registered should report their sales tax collections from all flea market sales on their business location return.

Flea market dealers that are not already registered and are making sales at flea markets on a permanent basis at one or more flea markets must obtain an annual registration. The annual registration fee is $45.00. The annual registration is valid for a calendar year (January 1 through December 31). If the dealer's sales tax liability is more than $45.00, the dealer also must file a return, reporting all sales tax on Tennessee flea market sales that is in excess of the $45.00 registration fee.

Flea market dealers that are not already registered and are making sales at flea markets on a less than permanent basis have the option to register and pay a quarterly or monthly registration fee. The monthly registration fee is $5.00, and the quarterly registration fee is $15.00. These registrations are valid for only a single flea market location. If a dealer's sales tax liability during a quarter is more than the dealer paid in registration fees for that quarter, then the dealer also must file a return and pay the sales tax that exceeds the registration fees due for that quarter from sales at that flea market location.

A dealer may register a maximum of three times per year in each location. If a dealer registers more than three monthly registrations, he must purchase a quarterly or annual registration for that location. If a dealer registers more than three quarterly registrations, he must purchase an annual registration for that location.

3. Revocation of Certificate of Registration

Any taxpayer violating the provisions of the sales or use tax law may have the certificate of registration revoked by the Commissioner after an opportunity for a due process hearing has been afforded. If the certificate is revoked, that person will not be eligible to apply for another certificate for 12 months. The taxpayer is entitled to a hearing with the Department

to determine if revocation was justified. The taxpayer will receive a 10-day notice of the hearing and be allowed to present evidence as to why the certificate should not be revoked.[45]

Any person engaged in business as a dealer in Tennessee without a certificate of registration from the Department is guilty of a Class C misdemeanor.[46]

Filing and Payments

A taxpayer selling products or taxable services must file sales tax returns monthly if the taxpayer meets a filing threshold of $400 gross sales per month or $4,800 in gross sales per year. Taxpayers who do not meet the filing threshold should pay sales tax to their suppliers in lieu of registering with the Department to collect and remit sales tax to the Department.[47]

All sales and use tax returns and associated payments must be submitted electronically through TNTAP. Taxpayers may create a TNTAP account to file sales tax. Taxpayers are not required to create a TNTAP account to file consumer use tax.

1. Filing through TNTAP

Tennessee taxpayers have online access to their tax accounts. Taxpayers should create a TNTAP account to file taxes, manage tax accounts, and view correspondence. Taxpayers must register for a tax account prior to creating a TNTAP account.

To create a TNTAP account, follow the steps below or in this video:

- Navigate to the TNTAP homepage: https://tntap.tn.gov/eservices/_/
- Click on the "Create a Logon" button in the upper right section of the page. Creating a TNTAP account is different than registering a new business. For information on registering a business, see the above section titled "Registration" in this chapter.
- Populate the required fields on the General Information, Registration, and Logon Information pages.
- After completing these pages, enter your email address, and submit the request for a TNTAP account.
- After submission, logon to TNTAP with the newly created login credentials.
- Then, connect your tax accounts to the TNTAP account to access specific tax accounts. To gain access to tax accounts, follow the instructions in this video.

2. Filing through an Approved Software Vendor

Taxpayers may file Tennessee sales and use tax through an approved software vendor. A list of approved software vendors is available on the Department's website. Click here for a list of approved vendors.

3. Filing through the Streamlined Central Registration System

Remote sellers with no business location in this state that register in Tennessee through the Streamlined Central Registration System may file using the Streamlined Simplified Electronic Return ("SER"). Taxpayers with business locations in Tennessee cannot file using SER.

Filing Periods and Due Dates

1. Filing Periods

Tennessee sales and use tax applies on an accrual basis, not a cash basis. Therefore, taxpayers should report all taxable transactions that occur during the month associated with the return (this includes reporting credits and deductions). Tennessee law requires taxpayers to file sales and use tax returns and remit the corresponding payment monthly. However, the Commissioner may establish by rule periodic filing and payment dates in instances where the Commissioner deems it to be in the best interest of the state.[48]

Taxpayers whose sales and use tax liability for 12 consecutive months has averaged $1,000 or less per month are authorized to file monthly *or* quarterly.[49]

2. Filing and Payment Due Dates

Sales tax due dates depend on the taxpayer's filing frequency.

Monthly Returns

Monthly returns and payments are due on the 20th day of the month following the end of the reporting period. This filing frequency applies to most Tennessee taxpayers.

Quarterly Returns

Quarterly returns and payments are due on the 20th day of the month following the end of the quarter (January 20, April 20, July 20, October 20).

Annual Returns

Annual returns and payments are due on January 20th. Generally, this filing period will only apply to manufacturers, wholesalers, and marketplace sellers that only make sales through a marketplace facilitator that is collecting Tennessee sales and use tax.

1099-K Filing Requirement

Reporting entities required to file a 1099-K Information Return with the Internal Revenue Service ("IRS") must also file the information return with the Department.[50] The 1099-K returns must be filed with the Department within 30 days of the filing due date required by the IRS. If the IRS grants a Federal Form 8809 extension, the due date for filing with the Department of Revenue is also extended 30 days.

Reporting entities include:

- Payment settlement entities.
- Third-party settlement organizations.
- Electronic payment facilitators.
- Third parties acting on behalf of payment settlement entities.

Rules for Billing Sales Tax

1. Invoicing

Dealers must indicate whether sales tax is being charged to the customer. They may either show the sales tax charged on the invoice or post a sign stating that sales tax is included in the price.[51]

A dealer may elect to include the sales tax in the price charged for personal property or taxable service. If a dealer makes this election, it must give notice to the purchaser that the price includes sales tax. This may be done by posting a sign stating "Prices Include Sales Tax" or including such phrase on the invoice or sales receipt. For example:

- An airport sells aviation fuel with the 4.25% sales tax included in the listed price of $5 per gallon for aviation fuel. The airport must indicate either on the ticket or receipt given to the customer or on conspicuously posted signs that "Prices Include Sales Tax." Assuming airport signs or receipts given to the customer provide the proper notice, tax is calculated as follows: $5.00 ÷ 1.0425 = $4.80 price per gallon excluding sales tax; $5.00 - $4.80 = 20¢ sales tax per gallon.

A dealer including the sales tax in the purchase price of its sales must remove the sales tax when making sales to tax exempt entities and must remove the required notice from the invoice or receipt for such sales.

Tennessee law prohibits dealers from making false or misleading statements concerning the reasons for price reductions. However, Tennessee tax law does not prohibit a dealer from advertising to purchasers that no sales tax will be charged or that the dealer will pay the sales tax itself. If a dealer chooses to conduct such advertising, then it will be liable for sales tax on the amount paid by the purchaser. For example:

- A furniture store advertises a weekend sale in which customers will "pay no sales tax." Such a statement indicates to customers that the prices do not include sales tax. The furniture dealer is liable for the tax and must calculate and pay the amount of tax on the total price charged to the customer. Assuming a customer paid a total price of $800 for the purchase of a recliner during the weekend sale and the combined state and local tax rate is 9.25%, tax must be calculated as follows: $800.00 x 9.25% = $74.00 sales tax liability of the furniture store dealer.

2. Installment or Credit Sales

Sales tax is collected on an accrual basis. Dealers making sales on credit terms or installment terms must report and remit the sales tax in the tax period in which the sales agreement was entered into.[52]

Included in the definition of "sale" is "a transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price."[53]

Refunds

When a taxpayer remits sales or use taxes in error or in contravention of any statute, rule, regulation, or clause of the constitution of this state or of the United States, the taxpayer may request a refund of such taxes by filing a claim for refund with the Department.[54] Because dealers are primarily responsible for collecting sales taxes from their customers, dealers will generally be the party that files a claim for refund with the Department. However, customers are also permitted to file a claim for refund with the Department if certain requirements are met. The criteria for refund requests made by dealers and customers are discussed below.

Note that the refund procedures and requirements discussed in this section are general in application. There may be certain transactions to which more particular refund procedures or requirements apply (e.g., transactions involving marketplace sellers and marketplace facilitators). If applicable, any specific refund procedures or requirements (other than those discussed in this section) will be discussed in the transaction-specific sections of this Manual.

1. Refund Requests Made by Dealers

Before a dealer can receive a refund of sales tax that was collected in error from a customer and remitted to the Department, the dealer must first refund or credit the sales tax to the

customer. The dealer is required to submit copies of documentation with its claim for refund that proves the dealer provided the customer with either a credit or refund of the tax for which the dealer is requesting a refund.

2. Refund Requests Made by Customers

Public Chapter 480 (2021), effective October 1, 2021, implements procedures to allow a customer who remits sales or use taxes to a dealer in error to request a refund of such taxes from the Department, rather than from the dealer, if certain requirements are met.

For a customer to be eligible to request a refund of sales or use tax directly from the Department, all the following requirements must be met:

- The amount of the claim for refund to be filed by the customer must exceed $2,500 per dealer.
- The dealer must have collected the tax from the customer and remitted it to the Department.
- The customer must have requested a refund from the dealer on at least **two** separate occasions and the dealer failed or declined to issue the refund.

In addition, one of the two requirements must be met: 1) The customer must obtain a written statement from the dealer in which the dealer attests to the below items under penalty of perjury on a form prescribed by the Department, the taxes were remitted to the Department by the dealer, including the amount and the date remitted;

- The dealer has not claimed and will not claim a refund of such taxes.
- The dealer has not taken and will not take a credit for such taxes.
- The dealer's sales and use tax account number.
- The local jurisdiction or jurisdictions for which any local sales tax included in the refund claim was collected and remitted.

The customer's request for a completed dealer attestation form may be submitted with the second request for refund, at the earliest, or may be submitted later.

or 2) if the customer reasonably attempts but is unable to obtain an attestation from the dealer, sufficient information must be made available to the Department to verify the information outlined above.

Contacting the Dealer

The statute requires the customer request a refund from the dealer on at least two separate occasions prior to submitting a claim for refund with the department. The two requests must be documentable and be made in written or electronic form (such as email).

The customer's second request for refund from the dealer may be made upon receiving a written refusal from the dealer or 30 days after the initial refund request is submitted, whichever occurs first. The 30-day period between requests is necessary to allow the dealer time to review the request and initiate or decline a refund.[55]

Statutes of Limitations

Generally, the statute of limitations refers to the legal limit on the period within which a certain legal action may occur, such as the Department issuing an assessment or a taxpayer filing a claim for refund. Actions that occur after this period expires are barred and may not be taken.

1. Assessments

The statute of limitations for a sales and use tax notice of proposed assessment is three years from December 31st of the year in which the **return was filed**. For example:

- Business A files and pays its June 2018 return on July 20, 2018. The Department has until December 31, 2021, to issue a notice of proposed assessment for that return (i.e., three years from December 31, 2018).
- Business B files and pays its November 2018 return late on February 20, 2019. The Department has until December 31, 2022, to issue a notice of proposed assessment for that return (i.e., three years from December 31, 2019).

The three-year statute of limitations does not apply if a return is not filed, or if a false or fraudulent return is filed with the intent to evade tax.[56] The Department may issue a notice of proposed assessment at any time in such circumstances.

2. Refunds

The statute of limitations for refund claims is three years from December 31st of the year in which the **payment was made**. For example:

- Business A files its December 2017 sales and use tax return and remits the corresponding payment on January 20, 2018. Business A has until December 31, 2021, to file a claim for refund for such period, even though the sales tax at issue was collected more than three years prior.

Refund Determinations

The Department must decide whether to issue a refund pursuant to a refund claim within six months of receipt of the claim. If a refund claim is not approved or denied within six months following receipt of the claim, the refund claim is deemed denied for the purpose of filing

suit in chancery court. If the claim for refund is denied, the taxpayer may file a suit for refund in chancery court within one year from the date on which the claim for refund was filed.[57] This one-year period of limitation can be extended only once by written agreement of the parties that is entered into within one year from the date the claim for refund was filed.[58] The taxpayer may also request an informal conference with the Department to contest a denied refund claim. More information on the informal conference process is provided below.

3. Statute Waivers

The Department may enter into a written agreement with the taxpayer to extend the statutory period of limitations upon the 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. This form does not extend the timeframe for filing suit after a refund claim is denied.

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 backdated 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.[59]

Penalties

The Department may impose a penalty on a taxpayer who:

- Fails to file a sales and use tax return or who is late filing a sales and use tax return or
- Fails to remit sales and use tax or who is late remitting sales and use tax 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 total liability due. The Commissioner of Revenue may for good cause waive payment of penalty on any tax due.[60]

1. Penalties and Penalty Rates

Delinquency Penalty – Filing or Paying Late

If a taxpayer does not file its return, files late, or does not timely pay the tax due, a delinquency penalty will be assessed. 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 could 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.

A taxpayer's failure to report and pay the total amount of taxes due may result in the imposition of a penalty in the amount of 10% of the underpayment, if the Department determines such failure is due to negligence.

Fraud Penalty

Fraud includes any deceitful practice or willful device resorted to with the intent to evade the tax.[61] 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 check or money order payments and penalties imposed in accordance with the Tax Enforcement Procedures Act.[62]

Penalty for Failure to File Electronically

Taxpayers are expected to file tax returns electronically under Tennessee law. The Department is authorized to assess any taxpayer that does not file returns electronically with a penalty that is not to exceed five hundred dollars for each instance of filing a return by any other means.[63]

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. Thus, the Commissioner does not have the authority to waive properly imposed fraud penalties**.** A good and reasonable cause for waiver, set forth in the law, must apply before the Commissioner can waive a penalty.[64] ***Interest may not be waived under any circumstances as specifically provided in Tennessee law***.[65]

If a taxpayer fails to pay the full amount of tax due, the following circumstances would be good and reasonable causes to waive the penalty:[66]

- 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:[67]

- 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.[68]
- 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 properly complete a tax return, 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 timely filed and paid the tax for at least the two-year period 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 Commissioner also may waive a penalty for good and reasonable cause, even if the cause for the deficiency/delinquency does not match one of the above circumstances, if the taxpayer can show that it has done everything it could reasonably be expected to do as an ordinarily intelligent and reasonably prudent businessperson. The taxpayer must also show that the deficiency/delinquency was not caused by a willful disregard of the law or gross negligence.[69]

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" on their TNTAP account. A Petition for Waiver of Penalty Form is also available on the Department's website under the "How do I…?" section.

Initial receipt, review and recommendation for approval or disapproval of each application for waiver of penalty shall be made by the director, or the director's delegate, of the division or agency within the department charged by the Commissioner with the enforcement of the tax involved.[70] This division is the Audit Division. The Commissioner or the Commissioner's delegate also reviews and approves or disapproves each application for waiver of penalty above a certain threshold. Such determination by the commissioner or the commissioner's delegate shall constitute the determinative and final decision on the application.

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.[71]

> ⚠ **The Department is prohibited by law from waiving interest. Tenn. Code Ann. § 67-1-803(a)(2)(B). (Under no circumstances shall the Commissioner's authority to waive penalties extend to interest.)**

All delinquent or deficient tax payments, either administered or collected by the Commissioner, begin accruing interest from the date delinquent or deficient until paid.[72]

- 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 after the date of assessment, interest accrues at the prevailing rate in effect on the date of the accrual of such interest.

Records Maintenance

Any tax return open under the statute of limitations is subject to either a field audit or an office audit. Tennessee requires all dealers to make reports and preserve suitable records of all sales and purchases and to maintain adequate books.[73] These records may be examined by the Department to determine the amount of tax due.[74]

If a taxpayer keeps electronic records, it must provide the records 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.[75]

1. Records Requested

Records include but are not limited to:

- All invoices and other records of goods, wares, merchandise, or other subjects of taxation.
- 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 deductions and exemptions allowed or claimed including exemption and resale certificates.
- A record of all property used or consumed in conducting business;
- A true and complete yearly inventory of the value of stock on hand.
- A complete record of any other pertinent records.[76]

Complete records are required whether sales are made for cash or on terms of credit. Wholesale dealers and jobbers must include the following information in their records:

- The name and address of the purchaser.
- The date of purchase.

- The article purchased.
- The price at which the sale is made to the purchaser.[77]

Records Commonly Examined

The following records are most commonly examined during a sales and use tax audit:

- Chart of Accounts
- Purchase Journal
- Bank Statements
- Sales Invoices
- Sales Tax Returns
- Federal Tax Returns
- General Ledger
- Cash Receipts Journal
- Financial Statements
- Vendor Invoices
- Franchise and Excise Tax Returns
- Sales Journal
- Cash Disbursements Journal
- Cash Register Tapes
- Resale/Exemption Certificates
- Business Tax Returns

If a dealer fails to file returns and pay the tax required or refuses to permit an examination of its books and records, the Commissioner is authorized to make an assessment based upon available information.

2. Record Retention

Dealers must keep records for a minimum of three years from December 31 of the year the associated sales and use tax return was filed. However, if an assessment has been appealed

and is pending before the Commissioner or a court, the records that are related to the assessment must be preserved until final disposition of the appeal.

If a dealer is not registered with the Department or in the case of fraud, the Department may assess for tax periods earlier than the three preceding tax years.[78]

3. Failure to Retain Records

Retaining records in accordance with subsections 1 and 2 above is required by law and is imperative in the case of an audit. As stated above, Tennessee law provides that if a dealer fails to keep adequate records, the Department may make an assessment "based on the best information available."[79] This could include using a "purchase mark-up" methodology or performing a "shelf-test" audit because inadequate documentation was available for review.

Assessment and Informal Conferences

The Audit Division will issue the taxpayer a Notice of Proposed Assessment if an audit results in an assessment. Taxpayers can work with the Audit Division to resolve issues regarding the assessment even after a notice is issued. Taxpayers also have the right to request an informal conference with the Commissioner, or the Commissioner's designee, to discuss proposed assessments.[80] The informal conferences are held in person or via telephone. All in-person conferences are held in the Department's Nashville office.

The Notice of Proposed Assessment becomes a Final Assessment on the 31st day after the date on which the assessment is issued unless the taxpayer timely requests an informal conference. A taxpayer wishing to contest a Final Assessment without making payment must file suit in chancery court within 90 days of the date on which the assessment becomes final.

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

Change in Business Ownership and Closing Your Business

Taxpayers must notify the Department if the business ownership changes in any manner. Changes may include:

- Selling or closing the business.
- Adding or changing business partners.
- Transferring or changing the ownership of the business.
- Changing the corporate structure requiring a new charter or certificate of authority.[81]

If a taxpayer sells its business or closes its business, the taxpayer must file a final Sales or Use Tax Return and pay all sales or use tax due within **15 days** after the date the business was sold or closed.

Furthermore, if a taxpayer sells a business, the purchaser of the business must apply for a certificate of registration in his or her own name.

Any taxpayer allowing a new business owner to purchase property or services tax-exempt using that taxpayer's registration and certificate of resale not only is guilty of a misdemeanor, but also could be held liable for the tax due on such property or services.

Successor Liability

If a successor or assign fails to follow the proper procedures when purchasing or taking over a business, such successor or assign could potentially be liable for the previous business's sales tax liabilities.

Such person must 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.[82]

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.[83]

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.[84]

"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.[85]

It does **not** include indebtedness of the seller either taken or assumed by the purchaser when a tax lien has not been filed.[86]

The purchaser shall have no liability for taxes, penalties, and interest if the Department 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.[87] 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 penalty. 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, in excess of 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.

Additionally, the use of the terms "purchaser" and "purchase money" do not limit the terms "successor, successors, or assigns" to only successors that provide consideration to take over a business. Instead, if a successor does provide consideration—or "purchase money"— as a general proposition, the liability of the successor is then limited to the amount of that purchase money under Tenn. Code Ann. § 67-6-513(c)(2), as long as it was paid "in good faith and for full and adequate consideration in money or money's worth."

Responsible Person Liability

Individuals often operate as a corporation, limited liability company, or other entity type to avoid being personally responsible for the liabilities of the business. Sales tax law is unique, in that individual owners or other "responsible persons" may be held personally liable for a sales tax liability, regardless of whether business is conducted as an entity.

The specific authority under which an individual may be held liable for the tax liability of a business is found in Tenn. Code Ann. § 67-1-1443. That statute governs liability for failure to pay taxes collected from customers, and provides as follows:

- Any person required to collect, truthfully account for, and pay over any tax collected from customers of any taxpayer, who willfully fails to truthfully account for and pay over any such tax collected, or who willfully attempts in any

manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for the total amount of the tax evaded, or not accounted for and paid over, along with penalties and interest.[88]

- As used in this section:
  - "Person" includes an officer or employee of a corporation, who as such officer or employee is under a duty to perform the act in respect of which the violation occurs.
  - "Willfully" is limited to material and informed participation in the diversion of such collected funds to a source other than to the state.
  - The liability imposed by this section shall be collected as otherwise provided herein.[89]

Application of the statute is not limited to a single individual but includes all of those connected with a corporation to be responsible for the payment of taxes.[90] When determining whether a particular individual is a responsible person, "[t]he crucial inquiry is whether the individual had the effective power to pay the taxes."[91] Stated another way, responsibility is a question of whether that person had sufficient power to see that the taxes were paid.[92]

The term "willfully" means the "material and informed participation in the diversion of such collected funds to a source other than to the state."[93] Acting willfully does not mean that a person acts with a bad intent or motive but instead refers to voluntary, conscious or intentional acts.[94] A person acts willfully when he or she pays other creditors while being aware that taxes remain unpaid.[95] In *Gephart v. United States,* the Sixth Circuit stated that "[w]ilfullness is present if the responsible person had knowledge of the tax delinquency and knowingly failed to rectify it when there were available funds to pay the government."[96]

Examples

A business owner sold part of his business. Though he sold a substantial portion of the business, and the purchase and sale agreement stated the purchaser was responsible for the business's taxes, he continued managing and operating the business on a day-to-day basis. The business was audited, and the Department determined the business underreported its sales and assessed the business. After assessing the business, the Department issued a responsible person assessment to the business owner because of his direct role in and responsibilities regarding remitting the sales tax.

The Department audited a business and issued an assessment after determining it underreported its sales. After assessing the business, the Department personally assessed

the business owner who ran the daily z-tapes from the store's cash registers because he was responsible for determining what amount of sales would be reported to the Department and subsequently remitted to the Department.

Chapter 4: Common Sales Tax Concepts

Overview

To better understand how sales and use tax applies, it is helpful to be familiar with the basic terminology and concepts. This chapter addresses some fundamental terms and definitions that are found in Tenn. Code Ann. § 67-6-102 and used in determining taxability under the Retailers' Sales Tax Act. This chapter also provides references to other chapters where the terms are applied or discussed in more detail.

Commonly Used Terms in Sales Tax Law

1. Auctioneers, Agents, and Factors

Generally, the person responsible for collecting and remitting the tax is easily identifiable. However, in some cases, the sale is effectuated by third parties that are responsible for the tax.

Auctioneers, agents, or factors acting for any unknown or undisclosed principal entrusted with any bill of lading, customhouse permit, or warehouse receipt for delivery of tangible personal property, or entrusted with possession of any such personal property for the purpose of sale, are deemed the owner of the property. Upon the retail sale of such property, the auctioneer, agent, or factor is required to collect and remit the sales tax. However, if the principal is known the tax responsibility rests with the principal. For example:

- At a large-scale vehicle auction, the vehicles come up for auction and the potential purchasers do not know the owners of the vehicles. The owner is an "undisclosed principal." The auction house is responsible for collecting and remitting the sales tax.
- Assume the same facts as above, except as each vehicle comes up for auction, the individual owner is standing next to the auctioneer, their name is mentioned, and the owner discusses the vehicle and its prominence. Then the auctioneer auctions the vehicle. Because the owner is known to the customers, the owner is a "disclosed principal" and would be responsible for collecting and remitting the sales tax.

The same rule applies to lien holders, such as storage men, pawnbrokers, and artisans.[97]

2. Business

Business means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect.[98] Business does not include certain occasional and isolated sales or transactions.[99] For more information on occasional and isolated sales, see Chapter 19 of this manual.

3. Commissioner

Commissioner, as used in this manual, means the Commissioner of the department of revenue or the Commissioner's duly authorized assistants.[100]

4. Dealer

A dealer includes every person, including Model 1, Model 2, and Model 3 sellers, who:

- Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state.[101]
- Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state.[102]
- Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section.[103]
- Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property.[104]
- Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property.[105]
- Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property.[106]
- Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business.[107]
- Furnishes any of the things or services taxable under this chapter.[108]
- Has any representative, agent, salesperson, canvasser, or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser, or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state.[109]
- Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or

by means of print, radio, or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.[110]

- Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid.[111]
- Sells at retail or charges admission, dues or fees as defined in this chapter.[112]
- Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators.[113]
- Acts as a marketplace facilitator.[114]

Model 1 Seller

A model 1 seller is a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.[115]

Model 2 Seller

A model 2 seller is a seller that has selected a certified automated system to perform part of its sales and use tax functions but retains responsibility for remitting the tax.[116]

Model 3 Seller

A model 3 seller is a seller that has:

- Sales in at least five states that are members of the Streamlined Sales and Use Tax Agreement.
- Total annual sales revenue of at least five hundred million dollars.
- A proprietary system that calculates the amount of tax due each jurisdiction.
- Entered into a performance agreement with the member states that establishes a tax performance standard for the seller.[117]

An affiliated group of sellers using the same proprietary system are model 3 sellers.[118]

5. Leases and Rentals

Leases and rentals of tangible personal property are generally subject to Tennessee sales and use tax. A lease or rental is any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.[119] A lease or rental may include future options to purchase or extend.[120] Also, it includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

However, the following transactions are not considered a lease or rental:

- Transfer of property under a security agreement or deferred payment plan that requires the transfer of title after the purchaser has made all required payments. Such transactions are considered a sale, rather than a lease or rental, and are subject to tax as a sale.
- Transfer of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of $100 or 1% of total required payments.[121] The total sales price of the property is subject to tax at the time of the sale. The periodic payments, including interest and financing charges, made under the agreement are not subject to tax.
- Providing tangible personal property along with an operator, who does more than maintain, inspect, or set up the property. Such transactions are treated as the sale of a service, rather than the lease or rental of property.
- Providing a dumpster or other container for waste or debris removal for a fixed or indeterminate period, along with the delivery and pickup of the dumpster. The dumpster provider must be exclusively responsible for delivery and pickup of the dumpster.[122]

⚠ **The sales and use tax definition of "lease or rental" in Tenn. Code Ann. § 67-6-102(51) should be used regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, title 47, chapter 2A, or other federal, state, or local law.**

Sales tax is due on the sales price derived from leases and rentals of tangible personal property when the lease is part of an established business.[123] The tax on leases or rentals is due from the lessee even if the lessor is a tax-exempt entity. Royalties paid, or agreed to be paid, either on a lump sum or production basis, for tangible personal property used in this state are rentals subject to the sales or use tax.[124]

Payments Subject to Tax

The sales tax applies to the sales price of each periodic payment the lessee agrees to pay under the lease agreement. For leases that require the lessee to make a lump sum payment up front, tax is due on that payment when it is made. For leases on which the lessee will make periodic (e.g., weekly, or monthly) payments, sales tax is to be collected on each lease payment at the time each payment is made. Effective July 1, 2024, recurring periodic payments, made after the first payment, covering periods where the primary property location for the leased property is no longer in Tennessee, are no longer sourced to Tennessee and are not subject to tax. See Chapter 7 of this manual titled Sourcing Sales to Tennessee.

The lease or rental price may include a fixed periodic amount, such as a regular monthly amount, and a variable periodic amount, such as mileage charges. If the lessee is obligated under the agreement to pay both amounts, then the sum of these amounts is subject to tax.

Security Deposits, Late Charges, and Optional Charges

Forfeited security deposits are considered part of the total consideration paid for the lease of tangible personal property and are subject to sales tax.

Late charges imposed on periodic lease payments made after the payment due date are considered part of the total consideration required to be paid for that periodic payment and are subject to sales tax.

> ⚠ **Late charges related to the lease of personal property are included in the sales price. However, separately stated late charges related to the sale of personal property or taxable services are not part of the sales price that is subject to the sales and use tax.**

Option charges for nontaxable items that are separately stated, however, are not subject to sales tax. For example, if a leased car comes with an option to buy insurance, the insurance would not be included in sales tax calculations.[125]

Terminal Rental Adjustment Clause

Lease or rental agreements for motor vehicles and trailers may contain a terminal rental adjustment clause. A terminal rental adjustment clause provides for an increase or decrease in the amount of consideration by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Section 7701(h)(1).[126]

The additional payments or refunds required under agreements pursuant to a terminal rental adjustment clause are part of the proceeds of the lease. At the end of a lease term:

- If a motor vehicle or trailer sells for less than was estimated by a lessor and lessee at the beginning of the lease and the lessee is required to make an additional payment under the lease, the additional payment is subject to tax if the lease was subject to tax.
- If a motor vehicle or trailer sells for more than was estimated by the lessor and lessee at the beginning of the lease and the lessor is required to make a refund to the lessee, the refund amount is a reduction in the amount of consideration for the lease and the lessor should refund tax on the amount refunded to the lessee, if tax was collected on the original lease payments.

For more information on exemptions that apply to the lease or rental of motor vehicles (the "3-day nonresident exemption"), please see Chapter 19 of this manual.

Lease Agreement vs. Finance Agreement

"Lease or rental" does not include finance agreements for the transfer of possession or control of property. When title to the property is to be transferred upon completion of the required payments and the payment of an option price that does not exceed the greater of $100 or 1% of the total required periodic payments, the transfer is not considered a lease; it is deemed a sale. Sales tax is due at the time of the sale/purchase of the property for which a loan is obtained under a financing agreement, and not on the periodic payments.[127]

Persons making conditional, charge, or installment sales must report the total selling price of such sales and pay the sales or use tax on such sales in the monthly tax period in which the contracts of sales are entered.[128]

Lease/Rental vs. Sale of Service

When tangible personal property is provided with an operator, it is not a lease of tangible personal property, but is instead a sale of a service which is not subject to sales or use tax.[129] Because the operator maintains control of the tangible personal property, there is no transfer of possession or control. The operator must be necessary for the equipment to perform as designed; someone who only maintains, inspects, or sets-up the tangible personal property is not considered an operator.[130] Businesses that provide an operator should use the true object test (see Chapter 11 for more information on the true object test) to determine whether they are providing a non-taxable service or the taxable rental of tangible personal property. For example:

- A wedding party rents an open-air photo booth for the duration of the wedding reception. The rental company provides an attendant to deliver, set-up, troubleshoot (if necessary), take down, and return the booth after the reception. The attendant is also available to show guests how to how to operate the booth. The guests otherwise

operate the booth, take the pictures, print the pictures, etc. Under these facts, the attendant is not necessary for the photo booth to perform as designed. Guests, not the attendant, take the photographs. Therefore, this would be the taxable lease or rental of tangible personal property, not the provision of a non-taxable service.

In certain circumstances, the operator of the property may not be an employee of the lessor. In these situations, there are specific criteria that must be met for the transaction to qualify as a nontaxable sale of a service, rather than a taxable lease of property.

- If an employee of the owner maintains continuous supervision over the property being leased, and operates the property, the owner is providing a service, and the lease will not be subject to sales or use tax.
- If the operator is not employed by the owner, the lease is subject to tax, unless all the following criteria are met:
- There is a contract between the operator and the owner which sets out the operator's duties regarding the care and use of the property to be leased, which the customer cannot overrule.
- The continuous presence of the operator is required for the property to perform its intended function.
- The owner must make certain that the operator meets any requirements imposed by the insurer of the property.
- The owner must make certain that the operator complies with all applicable regulations which govern the operation of the property or the operator's qualifications to operate the property.
- The owner must be contractually obligated to pay the operator if the customer fails to do so.
- The customer cannot terminate the operator without obtaining a replacement from the owner.
- The operator is authorized to cease operation of the property if the customer violates any provision of the lease agreement between the owner and the customer.

An owner of property rendering a nontaxable service may not use a certificate of resale to purchase the tangible personal property used to provide the service but must pay sales or use tax at the time the property is purchased or registered in Tennessee.[131]

⚠ **Auditors may request agreements or contracts to gain an understanding of the transfer of possession or control of the property and who is authorized to operate the property.**

Sourcing Leases or Rentals

Information regarding the sourcing of leases or rentals is included in Chapter 7 of this manual.

Damage Settlement on Leased Vehicle

Insurance proceeds paid to the owner of a leased vehicle pursuant to a damage settlement are exempt from sales and use tax.[132] The exemption applies when the motor vehicle has sustained damage that renders it a salvage vehicle, non-repairable vehicle, or flood vehicle, and the owner transfers title of the leased vehicle to the insurance company. [133]

If the insurance company sells the salvage vehicle it obtained because of a paid claim, prior to repair ("as is"), the insurance company may endorse a change in ownership on the certificate of title without paying sales and use tax.[134]

6. Marketplace Facilitator

A marketplace facilitator is a person, including any affiliate of the person, that:

- For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's taxable tangible personal property or services through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and
- Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser of the marketplace seller's tangible personal property or things or services taxable under this chapter and transmits payment to the marketplace seller.

For more information on marketplace facilitators and marketplace sellers, see Chapter 10 the Marketplace Facilitator chapter of this manual.

7. Person

For Tennessee sales and use tax purposes, a "person" is defined as any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit.[135] A "person" is also any political

subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under the Sales Tax Act.[136]

8. Resale

Resale means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser.[137] A sale for resale is the sale of the property, services, or taxable item intended for subsequent resale by the purchaser.[138] Sales tax does not apply when property, services, or a taxable item is purchased for resale. Sales for resale must be in strict compliance with rules and regulations promulgated by the Commissioner.[139]

For a more detailed explanation of what constitutes a sale for resale, see Chapter 19 of this manual.

9. Retail Sale

A retail sale is any sale for any purpose other than for resale, including leases and rentals.[140] Sales tax is imposed on the retail sale of products (tangible personal property, computer software, certain digital property, certain services, and certain amusements). The intent is to impose the tax on sales to consumers (retail sales) and not on sales to resellers.

10. Retailer

A retailer includes every person engaged in the business of making sales at retail or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under the sales and use tax statutes and every marketplace facilitator.[141]

11. Sale

For a transaction to be considered a sale of personal property, two basic requirements must be met:

- A transfer of title or possession of personal property, and
- Consideration for the transfer.[142]

Transfer of Title or Possession

The transfer of title or possession, meeting the first condition to be a sale includes:

- Exchange
- Barter
- Lease or rental of tangible personal property

- Conditional transfer
- Fabrication where raw materials are directly or indirectly furnished by the purchaser/consumer.
- Furnishing, repairing, or serving tangible personal property consumed on the premises of the person furnishing, repairing, or serving the tangible personal property.
- Transfers where the seller retains title as security for payment of the price.
- Transfer of possession under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments; or a transfer under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments.
- Transfer of title or possession, lease, or licensing, in any manner or means of computer software for consideration and includes the creation of computer software on the premises of the consumer and any programming, transferring, or loading of computer software into a computer.
- Furnishing of any of the things or services taxable for under the sales and use tax statutes.
- Gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities.
- Providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis.
- Processing of photographic film into negatives and/or photographic prints for resale.
- Charges for admission, dues, or fees except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate.
- Transactions that the Commissioner, upon investigation, finds to be in lieu of sales.
- Any sale, as otherwise defined in Tennessee law, that is made or facilitated by a marketplace facilitator.

- Any sale otherwise defined as such.[143]

Consideration

Consideration is a necessary component for a taxable sale. However, Title 67, Chapter 6 does not define the term. The Tennessee Court of Appeals defined the term consideration in the sales and use tax context, as "either a benefit to the promisor or a detriment to or obligation on the promise."[144] Consideration may include cash, credit, property, and services, for which personal property or services are sold, leased, or rented.[145]

Conversion of Sole Proprietorship to a Corporation

The transfer of possession or title of tangible personal property of a sole proprietorship that becomes the assets of a corporation resulting from the incorporation of such sole proprietorship is not a sale and thus not subject to sales and use tax.[146]

12. Sales Price

Sales price is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without certain deductions explained later in this manual.[147]

For more information on sales price and calculating sales price, see Chapter 11 of this manual.

13. Specified Digital Product

For Tennessee sales and use tax purposes, specified digital products are defined as electronically transferred digital audio-visual works, digital audio works and digital books.[148] Electronic transferring is a method of transferring products obtained by the purchaser by means other than tangible storage media.[149]

Detailed Information on specified digital products is included in Chapter 14 of this manual.

14. Tangible Personal Property

Generally, tangible personal property is taxable unless it is specifically exempt by law. Tangible personal property is defined as "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses."[150] Tangible personal property includes:

- Electricity
- Water

- Gas
- Steam
- Prewritten computer software[151]

Tangible personal property does not include:

- Signals broadcast over the airwaves[152]
- Real property
- Intangible property and intangible rights, e.g., gift cards or discount cards
- Fiber-optic cable after it has become attached to a utility pole, building, or other structure or installed underground. Such fiber-optic cable is deemed realty upon installation.[153]
- Mains, pipes, pipelines, or tanks after it has become attached to a building, other structure, or in the ground.[154]
- Railroads or railroad structures permitted or authorized to be made in, upon, or under public or private property.[155]

For more information on tangible personal property see Chapter 12 of this manual, Tangible Personal Property v. Real Property.

15. Use

The use of tangible personal property is subject to use tax if the consumer did not pay sales tax at the time of purchase. Use means and includes:

- The exercise of any right or power over tangible personal property incident to the ownership of tangible personal property.[156]
- The coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee.[157]

Use includes consumption, distribution, and storage for use in this state.[158] Use does not include the sale at retail of property in the regular course of business.[159]

For more information on use tax, see Use Tax Imposition, Chapter 6 of this manual.

Chapter 5: Sales Tax Imposition on Services and Tangible Personal Property

The "Retailers' Sales Tax Act" imposes the sales tax on tangible personal property, certain enumerated services, amusements, and digital products.[160] Items of tangible personal property are taxable unless specifically exempted by law. A service is not taxable unless it is specifically enumerated by the law or is part of the sales price of a taxable item of tangible personal property.[161] Amusements are discussed in Chapter 16 of this manual and specified digital products are discussed in Chapter 14.

> ⚠ **Generally, all tangible personal property is taxable unless it is specifically exempt by law. All services are generally exempt unless specifically enumerated as taxable by law or part of the sales price of a taxable product.**

Taxable Services

Services are taxable only if enumerated by law or if they are part of the sales price of a taxable product. Certain services to tangible personal property or computer software where the serviced property or software is transferred or delivered into Tennessee for use or consumption are subject to use tax effective July 1, 2024. Other services are not subject to use tax. Services subject to tax specifically enumerated by the law are:

- Repair of tangible personal property or computer software
- Installation of tangible personal property or computer software
- Lodging services and rooms
- Short-term space rental to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis
- Cleaning tangible personal property and animal bathing
- Parking and storing of motor vehicles
- Telecommunication services
- Television programming services[162]
- Ancillary services
- Enriching of uranium materials[163]

Services not included in the above list may be subject to sales tax when the charges for the services are considered part of the sales price of a taxable good or service, even if separately itemized. Delivery charges, labor and service costs, and services provided by the seller that are necessary to complete the sale of a taxable good or service, are part of the sales price of the taxable good or service. In general, labor service performed on real property is not subject to sales tax.

1. Repair of Tangible Personal Property or Computer Software

Tennessee law imposes sales tax on any repair of any kind of tangible personal property or computer software that is performed in the state.[164] Repair services include occasions when there may be no new parts involved in the transaction and occasions when a customer may furnish any or all of the parts necessary for the repair work.[165] Any type of charges for repair services and repairs such as a "service call," minimum charge, hourly or flat rates, mileage, etc., are subject to the sales tax.[166]

Repair services and repairs of tangible personal property are taxable and include:

- Work done to preserve or restore
- Mending or correcting
- Alterations
- Refinishing
- Cleaning that is a necessary part of any repair work
- Service calls where any repair work is done or contemplated
- Changes in the size, shape, or content.

Service calls where a repair is not contemplated are not subject to tax. For example, a trip or mileage charge billed in relation to giving an estimate for proposed work or a charge by a wrecker company solely for towing.

Repair Services Covered by Warranty or Service Contracts

If sales or use tax is paid on a warranty or service contract covering the repair and maintenance of tangible personal property or on a computer software maintenance contract, then the purchaser of the contract will not owe sales or use tax on any repairs, including parts and services, covered under the contract.

See Chapter 15 for more information on warranty and service contracts covering tangible personal property and Chapter 13 for more information on computer software maintenance contracts.

Repair Services Performed Within and Outside of Tennessee

Effective July 1, 2024, for the sale of repair services to tangible personal property or computer software that is made from a place of business within Tennessee where the serviced tangible personal property or computer software is delivered by the seller to the purchaser or the purchaser's designee outside of Tennessee or to a carrier for delivery to a place outside of Tennessee, the sale is not sourced to this state.[167]

Prior to the law change, courts found that the imposition of sales tax on services performed within the state on products later placed into interstate commerce did not violate the federal commerce clause.[168] The law was changed to adopt sourcing rules consistent with the SSUTA and member states.

In conjunction with the law change, effective July 1, 2024, remote sellers must collect Tennessee use tax on remote sales of such repair services performed out of state where the serviced tangible personal property or computer software is shipped or delivered by the remote seller to the purchaser or the purchaser's designee in Tennessee for use or consumption.[169]

For more information on the sourcing of sales of repair services, please see Chapter 7 of this manual.

Repair Services Performed by Owner or Owner's Employees

Repairs performed personally by the owner or by the owner's employees are not subject to tax. Repair services, and any other services otherwise taxable, performed for an affiliated company are exempt from tax.[170] Companies are affiliated only if:

- Either company directly owns or controls one hundred percent (100%) of the ownership interest of the other company; or
- One hundred percent (100%) of the ownership interest of both companies is owned or controlled by a common parent.

Industrial Machinery Exemption

Industrial machinery is exempt from sales and use tax.[171] The definition of industrial machinery includes repair services and installation services of items that are considered industrial machinery.[172] Therefore, the sale of industrial machinery installation and repair services is also exempt if the customer presents the taxpayer with a proper industrial machinery exemption certificate.[173] For example:

- A manufacturer purchases a forklift for moving material from storage to the manufacturing facility. It also purchases repair services to fix an older forklift that is

used in the manufacturing process. Both the repair service and equipment purchase qualify as industrial machinery and can be purchased tax free with an exemption certificate.

- An out-of-state manufacturer sends a piece of equipment to Tennessee for repairs. The Tennessee repair person is liable for the Tennessee sales tax if the sales tax is not collected from the customer. However, the out-of-state manufacturer could apply for a Tennessee industrial machinery exemption certificate and purchase the repairs tax free.

See Chapter 20 for more information on industrial machinery.

2. Installation of Tangible Personal Property or Computer Software

Installing tangible personal property that remains tangible personal property after installation or installing or loading computer software on a computer located in Tennessee are subject to Tennessee sales tax.[174] Effective July 1, 2024, sales of such installation services performed in Tennessee where the serviced property or software is delivered by the seller to the purchaser or the purchaser's designee outside of Tennessee or to a shipper for delivery to a place outside of Tennessee are not subject to use tax.

Tangible personal property that is sold and attached to real property, but which will ordinarily be removed by the owner or tenant, such as window air conditioning units, curtain and drapery rods, gasoline pumps, etc., is deemed to be personal property and the related installation charges are therefore subject to the sales and use tax.[175]

Such installation sales are taxed regardless of whether the installation is made incident to the sale of tangible personal property or computer software, and whether any tangible personal property or computer software is transferred in conjunction with the installation service.[176] For example, stand-alone installation of computer software furnished by a third party to install on a computer located in Tennessee is subject to sales tax. The tax is due from the dealer regardless of whether the dealer or someone acting on the dealer's behalf installs the property.[177]

Charges for installation services furnished in conjunction with the sale of tangible personal property or computer software are part of the sales price of the tangible personal property or computer software and are generally taxable, even if separately itemized. The following installation charges are not taxable:

- Installation services that are part of the sales price of exempt tangible personal property or computer software and[178]
- Charges for the installation of tangible personal property that becomes a part of real property upon installation.

3. Lodging Services & Rooms

Tennessee imposes sales tax on the sale, rental, or charges for any rooms, lodgings, or accommodations furnished to persons by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings, or accommodations are furnished to persons for a consideration.[179] The sales tax is imposed on entities that are in the business of furnishing rooms for overnight lodging.

90 or More Days

Charges for the use of rooms or accommodations furnished for periods of less than 90 days by hotels, motels, inns, or other tourist lodgings are subject to sales tax, regardless of whether the room is a guest room, banquet room, or meeting room. However, the tax does not apply to accommodations or rooms furnished to the same person for 90 or more continuous days.

If the same person pays for the room, different individuals may stay in the room during the 90 days. It does not matter if the room is not actually occupied, if it is continuously paid for by the same person.[180] If the room reservation is cancelled, the chain of continuous days for that room is broken and must start again. For example:

- An airline reserves and pays for a room for more than 90 days for its pilots to stay in during flight layovers. Different pilots stay in the room at different times throughout the 90 days, but the room is always paid for by the airline. The payment for the room is exempt.
- A corporation pays for a block of rooms for 90 consecutive days. Some nights the rooms are not occupied. Although some of the rooms are never occupied, the total payment is exempt.
- An auditor initially arranged to rent a room for seven days but his stay lasted four months. The room charge is exempt because his occupancy exceeded 90 days.

After 90 days, the dealer furnishing the room may refund any sales tax already collected from the occupant and claim credit for that tax on a subsequent return filed with the Department.

Cancellation Fees

If a person reserves a room for overnight lodging but then cancels the reservation, any cancellation fees that may be charged are not subject to tax.

Rental of Meeting or Banquet Rooms

The furnishing of a room (meeting room, banquet room, etc.) by an entity that is not in the business of furnishing rooms for overnight lodging is not taxable. However, if the entity's primary business is providing overnight lodging, sales tax should be collected and remitted on meeting rooms and similar space rentals.[181] For example:

- A wedding venue business contracts to rent a barn and grounds for the event. The rental of the barn includes a two-bedroom cabin for the wedding party to use prior to the wedding. The owner also occasionally rents the two-bedroom cabin on the premises for overnight stay. The overnight rental of the cabin is taxable, but the rental of the barn, grounds and cabin for the day are not taxable.

Considering the lessor's primary or major business type is important when determining the taxability of meeting, banquet, and similar room rents.[182] Charges for these rooms are subject to sales and use tax if the lessor's major business is furnishing rooms for overnight lodging (hotel, inn, tourist court, tourist camp, tourist cabin, etc.). The 90-day rule discussed in the prior section also applies to meeting rooms or banquet rooms.

Rental of meeting rooms, banquet rooms, or party rooms by persons that are not in the primary business of furnishing rooms for overnight lodging are not subject to sales tax. When a person rents a meeting or banquet room for a meeting, seminar, wedding reception, birthday party, or other similar event, the rental charges are not subject to the tax if the lessor is not primarily in the business of furnishing rooms for overnight lodging.

Charges, by any type of taxpayer, for short-term space rental to a vendor for the purpose of making sales may be subject to tax as discussed in the section on short-term space rentals.

Vacation Lodging

Vacation lodgings[183] include cabins, cottages, chalets, condominiums, houses, or individual rooms that are rented for overnight lodging that are rented for a period of less than 90 days. They are subject to the sales and use tax. If the owner rents the property directly, the owner is responsible for collecting and remitting the tax on the bookings. The amount of sales tax collected should be calculated on the sales price that includes all fees collected for the rental, as well as any other money that a consumer must pay to rent the accommodations (e.g., non-refundable pet deposits, required cleaning fees, property damage protection fees, etc.).

Management companies and internet-based platforms may be engaged by property owners in renting their property. Typically, they register and remit the tax on behalf of the property owner.

- A property management company[184] engaging in the business of leasing or renting vacation lodgings on behalf of individual property owners [185] to transients on a short-term basis must register with the department to collect and remit the appropriate sales tax.[186] This tax should be collected by the management company from the consumer whenever possible.[187] Property management companies step in the shoes of individual property owners and must collect sales tax on the rental of vacation lodging to consumers.
    - "Vacation lodging" means real property, other than the primary and regular residence or abode of an individual property owner, that is utilized, or can be utilized, for overnight rentals in the absence of the individual property owner.
- If an online company (or internet-based platform)[188] is a marketplace facilitator or has signed an agreement with the Department to collect and remit sales tax on behalf of its property owners, the property owner is not responsible for paying sales tax that is collected from customers on bookings made through that platform. In these instances, the online company will remit the collected sales tax because it is considered the seller for sales tax purposes. The property owner must still maintain records to document that the online company reported and paid sales tax.
- If the property owner uses internet-based platforms that are not marketplace facilitators to rent the property, it is the owner's responsibility to contact each platform to verify if it has signed an agreement with the Department to collect and remit sales tax on behalf of the owner. If the platform has not signed an agreement, the property owner is responsible for collecting and remitting the sales tax on bookings through that platform.

For more information on marketplace facilitators and marketplace sellers, see Chapter 4: Sales Tax Common Definitions, and Chapter 10: Marketplace Facilitators.

Time-Shares

Charges for the use of or the value of any time-share estate and any charges for the use of or the value of a perpetual interest in specified entities whose substantial purpose is the ownership and control of real property are not subject to the sales and use tax.[189]

Amounts paid as a standard fee for the service of facilitating the exchange of one time-share interval for another or for the service of making a reservation for a time-share interval via a reservation system are not subject to the sales and use tax.[190]

For this purpose, a "time-share estate" is an "ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease." [191]

4. Short-Term Space Rented by Dealers

Any person that rents or provides, on a short-term basis, space to a dealer or vendor for the dealer or vendor to make sales from is providing a taxable service. This is sometimes referred to as "booth rental." The "booth rental" is taxable whether provided to a dealer that does not have a permanent location in this state or is registered at other locations in this state but making sales from the booth space on a short-term basis.[192] The person who provides the space directly to exhibitors who sell goods or taxable services to the public is considered the retailer and is responsible for collecting and remitting the tax for the short-term space rental.[193]

Rental charges are not subject to tax if the dealer making sales from the booth has registered to collect sales tax at the temporary rental location. In addition, sales tax is not imposed on the renting or providing space to a:

- Craft fair
- Antique mall
- Book fair or gun show, if sponsored by a not-for-profit corporation
- Flea market
- Conventions, trade shows, or expositions, if they do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales.

5. Cleaning Tangible Personal Property

Tennessee law imposes sales tax on tangible personal property cleaning services performed in Tennessee. This includes the cleaning, laundering, or dry cleaning of any kind of tangible personal property, such as clothing, furniture, rugs, jewelry, motor vehicles, and animals.[194] Effective July 1, 2024, sales of cleaning services performed in Tennessee to tangible personal property where the serviced property is delivered by the seller to the purchaser or the purchaser's designee outside Tennessee are no longer subject to Tennessee tax and are reported as exempt interstate sales.

Additionally, effective July 1, 2024, remote sellers must collect Tennessee use tax on remote sales of such cleaning services performed out of state where the serviced tangible personal property is shipped or delivered by the remote seller to the purchaser or to the purchaser's designee in Tennessee for use and consumption.

Laundering and Dry Cleaning

Laundering or dry cleaning of tangible personal property is a taxable service.[195] However, the following are not subject to sales tax:

- Charges for storage of and insurance on laundry and cleaning, and charges for dyeing and blocking, provided the dealer separately states such charges on the ticket or invoice given to the customer and separately accounts for those charges in its books and records.
- Charges for pressing only, provided the dealer separately states those charges on the ticket or invoice given to the customer and separately accounts for those charges in its books and records.[196] However, if pressing is provided in conjunction with the laundering or dry-cleaning of clothes, it is taxable as part of the sales price, even if separately itemized.
- Charges for the use of coin-operated laundry and dry-cleaning machines, if the customer performs all the activities related to the handling of their clothing. If the seller performs any of the handling services, the charges are taxable.[197]

Bathing Animals

Charges for bathing animals are subject to sales tax, while separate charges for grooming are not taxable.[198] When a person provides both bathing and grooming services for a single charge, sales tax applies to the total charge. For example:

- A person provides pet grooming and bathing services. The invoice separately itemizes the charges for bathing services and other pet grooming services as follows:

Pet Bathing	15.00
Haircut	65.00
Brush-out	10.00
Nail Care	15.00
Total Sales before tax	105.00
Sales Tax (9.5% x $15 = 1.43)	1.43

  - In this example, the sales tax rate is 9.5%. The sales tax is only applied to the separately listed bathing service, resulting in $1.43 of tax due. If the services were not itemized and instead billed as $105 for the pet grooming and bathing services, the tax would be $9.98 ($105 x 9.5%).

Veterinarians may also be engaged in the business of providing bathing and pet grooming services. There is no tax applied to bathing performed for a medical purpose by a licensed veterinarian as part of the practice of veterinary medicine.[199] When a veterinarian provides non-medical animal bathing and grooming but makes separate itemized charges for each,

sales tax is only due on the charge for bathing. However, if non-medical bathing and grooming are sold for a single price, the total sales price is subject to sales tax. [200]

Car Wash Facilities

A car wash is not subject to sales tax if the customer remains in custody of the vehicle and most of the wash and related cleaning activities, such as rinsing, drying, polishing, and vacuuming, are completed by the customer or automated equipment. A car wash is subject to sales tax if the service provider takes custody of the vehicle at any time or performs most of the cleaning activities for the customer. Such activities include rinsing, drying, polishing, and vacuuming.[201]

A car wash facility that offers its customers both taxable and tax-exempt car washes should separately examine the application of the sales tax to each type of car wash sold. It should collect and remit sales tax on the taxable car washes and not collect sales tax on the tax-exempt car washes. This analysis is also applicable to the sale of monthly subscriptions or memberships to car wash facilities. For example:

- Taxpayer A sells self-service car washes. Its customers use the provided equipment to wash their own cars. The facility has open garage bays equipped with coin-operated high-pressure hoses. These sales are not taxable because the customer remains in custody of the vehicle and most of the vehicle's wash is completed by the customer or automated equipment.
- Taxpayer B sells automated car washes. Its customers drive into a drive-thru bay where automated machines wash the car. The customers have the option to vacuum their cars themselves. These sales are not taxable because the customer remains in custody of the vehicle and most of the vehicle's wash is completed by the customer or automated equipment.
- Taxpayer C sells full-service car washes, in which customers turn over possession of their vehicle to the facility, and attendants take the vehicle through the wash, vacuum, clean windows, and perform other detailing services. These sales are taxable because the facility always has custody of the vehicle.
- Taxpayer D sells a car wash service in which the customers enter into drive-thru bay where automated machines wash the exterior of their cars, and then the customers exit their vehicles and wait while an attendant performs other detailing services. This may include vacuuming, window cleaning, tire polishing, etc. These car wash services are taxable because the customer does not retain custody of the vehicle through the entire process.
- Taxpayer E provides a service where the customer remains in the vehicle while automated equipment washes the car’s exterior and continues to stay in the vehicle

while the facility's attendant completes some finishing touches like applying bug spray to the bumper or detailing the vehicle's tires. These car wash services are not taxable because the customer retains custody of the vehicle through the entire process.

- Taxpayer F provides both self-service car washes that are not taxable and full-service car washes that are taxable. Because the taxpayer offers to its customers multiple types of car washes at the same facility, the taxpayer should collect and remit the tax on the full-service car washes only.

A car wash facility's customer may be a licensed motor vehicle dealer. Motor vehicle washing or cleaning services may not be purchased on a resale certificate unless the service is part of the purchase of detailing services, as discussed in the next section, or the washing service is actually being resold *as such* by the licensed motor vehicle dealer.[202]

Automotive Detailing Services

Detailing services provided for persons who are not licensed motor vehicle dealers or automobile auctions are subject to sales tax as a taxable cleaning service.[203] [204] Purchases of detailing services and repair services performed on motor vehicles that are held for resale are exempt from sales tax if the vehicles are held for resale by a licensed motor vehicle dealer or licensed automobile auction.[205] [206]

"Detailing services" means and includes services that cosmetically or functionally refurbish or restore to like-new or serviceable condition or appearance and are intended to enhance or increase the sales value of used motor vehicles in preparation for those vehicles being offered for sale at either wholesale or retail in the ordinary course of the seller's business. "Detailing services" also means and includes services that cosmetically or functionally prepare new vehicles for sale at wholesale or retail in the ordinary course of the seller's business.[207]

"Motor vehicle" means a motor vehicle subject to registration and titling in this state.[208]

"Licensed motor vehicle dealer" and "licensed automobile auction" means a person licensed as such pursuant to state law.[209]

⚠ **Auditors may request evidence from detailers to verify that any exempt services provided were for a licensed motor vehicle dealer or automobile auction.**

Examples of taxable and exempt detailing services:

- Taxpayer provided vehicle cleaning and detailing services (washing, waxing, wheel polishing, engine cleaning, interior cleaning) to a customer, Mr. Smith, at his home.

Taxpayer properly collected sales tax because its customer was not a licensed motor vehicle dealer or a licensed automobile auction. Cleaning tangible personal property, including motor vehicles, is one of the services that is taxable. The fact that the service was performed at the buyer's location has no bearing on whether the sale is subject to sales tax.

- A licensed used car dealer purchased a detailing service from Taxpayer for one of its vehicles in inventory. The service included a thorough cleaning of the vehicle's interior and exterior, waxing, and repair to the glove box and radio. This sale of detailing and repair services was properly purchased on a resale certificate because the vehicle was being held for resale by a licensed motor vehicle dealer.

A detail service provider must pay sales tax on the products it uses in delivering services, because it is considered the user and consumer of any tangible personal property it purchases for use in performing the detailing services.[210] This includes soaps, detergents, chemicals, etc.

The sale of tangible personal property to a dealer who uses the property in the business of performing services is not a sale for resale. This includes any wax or finish that may remain on the vehicle, or any paper insert that may remain in the floorboard of the vehicle when the vehicle is returned to its owner.

Automobile Refinishers and Painters

All charges for repair services and repairs of any kind of tangible personal property, such as automobiles, including all parts and/or labor, are subject to the sales tax.[211] Therefore, charges made by automobile refinishers and painters for refinishing and painting automobiles are subject to the sales tax.

Any materials a service provider purchases that accompany the work done for its customers may be purchased without paying sales or use tax. However, items that are used by the refinishers and painters, but do not accompany the work done for the customers, are subject to sales or use tax.[212]

Cleaning of Real Property is Not Taxable

The cleaning of real property, such as windows and carpeting in a building, is not subject to sales tax. All items used to wash or clean real property, such as equipment, public utilities, and cleaning agents, are subject to the sales or use tax.[213]

6. Parking and Storage of Motor Vehicles

Operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles is a taxable service.[214] Services provided by businesses for

the purpose of storing or parking of trailers, when such trailers are attached to motor vehicles, are also taxable.[215]

However, sales tax does not apply to:

- Paid on-street parking provided by the state or one of its political subdivisions;[216]
- Parking in an unattended garage or parking lot provided by the state or one of its political subdivisions, when payment is made via parking meters;[217]
- Parking privileges sold by colleges, universities, and technical institutions or state colleges of applied technology to their students;[218]
- The storage of tangible personal property including airplanes, motorboats, non-motorized pull camping and travel trailers, furniture, and personal belongings, but not motor vehicles and trailers attached to motor vehicles;[219] and
- Services provided by warehousemen and movers engaged in the business of moving, storing, packing, and shipping tangible personal property. [220]

Leasing real property, in general, is not a taxable service. However, the leasing of real property for the purpose of providing land for the storage or parking of motor vehicles, is a taxable service. For example:

- Furniture Mfg. leases a piece of land to an individual who uses it to store a motor home and boat trailer. The individual is responsible for insuring the property, maintaining the property, and securing the property. This lease is not a taxable service. The Mfg. did not provide services for the purpose of parking or storing motor vehicles. Mfg. only signed an agreement to lease the land. This lease is not taxable.
- Furniture Mfg. fenced in one acre of its property for individuals to park or store their motor vehicles, motorboats, trailers, etc. The parking or storing of motor of vehicles is a taxable service, and the charges for that service are taxable. However, the charges for parking or storing of motorboats and trailers not attached to a motor vehicle are not taxable services.

7. Telecommunications Services

The furnishing of intrastate, interstate, and international telecommunications services for consideration is subject to sales tax.[221] Telecommunications services are not subject to use tax. Telecommunications services are defined as "the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points."[222] The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of

the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol service or is classified by the Federal Communications Commission as enhanced or value added. Examples of taxable telecommunication services include:

- Local and long-distance telephone services, cellular phone service, air-to-ground radiotelephone services, voice over internet protocol (VOIP) services
- Fixed wireless services and mobile wireless services (e.g., includes transmission services for voice as well as data and video (e.g., text messaging)
- 800 or other services designated as toll-free services and 900 services
- Prepaid calling services and prepaid wireless calling services (e.g., prepaid telephone cards, long distance calling cards, prepaid wireless calling cards, authorization codes and recharge of service)
- Fax services, paging and beeper services, telegraph services
- private communications services including any separately stated value-added non-voice data services (e.g., dedicated access lines, wide area network private communications services (WAN), virtual private network services (VPN), electronic data interchange services (EDI)
- Sales of prepaid telephone cards and authorization codes and prepaid wireless cards.

Special state and local sales tax rates apply to sales of intrastate and interstate telecommunication services for residential use and for business use. In addition, telecommunications services are subject to sales tax if sourced to this state under the telecommunications sourcing sales tax statutes.

See Chapter 17: Telecommunications, Ancillary Services, and Television Programming Services for a detailed discussion of this topic.

8. Ancillary Services

Ancillary services[223] are "services associated with, or incidental to, the provision of telecommunications services." Ancillary services include, but are not limited to, detailed telecommunications billing, directory assistance, vertical services, voice mail services and conference bridging services (e.g., audio and video teleconferencing services). Ancillary services are subject to a special local tax rate.

See Chapter 17: Telecommunications, Ancillary Services, and Television Programming Services for a detailed discussion of this topic.

9. Uranium Enrichment

Enriching uranium materials, compounds, or products performed on a cost-plus or "toll enrichment fee" basis is a taxable service.[224]

10. Television Programming Services

Tennessee law imposes sales tax on subscriptions to, access to and use of television programming services provided by video programming service[225] providers and direct-to-home satellite service[226] providers. Subscriptions to and access to electronically transferred or accessed (e.g., online streaming) of television programming [227] is also subject to sales tax.

Video programming services, direct-to-home satellite services and specified digital products (e.g., online streaming of television programming) are subject to different state and/ or local tax rates.

See Chapter 17: Telecommunications, Ancillary Services and Television Programming Services for a detailed discussion of television programming services. See Chapter 14: Specified Digital Products for a detailed discussion of specified digital products (e.g., online streaming of television programming).

11. Made to Order Sales[228]

When a person contracts with a service provider for the fabrication of articles of tangible personal property from materials selected or furnished by the customer, the total proceeds from the sale are subject to sales or use tax. These services are distinct from repair services in that the customer provides a raw material and the service provider fashions the material into a new and different product. For example, a customer provides a large piece of live edge oak to a furniture builder who uses the wood to create a custom dining room table.

The service provider may not deduct labor or service charges of fabrication or production, even if such charges are separately billed to customers apart from charges for materials.

Charges for labor and other services to install tangible personal property that has been fabricated, and which remains personal property after installation, are also subject to tax. Charges for labor and other services to install tangible personal property that becomes real property upon installation are not subject to sales or use tax if such charges are billed separately on an invoice given to the customer at the time of the sale.

Nontaxable Services in Connection with Real Property

Charges for maintenance or other work on buildings, electrical wiring, plumbing, or fixtures attached to and a part of any real property are not subject to the Tennessee sales tax, if billed separately from services for the maintenance of tangible personal property.[229] However, if a taxpayer charges one lump sum amount for maintenance services performed

on both real property and tangible personal property, the entire amount will be subject to the sales tax.[230] Real property includes office buildings, houses, built-in appliances, HVAC units, sidewalks, roads, bridges, and parking lots.

The sale, repair, or maintenance of real property or any installation of property that becomes a fixture is not subject to the sales and use tax. Instead, the person or entity providing the maintenance service is subject to sales or use tax on the property being installed and any materials used in the installation, repair, or maintenance.[231]

However, charges for labor performed on tangible personal property, such as a car repair, are subject to sales tax. See Chapter 12: Tangible Personal Property vs. Realty.

> ⚠ **Maintenance and other work on buildings or property affixed to realty are not subject to sales tax. Repair services and repairs of tangible personal property are taxable.**

Tangible Personal Property

Generally, the sales tax applies to every retail sale of tangible personal property.[232] Only if an exemption applies will a retail sale of tangible personal property not be subject to sales tax. See Chapter 19 of this manual for more information on exemptions.

"Tangible personal property" is defined as personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. It includes electricity, water, gas, steam, and prewritten computer software, but does not include signals broadcast over the airwaves or fiber-optic cable after it has become attached to a utility pole, building, or other structure or installed underground. Such fiber-optic cable is considered realty upon installation.[233]

"Sale" is defined as any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.[234] More specifically, "retail sale" is defined as any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.[235]

The person responsible for collecting and remitting sales tax on the sale of tangible personal property may depend on who is purchasing the tangible personal property and how the tangible personal property is being used. For example, if a contractor purchases tangible personal property while performing a contract, and that tangible personal property becomes part of real property, the contractor, not the end customer (e.g., real property owner), is

responsible for paying tax on the materials used in performing the contract. See Chapter 12: Tangible Personal Property vs. Realty.

There are certain products that may not be readily apparent as being tangible personal property, such as pre-written computer software. Items that are not considered tangible personal property and are not taxable include intangible rights, gift cards, and discount cards.

Other items may not necessarily be considered tangible personal property, but they are nonetheless taxable. For example, computer software; specified digital products, such as digital books and digital audio-visual products; and digital audio works, such as songs, speeches, and ringtones are treated the same as tangible personal property. When these items are sold or remotely accessed, sales tax applies. Items that are not considered tangible personal property and are not taxable include intangible rights, gift cards, and discount cards.

1. Coins, Currency, and Bullion

Effective May 27, 2022, there is a sales and use tax exemption for the sale of all coins, currency, and bullion that are:

- manufactured in whole or in part from gold, silver, platinum, palladium, and other material,
- used solely as legal tender, security, or commodity in this or another state, the United States, or a foreign nation, and
- sold based primarily based on their intrinsic value as precious material or collectible items rather than their representative value as a medium or exchange.

Collectible paper currency that is used as legal tender and sold based primarily on its intrinsic value as a collectible item rather than its representative value as a medium of exchange also falls within the scope of this exemption.

2. Hemp-Derived Products

Effective July 1, 2023, an additional 6% sales tax applies to the sale of products containing a hemp-derived cannabinoid.[236] This tax applies in addition to the standard 7% state sales tax rate and the applicable local option sales tax rate.

Hemp-derived cannabinoid means[237]:

- A cannabinoid other than delta-9 tetrahydrocannabinol ("THC"), or an isomer derived from such cannabinoid, that is derived from hemp in a concentration of more than one-tenth of one percent (0.1%); or
- A hemp-derived product containing delta-9 THC in a concentration of three-tenths of one percent (0.3%) or less on a dry weight basis.

This includes, but is not limited to:

- Delta-8 THC
- Delta-10 THC
- Hexahydrocannabinol
- THC acetate ester (TCHo)
- Tetrahydrocannabiphoro (THCp)
- Tetrahydrocannabivarin (THCv)
- Tetrahydrocannabinolic acid (THCa)

This does **not** include:

- Cannabichromene (CBC/CBCa/CBCv)
- Cannabicitran (CBT/CBTa)
- Cannabicyclol (CBL/CBLa)
- Cannabidiol (CBD/CBDa/CBDv/CBDp)
- Cannabielsoin (CBE/CBEa)
- Cannabigerol (CBG/CBGa/CBGv/CBGm)
- Cannabinol (CBN/CBNa)
- Cannabivarin (CBV/CBVa)
- Hemp-derived feed products allowed under title 44, chapter 6
- A substance that is categorized as a Schedule I controlled substance on or after July 1, 2023, including any substance that may be included above.

⚠ **The additional 6% sales tax levied on hemp-derived products does not apply to hemp-derived fiber, grain, or topical products.**

Reporting the Tax

The additional 6% sales tax applies to the sales price of products containing hemp-derived cannabinoids when sold at retail in Tennessee. The tax is reported in the same manner as sales tax. Therefore, the tax is due monthly, and taxpayers must file a return with the Department and remit payment on or before the 20th day of each month. The Department revised its Sales and Use Tax Return to include a new schedule, Schedule H, that retailers may use to comply with this additional tax.

See Chapter 3 of this manual for more information on how to register, file, and pay sales and use tax to the Department.

3. Artwork Used in Advertising Materials

The transfer of *preliminary artwork* by an *advertising agency* to its client is exempt from sales or use tax. The use by an advertising agency of preliminary artwork created by the advertising agency to provide advertising services is also exempt from sales or use tax.[238]

However, the sale or use of *final artwork* is subject to sales or use tax. If final artwork is provided by an advertising agency to its client pursuant to an agreement for providing *advertising services*, the sales price for the final artwork shall not include any fees paid for advertising services and shall include only the charges made by the advertising agency that are directly allocable to the production of final artwork. The sale or use of *advertising materials* is also subject to sales or use tax.

To determine whether artwork is taxable or exempt, it is important to understand the relevant definitions.[239]

"Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency while providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards, or similar materials.

"Final artwork" means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent.

"Advertising agency" means a business that derives more than eighty percent (80%) of its gross receipts from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

- The activity was not performed by the business itself but was contracted out to another business; and

- The charges for the activity were passed through the business to its client.

"Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place, or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

- Advice and counseling regarding marketing and advertising;
- Strategic planning for marketing and advertising;
- Consumer research;
- Account planning;
- Public relations;
- Design;
- Layout;
- Preparation of preliminary art;
- Creative consultation, coordination, media placement, direction, and supervision;
- Script and copywriting;
- Editing;
- Supervision of the production of advertising materials, including quality control;
- Direct mail; and
- Account management services.

"Advertising services" does not include the production of final artwork or advertising materials.

"Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

Chapter 6: Use Tax

Overview

The use tax was enacted in 1947, the same year as the sales tax. Use tax is intended to complement the sales tax in that use tax applies to purchases made from out-of-state vendors when no sales tax was paid. This generally occurs when a user purchases an item from an out-of-state dealer that is not registered for sales and use tax in the state of Tennessee. This includes out-of-state merchants who sell taxable products through the internet.

The use tax protects local businesses from unfair competition from out-of-state sellers who do not collect Tennessee's sales tax. It is not a tax applied in addition to the sales tax; it is owed only when Tennessee sales tax was not paid.[240] The use tax rate is equal to the sales tax rate on both the state and local level.

1. Definitions

Tangible personal property, computer software, specified digital products, warranty or service contracts covering repair or maintenance of tangible personal property, computer software maintenance contracts, and certain services to tangible personal property or computer software purchased out of state and imported into this state for use, consumption, distribution, or storage for use or consumption in this state, are subject to use tax when no sales tax was paid to the seller. The terms "use" and "use tax" are defined in the Tennessee Code.[241] "Use tax" includes use, consumption, distribution, and storage.[242]

"Use"[243] means:

- The exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business.
- The coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce, but it does not include labeling, temporary storage, or other handling in connection with the mailing or shipping of such advertising publications in interstate commerce to non-residents.
- The consumption of any of the taxable services and amusements.

"Storage"[244] means:

- Any keeping or retaining tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business.
- Temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee is not a taxable use in Tennessee.

2. Use Tax Imposition

Tax is imposed on a sale or purchase of a taxable product in several ways, three of which involve use tax:

- Sales tax applies to the in-state retail sale of a taxable product.[245]
- Use tax applies to out-of-state retail sales sold and shipped to Tennessee consumers.[246]
- Use tax applies to the importation for use, consumption, storage for use and distribution in this state.[247]
- Use tax applies to a contractor's use of tangible personal property in the performance of a contract where no sales and use tax was paid on the retail purchase.[248]

Activities Subject to Use Tax

When a user of tangible personal property, computer software, computer software maintenance contracts, warranty or maintenance contracts covering tangible personal property located in this state, and specified digital property, does not pay sales tax to a dealer, the user becomes personally liable for the tax. As stated above, this generally occurs when a user purchases from an out-of-state dealer not registered in Tennessee. Tax also applies when a dealer withdraws inventory items purchased without tax on a resale certificate for business or personal use. Remote sellers collect use tax on sales of certain services performed out of state to tangible personal property or software where the serviced property or software is delivered to Tennessee as detailed in Tenn. Code Ann. § 67-6-203(d).

Use tax is incurred when:

- Purchasing a product in another state without paying sales or use tax and bringing it into Tennessee for use in the state;[249]
    - For example: A business relocating to Tennessee brings property *purchased in a state with no sales or use tax.*[250] The dealer would be liable for use tax on this property.

- Purchasing a product from a mail-order catalog or on the internet and paying no sales or use tax;[251]
- Purchasing a product from a transient business that does not collect sales or use tax;[252]
- Consuming or using a product that was purchased without paying sales or use tax;[253]
- Consuming, as a service provider, tangible products in the performance of a service; [254]
- When leased property is relocated to Tennessee from another state during the lease period, Tennessee use tax applies to each lease payment for periods during which the property is in Tennessee. Credit, however, will be provided for any sales tax properly paid to another state on the lease or rental payment subject to Tennessee use tax; [255]
- When repair, laundering, or dry-cleaning services are performed on tangible personal property outside of Tennessee and the serviced tangible personal property is shipped or delivered to the purchaser or the purchaser's designee into Tennessee for use or consumption;[256]
- When repair or installation services on computer software are performed outside of Tennessee and the computer software is shipped or delivered to the purchaser or the purchaser's designee into Tennessee for use or consumption; [257] and
- When the installation of tangible personal property that remains tangible personal property after installation is performed outside of this state and the serviced tangible personal property is shipped or delivered to the purchaser or the purchaser's designee into Tennessee for use or consumption.[258]

⚠ **A taxpayer that makes a purchase subject to sales and use tax without paying sales tax will owe use tax on that purchase. See Chapter 3 of this manual for information on how to register a business for a use tax account or use the link on the Department's website to pay consumer use tax.**

1. Specified Digital Products and Video Game Digital Products

The use of specified digital products and video game digital products are also subject to the use tax.[259] For more information on the application of use tax to specified digital products and video game digital products, see Chapter 14.

2. Use Tax on Certain Services to Tangible Personal Property

Effective July 1, 2024, use tax applies to the following services:

- Repairing tangible personal property or computer software;
- Laundering or dry cleaning of tangible personal property;
- Installation of tangible personal property that remains personal property after installation; and
- Installation of computer software

when the repair, cleaning, or installation occurs at a place of business outside of Tennessee and the serviced tangible personal property or computer software is delivered by the seller to the purchaser or purchaser's designee within Tennessee for use or consumption within this state.[260]

The remote seller must collect use tax at the state and local tax rate for the location where the serviced property or software is received by the purchaser or its designee in Tennessee. If a remote seller does not collect Tennessee tax, the Tennessee purchaser must remit use tax on the purchase price of such repair, cleaning, and installation when the serviced property or computer software is received by the purchaser or its designee for use or consumption in Tennessee.

Effective July 1, 2024, the sales of such services performed in Tennessee where the serviced property or computer software is shipped or delivered by the seller to a place outside Tennessee is not subject to Tennessee sales tax. The seller reports such sales as exempt interstate sales on the Tennessee return.

For information on the sourcing of these services, please see Chapter 7 of this manual.

When Use Tax Does Not Apply

Use tax does not apply to everything to which sales tax applies. The Tennessee Code applies use tax specifically to some types of products while others are not subject to use tax. Use tax does not apply to certain services such as video programing, direct-to-home satellite, telecommunication, and amusements.[261]

1. Personal Items Moved into Tennessee

Use tax does not apply to personal items, personal manufactured homes,[262] and personal automobiles moved into Tennessee when a non-resident becomes a resident and completes a bona fide change of residence form (this does not apply to property imported for business purposes or to aircraft).[263]

- This exemption includes personal automobiles imported by new Tennessee residents relocating from another state or another country into Tennessee. A military member: whose home is in Tennessee; who has been stationed outside Tennessee for a period of time; and who is now returning to Tennessee after that period of duty is over is not deemed to be moving into Tennessee in a bona fide change of residence. The same would apply to a student who has been outside Tennessee for studies at an educational institution.
- This exemption includes boats imported solely for personal use if the boat has a fair market value of $10,000 or less and the boat was properly registered in the previous state.[264]
- For this exemption a person should submit to the Commissioner, or to the county clerk when appropriate, proof that the vessel was properly registered in another state. The person is eligible for the exemption whether the person previously paid sales or use tax or obtained proof that sales or use tax was paid, on the purchase of the boat at the rate provided by the law of the other state.

Tangible Personal Property in a Qualified Headquarters Facility

Tangible personal property moved into Tennessee in conjunction with establishing a qualified headquarters facility[265] and that qualifies for the headquarters facility tax credit[266] is exempt from any sales *and use tax* liability that arises solely because of moving the property into the state; provided, that the tangible personal property was previously used by the taxpayer in the operation of its business.[267]

2. Import for Export

The "import for export" provision does not apply to Tennessee sales subject to sales tax. The "import for export" provision means that if a dealer imports tangible personal property into Tennessee, stores it in Tennessee without exercising any right of ownership, then exports it, the tangible personal property *is exempt from use tax*. Because the tangible personal property is merely passing through Tennessee, there is no taxable event in Tennessee.

However, if the dealer does more than store, repackage, and inspect the tangible personal property, the dealer is exercising a right of ownership, and the exemption would not apply. This situation may occur with a contractor-dealer. It is not the intention of the code to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export.[268]

3. Interstate Commerce - Title and Property Pass outside the State

When title and possession of property passes from seller to buyer outside Tennessee, the sale is in interstate commerce. *Products in interstate commerce are not subject to use tax.*

Property No Longer in Interstate Commerce

The Tennessee Supreme Court has determined the sales and use tax applies to the fullest extent allowed by the Commerce Clause of the United States Constitution. According to *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), states may tax interstate commerce if the tax:

- Is applied to an activity having a substantial nexus with the taxing state.
- Is fairly apportioned.
- Does not discriminate against interstate commerce.
- Is fairly related to the state's services.

Products are no longer considered to be in interstate commerce when they come to rest in Tennessee and become part of the mass of property in Tennessee.[269] For example:

- A large grocery store chain headquartered in Virginia purchases cash registers from a Tennessee vendor. The Tennessee vendor ships all cash registers to the buyer's headquarters in Virginia. The buyer then distributes the cash registers to its stores in Virginia and Tennessee. The buyer is required to remit use tax to Tennessee on the cash registers used by its Tennessee stores.[270]

4. Storage of Tangible Personal Property

Tennessee use tax does **not** apply to:

- The temporary storage of tangible personal property in this State for subsequent shipment to another state.[271]
- The storage of tangible personal property in this State for use or distribution in this State, if the Tennessee sales or use tax has been paid already.[272]
- Inventory held for resale, if the taxpayer is in strict compliance with the rules and regulations applicable to sales for resale.[273]

5. Tangible Personal Property Held for Resale

Items that a dealer buys and sells to its customers or clients are not subject to use tax. As such, a dealer generally does not owe sales tax on purchases where a dealer presents a resale certificate to its vendors. Under TENN. COMP. R. & REGS. 1320-05-01-.68(3), a certificate of resale cannot be used to obtain tangible personal property to be used by the purchaser.

Tennessee's blanket certificate of resale states, "any merchandise obtained upon this resale certificate is subject to the Sales and Use Tax if it is used or consumed by the vendee in any

manner and must be reported and the tax paid thereon direct to the Department of Revenue."

⚠ **A taxpayer that purchases tangible personal property to resell legally must maintain records of sales corresponding with the purchases of the tangible personal property to produce in the event the taxpayer is audited.**

Contractor's Use Tax

Contractors are persons who perform installations of personal property as an improvement to realty. Contractors may include persons performing management services. The term contractor also includes subcontractors.

1. Contractor's Use Tax

Contractors and subcontractors who improve realty, or otherwise use personal property in the performance of a contract, are considered the users and consumers of the materials that are used or installed as part of the real property.[274] If sales tax is not paid on the materials when the materials are purchased, the contractor or subcontractor will owe use tax on the cost of their materials.[275] The construction labor costs of installation or erection and markup on materials are not taxable. The sales or use tax cannot be itemized separately and collected from the contractor's client.

Generally, the contractor or subcontractor remains liable for the sales or use tax on materials used in providing the contracted service even when the contractor's client is an otherwise exempt entity, such as federal, state, county, or city governments, and most exempt organizations. This is true even when the tax-exempt entity buys the materials and turns them over to the contractor or subcontractor for use.

⚠ **A contractor is still liable for sales and use tax on materials used to provide a contracted service to an exempt entity even if the exempt entity buys the materials and provides the contractor with the materials for the contractor to use.**

2. Contractor-Dealers

A contractor-dealer is one who improves realty and is also engaged in selling building materials and supplies to other contractors, consumers, or users.[276] Materials that may be sold at retail to other users can be purchased on a resale certificate; sales tax will be collected and remitted on the retail sales.[277]

Contractor-dealers who cannot separate the portions of their materials and supplies that they will consume in fulfillment of their contracts and those they will resell to other consumers may give a resale certificate to the seller of such materials and supplies.[278] The contractor-dealer will then collect and report sales tax on the materials resold and use tax on the materials used in fulfillment of their contracts.[279] Suppliers making sales to contractor-dealers and delivering the materials to a job site for use, or tagging particular supplies for a particular job performed by the contractor-dealer, must collect the applicable sales tax on those sales, even if the contractor-dealer presents a certificate for resale.

3. Exemptions

Under specific circumstances provided in the law, contractors or subcontractors are not liable for the sales or use tax on construction materials.[280] These specific exemptions are:

- If materials are purchased by a church and are used in *church* construction, the materials are exempt from both state and local sales or use tax. Similarly, carpet installed by a contractor for church construction is exempt.[281]
    - When determining if a structure qualifies as a church, the Department commonly looks at the facts and circumstances such as whether the building qualifies for an exemption from property taxes, whether it is used for commercial purposes, and whether it is used for commonly recognized church functions. For example, a gymnasium built next to a sanctuary would not be used for commonly recognized church functions.
- If materials are purchased by a private, nonprofit college or university and are used in college or university construction, they are exempt from the state sales or use tax but not from the local tax.[282]

Exemptions from sales or use tax are also available to contractors for specific types of contracts. Examples of contracts that are eligible for exemptions are:

- Electrical generating facilities and distribution systems owned by a government entity.[283]
- Wastewater and sewage systems and sanitary sewer pipes owned by a county or city.[284]
- Coal gasification plants and distribution systems owned by government entities.[285]

- A neutron spallation facility funded by the federal government or an instrumentality thereof.[286]

Reporting Sales of Materials to Private, Nonprofit College or University

Sellers should report such sales that are exempt from state, but not local sales tax as follows.

- The seller reports gross sales to the contractor on Line 1.
- The seller reports the sales of the tangible personal property to the contractor for use on the private nonprofit college or university on Schedule A Line 9 to exempt the sales from state tax.
- This amount must be added back in Schedule B Line 2 Adjustments.

Sales of tangible personal property for the contractor's use to fulfil its obligations under the contract with the private nonprofit college or university is subject to the single article local tax limitation. The purchases must be separated from other purchases that are fully taxed for local tax purposes.

- Amount of single article purchases in excess of the local tax limitation are reported on Schedule B Line 4.
- The sales of tangible personal property to a contractor to fulfil obligation under the contract with the private nonprofit college or university is not subject to the state single article tax and is not reported in Schedule C Line 1.

The contractor should obtain purchase invoices from nonprofit college or university for tangible personal property provided by the tax-exempt nonprofit for use/ improvement to realty under the contract.

- The contractor reports the nonprofit college or university provided purchases on Line 2 (Line 3 if purchases are from out-of-state) on its sales and use tax return.
- The contractor reports this same amount on Schedule A Line 9 to exempt the purchases from state tax.
- This amount must be added back in Schedule B Line 2 Adjustments. The nonprofit provided tangible personal property is subject to the single article local tax limitation.

The single articles must be separated from other purchases that are fully taxed for local tax purposes.

- The amount of the single articles in excess of the local tax limitation ($1,600) is reported on Schedule B Line 4.

- The tangible personal property provided to the contractor to fulfil obligation under the contract with the private nonprofit college or university is not subject to the state single article tax and is not reported in Schedule C Line 1.

Note, Tenn. Code Ann. § 67-6-601(a) requires each business location be registered for sales and use tax. TENN. COMP. R. & REGS. 1320-05-01-.08(2) (Rule 8) provides in part, "Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use, either in or out of the state." Rule 8 explains the situation where the contractor/dealer has purchased items for resale and put them in inventory. Even if a contractor (not a contractor/ dealer) uses tangible personal property or makes improvements to realty outside its location jurisdiction, the contractor reports and pays use tax on the return for its location. The contractor is not required to register of sales and use tax purposes in every jurisdiction where the contractor uses tangible personal property in the performance of a contract to make improvements to realty.

4. Tax on Fabricated Materials

Contractors fabricating raw materials for use in building construction are liable for the sales or use tax on the cost of the raw materials.[287] On the other hand, contractors fabricating materials for use in non-building projects, such as bridge steel, are liable for tax on the fabricated fair market value of the materials.[288]

Asphalt Fabricators[289]

Asphalt fabricators must remit use tax based on the fair market value of asphalt they use in fulfilling their contracts. The tax amount must be computed on the amount the fabricator would charge for the asphalt if it were sold and delivered in an arm's length transaction. The Department will accept as fair market value $5 per ton plus the cost of materials as the tax base.

Asphalt fabricators that sell asphalt to other contractors or customers without performing installation and who also install asphalt may purchase their materials on a certificate of resale. The asphalt fabricator must collect sales tax on the total sales price of the asphalt

fabricated and sold to other contractors. If the asphalt fabricator uses the asphalt rather than sells it, the asphalt fabricator will owe the use tax as previously indicated.

Use of asphalt by an asphalt fabricator or installer in a contract with a government or other tax-exempt entity subjects the fabricator or installer to payment of the use tax. Use tax is due even if the asphalt is provided by the government or tax-exempt entity. However, if asphalt is sold directly to the exempt entity with no installation or use by the seller, the purchase is tax-exempt.

5. Installation of Industrial Machinery

Contractors installing qualified tax-exempt industrial machinery for qualified manufacturers must apply to the Department for their own industrial machinery authorization number for each project.

> ⚠ **An industrial machinery authorization number is required for each project where the contractor is installing tax-exempt industrial machinery for qualified manufacturers.**

6. Property Owned by the United States Government

An exemption from contractor's use tax is available for any tangible personal property that is owned by the United States and is provided to a contractor on a temporary basis to be tested, provided that the exemption applies only to contracts awarded under the Small Business Innovation Research Program and does not apply to equipment or other property used to conduct the test.[290]

There is also an exemption from contractor's use tax for tangible personal property that is provided to a contractor on a temporary basis to be tested, provided that the testing facility is owned by the United States or any agency thereof. The exemption does not apply to property consumed or destroyed during the test. "Testing" is limited to diagnostic, analytical, and/or scientific testing in a controlled environment dedicated to such testing for the purpose of providing information and findings supportive of the aerodynamic, hypersonic, aero propulsion, space, missile, aircraft, and aerospace technologies and/or industries.

7. Qualified Disaster Restoration

An entity that engages in a qualified disaster restoration project in Tennessee is eligible for a credit of all Tennessee state sales or use tax except for one-half percent on the sale or use of qualified tangible personal property used in the project.[291]

A "qualified disaster restoration project" is a project undertaken in connection with the restoration of real or tangible personal property located within a declared federal disaster area that suffered damages because of the disaster. The project must involve a minimum of $50 million or more in the restoration of the property. The investment may include, but is not limited to, the cost of constructing or refurbishing a building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, and other tangible personal property within the building. The investment may not include land or inventory.

Qualified Tangible Personal Property

Qualified tangible personal property is any building materials, machinery, equipment, computer software, furniture, and fixtures used exclusively to replace or restore real or tangible personal property that suffered damages because of the disaster and purchased or leased prior to substantial completion of the qualified disaster restoration project.

Qualified tangible personal property does not include payments with respect to leases of qualifying tangible personal property that extend beyond substantial completion of the disaster restoration project. No other sales or use tax credits, exemptions, or reduced rates that may be available may be taken as a result of the same purchases or minimum investment.

Application Process

Persons seeking the credit must apply to the Commissioner of Revenue (the "Commissioner") to qualify the project as a qualified disaster restoration project, together with a plan describing the investment to be made. In the case of a leased building, the lessor must also apply and plan if any taxes paid by the lessor are to be claimed as part of the credit.

Upon approval of the application and plan, the Commissioner will issue a letter to the applicant stating that the applicant has tentatively met the requirements for the credit. To receive the credit, the taxpayer must submit a claim for the credit and documentation showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The claim may include taxes paid by the taxpayer, the lessor in the case of a leased building, contractors, and subcontractors.

Documentation verifying that the minimum investment requirements have been met can include:

- Employment records

- Invoices
- Bills of lading
- Lease agreements
- Contracts
- All other pertinent records and schedules required by the Commissioner.

The Commissioner will review the claim for credit and notify the taxpayer of the approved credit amount and directions for taking the credit. The taxpayer must receive notification before taking the credit.

If any of the requirements for this claim are not met, the taxpayer will be subject to an assessment of any sales or use tax, penalty, and interest that would have been due and for which credit was taken. The taxpayer does not have to establish its commercial domicile in Tennessee to be eligible for the credit.

Credit for Taxes Paid in Another State

Property brought to Tennessee from other states is not taxed twice. For those who have purchased tangible personal property out-of-state and paid sales or use tax to another state, Tennessee provides a use tax credit equal to the tax that was paid to the other state. Tenn. Code Ann. § 67-6-313(f) provides:

- In order to prevent actual multistate taxation of the acts and privileges subject to tax under this chapter, any taxpayer, upon proof acceptable to the Commissioner being submitted that the taxpayer has properly paid sales and use tax in another state on such acts and privileges, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax properly due and paid in another state.

Pursuant to this provision, the Department gives use tax credit for sales tax paid in another state. For more information on this credit, see Chapter 21 of this manual.

Chapter 7: Sourcing Sales to Tennessee

Overview

The Tennessee Works Tax Act, Public Chapter 377 Section 30 (2023), effective July 1, 2024, makes changes to Tennessee sales and use tax laws consistent with sourcing provisions in the Streamlined Sales and Use Tax Agreement ("SSUTA"). "Sourcing" is the act of determining which jurisdiction has the right to tax a sales transaction (i.e., where a sale takes place).

Adopting sourcing rules that align with the SSUTA clarifies for sellers which state's tax is due on a sale into or outside a state, reducing the risk of being subject to tax on the same interstate sale in two different states.

A seller determines where the sale takes place based on the sourcing rules and then applies that state's law to determine taxability. Tenn. Code Ann. § 67-6-901 provides when the sale is sourced to Tennessee, the seller must apply Tennessee sales and use tax law to determine the seller's obligation to collect and remit Tennessee sales and use tax for the seller's retail sales of a product.

The sourcing rules apply regardless of the characterization of a product as tangible personal property, a digital good, a service, or other taxable product.

The sourcing rules do not affect the obligation of a purchaser to remit use tax where the purchaser may take or use a product.

This chapter explains some of Tennessee's sourcing provisions for sales tax. Information regarding additional sourcing provisions in the TWTA and in the Tennessee Code is included in various chapters throughout this manual.

Sourcing Sales and Leases Made from Out of State into Tennessee

For purposes of applying these sourcing rules, "receive" or "receipt" is defined as:

- taking possession of tangible personal property;
- making first use of services; or
- taking possession or making first use of digital products, whichever comes first.[292]

Receipt does not include possession by a shipping company on behalf of a purchaser.[293]

In this section, "location" does not include a location that merely provides the digital transfer of the product sold.[294]

1. Sourcing Sales into Tennessee

Tenn. Code Ann. § 67-6-902(a)(2) provides, retail sales, *excluding leases or rentals*, of products from out of state locations into Tennessee are sourced as follows:

1) When the product is *received* by the purchaser at a business location of the seller, the sale is sourced to that business location *(*e.g., over-the-counter sales)[295];

2) If 1) does not apply, the sale is sourced to the location where the *receipt* by the purchaser or the purchaser's donee (designated by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, known to the seller (i.e., shipped or deliver to an address of the purchaser or purchaser's donee (e.g., gift))[296];

3) If 1) and 2) do not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of business when use of that address does not constitute bad faith[297];

   For example: A seller is instructed to deliver a product to the purchaser's shipper. There is no ship-to address for receipt by the purchaser or its donee. The seller uses the purchaser's billing address from its records to source the sale.

4) If 1) through 3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of that address does not constitute bad faith (e.g., purchaser's address from a credit card or check)[298]; and

   For example: A digital video game is transferred electronically (i.e., streaming) to a purchaser. There is no ship-to address. The seller maintains purchaser addresses in its records only for tax exemptions claimed. The seller uses the address from the purchaser's credit card obtained during the consummation of the sale to source the sale.

5) If 1) through 4) do not apply, or in the circumstance where the seller is without sufficient information to determine the location where the sale takes place under the sourcing rules, the location of the sale is determined by the address from which:

   - the tangible personal property was shipped;
   - the digital good or computer software delivered electronically was first available for transmission by the seller, not including any location that merely provides the digital transfer of the product sold; or
   - the service was provided. [299]

2. Sourcing Lease or Rental of Tangible Personal Property Imported into Tennessee

Tenn. Code Ann. § 67-6-902(b) provides separate sourcing rules for the lease or rental of tangible personal property imported into Tennessee. The sourcing rules do not affect Tennessee's imposition or computation of sales or use tax on a single (e.g., lump sum) or recurring periodic (e.g., monthly or annual) payment(s) billed according to the terms of the lease contract. Where a lease or rental of tangible personal property takes place is not altered by intermittent use at different locations (e.g., business property accompanies an employee on a business trip.)

For purpose of this section, the "primary property location" is defined as an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business.

The lease or rental of tangible personal property imported into Tennessee is sourced as follows:

1) For a lease or rental that requires a single payment (e.g., lump sum), the **payment is sourced the same as a retail sale** under 1 through 5 outlined directly above.[300] For example: A lessee pays a single payment to a Kentucky lessor for a one-year lease period and receives the leased equipment in Kentucky. The lump sum payment is sourced to Kentucky. Kentucky sales tax law applies to the single lease payment, even if the lessee subsequently moves the equipment to Tennessee during the one-year lease period. If the lease is renewed or extended, the single payment covering the period for the renewed lease is sourced to the address for the primary property location of the equipment.

2) For a lease or rental that requires recurring payments (e.g., monthly or annual), except for motor vehicles, trailers, semi-trailers, aircraft, watercraft sourced under 8 and transportation equipment sourced under 9 below, the **first period payment is sourced the same as a lease or rental that requires a single payment** under 6

directly above. Periodic payments made after the first payment are **sourced to the primary property location** for the period covered by the payment.

For example: A Georgia business leases equipment delivered in Georgia. The lease requires an initial payment and monthly recurring payments for a three-year lease period. One year later, the lessee moves the equipment to its new location in Tennessee. The monthly recurring payments covering periods following the move of the primary property location of the equipment are sourced to Tennessee. Tennessee sales tax applies to the remaining monthly lease payments for periods when the primary property location of the equipment is in Tennessee.

3) For the lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment and watercraft with a displacement of under 50 tons, that require recurring periodic payments, **the first and each subsequent periodic payment** is sourced to the primary property location.

   For example: A Tennessee resident leases and receives a pickup truck and trailer in Kentucky. The pickup truck and trailer will be registered in Tennessee and located at the lessee's Tennessee address. The lease requires an initial payment of $3,000 and monthly recurring payments of $1,000 for four years. The initial $3,000 payment and monthly recurring $1,000 payments are sourced to Tennessee. Tennessee sales and use tax law applies.

4) Regardless of any primary property location covered by recurring periodic payments, the payment(s) for lease or rental of **transportation equipment is sourced the same as a lease or rental that requires a single payment** and is outlined at the start of this section.

   Transportation equipment means:

   - Locomotives and railcars that are used to carry persons or property in interstate commerce;
   - Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses registered through the International Registration Plan and operated under the authority of a carrier authorized and certified by the federal government to carry persons or property in interstate commerce;
   - Aircraft operated by air carriers authorized and certified by the federal government or a foreign government to carry persons or property in interstate or foreign commerce; and
   - Containers designed for use on, and component parts attached or secured on locomotives, railcars, trucks, truck-tractors, trailers, semi-trailers, passenger buses or aircraft.

3. Marketplace Facilitator Sourcing

Effective July 1, 2024, all sales, including sales of services, made through the marketplace facilitator's marketplace are sourced using the sourcing rules found in Tenn. Code Ann. § 67-6-902.

For more information on marketplace facilitators, please see Chapter 10: Marketplace Facilitator of this manual.

Sourcing Sales and Leases from a Place of Business in Tennessee

Tenn. Code Ann. § 67-6-903 provides Tennessee continues to use origin sourcing for sales within Tennessee with a few modifications:

1) The sale of a product made **from a place of business within Tennessee delivered** by the seller or to a **purchaser within Tennessee**, or to a carrier or United States postal service location for delivery to a place within Tennessee, **is sourced to the seller's place of business from which the sale was made**[301] (e.g., over-the-counter sales, or sales shipped or delivered to a Tennessee address for the purchaser or the purchaser's designee.) The location where the purchaser may take or use the product is not determinative of where the sale is sourced.[302]

2) The sale of a product **from a place of business within Tennessee delivered** by a seller to a **purchaser or a purchaser's designee outside Tennessee**, or to a carrier for delivery to a place outside of Tennessee, **is not sourced to Tennessee** (i.e., interstate sale).

3) For a **lease or rental of tangible personal property, including transportation equipment,** made from a **place of business in Tennessee delivered** by the lessor **to a lessee within Tennessee** or to a carrier for delivery to a place in Tennessee **is sourced to the lessor's place of business** from which the lease was entered in Tennessee.

    a) For a **lease or rental of property, excluding transportation equipment,** delivered to the lessee or renter in this state **that requires recurring periodic payments,** the **periodic payments made after the first payment** that cover periods **where the primary property location is no longer within Tennessee are not sourced to Tennessee**. The lessor is not liable for sales or use tax on the periodic payments that cover periods where the primary property location is no longer in Tennessee.

    For example: A Tennessee resident leases a motor vehicle in Tennessee. The lease requires an initial payment and monthly recurring payments for three years. Two years later, the Tennessee resident moves to Florida. The monthly

lease payments covering periods following the move to Florida of the primary property location of the motor vehicle are no longer sourced to Tennessee. The lessor must stop collecting Tennessee sales tax on the monthly lease payments following notification by the lessee of the date the primary property location moved to Florida and report the remaining lease payments as exempt interstate sales on its Tennessee return.

b) Regardless of recurring periodic payments that cover any primary property location changes, the **payment(s) for lease or rental of transportation equipment** made from a **place of business in Tennessee** that is **delivered within Tennessee is sourced to the lessor's place of business under paragraph 3.**

c) For purpose of this section, the "primary property location" is defined as an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business.

The law changes addressing a recurring periodic payment covering primary property location moved outside Tennessee replaces the last sentence in sales and use tax rule TENN. COMP. R. & REGS. 1320-05-01-.32(2), which provides property leased in Tennessee is taxable regardless of whether the property remains inside or outside of Tennessee. The remaining language in Rule 32 is not affected by this law change.

Sourcing Services to Tangible Personal Property and Computer Software

For purposes of sourcing sales of services, "receive" or "receipt" means the location where the purchaser or its designee "makes first use of the services". The location where the purchaser or its designee receives the serviced property or software is the place where it *makes first use of the services*.

"Receive" or "receipt" does not include possession by a shipping company on behalf of the purchaser.

Tennessee imposes tax on the following services to tangible personal property or computer software:

- performing repairs to tangible personal property or computer software;
- laundering or dry-cleaning tangible personal property;
- installing tangible personal property that remains tangible personal property after the installation; and
- installing computer software.

Tenn. Code Ann. § 67-6-903(e) provides sales of services performed from a place of business in Tennessee to tangible personal property or computer software where the serviced property or software is delivered by the seller to the purchaser or purchaser's designee outside Tennessee or to a carrier for delivery to a place outside Tennessee is no longer sourced to Tennessee (i.e., interstate sale).

Effective July 1, 2024, the sales of such services performed in Tennessee where the serviced property or software is shipped or delivered by the seller to a place outside Tennessee is not subject to Tennessee sales tax and is reported as exempt interstate sales on the seller's Tennessee return.

For example: An Arkansas contractor shipped a backhoe for repairs to a facility in Memphis, Tennessee. Once the repairs are completed, the repair facility delivers the repaired backhoe to the contractor's place of business in Arkansas. Effective July 1, 2024, the sale of the repair service to the backhoe delivered out of state is no longer sourced to Tennessee. The seller reports the repair service as an exempt interstate sale on its Tennessee return.

Tenn. Code Ann. § 67-6-902(a)(2) provides sales of services performed out of state, when the service is not received by the purchaser at the seller's business location, is sourced to the place where receipt by the purchaser or purchaser's designee occurs in Tennessee. Under the new sourcing rule, the location where the purchaser or its designee receives the serviced property or software is the place where it makes first use of the services (e.g., shipped or delivered to a Tennessee address of the purchaser or its designee).

Effective July 1, 2024, remote sellers must collect Tennessee use tax on the services performed outside Tennessee at the state and local tax rate for the location where the serviced property or software is received by the purchaser or the purchaser's designee in Tennessee. If the remote seller does not collect Tennessee tax, the purchaser must remit the use tax.

Sourcing Sales and Leases from Out of State into Tennessee

For purposes of applying sourcing rules, "receive" or "receipt" means:

- taking possession of tangible personal property;
- making first use of services; or
- taking possession or making first use of a digital products, whichever comes first;[303] and
- does not include possession by a shipping company on behalf of a purchaser.[304]

In this section, "location" does not include a location that merely provides the digital transfer of the product sold.[305]

Florists

Florist sales completed by sending and receiving orders between florists for fulfillment and delivery to a recipient continue to be sourced to the place of business of the order-taking florist according to TENN. COMP. R. & REGS. 1320-05-01-.22(2).

Florist sales that are from orders taken from a place of business within Tennessee and sent/wired to a receiving florist (either located in or outside Tennessee) for fulfillment and delivery to a recipient (either located in or outside Tennessee) are sourced to the order-taking florist's business location in Tennessee. Such sales are not sourced to an order-receiving florist.

The Tennessee florist that takes the orders collects Tennessee sales tax at the state and local tax rate for the Tennessee florist's business location from which its customer placed the order.

Other sales by the Tennessee florist that are not completed by sending and receiving order instructions between florists are sourced according to the above sourcing rules for sales from a place of business in Tennessee under Tenn. Code Ann. § 67-6-903.

Sourcing Sales of Direct Mail

Direct mail is printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. Direct mail also includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address (e.g., bulk shipment).[306]

Tenn. Code Ann. § 67-6-904(a) defines advertising and promotional direct mail, and other direct mail for purposes of sourcing direct mail only. The newly defined terms do not affect Tennessee's imposition of sales or use tax on printed material.

The direct mail sourcing rules do not affect Tennessee's determination that creating and mailing individualized information statements (e.g., invoices, bills, account statements, or payroll advices) to the purchaser's customers or employees are sales of nontaxable billing services. See Important Notice Variable Image Printing Used in Billing and Other Print Mail Services May 2001.

The direct mail sourcing rules do not affect the obligation of a purchaser to remit Tennessee use tax, under Tenn. Code Ann. § 67-6-203(a), on the purchase price of "other direct mail"

distributed to recipients in Tennessee, or under Tenn. Code Ann. § 67-6-203(b) on the value advertising and promotional direct mail distributed to recipients in Tennessee.

Advertising and Promotional Direct Mail

"Advertising and promotional direct mail" includes printed material that qualifies as direct mail[307] and has the primary purpose to:

- Attract public attention to a product, person, business, or organization; or
- Attempt to sell, popularize, or secure financial support for a product, person, business, or organization.[308]

Other Direct Mail

"Other direct mail"[309] means direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional mail is included in the same mailing and includes, but is not limited to:

- Transactional direct mail that contains personal information specific to the addressee, including, but not limited to, invoices, bills, statements of account, and payroll advices;
- Any legally required mailings, including, but not limited to, privacy notices, tax reports, and stockholder reports; and
- Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including, but not limited to, newsletters and informational pieces.

"Other direct mail" does not include the development of billing information or the provision of a data processing service that is more than incidental.[310]

Product

"Product" is defined as any tangible personal property, a product transferred electronically, or a service.[311]

1. Sourcing Sales of Direct Mail

The direct mail souring rules apply regardless of shipping terms (e.g., FOB shipping point or FOB destination). The sourcing rules do not impose tax on data processing services or billing services.[312]

Sales of direct mail are sourced as follows:

1) The sale of advertising and promotional direct mail and other direct mail made from a place of business in Tennessee to a purchaser where delivery is made by the seller to a carrier or United States postal service location for distribution or delivery to direct mail recipients within Tennessee, is sourced to the seller's place of business from which the sale is made;[313]

2) To the extent the seller knows based on the *delivery information* provided by the purchaser that the sale includes direct mail distributed to recipients in another state(s), the portion of the sales price that equals the percentage of direct mail distributed to recipients outside Tennessee is not sourced to Tennessee *(e.g., interstate sales)*;[314]

3) If the purchaser does not provide the *delivery information* to the seller, a purchaser may provide the Streamlined Sales Tax Certificate of Exemption to claim a direct mail exemption for the portion of the sales price of direct mail that equals the percentage of direct mail distributed to recipients outside Tennessee;[315]

4) If the purchaser fails to provide the seller delivery information, a Streamlined certificate claiming exemption for direct mail distributed out of state, or a Tennessee direct pay permit, the sale of direct mail from a Tennessee place of business in Tennessee is fully subject to Tennessee sales tax unless another exemption applies (e.g., nonprofit tax exemption).

5) For purposes of sourcing remote sales of advertising and promotional direct mail and other direct mail delivered into Tennessee, Tenn. Code Ann. § 67-6-902(a)(2)(B) provides, the location where receipt by the purchaser's donee (i.e., direct mail recipient) occurs, includes the location indicated by instructions for delivery to the purchaser's donee (i.e., direct mail recipient) known to the seller. To the extent the seller knows based on *delivery information* provided by the purchaser, remote sales of direct mail distributed by the seller to direct mail recipients in Tennessee are sourced to the Tennessee mailing or delivery address of the direct mail recipients.

6) In the absence of bad faith, where the seller sourced the sale according to the delivery information provided by the purchaser in accordance with this section, the seller is not liable for tax if it is determined the purchaser provided incorrect delivery information.[316]

2. Purchasers Must Provide Delivery Information

The purchaser must provide the direct mail seller delivery information. In the case of sales of direct mail made from a place of business in Tennessee, a purchaser may opt to provide a fully completed Streamlined certificate to claim an exemption for the portion of the price of direct mail distributed to recipients outside Tennessee.

Tennessee has not adopted SSUTA direct mail provisions allowing a purchaser to use the Streamlined Certificate of Exemption to "claim direct mail" to direct pay the sales or use tax to all states and local jurisdictions where the direct mail is distributed to recipients. On the certificate under 4. "Reason for Exemption" box K "direct mail" is blacked out.

Delivery information is summary jurisdictional information sufficient for the seller to source the sale to the state(s) and any local jurisdictions in which the direct mail is distributed to recipients. A reasonable allocation method that fairly represents the distribution of the direct mail can be provided by the purchaser. The seller must be able to keep and use the delivery information for sales and use tax reporting purposes.

Some examples of acceptable allocation methods include:

- allocation based on population in a jurisdiction as a percentage of the total population of jurisdictions within the distribution area.
- allocation based on the sales volume of the direct mail purchaser's sales location in a jurisdiction as a percentage of the total sales volume of sales locations within the distribution area.
- allocation based on a percentage of the direct mail purchaser's customer accounts in a jurisdiction to the total number of customer accounts within the distribution area.
- allocation based on the sales volume of the direct mail purchaser in a jurisdiction as a percentage of the total sales volume within the distribution area.

For Example:

- A Tennessee printer produces 10,000 advertising flyers for mailing to the purchaser's customers in Tennessee and Kentucky. The purchaser does not allow printers to keep its proprietary customer mailing lists. Instead, the purchaser provides delivery information allocating the price of the flyers based on a percentage of its customer accounts in each zip code to total number of customer accounts within the distribution area. The portion of the sales price of the advertising flyers distributed to Kentucky zip codes are not sourced to Tennessee (e.g., interstate sales.

The Tennessee printer collects Tennessee sales tax on the portion of the sales price for flyers distributed to recipients within Tennessee at the state and local tax rate for the printer's place of business in Tennessee. The printer reports the portion of the price for flyers distributed to Kentucky as exempt interstate sales on its Tennessee tax return.

A purchaser may opt to provide a fully completed Streamlined certificate to claim an exemption for the portion of the price of direct mail that corresponds to the direct mail distributed to recipients outside Tennessee when purchasing direct mail from a place of business in Tennessee. To claim an exemption for direct mail distributed outside Tennessee

using the Streamlined certificate, the purchaser must include its federal identification number. On Line 4. "Reason for Exemption" the purchaser should check box "L. Other" with an explanation specifying the percentage of direct mail distributed outside Tennessee (e.g., x% of direct mail is distributed outside Tennessee).

For Example:

- A Chattanooga Tennessee printer sells 50,000 advertising flyers to a Georgia purchaser. The Georgia purchaser provides a fully completed Streamlined certificate with the Line 4. "Reason for Exemption" box "L Other" checked and the explanation "80% of the advertising flyers are distributed outside Tennessee." The Chattanooga Tennessee printer must collect Tennessee sales tax at the state and local tax rate for the printer's place of business in Chattanooga Tennessee on the portion of the sales price that corresponds to 20% of the advertising filers distributed by the printer in Tennessee. The printer reports the price for 80% of the flyers distributed outside Tennessee as exempt interstate sales on its Tennessee return.

A Tennessee direct pay permit holder providing its direct pay permit to purchase direct mail without the payment of tax, must report Tennessee sales or use tax on the portion of the sales price of direct mail distributed by the seller to direct mail recipients in Tennessee. The direct mail distributed by the seller to recipients outside Tennessee is not sourced to Tennessee. The direct pay permit holder should not report Tennessee tax on the portion of the price that corresponds to direct mail distributed to recipients outside Tennessee.

Remote sellers registered for sales and use tax in Tennessee must use the delivery information provided by the purchaser to collect and remit Tennessee sales or use tax on the direct mail distributed to recipients in Tennessee at the state and local rate for each Tennessee jurisdiction in which the delivery information shows the direct mail was delivered to recipients in Tennessee.

Chapter 8: Local Sales Tax Imposition

Overview

Any county or incorporated city may levy a tax on the same privileges that are subject to the state's sales or use tax. All counties, and some incorporated cities, have adopted a local option tax of up to 2.75%.[317]

Local Tax Limitations

The law limits local option tax rates for the following items:

- There is no local option tax on electric power or energy, natural or artificial gas, coal, or fuel oil.[318]
- The local tax rate for water sold to manufacturers is 0.5%. (However, should the local tax rate in a jurisdiction be reduced to less than 1%, the rate for water sold to manufacturers would be 0.33%.[319])
- The local tax rate for sales of tangible property to common carriers for use outside Tennessee is 1.5%.[320]
- Intrastate telecommunication services are taxed at the state rate of 7% and a flat local rate of 2.5%.[321]
- Interstate and international telecommunication services sold to businesses are exempt from local tax.[322]
- Interstate and international telecommunication services sold to persons other than businesses (i.e., residential) are subject to a standard local rate of 1.5%.[323]
- Video programming services including cable television, wireless cable television, and video services provided through wireline facilities that are offered for public consumption (i.e., broadband television) are exempt from local tax up to the amount of $27.50.[324]
- Vending machine sales of both food and non-food items are taxed at a standard local tax rate of 2.25% on all sales.[325]
- Specified digital products are taxed at a standard local rate of 2.5%.[326] The 2.5% standard local rate does not apply to digital final artwork or to digital advertising materials.

The local option tax rates for each city and county are listed in the section below and can be found on the Department's website at tn.gov/revenue. The local option tax rates make up

what is known as the Situs Table. To pinpoint the appropriate jurisdiction for a taxpayer, use the Tennessee Sales Tax Jurisdictional and Tax Rate Database.

Local Option Tax Rates

The local tax rate may not be higher than 2.75% and must be a multiple of .25. All local jurisdictions in Tennessee have a local sales and use tax rate. The local sales tax rate and use tax rate are the same rate. Local sales and use taxes are filed and paid to the Department of Revenue in the same manner as the state sales and use taxes.

The local sales tax rate map is a complete and up-to-date list of the tax rate for each jurisdiction. The local sales tax rate map is available on the Department's website here.

Taxpayers may also use the Tennessee sales tax jurisdiction and tax rate database to lookup state and local tax rates and local jurisdiction SITUS and FIPS codes. Information that can be helpful when searching through the database is available here at the Department's website.

Sales tax rate tables and the boundary database are available for download on the Department's website here. These files may be used in tax calculation applications to determine the tax rate. The Streamlined Sales Tax Technology Guide (Chapter 5, Rate and Boundary Files) provides information that is helpful in determining tax rates.

Local Sourcing Rules

In general, for local tax purposes, sales of tangible personal property, computer software, specified digital products, and taxable services are sourced according to the guidelines in Chapter 7 of this manual.

The sale of water is sourced to the locality where the water is delivered to the consumer.[327] The sale of telecommunications services is sourced according to the provisions of Tenn. Code Ann. § 67-6-905(b)-(d).

1. Sales at Special Events

If a taxpayer collects any amount of sales tax from customers, the taxpayer must remit that amount on its sales tax return. A taxpayer may not be required to collect sales tax if tax was paid at the time of purchase and meets one of the following criteria:

- Taxpayer averages less than $4,800 in gross sales a year;[328]
- Taxpayer is selling its own agricultural products at this event and nothing other than these products[329]; or
- Taxpayer makes sales at only 1-2 temporary events per year (in any state) and does not have an ongoing retail business.[330] To be temporary, the event cannot last more than 30 days.

The due date for the special event sales tax return is the 20th day of the month following the event.

2. Food Trucks

Food trucks and other mobile vendors making Tennessee sales at different temporary Tennessee locations should register their primary business location for sales and use tax. The primary business location may be the vendor's residence or central kitchen.

The vendor should collect Tennessee sales tax at the state and local rate of its business location and report all sales, including sales made from temporary locations, on the sales tax return for its business location.

Single Article

The local option tax is applied to the first $1,600 of the purchase price of any *single article* of tangible personal property sold. The term "single article" refers to any item that is considered, by common understanding, to be a separate unit, apart from any accessories, extra parts, etc., and is capable of being sold as an independent item or as *a common unit of measure*. Independent units sold in sets, lots, suites, or other such groupings are not considered to be single articles. The single article limitation does not apply to sales of taxable services, amusements, custom computer software, and warranty or maintenance contracts. These sales are subject to the *full local option tax*.[331]

For more information on single article tax, see Chapter 9.

Chapter 9: Single Article

Overview

Tennessee provides special tax treatment for single articles of tangible personal property. The term "single article" refers to any item that is considered, by common understanding, to be a separate unit, apart from any accessories, extra parts, etc. and is capable of being sold as an independent item or as *a common unit of measure.* Independent units sold in sets, lots, suites, or other such groupings are not considered to be single articles.[332]

Single Article Local Tax

The local option tax is applied only to the first $1,600 of the purchase price of any *single article* of tangible personal property sold. The single article local tax limitation does not apply to a single invoice total when multiple items of tangible personal property are included on the invoice. The single article limitation does not apply to sales of taxable services, amusements, custom computer software, and warranty or maintenance contracts. These sales are subject to the *full local option tax*.[333] For example:

- A taxpayer in Davidson County bought a car in Nashville for $20,000. The local tax rate is 2.25%. The taxpayer would pay the dealer $36 in local tax for Davidson County which is $1,600 multiplied by the local rate 2.25%.

1. Local Tax Base Limitations

The local tax does not apply to any portion of the price of a single article of tangible personal property that exceeds the local tax base limitation for that local jurisdiction. Most local jurisdictions have a local tax base limitation of $1,600. Currently, there are two Tennessee counties with single article local tax limitations that are less than $1,600: Hamblen County's limit is $300, and Hancock County's is $375.[334] Local tax base limitations are listed in the chart below. This chart is also available on the Department's website here.

	Effective Date	Base	County	Effective Date	Base
Anderson	7/2006	$1,600	Lauderdale	1/1995	$1,600
Bedford	8/2001	$1,600	Lawrence	3/1996	$1,600
Benton	1/1997	$1,600	Lewis	7/1997	$1,600
Bledsoe	2/1991	$1,600	Lincoln	5/1992	$1,600
Blount	8/1983	$1,600	Loudon	7/1998	$1,600
Bradley	7/2009	$1,600	McMinn	8/1983	$1,600
Campbell	9/1983	$1,600	McNairy	9/1983	$1,600
Cannon	9/1983	$1,600	Macon	10/1983	$1,600
Carroll	10/1997	$1,600	Madison	10/1983	$1,600
Carter	1/2009	$1,600	Marion	5/2006	$1,600
Cheatham	10/1983	$1,600	Marshall	12/1983	$1,600
Chester	6/1995	$1,600	Maury	8/1983	$1,600
Claiborne	10/1983	$1,600	Meigs	10/1983	$1,600
Clay	11/1999	$1,600	Monroe	9/1983	$1,600
Cocke	3/1988	$1,600	Montgomery	1/1989	$1,600
Coffee	4/2007	$1,600	Moore	9/1988	$1,600
Crockett	6/1996	$1,600	Morgan	9/1983	$1,600
Cumberland	9/1999	$1,600	Obion	5/2000	$1,600
Davidson	10/1983	$1,600	Overton	8/1997	$1,600
Decatur	2/1998	$1,600	Perry	1/1998	$1,600
Dekalb	7/2007	$1,600	Pickett	1/1999	$1,600
Dickson	10/2001	$1,600	Polk	3/1984	$1,600
Dyer	4/2001	$1,600	Putnam	7/1999	$1,600
Fayette	9/1983	$1,600	Rhea	10/2008	$1,600
Fentress	10/1992	$1,600	Roane	9/1983	$1,600
Franklin	10/1986	$1,600	Robertson	8/2007	$1,600
Gibson	5/2012	$1,600	Rutherford	7/2000	$1,600
Giles	7/1998	$1,600	Scott	11/1984	$1,600
Grainger	7/1994	$1,600	Sequatchie	7/1988	$1,600
Greene	5/2000	$1,600	Sevier	7/2009	$1,600
Grundy	4/2020	$1,600	Shelby	9/1983	$1,600
Hamblen	7/2009	$300	Smith	5/2000	$1,600
Hamilton	7/2004	$1,600	Stewart	11/1999	$1,600
Hancock	1/1983	$375	Sullivan	9/1983	$1,600
Hardeman	7/2002	$1,600	Sumner	10/1983	$1,600
Hardin	11/1997	$1,600	Tipton	9/1983	$1,600
Hawkins	10/1988	$1,600	Trousdale	12/1983	$1,600
Haywood	10/1998	$1,600	Unicoi	12/2004	$1,600
Henderson	10/1997	$1,600	Union	2/2005	$1,600
Henry	8/1988	$1,600	Van Buren	1/1990	$1,600
Hickman	7/2003	$1,600	Warren	4/2004	$1,600
Houston	10/1986	$1,600	Washington	7/1994	$1,600
Humphreys	10/2011	$1,600	Wayne	10/1998	$1,600
Jackson	5/2000	$1,600	Weakley	7/1998	$1,600
Jefferson	10/2008	$1,600	White	9/1983	$1,600
Johnson	11/1987	$1,600	Williamson	4/1991	$1,600
Knox	7/1983	$1,600	Wilson	11/1993	$1,600
Lake	3/1997	$1,600			

Note: The city of Morristown has a single article local tax base limitation of $1,600, while the remainder of Hamblen County has a single article local tax base limitation of $300.

2. Reporting Local Single Article Sales

Local single article sales are first reported on Schedule B of the sales tax return, Form SLS450. This schedule must be completed because the amount of sales that exceed the tax base must be subtracted from all single article sales (Line 4, Schedule B). The figure from Line 8 of Schedule B is then taken to Line 10 on the front of the sales tax return.

State Single Article Tax

In addition to the local option single article limitation, there is a state single article tax. The state single article tax rate of 2.75% is applied to the amount of the sales price of a single article of tangible personal property between $1,600 and $3,200. Any amount over $3,200 is not subject to the state single article tax. Unlike the local option tax rates, the state single article rate is a standard rate of 2.75%. The state single article tax is paid in addition to the general state sales tax.

1. Reporting State Single Article Sales Tax

State single article sales are first reported on Schedule C of the sales tax return (Form SLS450). This schedule must be completed because the amount of single article sales that are between $1,600 and $3,200 must be listed (Line 1, Schedule C). The figure from Line 9 of Schedule C is then taken to Line 12 on the front of the sales tax return.

Example Calculations

- A taxpayer bought a mobile generator in Nashville for $14,000. The taxpayer would pay the dealer $1,024 in state tax plus $36 in local tax for a total sales tax of $1,060.

Item	Sales Price	State Taxable	State Single Article	Local Taxable
Mobile Generator	$14,000	$ 14,000	$ 1,600	$ 1,600
Total		$ 14,000	$1,600	$ 1,600
Applicable Tax Rates		7.00%	2.75%	2.25%
State and Local Tax Due		**$ 980**	**$ 44**	**$ 36**

- A taxpayer bought a portable generator in Nashville for $2,800. The taxpayer would pay the dealer $229 in state tax plus $36 in local tax for a total sales tax of $265.

Item	Sales Price	State Taxable	State Single Article	Local Taxable

Portable Generator	$2,800	$ 2,800	$ 1,200	$ 1,600
Total		$ 2,800	$1,200	$ 1,600
Applicable Tax Rates		7.00%	2.75%	2.25%
State and Local Tax Due		**$ 196**	**$ 33**	**$ 36**

Single Article: Lease or Rental of Tangible Personal Property

The lease or rental of tangible personal property without acquiring title is included in the definition of "sale" and is subject to tax.[335] Tenn. Code Ann. § 67-6-204(a) imposes a tax on the gross proceeds of all leases and rentals of tangible personal property in Tennessee. The Department uses the terms of the contract under which the tangible personal property is leased or rented as the basis for computing the tax.[336] As noted in the above sections, Tenn. Code Ann. § 67-6-702 authorizes counties and incorporated cities to impose a local sales tax, but the tax only applies to the first $1,600.00 on the sale or use of any single article of tangible personal property.

In *Finalco, Inc. v. Taylor*, 1994 WL 48986 (Tenn. Ct. App., Feb. 16, 1994), the Tennessee Court of Appeals explained the applicability of the local option cap to leases of tangible personal property:

- If the leased equipment is determined to be a single article, then the tax rate is applied to the lesser of the first $1,600 of the rental flow from a single article or the per unit rental cost of the single article. If leased property is not a single article, then the tax rate is multiplied by the entire rental stream.[337]

For example:

- If a taxpayer is a hospital that leases an MRI machine ("machine"), which is generally considered an independent unit, the machine will qualify for the single article cap under Tenn. Code Ann. § 67-6-702(a)(1). The machine would be considered a single unit under Tenn. Code Ann. § 67-6-702(d).
    - If the machine is leased with a software package, or any additional extras, and the vendor lists the machine separately from the software or extras and the machine could be leased without the software or extras, then the machine would be considered a single unit and would qualify for the single article cap.

- If the MRI machine is leased together with a software package or any other additional extras, and the vendor does not list the items separately on the invoice, but instead charges one price for the entire rental, then the MRI machine would not be considered a single unit and would not qualify for the single article cap, and the entire rental would be subject to local option sales tax.

Single Article: Software

Single article taxation does not apply to custom software, which is subject to the full local and state sales tax rates. However, single article sales tax laws do apply to prewritten computer software. A separate prewritten computer software application or module that is sold by itself, without any other computer software application or module bundled with it and sold for one price will qualify as a single article of prewritten computer software. This applies regardless of how the software is delivered, whether downloaded or remotely accessed.

Therefore, only the first $1,600 of the sales price of a single article of prewritten computer software is subject to the applicable local sales tax. An additional state single article tax at the rate of 2.75% is due on the amount of the sales price of prewritten computer software between $1,600 and $3,200.

Beyond $3,200, no local tax or additional state single article tax is due on prewritten computer software. If prewritten computer software is sold pursuant to a software service agreement that requires multiple payments during the agreement period, the single article treatment described above will apply to the total of the service agreement payments.

Single Article Application to Sales of Boats and Trailers

A boat and any kind of motor, whether inboard or outboard, that is installed by the manufacturer or dealer is considered one single article for purposes of calculating the local single article cap and the state single article tax. However, a boat trailer is a separate single article and requires a separate calculation. If a consumer purchases both a boat and a trailer, two separate single article calculations should be done.

If the boat, motor, and trailer sales are not separately listed on the bill of sale, value should be assigned to the boat plus motor and the trailer by using percentages. The value of the boat and motor is 90% of the total sales price, and the trailer is 10%. If the dealer lists the value of the boat, motor, and trailer on the bill of sale, the assigned amounts should be used. The value of the boat and the motor should be added together for the single article calculation of the boat, and the value of the trailer should be used for the single article calculation of the trailer.

Furthermore, Tenn. Code Ann. § 67-6-510(a) provides that when used articles are taken in trade, sales or use tax is due on the price of the article sold minus the credit for the article taken in trade. If a boat and trailer are traded in for a new boat and trailer and the dealer fails to breakdown the components of the package deal, the Department will allow dealers to subtract the trade-in value from the sales price before applying the 90/10 percentage split.

Any other necessary parts and equipment installed by a boat manufacturer or dealer prior to the sale, as well as any freight, labor, and delivery charges, will be treated as part of the boat single article. However, in addition to the trailer, other items not installed as part of the boat, such as skis, ski ropes, and personal flotation devices are not part of the boat single article and should be separately itemized and taxed at the applicable state and local sales tax rates.

The prices of motor vehicle and boat dealer installed accessories sold in conjunction with a motor vehicle or boat are to be included the price that is subject to the single article local tax limitation and state single article tax.

1. Applying the Single Article Cap and the State Single Article Tax

To apply the single article cap to the local option tax, the prices of the boat, motor, and dealer installed accessories are totaled, and the local option tax is applied only to the first $1,600 of the total. To calculate the state single article tax, the boat, motor, and dealer installed accessories are totaled, and the tax rate of 2.75% is applied to the amount of the total that is between $1,600 and $3,200.

2. Examples

The examples below compute the amount of state and local tax due with or without trade-in credit and with or without a separately itemized price. The examples assume a local option rate of 2.25% and are rounded to the nearest whole number for ease of explanation.

Example 1

A dealer sells a boat, motor, and trailer, and the bill of sale is broken down as follows:

Item	Sales Price	State Taxable	State Single Article	Local Taxable
Boat	$ 6,141	$ 6,141	$ 1,600	$ 1,600
Motor	4,000	4,000	* 0	* 0
Trailer	1,000	1,000	0	1,000
Dealer installed	875	875	* 0	* 0

accessories				
Freight	275	275	* 0	* 0
Labor	225	225	* 0	* 0
Total	$ 12,516	$ 12,516	$ 1,600	$ 2,600
Applicable Tax Rates		7.00%	2.75%	2.25%
State and Local Tax Due		**$ 876**	**$ 44**	**$ 59**

* Boat, motor, accessories, freight, and labor are considered one single article.

Example 2

A dealer sells a boat, motor, and trailer with a trade-in, and the bill of sale is broken down as follows:

Item	Sales Price	Less: Trade-In	State Taxable	State Single Article	Local Taxable
Boat	$ 5,141	$ (3,000)	$ 2,141	$ 1,600	$ 1,600
Motor	4,000	(1,500)	2,500	* 0	* 0
Trailer	2,000	(1,150)	850	0	850
Dealer installed accessories	875	-	875	* 0	* 0
Freight	275	-	275	* 0	* 0
Labor	225	-	225	* 0	* 0
Total	$ 12,516	$ (5,650)	$ 6,866	$ 1,600	$ 2,450
Applicable Tax Rates			7.00%	2.75%	2.25%
State and Local Tax Due			**$ 481**	**$ 44**	**$ 55**

* Boat, motor, accessories, freight, and labor are considered one single article.

Example 3

A dealer sells a boat, motor, and trailer with a trade-in, and the bill of sale is broken down as follows:

Item	Sales Price	Less: Trade-In	State Taxable	State Single Article	Local Taxable
Boat, Motor, & Trailer	$ 11,141	$ (5,650)	$ 5,491	$ 1,600	$ 1,600
(Trailer 10% Calculation)	-	-	-	0	** 549
Dealer installed accessories	875	-	875	* 0	* 0
Freight	275	-	275	* 0	* 0
Labor	225	-	225	* 0	* 0
Total	$ 12,516	$ (5,650)	$ 6,866	$ 1,600	$ 2,149
Applicable Tax Rates			7.00%	2.75%	2.25%
State and Local Tax Due			**$ 481**	**$ 44**	**$ 48**

* Boat, motor, accessories, freight, and labor are considered one single article ($11,141 - $5,650 = $5,491 x 90% = $4,942 + $1,375 = $6,317).

** The boat trailer is a separate single article ($11,141 - $5,650 = $5,491 x 10% = $549).

Motor Vehicles

Parts and accessories for motor vehicles that are installed at the factory and delivered as original equipment are part of the unit. Parts and accessories installed by a dealer or distributor before or at the time of the sale and that are included in the sales price of the vehicle are also considered part of the unit and are all treated as one single article. For example:

- A person in Chattanooga buys a new car for $25,000. This is how the sales tax is calculated:

Item	Sales Price	State Taxable	State Single Article	Local Taxable
Car	$ 25,000	$ 25,000	$ 1,600	$ 1,600
Applicable Tax Rates		7.00%	2.75%	2.25%
State and Local Tax Due		**$ 1,750**	**$ 44**	**$ 36**
Total Tax Due	**$ 1,830**			

- In this example, a person in Chattanooga buys a new car but also has a trade-in and adds dealer installed accessories.

Item	Sales Price	Less: Trade-In	State Taxable	State Single Article	Local Taxable
Car	$ 20,000	$ (10,000)	$10,000*	$ 1,600	$ 1,600
Dealer installed accessories	$1,000	-	$1,000*	-	-
Document Fees	$450	-	$450	-	-
Labor	$225	-	$225*	-	-
Total	$ 21,675	$ (10,000)	$ 11,675	$ 1,600	$ 1,600
Applicable Tax Rates			7.00%	2.75%	2.25%
State and Local Tax Due			**$ 817**	**$ 44**	**$ 36**

* The car, accessories, and labor are all considered one single article.

Manufactured Homes

Parts, accessories, furniture, appliances, and other items that are part of a manufactured home are considered parts of the single unit. Also included in the single article charge are delivery fees, installation fees (setup, hookup, etc.), and other incidental items that are part of the sale. Manufactured homes, however, are subject to state sales tax at one half the normal rate. As stated above, the normal state single article sales tax rate is 2.75%, thus the applicable state single article rate for manufactured homes is 1.375%. To account for this reduced rate, taxpayers should report the amount of the total sales price in excess of the $1,600 local single article limitation on Schedule B, excess amount of single article tax base line 4. Then multiply the application state single article tax amount (up to $1,600) by 0.5 and report the resulting amount on Schedule C taxable single article sales from $1,600 to $3,200 on line 1.

Tractors

A tractor and a farm implement (e.g., plow, rake, mower, or bucket, etc.) are commonly understood to each be a separate unit that is priced and sold as independent items. State and local tax are calculated separately for the tractor and for each implement. The single article local tax limitation and the additional single article tax are not calculated on a total invoice amount but for multiple articles of tangible personal property.

Note that the single article law that treats parts and accessories installed on a motor vehicle as a part of a motor vehicle does not apply to tractors.

Chapter 10: Marketplace Facilitators

Background

As discussed throughout this manual, the sale of tangible personal property in Tennessee is subject to Tennessee sales and use tax. Traditionally, this transaction occurred at a brick-and-mortar store, where a customer would purchase merchandise from a retailer located nearby, and the retailer would collect and remit sales tax to the state. However, as electronic commerce continued to develop, this transaction began migrating to the internet, whereby an online seller, perhaps located outside of Tennessee, would sell the merchandise. Because of the historical constitutional nexus provisions discussed in Chapter 2, the state could not require remote sellers without physical presence to collect Tennessee sales tax. Instead, it was the customer's responsibility to self-report and remit Tennessee use tax. Based on this structure, use tax has historically been underreported.

After the United States Supreme Court case *South Dakota v. Wayfair*,[338] states began enacting statutory economic nexus provisions, where states could require out-of-state retailers to collect their respective sales tax if certain thresholds were met. However, electronic commerce continued to evolve, and many of the traditional online sellers began selling merchandise through what is now known as "marketplace facilitators." To ease compliance on small online sellers, states began enacting marketplace facilitator laws whereby the marketplace facilitator, not the small business, is responsible for collecting and remitting the respective state's sales tax. Tennessee enacted such a law in Public Chapter 646 (2020), effective October 1, 2020.

1. Marketplace Facilitators and Marketplace Sellers

Marketplace facilitator laws are new, and, thus, states have had to create new defined terms to administer this new business model. Below is an outline of some of Tennessee's most important terms.

Marketplace

A marketplace is a physical or electronic place, platform, or forum, including, but not limited to:

- A store
- Booth
- Internet website
- Catalog, or
- Dedicated sales software application

where tangible personal property or any of the things or services subject to sales and use tax are offered for sale.

Marketplace Facilitator

A marketplace facilitator is a person (which includes businesses), including any affiliate of the person, that:

- For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's taxable tangible personal property or services through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and
- Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser of the marketplace seller's tangible personal property or things or services taxable under the sales and use tax statutes and transmits payment to the marketplace seller.

A marketplace facilitator **is not**:

- A person who exclusively provides *advertising services*, including listing products for sale and does not actually facilitate the sale.
- A person whose activity is only providing *payment processing services* between two or more parties.
- A derivatives clearing organization, designated contract market, or foreign board of trade or swap execution facility that is registered with the Commodity Futures Trading Commission ("CFTC registered platforms"), or any clearing members, futures commission merchants, or brokers using the services of CFTC registered platforms.
- A person that is a *delivery network company*; except, that a delivery network company that meets the definition below may elect to be deemed a marketplace facilitator if it so chooses.
- An auctioneer that is licensed under Title 62, Chapter 19.[339]

Marketplace Seller

A marketplace seller is a person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator.

Beginning October 1, 2020, an out-of-state marketplace seller that has sales in excess of $100,000 is not required to register in Tennessee if all its taxable sales are made through a

marketplace facilitator that is collecting and remitting Tennessee sales tax on the seller's behalf. Marketplace sellers that make any sales other than those facilitated by a registered marketplace facilitator, for example, through its own website, may be required to register for sales and use tax if they have sales in excess of $100,000 in the state during the previous 12-month period.

> ⚠ **Please note, sales made through a marketplace facilitator that is collecting and remitting Tennessee sales tax *do not* count as sales for the purpose of determining if an out-of-state marketplace seller has a registration and collection requirement under Tenn. Code Ann. § 67-6-524(b).**

If the marketplace facilitator does not meet the threshold and is not required to collect and remit Tennessee tax, but the seller meets the threshold when including all its sales through unregistered facilitators and any other sales, the marketplace seller is required to registered collect and remit Tennessee sales and use tax.

Marketplace sellers with a physical presence such a storefront, employees, or operations located in Tennessee is required to register for sales and use tax in Tennessee. If all of its sales are made through marketplace facilitators that collect and remit Tennessee tax, the marketplace seller may request annual tax return filing status and report $0 sales on the return. Registration for Tennessee the sales and use tax will provide the marketplace seller with a Tennessee resale certificate.

Delivery Network Company

A delivery network company is a business entity that maintains an internet website or mobile application used to facilitate delivery services for the sale of local products. The most common example of a delivery network company is a food delivery company where customers order food from a local restaurant using a website or platform that then delivers the food.

Delivery Services

Delivery services means the pickup of one or more local products from a local merchant and delivery of the local products to a customer. "Delivery services" do not include any delivery requiring over **50 miles** of travel from the local merchant to the customer.

Local Merchant

A local merchant is a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with the delivery network company.

2. When Must a Marketplace Collect Tennessee Sales Tax?

When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or taxable services, the marketplace facilitator is liable for collecting sales tax on the sales price of the tangible personal property or services. Marketplace sellers are not obligated to collect, remit, or be liable for sales and use tax collected and remitted by a marketplace facilitator. The marketplace facilitator is not responsible for collecting the central business district fee provided for in Tenn. Code Ann. § 7-88-117, even if the marketplace seller is located in the central business district.

Because the marketplace facilitator is considered the seller, it does not matter if the marketplace seller has a sales tax certificate of registration or would have been required to collect sales or use taxes had the sale not been facilitated by the marketplace facilitator.

> ⚠ **Marketplace facilitators are considered the seller and retailer for sales and use tax registration and collection purposes only.**

There are, however, exceptions to when a marketplace facilitator is required to collect sales and use tax.

3. Exceptions to Marketplace Facilitator Collection Requirement

Sales Threshold

If the marketplace facilitator made *or* facilitated total sales to consumers in this state of **$100,000** or less during the previous twelve-month period, it is not required to register with the Department and collect and remit sales tax.[340] The marketplace facilitator's own sales plus the sales that it facilitates for its marketplace sellers are counted towards the $100,000 threshold. Marketplace facilitators who do not have at least $100,000 in total sales made or facilitated in this state do not have to collect.

Please note, if a previously unregistered marketplace facilitator exceeds the $100,000 threshold during the year, the marketplace facilitator is required to register and begin collecting sales and use tax on the first day of the third month following the month in which it meets the threshold. This amount includes sales made by the marketplace facilitator and sales the marketplace facilitator facilitated through its marketplace. For example:

- A company sells tangible personal property through its website as well as facilitates transactions for others through a marketplace. In 2019, the company facilitated $10,000 in sales and had $80,000 in sales through its website in Tennessee.
- On October 15, 2020, the company had $30,000 in sales through its website and

facilitated $90,000 through its marketplace.

- Because the company exceeded the $100,000 threshold in its own sales and sales facilitated on its marketplace, it must register and begin collecting sales and use tax beginning on January 1, 2021.

Marketplace Sellers Meeting Substantially All Test

The marketplace facilitator is excluded from collecting sales tax if it demonstrates that substantially all the marketplace sellers for whom it facilitates sales are registered dealers for sales tax purposes. If this is the case, the Commissioner may waive the requirements that the marketplace facilitator collect sales tax. If a waiver is granted, sales tax must be collected by the marketplace sellers.

To request a waiver, marketplace facilitators should contact the Department's Audit Division, Sales and Use Tax Unit, at (615) 741-8499. The request should include enough information to allow the Commissioner to confirm that substantially all the marketplace sellers are registered and collecting sales tax.

Marketplace Facilitator and Marketplace Seller with Contractual Agreement

The third exclusion from the collection requirement is when the marketplace facilitator and the marketplace seller contractually agree that the marketplace seller will collect and remit all applicable taxes under the sales and use tax statutes **and** the marketplace seller:

- Has annual gross sales in the United States of over $1,000,000,000, including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;
- Provides evidence to the marketplace facilitator that it is registered in this state under Tenn. Code Ann. § 67-6-601; and
- Notifies the Commissioner that the marketplace seller will collect and remit all applicable taxes under the sales or use tax statutes on its sales through the marketplace facilitator and is liable for failure to collect or remit applicable taxes on its sales.

Marketplace sellers should notify the Department by contacting the Department's Audit Division, Sales and Use Tax Group at (615) 741-8499. The request should include enough information to allow the Commissioner to confirm that all the requirements outlined above are satisfied.

4. Delivery Network Company Election

A delivery network company may elect to be deemed a marketplace facilitator. To make an election, the delivery network company should simply register with the Department and begin collecting and remitting Tennessee sales tax. The company should contact the Department if it wishes to rescind the election.

Marketplace Facilitator Administration

1. Sourcing Sales Made through Marketplace Facilitator

Effective July 1, 2024, all sales, including services, made through the marketplace facilitator's marketplace are sourced using the sourcing rules found in Tenn. Code Ann. § 67-6-902.

A marketplace facilitator with no physical location in Tennessee must collect tax on sales through its marketplace based upon the address where the tangible personal property is shipped (i.e., use "destination sourcing"). Sales tax on taxable services, however, shall be collected consistent with other service sourcing provisions. Please see Chapter 12 for more information. This is important for local tax collection purposes as discussed in more detail in Chapter 8. For example:

- A resident of Rocky Top, Tennessee purchases merchandise through an online marketplace and has the merchandise shipped to her home in Rocky Top. Although the tax rate in Campbell County, where Rocky Top is located, is 2.25%, Rocky Top has raised its local tax rate to 2.75%. Therefore, the marketplace facilitator must collect tax at a 9.75% (7% state, 2.75% local) rate on the transaction.

If the marketplace facilitator has a physical location in Tennessee from which it facilitates the sale of tangible personal property, such as a brick-and-mortar market with several booths where the goods for sale are provided by other businesses (i.e., marketplace sellers), the marketplace facilitator should source the sales to its physical location (i.e., the marketplace facilitator should use "origin sourcing" not "destination sourcing.").

2. Facilitated Sales Must be Reported Separately

A marketplace facilitator must report sales and use tax on sales *through* its marketplace on behalf of marketplace sellers separately from any sales and use tax collected on sales *made directly by* the marketplace facilitator or its affiliates. A marketplace facilitator should log into (or create) a TNTAP account to report these sales. A marketplace facilitator should create a new location ID to report the facilitated sales.

3. Auditing a Marketplace Facilitator

The Department can audit a marketplace facilitator for sales it facilitates, except with respect to transactions that are subject to Tenn. Code Ann. § 67-6-501(f)(1)-(3). Tenn. Code Ann. § 67-6-501(f)(1)-(3) transactions are exceptions to the marketplace facilitator collection requirement that are outlined above.

The Department may not audit or otherwise assess taxes against marketplace sellers for sales facilitated by a marketplace facilitator, except to the extent the marketplace facilitator seeks relief as provided below or with respect to transactions that are subject to Tenn. Code Ann. § 67-6-501(f)(1)-(3).

A marketplace facilitator is relieved of liability for failure to collect and remit the correct amount of taxes to the extent that the error was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller if the marketplace facilitator demonstrates that it made a reasonable effort to obtain correct and sufficient information from the marketplace seller.

Document Retention

The marketplace facilitator registered in Tennessee is the retailer for its own sales and any sales it facilitates for marketplace sellers, except with respect to transactions that are subject to Tenn. Code Ann. § 67-6-501(f)(1)-(3). The marketplace facilitator is required to keep books and records for its own sales and any facilitated sales including, but not limited to, electronic sales records/ invoices, exemption and resale certificates, purchaser information, product information including products codes and descriptions, sales and use tax collected and records for preparing and filing the sales and use tax returns. Marketplace facilitators are responsible for obtaining from purchasers, exemption and resale documentation associated with its sales and sales it facilitates. Marketplace facilitators may not rely on exemption documentation obtained by marketplace sellers.

The marketplace seller should maintain any records or information on collecting and remitting that it provided to the facilitator, such as the specific tax treatment of products it sells through the marketplace. It should also maintain records of all its sales on marketplace facilitator platforms according to the platform on which sales were made in addition to records for other sales not made on marketplaces .The marketplace seller that makes its own direct sales to purchasers must keep and maintain books and records including but not limited to; electronic sales records/ invoices, exemption and resale certificates, purchaser information, product information including product codes and descriptions, sales and use tax collected, and records for preparing and filing the sales and use tax returns. Marketplace sellers are responsible for obtaining from purchasers, exemption and resale documentation associated with its sales. Marketplace sellers may not rely on exemption documentation obtained by marketplace facilitators.

Marketplace sellers also need records and information for sales facilitated by a marketplace facilitator for purposes of paying other Tennessee taxes (e.g., franchise and excise tax, business tax, and central business district fee) the marketplace seller owes.

The marketplace facilitator and marketplace seller must keep and maintain suitable records of sales and purchases for a period of three years from December 31 of the year in which the associated sales and use tax return was filed.

4. Exemption Certificates – Purchases for Resale

Sellers (including marketplace facilitators) are required to obtain, and purchasers (including marketplace sellers) are required to provide, suppliers with a resale certificate to make tax-exempt purchases of personal property or taxable services that is for resale. Effective January 10, 2022, out-of-state sellers, including marketplace sellers, may present an out of state resale certificate or a fully completed Streamlined Sales Tax Certificate of Exemption Certificate including the sales tax identification number issued by another state to a Tennessee supplier for products the Tennessee supplier drop ships to the out of state sellers' Tennessee customers. A marketplace seller must provide a resale certificate to its inventory supplier even if all its sales are facilitated by a marketplace facilitator.

Marketplace sellers located in Tennessee or that have made $100,000 or more in its own Tennessee sales (i.e., Tennessee sales other than sales facilitated by a marketplace seller that collects and remits Tennessee tax) must register for sales and use tax and provide a Tennessee supplier with its Tennessee Sales and Use Tax Resale Certificate or a fully completed Streamlined Sales and Use Tax Exemption Certificate including its Tennessee sales and use tax ID number to make the purchases for resale without tax.

Out-of-State Marketplace Sellers

Out-of-state marketplace sellers that are not registered for sales and use tax in Tennessee must provide a Tennessee supplier with its resale certificate issued by another state or a fully completed Streamlined Sales and Use Tax Exemption Certificate including the sales and use tax ID number issued by the other state and the state of issue. For example:

- A California marketplace seller that is not required to register for Tennessee sales tax does not have a Tennessee resale certificate. The marketplace seller purchases a stock of goods from a Murfreesboro supplier for resale. The marketplace seller resells the goods to Tennessee customers through a marketplace facilitator collecting Tennessee tax.
- The California based marketplace seller may provide the Murfreesboro supplier a fully completed Streamlined Certificate of Exemption consistent with the above requirements.

Sellers who are not Registered for Sales and Use Tax in Any State

If an out-of-state marketplace seller is not required to register for sales and use tax in any state (e.g., home state does not impose sales tax), the seller must provide a Tennessee supplier with a fully completed Streamlined Sales and Use Tax Exemption Certificate including a tax ID number for another type of tax (e.g., business tax or excise tax ID number) issued by its home state or its federal identification number (FEIN).

If the marketplace seller does not have any tax ID number issued by its home state or a FEIN, the out-of-state marketplace seller must pay tax on its purchases. A state driver's license number may not be used as a tax ID number to claim a resale exemption.

Foreign Marketplace Sellers

A foreign marketplace seller that is not required to be registered in the United States must provide a fully completed Streamlined Exemption Certificate with a tax ID number issued by its home country to claim that it is entitled to purchase products for resale.

The Streamlined Sales and Use Tax Exemption Certificate and the corresponding instructions may be found at the following link: Streamlined Sales and Use Tax Exemption Certificate

5. Claims for Refund

When a marketplace facilitator facilitates a sale, it is considered the dealer for Tennessee sales and use tax purposes. For this reason, the marketplace facilitator must file the claim for refund with the Department, not the marketplace seller. See Chapter 3 Administrative Requirements, Refunds section for more information about filing sales and use tax refund claims.

Chapter 11: Sales Price (Purchase Price) and Bundled Transactions

Sales Price (Purchase Price)

The Tennessee definitions of *sales price* and *purchase price* are compliant with the Streamlined Sales and Use Tax Agreement. *Sales price* is the measure that is subject to sales tax. *Purchase price* is the measure that is subject to use tax. *Sales price and purchase price have the same meaning.* It is the total amount of consideration for which products that are subject to tax are sold. Sales price may also include consideration received by a seller from third parties.

Determining the amount of the sales price for sales and use tax purposes is a process that is based on the definition. A seller cannot transform a properly taxable amount or segregate a portion of the sales price into a nontaxable amount by simply separately stating or itemizing amounts on the invoice.

Sales price includes, and no separate itemization or deductions from the sales price are allowed for, the *seller's*:

- Cost of the property sold
- Cost of materials used
- Labor or service costs
- Interest
- Losses
- Transportation costs (incoming freight)
- Taxes imposed on the seller
- Any expenses of the seller
- Charges for any services necessary to complete the sale
- Delivery charges
- Installation charges

In addition, a service that is not specifically enumerated in the statutes as a taxable service may be included in the sales price of a taxable good or service. Specifically, the sales price of a good or service equals the "total amount of consideration... for which personal property or

services are sold," without any deduction for such things as the seller's cost of the property, the cost of the materials, the seller's travel or transportation costs, and other such expenses of the seller.[341] Thus, when the sale of a non-enumerated service is part of the sale of a taxable good or service, the charges for the non-enumerated service are included in the sales price of the taxable good or service and as such are subject to taxation.

For example, an activation fee, connection fee, or similar charge is generally a one-time separately itemized charge by a retailer to recoup expenses or costs associated with setting up an account or turning on or starting a service. Such separately itemized charges are included in the sales price of a taxable product or taxable service.

Sales price does **not** include:

- Discounts or coupons not reimbursed by a third party;
- Separately itemized interest, financing, or carrying charges;
- Separately itemized taxes legally imposed on the consumer; or
- Separately itemized credit[342] for used items taken in trade.

Additionally, the sales price contains a bundling provision. In general, a bundled transaction is one in which there are two or more distinct and separately identifiable products that are sold for a single, non-itemized price. The sales price includes the value of exempt personal property, if the exempt personal property has been bundled together with taxable personal property and sold as a single product.[343] There are also special bundling provisions for transactions involving internet access, telecommunication services, ancillary services, video programming services, and direct-to- home satellite services.[344]

1. Consideration

Consideration is payment or compensation for something bargained for and is a basic requirement for a sale to exist. The definition of sales price provides that consideration received in exchange for property or services sold may be in the form of *cash, credit, property, or services, valued in money, whether received in money or otherwise.*[345]

As stated previously, consideration also may be given in the form of a credit. For example:

- A retailer of office furniture owes his accountant $1,000 for accounting services provided in the previous year. The accountant obtains $2,000 worth of new office furniture, and in exchange, gives the retailer credit by eliminating the outstanding debt owed of $1,000 and pays $1,000 in cash. The total consideration paid is $2,000.

Another example of consideration is as follows:

- A corporation organizes two subsidiaries and contributes motor vehicles to said subsidiaries for their net book value in exchange for stock. The Tennessee Supreme Court held that the contribution of motor vehicles in exchange for stock in the new subsidiaries constituted consideration for sales and use tax purposes.[346]

Gift Cards

Gift certificates and gift cards are monetary instruments that, when used, are consideration for the tangible personal property or taxable service purchased. Note that gift certificates and gift cards are not subject to the sales tax when they are initially sold because there has been no sale of tangible personal property or taxable service at that time. Gift cards represent the intangible right to purchase tangible personal property or a service in the future.

2. Miscellaneous Taxes Listed on Invoice

It is not uncommon to find other types of taxes separately itemized on a sales invoice. Any federal or state taxes that are imposed on the seller and passed on to the purchaser may not be deducted from the sales price for purposes of calculating the amount of tax due, even if the tax is separately itemized on the sales invoice. This also includes any federal taxes that may have been passed on to the seller by a manufacturer. A tax imposed on a product prior to the retail sale of the product is a cost or expense of the seller and is included in the price that is subject to tax. For example:

- There is a federal excise tax imposed on the sale of tires by a manufacturer, producer, or importer of tires to resellers.[347] The federal excise tax is imposed on the manufacturer, producer, or importer and constitutes a cost element of the tires that is passed down to the retailer. The retailer often includes the tax in the sales price of the tires, and no deduction or separate itemization of the tax is allowed for purposes of calculating the tax.

A tax imposed on a retailer for the retail sale of a product is a cost or expense of the retailer that is included in the price subject to tax. For example:

- Tennessee's business tax is levied on the gross taxable sales of Tennessee retailers and wholesalers. The business tax is a cost or expense of the seller and, if passed on to the purchaser, is included in the sales price for purposes of calculating the amount of sales tax due.[348]

In contrast, a tax imposed on the consumer or a tax that the seller is required to collect from the consumer, that is separately stated on the sales invoice, is not part of the sales price for purposes of calculating the amount of sales tax on the retail sale of a product that is subject to tax.

The sales price subject to the tax includes all federal and state taxes on sales of alcoholic beverages except the liquor-by-the-drink tax, imposed by Tenn. Code Ann. § 57-4-101 *et seq*.[349] The liquor-by-the-drink statutes require the seller to collect the tax from the purchaser, consistent with the definition of sales price. Therefore, liquor-by-the-drink tax is not included in the amount subject to sales tax.

3. Federal Excise Taxes

Any federal excise tax that is required by law to be passed on to, and is paid by the ultimate consumer, is not a part of the sales price subject to the sales and use tax, provided that such tax is billed separately to the customer. However, any federal excise tax that is not required by law to be passed on to the consumer is a part of the sales price, even though such tax may be billed separately to the customer.[350] For example:

- A federal excise tax is imposed on indoor tanning services. The applicable federal law[351] states, "[t]he tax imposed by this section shall be paid by the individual on whom the service is performed." This tax is imposed on the consumer, and when itemized on the invoice, the tax is not included in the sales price.

The following are federal excise taxes (federal statutes can be found HERE) that are imposed on the *consumer* and that are **excluded** from the sales price, when separately itemized on the sales invoice:

- Telecommunications Excise Tax (26 U.S.C. § 4251)
- Transportation of Persons by Air (26 U.S.C. § 4261) (*not a taxable service in TN*)
- Transportation of Property by Air (26 U.S.C. § 4271) (*not a taxable service in TN*)
- Tanning Service (26 U.S.C. § 5000B)

The following are federal excise taxes that are imposed on the *seller*. Thus, the seller's costs or expenses are **included** in the sales price, even if separately itemized on the invoice:

- Federal Alcohol Tax (26 U.S.C. §§ 5001-5132)
- Federal Tobacco Tax (26 U.S.C. §§ 5701-5708)
- Federal Gas Guzzler Tax (26 U.S.C. § 4064)
- Federal Motor Fuel Tax (26 U.S.C. §§ 4081-4084)
- Federal Firearms and Ammunition Excise Tax (26 U.S.C. §§ 4181-4182, 5801-5822)
- Federal Tire Tax (27 U.S.C. § 4071)
- Retail Tax on Heavy Trucks, Trailers, and Tractors (26 U.S.C. § 4051-4053)

4. Finance/Carrying Charges

Finance charges, carrying charges, time price differential, or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price are *not* considered a part of the sales price of such property. Therefore, such charges are not subject to sales tax if the amount of such finance charges, carrying charges, time price differential, or interest is in addition to the usual or established case selling price, and:

- Is segregated on the taxpayer's invoice or bill of sale; or
- Is billed separately to customers.[352]

Unless the above conditions are met, such charges shall be deemed to be part of the selling price for the purpose of computing the tax.[353]

5. Late Charges

Late payment charges are generally for recovering the costs or expenses associated with the collection of delinquent accounts. These charges are imposed after the sale of the tangible personal property or taxable service.

Sales of Tangible Personal Property or Taxable Services

Separately stated late charges related to the sale of tangible personal property or taxable services are *not* included in the sales price. Late payment charges are often imposed on purchasers who are delinquent in payment for taxable purchases. Late payment charges are not interest, financing, or carrying charges for the privilege of making deferred payments.

Leases of Tangible Personal Property

There is an exception for late charges related to the lease or rental of tangible personal property. Most lease agreements include a requirement to pay a late payment charge for any late payment made, and if the late payment charge is not paid, the lessee will be in default of the lease agreement. Late payment charges are part of the lease and are considered part of the total consideration paid for the lease of the tangible personal property. Late payment charges related to the lease of tangible personal property are included in the sales price.

Demurrage Charges

Demurrage charges are essentially late fees charged to a purchaser of oxygen, acetylene, liquefied petroleum products, or other similar products, when the purchaser retains the container used to transport the product longer than the agreed upon time limit. Separately

stated demurrage charges are not included in the sales price for sales and use tax purposes. Thus, these charges are not included in the sales price of the product purchased.

Water and Electricity

Late payment charges identified on electric and water bills are not included in the sales price for sales and use tax purposes.[354] Electric and water bills will often reflect late charges by including a higher total amount to be paid, if paid after the due date, rather than showing an itemized late charge amount. The difference between the total amounts owed prior to the due date and after the due date, respectively, is the late charge.

6. Delivery Charges

Delivery charges for taxable purchases that are billed by a seller are included as part of the sales price, regardless of the shipping terms and whether the delivery charges are separately itemized on the invoice.[355] Delivery charges include:

- Charges for transportation
- Delivery
- Shipping
- Shipping and handling
- Incoming freight
- Outgoing freight
- Packing
- Crating
- Postage

If an item of tangible personal property or service is subject to Tennessee sales or use tax, then the delivery charge made by the seller for delivering the property or service is subject to sales or use tax.

However, when an item purchased is not subject to Tennessee sales and use tax, the delivery charge is not subject to sales or use tax. This pertains to items:

- Shipped out of state
- Sold to exempt entities
- Purchased under an exemption

- Sold for resale

Furthermore, when an item is delivered by a third party hired by the buyer, the delivery charges made by the third party to the buyer are not subject to sales or use tax.

Examples – Delivery Charges

- An appliance store sells a refrigerator for $500 and delivers it to the customer in Tennessee. The customer is billed $20 for delivery of the refrigerator. The total sales price subject to Tennessee sales or use tax is $520.
- An appliance store sells a refrigerator for $500 to a customer in Tennessee. An independent delivery company delivers the refrigerator and bills the customer $20 for delivering the refrigerator. The seller did not bill the delivery charge to the customer; therefore, the delivery charge is not part of the sales price of the refrigerator. The total sales price subject to Tennessee sales or use tax is $500.
- A Tennessee sporting goods store sells athletic equipment to a boy's club and charges separately for delivery. The boys club gives the store a Tennessee exemption certificate to purchase the athletic equipment free of tax. Since the athletic equipment is exempt from tax when sold to the boy's club, the delivery charge is also exempt from tax.
- A Tennessee resident ships a laptop to a Tennessee computer repair shop for repairs. The repair shop replaces the hard drive and charges the Tennessee resident $150 for replacement parts, $100 for repair service, and $50 for shipping and handling. The total sales price subject to Tennessee sales tax is $300.

Standalone Shipping Services

Delivery, freight, or transportation services provided by passenger or cargo transportation companies or messenger services are nontaxable services in Tennessee. For example:

- A Memphis resident sends a package to her sister in Kingsport via Delivery Company, a common carrier. The delivery or freight charge by Delivery Company is not a taxable service in Tennessee, and no Tennessee sales tax is due on the charge for the delivery service.

Delivery Charges for Direct Mail

Delivery charges, including postage and mailing services, for direct mailing of printed materials to a mass audience or to addressees on a mailing list provided by a customer are not subject to sales and use tax if the delivery charges are separately itemized on the invoice and the recipients of the printed materials are not charged for the printed materials.[356] For example:

- A print shop sells 1,000 coupon booklets for $500 and mails the booklets to Tennessee addressees on a mailing list provided by the customer. The print shop itemizes on the customer's invoice an additional $350 for postage and $100 for preparing the booklets for mailing. The postage and preparation charges are itemized delivery charges for direct mail and are not part of the total sales price. The total sales price subject to Tennessee sales and use tax is $500.

Allocation of Delivery Charge Between Taxable/Nontaxable Items

If a single delivery charge is made for a shipment that includes both taxable and nontaxable tangible personal property or services, then the seller or purchaser must allocate a percentage of the delivery charge to the taxable tangible personal property or service to include in the amount that is subject to sales or use tax.

The seller or purchaser should allocate delivery charges for combined shipments using:

- A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or
- A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The following example includes an allocation of delivery charges based on the sales price and based on the weight of all property in the shipment.

Sales Price and Single Article

		State	SSA @ 2.75	Local @ 2.25	Total			
Invoice 1	**Installation is for 1 generator**					**No Allocation of Delivery Charges is Needed**		
1 generator	8,800.00	9,500.00	1,600.00	1,600.00				
freight	500.00							
installation	200.00							
	9,500.00	9,500.00	1,600.00	1,600.00				
Sales tax		665.00	44.00	36.00	745.00			
Invoice 2	**Installation is Separately Charged for Each Article**					**Allocation of Delivery Charges Based on Weight**		
						Weight	%	Freight
1 generator	4,800.00	5,426.67	1,600.00	1,600.00		400	53.33%	426.67
installation of generator	200.00							
1 cooling tower	3,100.00	3,620.00	1,600.00	1,600.00		300	40.00%	320.00
installation of cooling tower	200.00							
1 small generator	200.00	453.33		453.33		50	6.67%	53.33
installation of sm generator	200.00							
freight	800.00							
	9,500.00	9,500.00	3,200.00	3,653.33		750.00	100%	800.00
Sales tax		665.00	88.00	82.20	835.20			
Invoice 3	**Installation for 3 Articles is Bundled**					**Allocation of Delivery Charges Based on Sales Price**		
						Price	%	freight
1 generator	4,800.00	5,274.07	1,600.00	1,600.00		4,800	59.26%	474.07
1 cooling tower	3,100.00	3,406.17	1,600.00	1,600.00		3,100	38.27%	306.17
1 small generator	200.00	219.76		219.75		200	2.47%	19.75
freight	800.00							
installation	600.00	600.00		600.00				
	9,500.00	9,500.00	3,200.00	4,019.75		8100	100.00%	800.00
Sales tax		665.00	88.00	90.44	843.44			

*Installation charges by the seller of tangible personal property is part of the sales price of the property.
*Delivery charges by the seller of tangible personal property are part of the sales price of the property.
* Delivery charges may be allocated at the seller's option based on weight or sales price.

7. Installation Charges

Charges for the installation of tangible personal property or computer software, when such installation is furnished in conjunction with the sale of the tangible personal property or computer software, are part of the sales price or purchase price of the tangible personal property or computer software, even if separately itemized. This applies to installation services for tangible personal property that remains tangible personal property after installation. See Chapter 12 of this manual for a more thorough discussion of how to determine when tangible personal property remains tangible personal property after installation.

8. Services Necessary to Complete Sale

Services necessary to complete the sale are taxable as part of the selling price. For example:

- A telecommunications company purchases telephone central office power, transmission, and switching equipment for its central offices. In addition to this equipment, the company also purchases system engineering services which include

determining how to connect the equipment, maintaining updated records of equipment configuration, determining the compatibility of the proposed equipment to existing equipment, and preparing detailed specifications that instructed the installers how to install the equipment. Without the engineering services, the final product of a fully operational central office could not be accomplished, therefore, such engineering services would be included in the sales price.[357]

- A mandatory tip when purchasing a meal at a restaurant is a charge for a service necessary to complete the sale and is included in the sales price.[358]

9. Trade-in Credit

Trade-in Credit – In General

Any time a used item of tangible personal property is traded in as a partial payment towards the purchase of another *like kind* item of tangible personal property ("trade-in credit"), the sales tax on the purchased item is calculated by taking the sales price of the purchased item and subtracting the credit received for the traded-in item.[359] This applies to all trade-ins of tangible personal property. Please see Chapter 21 for a thorough discussion of the trade-in credit.

10. Discounts

Cash Discounts

Cash discounts taken by buyers **are not included** in the sales price. This would apply to discounts allowed if payments are made by cash or discounts allowed if payments meet certain discount terms. For example:

- A customer is offered a cash discount on goods purchased on credit from a merchant to incentivize early payment of the customer's account. The sales price of the goods without the cash discount applied is $2,500. The discount terms indicated on the customer's invoice are as follows—1/15, net 30—indicating that the customer will receive a 1% discount if they pay the invoice within 15 days; otherwise, payment is due within 30 days. The customer takes the discount and pays the invoice within 15 days. The amount subject to sales tax is $2,475 ($2,500 sales price - $2,500 x 1% cash discount).

In-Store Coupons and Seller Discounts

In-store coupons and seller discounts **are not included** in the sales price. The seller provides the item for the discounted price, which is the total consideration given by the buyer. The discount is not included in the sales price since the seller is not reimbursed for the discounted amount.

Manufacturer's Coupons

Manufacturer's coupons **are included** in the sales price for sales tax purposes. The seller is reimbursed the discounted amount by a third party (i.e., the manufacturer). The amount the seller will receive from the third party is known at the time of sale (when the purchaser presents a coupon to claim the price reduction). Therefore, the *total consideration* received by the seller, which includes the price paid by the consumer plus the reimbursement provided by the manufacturer, is the sales price.

Group Discounts

Group discounts given by a seller to members of an organization (e.g., a credit union) that are reimbursed by the third-party organization **are included** in the sales price for sales tax purposes.

Volume Discounts

Volume discounts are incentives paid to a seller for achieving a certain volume of sales within a period. They are not reimbursements by a third party for discounts that the seller may have given to purchasers. Therefore, they **are not included** in the sales price.

Advertising Incentives

Advertising incentive payments to a seller to cover the cost of advertising, shelf space, and similar types of promotional costs are not reimbursements directly related to discounts that the seller may have offered to purchasers and **are not included** in the sales price.

Tobacco Buydowns

Tobacco buydown payments **are not included** in the sales price of tobacco sold at retail.[360]

Mail-in Rebates

Mail-in rebate payments received by a purchaser directly from a third party (e.g., a manufacturer), upon the purchaser mailing proof of purchase to the third party, **are included** in the sales price.

Employee Discounts

Employee discounts offered by a seller to all its employees on sales of merchandise that are not reimbursed by a third party **are not included** in the sales price.

11. Credit Card Surcharges

Credit card fees charged by the seller are part of the sales price of the personal property or services purchased.[361] If the personal property or service is subject to tax, then the credit card fee, even if separately stated on the invoice or receipt, is part of the sales price or purchase price that is subject to tax. The credit card fee charged is for the seller's additional costs and expenses related to accepting credit card payments from purchasers.[362]

While Tennessee sales tax law includes a provision[363] for prorating separately itemized delivery charges based on either the sales price or weight of the items purchased, there is no such allocation provided for credit card fees.

A credit card fee that the seller charges the purchaser that is a flat fee (e.g., $15.00) should be considered part of the sales price of one or more of the taxable items purchased.

A credit card fee that varies based on the price of the items purchased (e.g., 2% of total payment) that is separately itemized on the invoice may be allocated to each of the items purchased based on the percentage of the sales price of each item to the total of the sales price of all items purchased. The percentage of the credit card fee allocated to taxable items is part of the sales price and included in the taxable amount for each taxable item purchased. The percentage of the credit card fee allocated to nontaxable or exempt items is part of the sales price of items that are not taxable.

12. Restocking Fees

Certain dealers charge a "restocking fee" when a consumer returns an item of tangible personal property. The restocking fee works where the dealer charges a certain amount to the consumer (for example 15% of the sales price) when that person returns the item. Tennessee does not impose sales or use tax on restocking fees or return fees that are not directly associated with the use of a return product because restocking fees are not a taxable enumerated service under Tennessee law.[364]

Furthermore, as the Department has previously stated in Letter Ruling 02-27, if merchandise is returned and a refund is given, the restocking service fee cannot be part of the sale of tangible personal property because no taxable sale occurred upon imposition of the restocking fee (i.e., this is a post-transaction fee). Moreover, the ruling states that the restocking fee is not taxable as part of a taxable sale of tangible property because with a merchandise return, a buyer is due a full refund of the amount of sales tax paid.

Therefore, dealers should refund the sales tax applicable to the fully refunded purchase price of tangible personal property even if the dealer charges a separate "restocking fee." If a dealer does not refund sales tax to the consumer when it refunds the purchase price, the dealer is not entitled to a reimbursement or credit for sales from the Department.

Bundled Transactions and the True Object Test

Whenever two or more items are sold for a single sales price and at least one of the items is subject to sales tax, the entire sales price is subject to sales tax. This sales tax principle is found in case law and the definition of sales price which includes "the value of exempt personal property given to the purchaser where tax and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise."[365] Tennessee case law indicates the bundle transaction principles also apply to transactions that include services and digital property.

In addition, there are specific statutes that address the taxation of bundled transactions involving internet access, telecommunications services, ancillary services, internet access, and audio or video programming services such as cable, wireless cable, broadband television programming or direct-to-home satellite television programming services. See Chapter 17: Telecommunications, Ancillary Services and Television Programming Services for more information concerning this topic.

When transactions do not readily lend themselves to classification as either taxable or nontaxable, Tennessee courts have focused on the true object or primary purpose of the activity or business at issue. When a transaction involves taxable and nontaxable components and the transaction's true object or a "crucial,[366]" "essential,"[367] "necessary," "consequential," or "integral" element of the transaction is subject to sales tax, the entire transaction is subject to the tax.[368]

Only if the true object of the transaction is not independently subject to sales tax and the items that would be subject to sales tax are "merely incidental" to the true object of the transaction, will the transaction not be subject to sales tax.[369] For instance, the use of a compact disc (CD) could be merely incidental to the true object of the sale, which was the nontaxable service to transfer intangible data.[370]

1. True Object Test Application

A totality of the facts and circumstances are considered to determine the true object of the transaction. If the true object or primary purpose of a transaction would independently be taxable, then the true object and any "crucial, "essential," "necessary," "consequential," or "integral" elements of the transaction will be subject to sales tax. In addition, if a taxable component of a transaction is "crucial," "essential," "necessary," "consequential," or "integral," the transaction will be subject to sales tax even if the true object of the transaction is not independently subject to sales tax.

A "mixed transaction" is generally understood to be a transaction involving the inseparable transfer of tangible personal property along with a service, where at least one aspect of the transaction is independently taxable. For example, a transaction involving the commission of

an artist to paint a portrait could be characterized as either the provision of services or the sale of tangible personal property. Tennessee generally does not impose a tax on the service of painting portraits, but it does impose tax on a portrait because it is tangible personal property. Since the sales tax treatment turns on the characterization of the transaction, courts look to the true object of the transaction to determine its real character.

In the transfer of tangible personal property in association with a sale of intangible property, there may be characterization issues because intangible property rights are generally not subject to sales tax in Tennessee. For example, the sale of a discount card that entitled its bearer to future discounts on merchandise was found to be not subject to sales tax because, even though tangible personal property in the form of the discount card was transferred to the customer, the true object of the transaction was really the purchase of an "intangible right" that was not subject to sales tax.[371]

When services are difficult to classify, the true object test may be used to properly establish if services are taxable. For example, when service providers perform activities previously performed by internal employees, the question arises as to whether characterization of the service should be limited to what the service provider claims to provide, or should it be properly characterized according to the true object of the customer's broader operation for which the service is rendered. More specifically, a staffing company provides temporary workers for its client to assist with repairing tangible personal property. Under Tennessee law, the provision of temporary workers is not a taxable service, but repairing tangible personal property is a taxable service; so, the true object of the transaction must be determined before classifying the transaction.

2. Examples of True Object Test

Letter Rulings 14-10 and 17-17 discuss the true object test. The following examples are based on those rulings and referenced cases.

True Object Test in Relation to Equipment Lease

A service provider leases equipment to its customers in addition to providing a taxable service. The issue is whether the purchase of the equipment by the service provider is classified as exempt as a "sale for resale." In this example, the relevant facts are:

- The taxable service and equipment lease are separately itemized on the customer's invoice.
- Customers do not have to rent the service provider's equipment to receive the service. However, if they do rent the service provider's equipment, they must use the provider's service. In other words, the service provider is not in the business of renting equipment for general use by the public.

- The leased equipment in the hands of the customer is without value except in connection with the service.

Identifying the ultimate consumer is key to establishing if the equipment purchase may be properly classified as a sale for resale.[372] In this example, the service provider is the ultimate consumer of the equipment primarily because the leased equipment was of no value to the customer without being used in conjunction with the taxable service.[373] The primary function and purpose of the service provider was to provide its service, not lease equipment. The service provider's purchase of equipment to lease to its customers was necessary for it to deliver its services. For these reasons the service provider, not its customer, is the ultimate user or consumer and the equipment purchase is not exempt.

True Object Test in Relation to Equipment Lease – Sale for Resale

This example is similar to the previous one, except that the equipment purchased by the service provider for lease to its customers qualifies for the "sale for resale" tax-exemption because the ultimate consumer is the customer and not the service provider.[374]

In this example, the service being sold requires customers to acquire equipment to access the related service. The equipment may be purchased or leased from the service provider or from others. Unlike the previous example, the equipment has a value to the customer apart from its use in obtaining the service provided by the service provider. The equipment purchased by the service provider is for the primary purpose of leasing to its customers rather than for enabling the sale of its associated service. The fact that the equipment has a value to the customer beyond access to the service and that the service provider's leasing enterprise went beyond the mere enabling of its service supports the argument that the customer is the ultimate consumer. As such, the sale of the equipment to the service provider is exempt, as a "sale for resale" when properly documented.

True Object Test Involving Computer Software

An instructor-led webinar enterprise provides its customers with access to live lectures by means of a computer. As part of its webinar, the taxpayer provides its students with web-based access to its platform where the students can select and pay for a specific course. The Taxpayer's platform constitutes computer software for Tennessee sales and use tax purposes, and the platform is accessed by the Taxpayer's students from locations within Tennessee. At issue is if access to the platform is a taxable purchase of software.

In this case, the student's use of the platform software is merely incidental to participating in the live class. The platform software simply provides access to a real time presentation where the student can interact with the instructor and view course material. After gaining access, the student is not interacting with a computer program, but instead interacts with

the instructor and other students. The platform only facilitates course instruction between the students and instructor, and it is merely incidental to the webinar.

The true object test finds that the student is not purchasing use of the software, but is, instead, purchasing access to a training class. The training class itself is not a taxable service,[375] so the instructor-led webinars are not subject to the sales and use tax.[376]

Chapter 12: Tangible Personal Property vs. Realty

Overview

Generally, all tangible personal property is subject to the sales and use tax unless it is specifically exempt by law. "Tangible personal property" is defined as "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses." It includes electricity, water, gas, steam, and prewritten computer software, but it does not include signals broadcast over the airwaves, stocks, bonds, insurance, or other securities.[377]

Further, sales of installation, cleaning, and repair of tangible personal property are taxable, including sales of these services that are performed out of state on tangible personal property where the serviced property is shipped or delivered into Tennessee for use or consumption.[378] However, although real property can be seen or touched, real property is not subject to tax in the same manner as tangible personal property. The sale, cleaning, or repair of real property or any installation of property that becomes a fixture (property that becomes attached to realty) is not subject to the sales and use tax.[379] Instead, the person or entity installing property that becomes a fixture, cleaning, or repairing the real property is subject to sales or use tax on the property being installed and any materials used in the installation, cleaning, or repair.[380]

Realty vs Tangible Personal Property

Real property is that which is immovable, such as land, buildings, improvements to same, and even some firmly attached or integrated structures like light fixtures. There are times when it is difficult to determine whether an item is real property or tangible personal property. The issue of whether an item of tangible personal property becomes part of realty depends upon the application of the common law of fixtures to the factual circumstances.[381]

1. Intent of the Parties

The question of when an item is considered a fixture is resolved by ascertaining the intent of the parties.[382] The following questions aid in ascertaining the parties' intent: do the parties intend the property to be moved at will or to remain in the same location for its useful life; how is the property depreciated; if a contract is involved, such as a financing agreement or a lease, does the contract indicate an intention for the property.

As the Tennessee Supreme Court stated, "only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold."[383] Therefore, if the property is "intended to be removable at the pleasure of the owner, it is not a fixture."[384] However, when personal property is

installed upon real property pursuant to a non-ownership interest in the real property, such as a lease or easement, Tennessee courts have determined that the key question becomes whether the parties intend that the owner of the property being installed has the ability to remove the property from the land, asking whether the installed property remains "separate and apart from the freehold."[385]

If the property is intended to be removable at the pleasure of the owner, it is not a fixture.[386] Objective factors typically help illustrate such intent.[387] Objective factors include the factors below.

2. Objective Factors

Below are the types of questions that may be asked to make an object determination as to whether the property is tangible personable property or a fixture.

Use and Purpose of the Property

- Was the property designed and constructed to be permanently attached, or was it designed for temporary installation?
- Is the property custom made according to location?

How the Property is Attached or Affixed

- Is the property in question attached with a few screws, welded onto the structure, built into the structure, or cemented into the ground?
- How difficult is it to remove the property (consider time, cost, and ease of removal)?

How the Property is Removed

- If the property were removed, would there be significant damage to the remaining property, or would the remaining property stay intact?
- Would there be a hole in the ground that would require filling or a large hole in the building that would need to be repaired?
- Would the property being removed be damaged upon removal, and if so, to what extent?
- Would removal of the property destroy its essential character as personality?

Courts have also found that tangible personal property becomes a part of realty if removing the property would seriously damage the building to which it is affixed.[388] Further, courts have held that tangible personal property is more akin to a fixture if removal would destroy its essential character as tangible personal property.[389]

The determination of whether property becomes part of the realty upon installation or remains tangible personal property must be made on a case-by-case basis. Inquiries as to intent and attachment must be made each time. There may also be instances when an actual inspection of the property in question is warranted.

Examples of Tennessee Case Law

- *Harry J. Welchel Company v. King,* 610 S.W.2d 710 (Tenn. 1980). The Tennessee Supreme Court analyzed the intent and objective factors noted above of farmers who purchased and installed grain bins. The Court concluded the grain bins at issue were personalty (i.e., tangible personal property).[390] Although the bins were large in size and bolted to a concrete base, the Court found they were attached to the concrete base only to prevent them from blowing over in a high wind when empty.[391] Additionally, the farmers financed the bins as personal property, sold the bins at foreclosure as personal property, and installed the bins on leased farms.[392]

- *Keenan v. Fodor*, No. M2011-01475-COA-R3CV, 2012 WL 3090303 (Tenn. Ct. App. July 30, 2012). The Tennessee Court of Appeals found a large ornamental gate remained personalty despite having a substantial concrete foundation poured for its support that would leave craters if removed.[393] The court lent greater significance to the person's stated intent that the gate would be moveable and that it was designed to be moveable.[394]

- *Hubbard v. Hardeman County Bank,* 868 S.W.2d 656 (Tenn. Ct. App. August 24, 1993). The Tennessee Court of Appeals held that two one-story branch bank buildings were personal property.[395] The court relied on the fact that the leased buildings were constructed to be portable, such that they could be moved or sold as market conditions or need for the buildings changed, and the leases expressly provided the buildings were not to become fixtures.[396]

- *Gen. Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241 (Tenn. 1974). The Tennessee Supreme Court examined carpet that was laid using the tackless strip method making it easily removable.[397] The Court found the carpet became realty because the parties installed it with the intent that it remains in place for the length of its useful life. The method of installation simply allowed for easy replacement of the carpet when it was worn out.[398]

- *Process Systems, Inc. v. Huddleston,* 1996 Tenn. Ct. App. Lexis 695 (Tenn. Ct. App. October 25, 1996). The Tennessee Court of Appeals found that removal of a conveyor system would damage the building where it was installed and would destroy the system's essential character.[399] Accordingly, the court held the conveyer system was an improvement to real property.[400]

- *Herman Holtkamp Greenhouses, Inc. v. Metropolitan Nashville and Davidson County,* No. M2009-003450COA-R3-CV, 2010 WL 366697 (Tenn. Ct. App. Feb. 2, 2010). The Tennessee Court of Appeals found the taxpayer's greenhouses became realty upon installation. The court based its decision on the greenhouses' large square footage, built-in restrooms and lunchrooms, and concrete tunnels.[401] The court expressed that each of these facts reflected an intention that the greenhouses remain permanently installed on the property.[402]

- *Magnovox Consumer Electronics v. King,* 707 S.W. 2d 504 (Tenn. 1986). The Tennessee Supreme Court analyzed whether fuel tanks mounted on a concrete pad and secured by four metal rods that protruded out of the concrete up the side of the tank to keep it from shifting became part of the real property. The tank could be moved but would have to be moved "as if it were a building," because the tank was connected to a building by a steel pipe. The Court held that the tank was a fixture (realty). The Court distinguished from *Welchel* outlined above because in that case, the grain bins were easily disassembled and of far less capacity than the fuel tank. Also, the grain bins were not attached to any other structure, and there was no indication that the bins were intended to be permanent.

Administrative Examples

The Department has administratively opined on whether the following items are tangible personal property or become realty upon installation. This list, however, should not be relied upon exclusively because, as mentioned above, this is a highly fact driven analysis.

- Air Conditioners
    - Window air conditioners can be removed or replaced easily and are tangible personal property. Central air conditioners in HVAC systems are not easily removed and are improvements to real property.
- Curtain Rods
    - Curtain rods purchased from the general inventory at stores remain tangible personal property upon installation. Window treatments that are custom made for a specific customer and installed by the seller become real property upon installation.[403]
- Custom Shutters,[404] Custom Awnings,[405] and Custom Carports and Garages
    - All these items are considered affixed to realty upon installation.
- Glass windows
    - Glass windows are considered affixed to realty upon installation.[406]

- Underground Storage
    - Underground gas tanks become affixed to realty upon installation.
- Swimming Pools
    - Above ground swimming pools installed 6-8 inches below ground on sand and concrete remain tangible personal property,[407] and in-ground swimming pools and spas become affixed to realty upon installation[408] On-ground swimming pools, also known as semi in-ground swimming pools become affixed to realty upon installation.
- Fire Prevention Sprinkler Systems
    - These systems become a part of realty.[409]
- Floating Boat Docks
    - These generally become a part of realty upon installation.[410] Both the TVA and the Army Corps of Engineers require owners of floating boat docks/slips to obtain a boat dock permit before it is built and installed. A dock permit never expires and is not renewable, indicating an intent of permanency. Although it is usually possible to move such docks, it is unusual given the regulations set out by the TVA and the Army Corps of Engineers.

Restaurant Equipment

Restaurant equipment that is intended to be removable and capable of being relocated and used elsewhere if a restaurant changes location remains tangible personal property after installation. Removal of restaurant equipment generally does not destroy the equipment or damage the realty. Common examples include free standing ovens, free standing refrigerators and freezers, deep fryers, microwaves, coffee machines, soda machines, warming equipment, mixers, bar coolers, ice cream freezers, etc. The sale, installation, and repair of this type of restaurant equipment are subject to sales and use tax.

The sale and installation as well as the repair of restaurant equipment that becomes part of realty upon installation are not subject to sales and use tax. The party installing or repairing the restaurant equipment must pay sales tax on its purchase of the property being installed or the repair parts. Common examples include built-in pizza ovens, walk-in freezers, and coolers that are part of the building structure, exhaust fans, vent-a-hoods attached to the realty, etc.

Below is a non-exclusive list of common restaurant equipment and property and the proper classification that could generally be applied to them.

Items Remain TPP Upon Installation	Items Become Real Property Upon Installation
Cooking Equipment Char broiler Coffee maker Crepe maker Deep fryer Griddle Grill Hot dog rollers Microwave Oven (freestanding, countertop electric, convection, non-built-in pizza oven, conveyor style oven) Range (freestanding) Steamer Toaster Vent hood (removable; see Letter Ruling #99-33) Waffle maker Warming and holding equipment Rice cooker	Built-in pizza ovens (e.g., wood-fired brick, gas, electric) Built-in range (e.g., slide-in) Built-in exhaust fan (e.g., roof-mounted) (does not include filters)
Refrigeration Equipment Bar refrigerators and coolers Beverage dispenser Ice cream machine Reach-in freezer Reach-in refrigerator Refrigerated display cases (freestanding) Salad and sandwich refrigerated prep table Soda fountain machine Under-counter and countertop refrigerators Walk-in coolers and freezers (self-contained)	Built-in refrigerated display cases (e.g., walk-in glass door beer cooler) Built-in walk-in coolers and freezers (e.g., beer cave, room in building)
Other Restaurant Equipment Blender Booth seating Chairs and bar stools Cutlery and knives Dining tables Dish washer Food processor Juicer Meat grinder Mixer Proofer cabinet Slicer	Custom built-in booth seating

Pipeline and Railroad Components

The sales and use tax definition of "tangible personal property" specifically excludes certain pipeline and railroad components.[411]

1. Installation of Pipelines

Installation of mains, pipes, pipelines, and tanks is exempt from sales and use tax. These items are considered realty once they have been attached to a building or other structure or after they are installed underground to conduct steam, heat, water, wastewater, oil, electricity, gas, or any other property, substance, or product that is capable of transportation or conveyance or protected as a result. While the installation of mains, pipes, pipelines, and tanks is exempt from sales and use tax, the initial purchase of these materials remains subject to sales and use tax.

Installation of the following items that remain tangible personal property once installed is subject to sales and use tax: propane tanks for residential use and above-ground storage tanks that can be moved without disassembly and are not affixed to the land.

2. Installation of Railroads

Installation of railroads, railroad structures, substructures, superstructures, tracks, and the metal on these structures is exempt from sales and use tax. These items are considered realty once installed. Installing branches, switches, and other improvements made in, upon, or under public or private property are also exempt from sales and use tax as they are considered realty once installed.

3. Unattached Pipeline and Railroad Components

The purchase of pipeline and railroad components before the items are installed remain subject to sales and use tax. Additionally, a contractor that installs such components remains liable for contractor's use tax on the component if the contractor did not pay sales tax when purchasing said components.

Fiber-Optic Cable

For sales and use tax purposes, fiber-optic cable is not considered tangible personal property after it has been attached to a utility pole, building, or other structure or has been installed underground.[412]

The installation of fiber-optic cable is also exempt from sales and use tax. The lease of fiber-optic cable is exempt from sales and use tax if the following criteria are met:

- The lease is for "dark" fiber-optic cable, meaning the lessor does not provide telecommunication services in connection with the lease: and
- The lease is for fiber-optic cable that has already been attached to a utility pole, building, or other structure or installed underground.

However, the purchase of fiber-optic cable before it is installed is subject to sales and use tax. Additionally, a contractor that installs fiber optic cable is liable for contractor's use tax on the cable if sales or use tax was not paid on the original purchase.

Chapter 13: Computer Software

Historical Overview

Prior to 1977, Tennessee considered sales of computer software to be sales of intangible personal property. In 1977, the General Assembly amended the definition of "tangible personal property" to specifically include computer software in response to the Tennessee Supreme Court's holding to the contrary in *Commerce Union Bank*, 538 S.W.2d at 408.[413]

In 2015, in response to advances in technology that allow persons to remotely access and use software over the internet, the Tennessee General Assembly adopted into law 2015 Tenn. Pub. Acts Ch. 514, § 22. This law effectively treats all uses of computer software in this state equally, regardless of how a person accesses the software. It amended Tenn. Code Ann. § 67-6-231(a) to include a new subdivision (2), which states in pertinent part that:

> [f]or purposes of subdivision (a)(1), "use of computer software" includes the access and use of software that remains in the possession of the dealer who provides the software or in the possession of a third party on behalf of such dealer. If the customer accesses the software from a location in this state as indicated by the residential street address or the primary business address of the customer, such access shall be deemed equivalent to the sale or licensing of the software and electronic delivery of the software for use in the state.

As a result, the access and use of computer software in this state, which has generally been subject to tax since 1977, remains subject to sales and use tax regardless of a customer's chosen method of use.

Sale of Computer Software

The retail sale, lease, licensing, or use of computer software in Tennessee is subject to sales and use tax.[414] A "sale" includes "the creation of computer software on the premises of the consumer and any programming, transferring, or loading of computer software into a computer" in Tennessee.[415] Computer software is subject to sales and use tax regardless of the medium of transfer or delivery of the computer software in Tennessee. Common methods of delivery include discs, tapes, CD ROM, electronically, internet downloads, load and leave, and programming or installation on computers in this state.

Tennessee's taxation of computer software has evolved as methods of accessing and using software have changed. Provisions of the Revenue Modernization Act went into effect July 1,

2015, and provide that computer software that remains in the possession of the seller that is remotely accessed and used from locations in Tennessee is subject to sales and use tax.[416]

1. Computer Software

"Computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.[417] Computer software includes customized and prewritten computer software. Prior to January 1, 2008, both customized and prewritten software were defined as tangible personal property. However, effective January 1, 2008, the definition of tangible personal property only includes prewritten computer software.[418]

Customized Computer Software

Customized computer software is software designed and developed to the specifications of a specific purchaser. Customized software is not subject to the single article local tax limitation and additional single article state tax. By its nature, customized software is designed specifically for the need of an individual customer. There is neither a common understanding of the customized software as a separate unit, nor is it subject to a common unit of measure. Moreover, the single article cap does not apply to the sale of services, such as technical support.[419]

Prewritten Computer Software

Prewritten computer software is software, including prewritten upgrades, that is *not* designed and developed by the author or other creator to the specifications of a specific purchaser.[420] Prewritten computer software is software designed for use by multiple purchasers. Prewritten computer software is not custom computer software. Prewritten software includes:

- Computer software that was originally designed as customized software but is subsequently sold to a purchaser it was not designed for;
- Prewritten upgrades designed to modify or enhance previously purchased prewritten computer software; and
- The combination of two or more "prewritten computer software" programs or prewritten portions or modules.[421]

Both prewritten and customized computer software are taxable in Tennessee if provided:

- Via remote access to a customer located in Tennessee.

- On a tangible storage medium, e.g., disks and tapes, to the customer in Tennessee.
- By loading and leaving on the customer's or the customer's designee's computer in Tennessee.
- By electronic delivery, e.g., download, to the customer's or the customer's designee's computer in Tennessee.
- By programming it into the customer's or the customer's designee's computer in Tennessee.

Modifications and Enhancements

Modifications or enhancements to customized or prewritten computer software are sales of computer software and are subject to sales and use tax.

2. Remotely Accessed Software

Remotely accessed software remains in the possession of the seller or a third party on behalf of the seller and is accessed and used from locations in Tennessee by the purchaser or purchaser's users (e.g., employees). The location where remotely accessed software is installed or hosted is immaterial. Remotely accessed software is not downloaded or otherwise delivered to the purchaser or installed on the purchaser's computer. Access and use of such software by users from locations outside Tennessee are exempt from tax. If the purchaser has users located in the state and outside of the state that access and use such software, the sales price of the software may be allocated to claim an exemption for the out-of-state portion of the sales price.[422]

Software Accessed from Locations Both Inside and Outside Tennessee

A purchaser of remotely accessed software that is accessed and used from locations both in and outside of Tennessee may provide its seller with a fully completed Remotely Accessed Software Direct Pay Permit. The purchaser must include on the permit its Tennessee sales and use tax account number that will be used to directly report and pay the Tennessee tax. If the Tennessee purchaser is not registered for sales and use tax purposes, the purchaser may use the Streamlined Sales and Use Tax Certificate of Exemption, which must include its federal identification number, to claim exemption for the portion of the price that corresponds to the percentage of users located outside Tennessee. The seller must then collect tax on the portion of the price that corresponds to the percentage of users in Tennessee. A purchaser may not use, and a seller may not accept, a Remotely Accessed Software Direct Pay Permit for computer software transferred or delivered to and possessed by the purchaser or the purchaser's designee.[423]

Software that Remains in Possession of Dealer

With respect to the taxable use of computer software in this state that remains in possession of the dealer, Tenn. Code Ann. § 67-6-231(a)(2) requires the access and use of the computer software by a customer within this state. However, Tenn. Code Ann. § 67-6-231(b) clarifies that the application of the sales and use tax to remotely accessed software does not make otherwise nontaxable services subject to tax. Tenn. Code Ann. § 67-6-231(b) specifically states that "information or data processing services" and "the storage of data" remain nontaxable for Tennessee sales and use tax purposes. This subsection, however, is not all encompassing. Please see the following sections of this manual for more information on the taxability of computer software.

Sales Price/Purchase Price of Computer Software

Sales price is the total amount for which an item is sold. It includes labor and service costs of the seller as well as charges for services necessary to complete the sale.[424] Charges for consulting or other services that contribute to the creating, designing, developing, fabricating, programming, altering, or modifying of computer software are labor or service costs of the seller and/or services that are necessary to complete the sale of the computer software. As a result, such charges are subject to tax when made as a part of the sale of computer software, even when the service charges are separately itemized or invoiced by the seller of the computer software. Installation services provided by the computer software seller are part of the sales price of the computer software even when the installation services are separately itemized or invoiced by the computer software seller.[425]

Travel Reimbursement

Amounts paid by the seller for travel, lodging, meals, etc. that are reimbursed by the purchaser are expenses of the seller and as a result are part of the sales price of computer software or installation of software.

Services

1. Nontaxable Services

The taxation of remotely accessed software does not affect the taxation of enumerated services. Sales tax only applies to services specifically enumerated in the law. Services that are not subject to tax remain nontaxable, regardless of the method of delivery. The law specifically mentions certain nontaxable services, making it clear the taxation of services is unaffected by the taxation of remotely accessed software. Such nontaxable services include, but are not limited to:

- Information or data processing services, including the capability of the customer to analyze such information or data provided by the dealer.
- Payment or transaction processing services.
- Internet access.
- The storage of data, digital codes, or computer software.
- The services of converting, managing, and distributing digital products.

True Object Test

When two or more items are sold for a single sales price and at least one of the items is subject to sales tax, the entire sales price is subject to the sales tax as a bundled transaction.[426] When a transaction involves taxable and nontaxable components and the transaction's true object or a "crucial," "essential," "necessary," "consequential," or "integral" element of the transaction is subject to tax, the entire transaction is subject to sales tax.[427] If the true object of the transaction is not independently subject to sales tax and the items that would be subject to sales tax are "merely incidental" to the true object of the transaction then the transaction is not subject to sales tax.

The true object of the service does not change merely because an online portal (computer software) is used by the customer to access and use information or data processing services, payment or transaction processing services, or data storage and retrieval services. [428]

Using otherwise taxable items to furnish a service, e.g., the nontaxable services, does not subject the transaction to sales and use tax, if the primary purpose, i.e., true object, of the sale is nontaxable.[429] For example:

- A company offers a business process outsourcing package ("package") to clients that includes both the provision of management services and access over the internet to proprietary software. However, the clients' access of the software is merely incidental or secondary to the primary purpose of outsourcing the clients' management operations. The value of the package is in avoiding the need to use the software, and the company is the ultimate user of the software. Thus, the true object of the transaction is the provision of nontaxable services. Accordingly, the business process outsourcing package is not subject to the Tennessee sales and use tax.[430]

For a full analysis of how sales tax applies to services, see Chapter 5 of this manual.

2. Installation and Repair Services

Taxable services relating to computer software include repair/maintenance of computer software and installation of computer software.[431] Stand-alone charges for these services by a third party that is not the seller of the computer software are subject to tax.

There is an exemption from sales tax for installation and repair services of computer software that are rendered by a company for an "affiliated company."[432] For the purpose of this exemption, companies are "affiliated" only if:

- Either company directly owns or controls 100% of the ownership interest of the other company; or

100% of the ownership interest of both companies is owned or controlled by a common parent.[433]

Use Tax on Installation and Repair of Computer Software

Effective July 1, 2024, remote sellers must collect Tennessee use tax on sales of services performed out of state for repairing or installing computer software. If the remote seller does not collect Tennessee tax, the Tennessee purchaser must remit use tax on the purchase price of such repair or installation. The installation or repair of computer software is subject to use tax when the following requirements are met:

- The installing or repairing occurs at a place of business outside of Tennessee, and
- the serviced computer software is delivered by the seller to the purchaser or purchaser's designee within Tennessee or to a carrier for delivery to a place in Tennessee for use or consumption within this state.[434]

3. Computer Software Configuration and Training

Tennessee does not specifically impose sales tax on training or software configuration. Software configuration is a means of setting pre-defined toggles or switches and/or building tables that give direction or define values of parameters within the software.

Training and software configuration services provided by the seller in conjunction with the sale of the computer software or installation of computer software that ***are*** separately itemized may be subject to tax as a part of the sales price of the computer software or installation services when such services are necessary to complete the sale of the computer software or installation of computer software.

Stand-alone training or software configuration services provided by a third party are not subject to sales tax.

Training and software configuration services that are not separately itemized from the sales price of computer software or installation of computer software are part of the sales price of the software or installation and subject to tax.

Single Article

Prewritten computer software qualifies for the single article local tax limitation and is subject to the additional state tax imposed on single articles of tangible personal property. A separate prewritten computer software application or module that is sold by itself, without any other computer software application or module bundled with it and sold for one price, will qualify as a single article of prewritten computer software. This applies regardless of how the software is delivered, whether downloaded or remotely accessed.

Customized modifications to prewritten computer software that are not separately itemized are included in the sales price of prewritten computer software and qualify for single article taxation. However, when multiple prewritten computer software products, components, or modules are packaged or bundled and sold for a single sales price, the single article local tax limitation and additional single article state tax does not apply. Instead, local tax applies to the entire bundled price of the prewritten computer software products.[435] For example:

- A computer software company that offers business consulting services and software application development entered into a licensing agreement with another company whereby the computer software company would provide customized software and services. This licensing agreement would not be subject to the single article limitation. The agreement includes both customized software and services, both of which are not subject to the single article cap.

Only the first $1,600 of the sales price of prewritten computer software is subject to the applicable local sales tax. An additional state single article tax at the rate of 2.75% is due on the amount of the sales price of prewritten computer software between $1,600.01 and $3,200. Beyond $3,200, no local tax or additional state single article tax is due on prewritten computer software. If prewritten computer software is sold pursuant to a software service agreement that requires multiple payments during the agreement period, the single article treatment described above will apply to the total of the service agreement payments. This calculation would be the same as the local tax single article calculation for leased tangible personal property. For information on leased tangible personal property, see Chapter 5 of this manual.

Because customized computer software is not defined as tangible personal property, the special state and local taxation for single articles of tangible personal property does not apply. Therefore, the entire sales price of customized computer software is subject to the local tax, and the additional state single article tax does not apply.

1. In-house Computer Software

There is a sales and use tax exemption for computer software that is fabricated, installed, and repaired by a person, its agents, or its "direct employees" for such person's own use and consumption.[436] Such computer software is often referred to as "in-house" computer software.

Use of software fabricated or programmed by "direct employees" of an ***affiliated company*** may also qualify for a use tax exemption; persons seeking this exemption must submit a letter to the Department requesting approval to qualify such software for the exemption.[437] A letter requesting approval of the exemption for using software fabricated or programmed by "direct employees" of the company itself is not required.

The "in-house" computer software use tax exemption ***does not*** apply to software fabricated or programmed by independent contractors or employees of an entity that is not the user and consumer of the software. Please note, however, that the extension covers *agents* of the person.

Whether a person is an independent contractor or agent will depend on the common law concepts of agency developed in the Tennessee court system. The primary test is whether the principal has a right to control the conduct of the agent with respect to matters entrusted to the agent,[438] such as programming, transferring, and loading computer software by employees of an entity engaged in the business of providing temporary manpower or staffing for clients where the clients exercise extensive/complete control over the staffing agency's employees.

Charges for training, telephone support, and help-desk services performed by temporary staffing employees, when such charges are separately itemized from the charges for programming, transferring, and loading of a client's computer software, are not subject to sales and use tax. In general, a support service agreement covers help desk and customer service support, basic usability of the software, and Q&A assistance with software functionality.[439]

2. Video Game Digital Products

The 7% state sales and use tax and the applicable local sales and use tax rate applies to any charges for the permanent or temporary right to access video game digital products, whether the charge is on a per use, per user, per license, subscription, or any other basis.

A video game digital product is defined in Tenn. Code Ann. § 67-6-102 as remotely accessed computer software (i.e., software that is accessed but not downloaded) that facilitates human interaction with a user interface to generate visual feedback for amusement purposes. A video game digital product is *not* defined as a specified digital product. However, the taxation of a video game digital product is included in Tenn. Code Ann. § 67-6-233 as another type of digital product that Tennessee taxes. The 2.5% special local tax rate on specified digital products does not apply to video game digital products.[440]

Use of Computer Software

Use tax applies to the use of computer software in Tennessee, including prewritten and custom computer software, regardless of whether the software is delivered electronically, delivered by use of tangible storage media, loaded, or programmed into a computer, created on the premises of the consumer, or otherwise provided. Use tax also applies to software that remains in possession of the seller and that is *remotely accessed* and used by the customer, or their users located in this state.[441]

The tax applies to any access and use of the software from a location in Tennessee, and it applies whether the charge for the software is on a per use, per user, per license, subscription, or any other basis. The software is accessed from a location in Tennessee if a customer's residential or primary business address is in this state. If the seller does not collect the tax, *purchasers in this state who remotely access and use software must report* and pay use tax directly to the Department on the purchase price for the use of the remotely accessed software.

1. Allocation of Purchase Price (Users Located in Multiple States)

If the purchaser pays for access to software that will be used by individuals who are located in this state and other individuals who are located outside this state (e.g., the purchaser's in-state and out-of-state employees), *then the price paid by the purchaser may be allocated* based on the percentage of users located in Tennessee to determine the amount subject to Tennessee tax. This may be done in one of two ways:

- If the purchaser is registered for Tennessee sales and use tax purposes, then it may use the Remotely Accessed Software Direct Pay Permit form to purchase the software without paying tax to the seller. The purchaser must then directly pay the

tax to the Department on the portion of the price that corresponds to the percentage of users located in Tennessee. The form must include the purchaser's Tennessee sales and use tax registration number.[442]

- If the purchaser is not registered for Tennessee sales and use tax purposes, then it may use a fully-executed Streamlined Sales Tax Certificate of Exemption to claim an exemption for the portion of the price that corresponds to the percentage of users located outside Tennessee. The seller must collect tax from the Tennessee customer on the percentage of the price that is allocated to Tennessee.
    - The Streamlined Sales Tax Certificate of Exemption must include the purchaser's federal identification number. In addition, under, "Reason for Exemption," the customer should check "Other" with an explanation such as, "remote access software used by employees located in multiple states" and specify the percentage of users located outside of Tennessee.
    - A purchaser that is registered for Tennessee sales and use tax purposes may use either the Remotely Accessed Software Direct Pay Permit to directly pay the tax or the Streamlined Sales Tax Certificate of Exemption to claim the exemption. A purchaser that is not registered for Tennessee sales and use tax purposes may only use the Streamlined Sales Tax Certificate of Exemption to claim the exemption for the portion of the price that corresponds to the percentage of users located outside of Tennessee.

2. Purchases with Resale Certificate

A dealer that purchases software exclusively for the purpose of providing remote access and use of that software to its customers may purchase the software without tax using a resale certificate.

3. Remotely Accessed Software Direct Pay Permit

A direct pay permit gives a taxpayer written permission to make all purchases free of the sales or use tax and to report all sales or use tax due directly to the Department.[443]

A purchaser of software, which remains in the seller's possession and is accessed and used from locations both in and outside of Tennessee, may provide its seller with a completed Remotely Accessed Software Direct Pay Permit to make the purchase without paying tax to the seller.[444]

For example:

- A purchaser of remotely accessed software that has employees who access the software from multiple states (both within and outside Tennessee) may use the permit. The purchaser must provide a separate permit for each remotely accessed software product purchased or an attachment to the permit that lists the software products to which the permit applies. The purchaser must then directly report and pay the sales or use tax to the Department on the portion of the price that corresponds to the percentage of users located in Tennessee.

Completion of Remotely Accessed Software Direct Pay Permit Form

The purchaser that is registered for sales and use tax purposes must include on the Remotely Accessed Software Direct Pay Permit form its Tennessee sales and use tax account number that will be used to directly report and pay the tax. A purchaser must not use, and a seller must not accept, the Remotely Accessed Software Direct Pay Permit if a Tennessee sales and use tax account number is not listed on the form.

A purchaser that is not registered for sales and use tax purposes may use the Streamlined Sales Tax Certificate of Exemption. The certificate must include the purchaser's federal identification number to claim an exemption for the portion of the price of the remotely accessed software that corresponds to the percentage of users located outside Tennessee. The seller must collect tax on the portion of the price that corresponds to the percentage of users in Tennessee.

Unacceptable Use of Remotely Accessed Software Direct Pay Permit

A purchaser may not use the Remotely Accessed Software Direct Pay Permit when purchasing computer software that is provided to the purchaser:

- On tangible storage medium (i.e., discs or tapes).
- By download.
- Through programming, loading, or installation on the purchaser's (or its designee's computer).

A seller must not accept the Remotely Accessed Software Direct Pay Permit for sales of software that is transferred or delivered to the purchaser using the above methods.

4. Remotely Accessed Software Used to Fabricate Software for Personal Use is Exempt

The remote access and use of software by the purchaser exclusively for *fabricating other software* that is owned and used only by that person is exempt from sales and use tax.[445]

Computer Software Maintenance Contracts

The sale of, use of, or subscription to a computer software maintenance contract in Tennessee is subject to sales and use tax.[446]

1. Definition of Computer Software Maintenance Contract

"Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair, or maintenance of computer software on the part of the seller.[447]

2. Software Maintenance Contracts Are Subject to Sales *and* Use Tax

If a purchaser buys a computer software maintenance contract in another state, and the seller does not collect tax on that purchase, the purchaser will owe use tax on the purchase price of the contract covering the computer software installed on computers located in Tennessee. It does not matter whether the purchase of the maintenance contract is mandatory with the purchase of computer software or if the purchase of the maintenance contract is optional and separately priced and invoiced.

Furthermore, if a seller collects another state's sales tax on the purchase of the contract, and the rate of the tax imposed is lower than the Tennessee sales and use tax rate, then the purchaser will owe use tax on the difference between the out-of-state tax paid and the amount owed based on the Tennessee sales and use tax rate. However, if the rate of the other state's tax is equal to or greater than the Tennessee sales and use tax rate, then the purchaser will not owe any additional use tax in Tennessee.

Purchases Subject to Use Tax

If no sales tax was paid on the retail sale of a computer software maintenance contract, the contract will be subject to use tax under the following circumstances:

- The computer software maintenance contract is sold as part of, or in connection with, a sale of computer software that is subject to Tennessee sales and use tax. For example:
    - A purchaser buys computer software in Tennessee from Tennessee Computer Software Dealer ("TCSD"). At the same time, the purchaser also buys a computer software maintenance contract that covers repairs of the software he is purchasing. TCSD charges Tennessee sales tax on the sale of

the software. The sale of the computer software maintenance contract is also subject to the Tennessee sales tax.

- The computer software maintenance contract applies to computer software installed on computers located in this state. For example:
    - A purchaser buys a computer software maintenance contract from Software Maintenance Contract Dealer ("SMCD"). The contract covers repairs to software that is installed on the purchaser's Tennessee office computer. The sale of the contract is subject to the Tennessee sales tax, and SMCD would collect and remit the tax. However, if the sales tax was not collected on the purchase, the purchaser would owe Tennessee use tax on the purchase price of the contract.
        - If there are computers located in and outside of Tennessee, under the contract, the user may *allocate* a percentage of the sales price or purchase price of the computer software maintenance contract that equals the percentage of computer software installed on computers located in Tennessee.
- The location of the computer software covered by the computer software maintenance contract is not known to the seller, but the purchaser's residential street address or primary business address is in Tennessee. For example:
    - Tennessee Purchaser ("TP") buys a computer software maintenance contract from Tennessee Software Maintenance Contract Dealer ("TSMCD"). The maintenance contract covers repairs of software that TP bought from another dealer. TSMCD does not know where the software is installed, but it does know that TP's primary business address is in Tennessee. The sale of the contract is subject to Tennessee sales tax.

3. Separate Sales of Support Services

Support services, referred to as telephone support services, that do not include any transfer, repair, or maintenance of computer software and are sold and invoiced separately from a computer software maintenance contract are not subject to tax. Generally, support service agreements cover help desk and customer service support, basic usability of the software, and Q&A assistance with software functionality.

Separate sales of support services are not subject to sales and use tax as part of the computer software maintenance contract if they meet all three of the following conditions:

- The seller sells the support services separately from the sale of the computer software maintenance contract;
- The purchaser is not required to purchase the support services to purchase the computer software maintenance contract; and
- The support services do not include the installation, transfer, repair, or maintenance, including updates and upgrades, of the computer software. For example:
    - A dealer sells computer software, computer software maintenance contracts and support service agreements. The *software maintenance* contract includes updates and fixes to the software, technical support, and installation services. The *support service* agreement covers help desk and customer service support, basic usability of the software and Q&A assistance with software functionality. Sales of the support service agreements are not subject to tax when they are sold separately from the computer software and the computer software maintenance contracts.

4. Single Article Tax Limitation Does Not Apply to Computer Software Maintenance Contracts

The total sales price for a computer software maintenance contract is subject to the state tax rate plus the applicable local tax rate. The local option single article tax limitation on the first $1,600 of the sales price of tangible personal property and the additional state single article tax does not apply to the sale or use of a computer software maintenance contract.

5. Software Installed on Computers Both Inside and Outside the State

When a computer software maintenance contract applies to computer software that is installed on computers located both inside and outside the state, then Tennessee sales or use tax is only due on the percentage of the sales price that correlates to the percentage of the software installed on computers in Tennessee. For example:

- A purchaser buys a computer software maintenance contract from a software maintenance contract dealer. The contract covers repairs to software that is installed on the purchaser's Tennessee office computer and on three of the purchaser's Florida office computers. The purchaser pays a $1,000 monthly subscription fee for the contract. Only $250, or 25 percent, of the monthly subscription fee would be subject to the Tennessee sales or use tax. The software maintenance contract dealer should include the monthly subscription fee of $1,000 on Line 1, Gross Sales of its

sales and use tax return. The amount that is not subject to Tennessee sales tax, $750, should be included in Schedule A, Line 7, Sales in Interstate Commerce.

6. Repairs

If sales or use tax is paid on the computer software maintenance contract, then no additional tax is owed on any repairs, maintenance, updates, or upgrades to the software that are performed as part of the contract. However, any repairs or maintenance to the software that are not covered by the contract will be subject to the sales tax.

Examples

- An individual purchases a maintenance contract from a computer seller that covers the purchaser's software. The purchaser's software has a glitch, and it must be repaired. The repair is covered by the maintenance contract, and the computer seller repairs the software at no charge. No sales tax is owed on the repair.
- An individual purchases a maintenance contract from a computer seller that covers the purchaser's software. The purchaser's software has been compromised due to a computer virus and must be repaired. However, because of the nature of the repair, the repair is not covered by the maintenance contract, so the computer seller charges $100 for the repair. Sales tax is owed on the $100 charge.

Chapter 14: Specified Digital Products

Specified Digital Products

Specified digital products are electronically transferred digital audio-visual works, digital audio works, and digital books.[448] The sale, lease, licensing, or use of specified digital products electronically transferred to or accessed by purchasers or subscribers in Tennessee is subject to sales and use tax.[449]

Taxable retail sales, leases, licensing, or use of specified digital products include:

- Specified digital products sold with rights of permanent use.
- Specified digital products sold with rights of less than permanent use.
- Specified digital products sold with rights of use conditioned upon continued payment by the subscriber or purchaser.
- Subscriptions to, access to or the purchase of a digital code for receiving or accessing specified digital products.[450]

1. Electronically Transferred

"Electronically transferred" means the purchaser obtains the product by electronic means, such as downloading (including streaming and podcasting) or accessing it through the internet.[451] Podcasting is the electronic distribution of audio or video digital media files over the internet by syndicated automatic downloads to subscribers.

Electronically transferred does not mean the product is transferred on tangible storage media such as tapes, CDs, or DVDs.

> ⚠ **<u>Delivered electronically</u> (within the context of computer software taxation) does not mean the same as *electronically transferred*. <u>Delivered electronically</u> means *delivered to the purchaser* by means other than tangible personal storage media. Tenn. Code Ann. § 67-6-102(24).**

Digital Audio-visual Works

Digital audio-visual works means "a series of related images that, when shown in succession, impart an impression of motion, together with any accompanying sounds, if any, that are transferred electronically."[452] Examples include:

- Motion pictures
- Custom promotional video content[453]
- Speeches
- Musical videos
- News programs
- Entertainment programs
- Live events

Digital Audio Works

Digital audio works means "works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically."[454] Examples of prerecorded or live digital audio works include:

- Music
- Songs
- Speeches
- Readings
- Sound recordings[455]
- Ringtones

Digital Books

Digital books mean "works that are generally recognized in the ordinary and usual sense as 'books' that are transferred electronically."[456] Digital books include:

- Fiction
- Non-fiction
- Short stories

Electronically Transferred Items that Are Not Specified Digital Products

The following items *electronically transferred* to a purchaser are *not* specified digital products:

- Video or audio greeting cards sent by email
- Digital magazines or periodicals
- Individual digital photographs
- Data processing and information services
- Video or electronic games
- Digital newspapers
- Chatroom discussions or weblogs
- Satellite radio services

Electronically Transferred Items Otherwise Subject to Tax

Certain electronically transferred or accessed products are subject to tax under other provisions of the sales and use tax statutes and are not taxed as specified digital products.

For example:

- Video programming services (cable, wireless cable, and broadband television programming services), direct-to-home satellite television programming services, and television programming services sold by hotels and motels to guests are taxable services in Tennessee but are not taxed as specified digital products.
- Computer software that is electronically transferred to purchasers is taxable in Tennessee but is not taxed as a specified digital product.
- Sales by a hotel or motel of pay-per-view movies and pay-per-use electronic games that are subject to tax as an amusement, pursuant to Tenn. Code Ann. § 67-6-212, are not subject to tax as specified digital products.

Examples – Taxable Sales of Specified Digital Products

- Sales of movies, songs, or books that are downloaded and may be stored indefinitely on the purchaser's computer or other electronic device and may be accessed/played an unlimited number of times. *These would be sales with rights of permanent use.*
- Sales that provide the purchaser with access to movies, songs, or books that cannot be downloaded, cannot be stored indefinitely on a purchaser's computer, or can only be accessed and played if the purchaser continues to make periodic subscription

payments (e.g., yearly, monthly, etc.) to the seller. *These would be sales with rights of less than permanent use or rights of use contingent upon continued payment.* For example:

- A taxpayer sells rights to customized recorded messages for phone systems to its customers ("users"). Rights to the recorded messages are sold to users for a contractual period that may be extended if a user continues payment. Users only have access to the recorded messages during the contractual period. The taxpayer's customized recorded messages are considered specified digital products. The services are sold with rights of less than permanent use.[457]

2. Tax Rates

Tennessee sales and use tax statutes provide that specified digital products are taxed at the state rate of 7% and a standard local tax rate of 2.5%, instead of the local tax rate in effect in a county or municipality.[458] The entire sales price of specified digital products is subject to the state and local tax. The local tax single article limitation and the additional state single article tax does not apply.

3. Sourcing

A sale of a specified digital product occurs in this state if:

- The purchaser receives the electronically transferred digital property at a Tennessee location of either the seller or purchaser, or
- The seller's business records, or the address obtained from the purchaser during the sale indicates a Tennessee billing address.

For more information concerning sourcing sales of specified digital products, please see Chapter 7 of this manual, Sourcing Sales to Tennessee.

4. Digital Codes for Obtaining Specified Digital Products

Digital code means a code that may be obtained in a tangible form, such as a card or through email, that provides a purchaser with a right to obtain one or more specified digital products. A digital code does not include gift certificates or gift cards that represent a monetary value that is redeemable for specified digital goods.[459]

Sales of digital codes to obtain access to or downloads of specified digital products are subject to tax at the time of the sale of the digital code, and no additional tax is due when the purchaser or subscriber enters the code and accesses or downloads a specified digital

product. The sale of the digital code to purchase specified digital products is subject to the same state tax rate of 7% plus the standard 2.5% local tax rate[460] that applies to specified digital products. For example:

- A customer visits her favorite band's website and notices the band has released a new album. Although the band's website does not have the capacity to allow the customer to download the album, it does sell a download code, whereby the customer can purchase the code and visit a different website, enter the download code, and download the album where no separate charge is made. Sales tax will apply to the purchase of the download code, not when the customer visits the second website to download the album.

5. Sales and Use Tax Exemptions for Digital Equivalents

The retail sale of a specified digital product is exempt from sales and use tax when the retail sale of an equivalent product in its tangible form is exempt from sales and use tax.[461] Some examples of tax exemptions for products in a tangible form that apply to an equivalent specified digital product include the following:

- The tax exemption for printed textbooks or workbooks applies to equivalent textbooks and workbooks that are electronically transferred and defined as digital books.[462]
- The tax exemption for sales of master sound recordings on tapes or discs sold by recording studios applies to sales by recording studios of equivalent master sound recordings that are electronically transferred and defined as digital audio works.[463]
- The tax exemption for sales of master commercials or other programming on video tapes or film sold by television studios applies to sales by television studios of equivalent master commercials and program recordings that are electronically transferred and defined as digital audio-visual works.[464]
- Sales, leases, licensing, or use of specified digital products are not subject to tax if the sales of equivalent products in tangible form are exempt from taxation as a sale for resale or otherwise exempt from tax.[465]

6. Other Sales and Use Tax Exemptions

There are specific statutory exemptions for specified digital products, including the following:

- The definition of industrial machinery includes machinery and equipment that is necessary to and used primarily to convert tangible property into specified digital

products. It also includes repair services, repair parts and installation labor for the machinery and equipment.[466]

⚠ **However, machinery and equipment used for storage or distribution of specified digital products are excluded from the definition of industrial machinery and do not qualify for the tax exemption.**

- Specified digital products that are provided free of charge with rights of less than permanent use are exempt from sales and use tax.[467] For example:
  - A seller allows prospective customers to access and play a portion of a song or video that is available for sale in tangible form on CDs or DVDs. The free temporary access to play the digital music or video is exempt from sales and use tax.
- Specified digital products sold for further broadcast, distribution, license, or retransmission by a provider of video programming services are considered sales for resale and may be purchased tax-exempt with a resale certificate by video programming service providers.[468]
  - Video programming services are subject to tax pursuant to Tenn. Code Ann. § 67-6-226 and include cable and wireless cable television programming services and similar television programming video services provided through public wireline facilities.

7. Online Courses

The sale of a pre-recorded video that is accessed by subscribers or consumers in this state is subject to sales tax as the sale of access to a specified digital product. Subscribers or consumers are in this state if their residential or primary business street address is in this state.

The pre-recorded video remains subject to tax as the sale of access to a specified digital product if the video is offered on demand (to be viewed at any time) or if it is offered as a webcast replay that may be accessed at a scheduled date and time. Specified digital products may be sold with rights that permit the subscriber or consumer of the product to access the product at any time or only at a specific date and time.

The availability of a live instructor during the online course does not change the taxability of the pre-recorded video, even if course participants can ask an instructor questions via email during or following the online course. Although participants can email questions to an

instructor during or following the online course, which is a non-taxable component of this transaction, the true object of this transaction is access to a specified digital product. Therefore, the pre-recorded video remains subject to sales tax.

However, live, *instructor lead* courses, are not specified digital products and the true object of such courses is a nontaxable educational service.

Continuing Education Courses Offered by Certain Nonprofits

Tenn. Code Ann. § 67-6-329(a)(21) exempts from sales and use tax online access to continuing education courses that:

- Meet regulatory requirements for licensed individuals; and
- Are offered by organizations exempt by the Internal Revenue Service (IRS) under 26 U.S.C. § 501(c)(3) or (c)(6).

Organizations that are not exempt federally under the above provisions must continue to collect sales and use tax on the provision of taxable online continuing education courses that are specified digital products.

Chapter 15: Warranty & Service Contracts

Contracts Covering Tangible Personal Property

Tennessee law imposes sales and use tax on the sale of, use of, or subscription to a warranty or service contract covering the repair or maintenance of tangible personal property at the time of the sale of the contract.[469] The tax treatment of warranty or service contracts covering tangible personal property is consistent with the tax treatment of computer software maintenance contracts. Computer software maintenance contracts are discussed under Chapter 13 Computer Software in this manual. The statutory imposition of sales tax on the sale of warranty or service contracts was a result of the court decision in *Covington Pike Toyota v. Cardwell,* 829 S.W.2d 132 (Tenn. 1992).

The sale of a warranty or service contract covering tangible personal property is a separate taxable event and is not a repair service. Taxation of the sale of a warranty or service contract is not determined based on whether any repairs covered by the contract will be performed in Tennessee. However, there must be sufficient contact with Tennessee for the sale of a warranty or service contract to be taxable in Tennessee.

Furthermore, because the sale of a warranty or service contract is a separate taxable event, the tax applies even if the underlying tangible personal property is exempt. For example:

- Manufacturer purchases a large machine that qualifies for the industrial machinery exemption; thus, the purchase is not subject to sales tax. Manufacturer also purchases a warranty on the large machine. Although the machine itself is tax-exempt, the warranty is not.

There are, however, three exceptions to this rule. Warranty and service contracts purchased for resale, contracts covering industrial machinery used in a *qualified data center*, and contracts covering equipment used primarily in agricultural operations are tax-exempt.[470]

1. Sourcing Rules

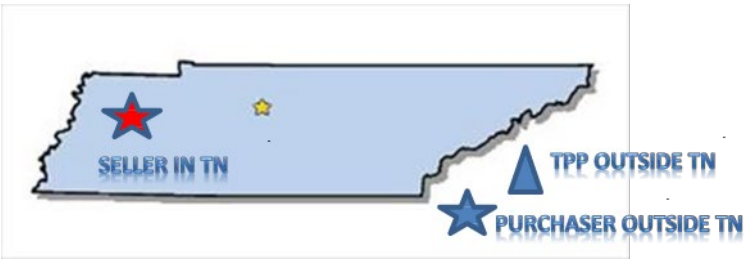
The following sourcing rules for purchases of warranty or service contracts are to be used to determine if the charges for a warranty or service contract that warrants the repair or maintenance of tangible personal property are subject to sales or use tax in Tennessee. The sales and use tax law[471] was amended in 2015 to clarify when the sale of, use of, or subscription to warranty or service contracts covering the repair or maintenance of tangible personal property occurs in Tennessee.

Warranty or service contracts covering the repair and maintenance of tangible personal property are subject to tax in this state when:

- **The warranty or service contract is sold as part of, or in connection with, a sale of tangible personal property that is subject to Tennessee sales tax.**
    - This means that if a seller makes a sale of tangible personal property on which it is required to collect Tennessee sales tax and it also makes a sale of a warranty or service contract covering that tangible personal property, then it must also collect sales tax on the sale of the warranty.
    - This rule applies even if, due to an exemption, no tax is collected on the tangible personal property that is sold in conjunction with the warranty or service contract (e.g., industrial machinery, agricultural appliance, etc.).
    - This circumstance would occur if the sale were from a location in Tennessee.

    - However, it would also occur if a remote Tennessee seller sold property from another state to a purchaser in Tennessee and ships or delivers the property to the purchaser or purchaser's designated location in Tennessee.

    - If a seller sells a warranty or service contract as part of, or in conjunction with, the sale of tangible personal property that is sold in interstate commerce and is not subject to Tennessee tax, the sale of the warranty or service contract is sourced outside the state and is not subject to Tennessee tax. This applies even if the tangible personal property is expected to be shipped to a repair or service center in Tennessee for repairs or services that are covered by the warranty or service contract.



- Under the current law, warranty or service contracts sold in Tennessee to nonresidents in conjunction with the sale of vehicles and boats that are removed from Tennessee within three days and aircrafts that are removed within 30 days to the purchaser's home state *are not* subject to Tennessee sales and use tax. The purchaser must complete, and the seller must maintain, an affidavit stating that the vehicle or boat will be removed within three days, or the aircraft will be removed within 30 days to the purchaser's home state.

- **The warranty or service contract is also taxable if the tangible personal property covered by the warranty or service contract is located in Tennessee or, in the case of mobile property, based in Tennessee.**
  - The warranty contract would be subject to sales or use tax even if the purchaser and/or the seller are located outside of Tennessee or even if the tangible personal property was purchased tax exempt.
  - If a purchaser buys a warranty or service contract that covers tangible personal property that is located in Tennessee and the out-of-state seller does not collect sales tax, the purchaser owes use tax on the purchase price of the contract.
  - If a Tennessee resident purchases a warranty or service contract in conjunction with the purchase of a vehicle, boat, or aircraft in another state, with the intent of moving that vehicle, boat, or aircraft back to Tennessee, then use tax will be owed on the purchase price of the warranty when a person locates those items in Tennessee.
  - If a warranty or service contract covers tangible personal property that is located both inside and outside the state, then Tennessee sales or use tax is only due on the percentage of the sales price that correlates to the percentage of the tangible personal property located in Tennessee.

- If the tangible personal property covered by a renewal or extension contract is no longer located or based in Tennessee, the sale of the renewal or extension of the warranty or service contract is not subject to Tennessee tax.

- **If the location of the tangible personal property covered by the warranty or service contract is unknown, the warranty or service contract is taxable if the purchaser's residential or primary business address is located in Tennessee.**
  - Any repairs (parts and/or services) made to tangible personal property that are covered by a warranty contract, the sale of which was subject to Tennessee tax, are not subject to sales tax. Further, any tangible personal property purchased by a dealer to fulfill warranty obligations is not subject to the sales and use tax.[472] However, any charges for repairs not covered by the warranty contract or any deductible/amount required to be paid before repairs are made under the warranty contract are subject to sales tax.[473]

Use Tax

Use tax applies to purchases of warranty or service contracts covering tangible personal property in this state when sales tax was not paid to the seller.[474]

If a purchaser buys a warranty or service contract from an out-of-state seller and the seller does not collect sales tax on that purchase, the purchaser will owe use tax on the purchase price of the contract covering tangible personal property located in Tennessee. Furthermore, if a seller collects another state's sales tax and the rate of the tax was lower than the Tennessee sales and use tax rate, the purchaser will owe use tax on the difference between the out-of-state tax paid and the amount that would be owed based on the Tennessee tax rate. [475]

When a warranty or service contract covers tangible personal property that is located both inside and outside the state, then Tennessee sales or use tax is only due on the percentage of the sales price that correlates to the percentage of the tangible personal property located in Tennessee. If an out-of-state seller collected sales tax on the property located in another state (i.e., seller is not registered in Tennessee), the purchaser must report and pay the use tax on the portion of the purchase price that correlates to the property located in Tennessee.

1. Examples

The warranty or service contract is taxable if it is sold as part of or in connection with a sale of tangible personal property that is subject to Tennessee sales or use tax. For example:

- Tennessee Furniture Dealer ("TFD") sells office furniture in Tennessee to a purchaser and collects Tennessee sales tax on the sale. In conjunction with this sale, TFD also sells a warranty or service contract to the purchaser that covers the repair of the furniture. TFD must also collect Tennessee sales tax on the sale of the contract.
- If an Out-of-state Furniture Dealer that is not registered in Tennessee sells and ships office furniture to a purchaser's Tennessee address and also sells the warranty contract covering repairs to the office furniture, the purchaser must report use tax on the purchase price of the office furniture and the warranty contract.

The warranty or service contract is taxable if the tangible personal property covered by the warranty or service contract is located in Tennessee. For example:

- Warranty Dealer ("WD") sells warranty or service contracts that cover the repair of furniture sold by National Furniture Seller. WD sells a warranty or service contract to Purchaser that covers the repair of office furniture located in Purchaser's Tennessee office. The sale of the contract is subject to Tennessee sales tax, and WD should collect and remit the tax. However, if the sales tax was not collected on the purchase, Purchaser would owe Tennessee use tax on the purchase price of the contract.

If the location of the tangible personal property covered by the warranty or service contract is unknown, the warranty or service contract is taxable if the purchaser's residential or primary business address is located in Tennessee. For example:

- Warranty Dealer ("WD") sells warranty or service contracts that cover the repair of all furniture sold by National Furniture Seller ("NFS"). WD sells a warranty or service contract to Tennessee Purchaser ("TP") that covers the repair of office furniture purchased from NFS. WD does not know where the office furniture is located, but it does know that TP's primary business address is in Tennessee. The sale of the contract is subject to Tennessee sales tax. If an out-of-state warranty dealer is not registered in Tennessee, the purchaser must report and pay the use tax on the portion of the purchase price that correlates to the furniture actually located in Tennessee.

2. Contracts Covering Vehicles, Boats, and Aircraft Sold to Nonresidents

Warranty or service contracts sold in Tennessee to nonresidents in conjunction with the sale of vehicles and boats that are removed from Tennessee within three days and aircraft that are removed within 30 days to the purchaser's home state *are not subject to Tennessee sales and use tax*. The purchaser must complete, and the seller must maintain an affidavit stating that the vehicle or boat will be removed within three days, or the aircraft will be removed

within 30 days to the purchaser's home state. For more information on the removal affidavit, see Chapter 189 For example:

- Tennessee Car Dealer sells a vehicle and warranty or service contract covering the vehicle to nonresident purchaser in Tennessee. Purchaser buys the vehicle using a three-day removal affidavit (i.e., Purchaser attests that he is permanently removing the vehicle from Tennessee within three days). Neither the sale of the vehicle nor the sale of the contract is subject to sales tax in Tennessee.

3. Contracts Covering Vehicles, Boats, and Aircraft Purchased in Another State

Conversely, if a Tennessee resident purchases a warranty or service contract in conjunction with the purchase of a vehicle, boat, or aircraft in another state, and moves the vehicle, boat, or aircraft back to Tennessee, then use tax will be owed on the warranty, as well as the vehicle, boat, or aircraft, when a person brings those items into Tennessee. For example:

- Tennessee Purchaser ("TP") buys a vehicle and a warranty or service contract covering that vehicle in Georgia, and TP brings the vehicle back to register it in Tennessee. The Tennessee county clerk must collect use tax on the warranty or service contract as well as the vehicle when TP registers the vehicle.

4. State Single Article Tax and Single Article Local Tax Limitation

The total sales price for a warranty or service contract covering the repair or maintenance of tangible personal property is subject to the state tax rate plus the applicable local tax rate. The local option single article tax limitation on the first $1,600 of the sales price of tangible personal property and the additional state single article tax *does not apply to the sale or use of a warranty or service contract*.

5. Contracts Covering Property Located Inside and Outside Tennessee

When a warranty or service contract covers tangible personal property that is located both inside and outside the state, then Tennessee sales or use tax is only due on the percentage of the sales price that correlates to the percentage of the tangible personal property located in Tennessee. For example:

- A purchaser buys a warranty or service contract from Warranty Dealer ("WD"). The contract covers repairs to office furniture that is located, in equal amounts, in the purchaser's Tennessee office and three of the purchaser's Florida offices. The purchaser pays $500 for the contract. Only $125, or 25%, of the purchase price would be subject to the Tennessee sales or use tax.

6. Repairs Performed Under a Warranty or Service Contract

If sales or use tax is paid on a warranty or service contract covering the repair and maintenance of tangible personal property, then the purchaser of the contract will not owe sales or use tax on any repairs, including parts and services, covered under the contract. However, if the repair is not covered by the contract, the purchaser will owe sales tax on the repair. Additionally, the purchaser will owe sales tax on any minimum fee or deductible that is not covered by the contract. For example:

- A purchaser purchases a warranty contract from Tennessee Furniture Dealer ("TFD") that covers the purchaser's office furniture. One of the furniture items breaks because of faulty construction, and it must be repaired. The repair is covered by the warranty contract, and TFD repairs the furniture at no charge. No sales tax is owed on the repair.
- A purchaser purchases a warranty contract from Tennessee Furniture Dealer ("TFD") that covers the purchaser's office furniture. One of the furniture items is misused, breaks, and must be repaired. This type of repair is not covered by the warranty contract. TFD charges $100 for the repair. Sales tax is owed on the $100 charge.

Contracts or Warranties for Repair of Real Property

As stated above, the retail sales of, use of, or subscription to a warranty or service contract covering the repair or maintenance of tangible personal property is taxable. However, the sale of a warranty or service contract covering real property or property that are fixtures attached to and a part of realty is not subject to sales and use tax.[476] For example:

- A homeowner purchases a home warranty that covers the roof, siding, and major built-in appliances. Because the roof, siding, and major built-in appliances are real property or fixtures attached to and a part of real property, the warranty is not subject to sales tax.

Furthermore, if the warranty covers both real property and tangible personal property and is sold for a single price, the entire warranty is subject to sales and use tax.[477]

Chapter 16: Sales Tax Imposition on Amusements

Amusement Tax

Sales tax applies to the sale of amusements furnished in this state. Amusement activities subject to sales tax include membership sports and recreational clubs; admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities; entering or engaging in any kind or recreational activity; and using tangible personal property for amusement, sports, entertainment, or recreational activities. It applies at the same state and local tax rates imposed on the sale of tangible personal property at retail.[478] Amusements are not subject use tax. Sales in Tennessee for admission to or entering or engaging in amusement, sports, entertainment, exhibition, display or other recreational events and activities provided or furnished outside Tennessee are not subject to Tennessee sales tax. For example, if a Tennessee dealer sells tickets in Tennessee for admission to a music concert to be held in New York City, the ticket sale is not subject to Tennessee sales tax.

Dealers registered for sales tax in Tennessee may purchase for resale admission tickets to taxable amusements furnished in this state without paying sales the tax by presenting the seller with a Tennessee resale certificate[479]. Dealers making purchases for resale of amusements must collect sales tax on the resale of the amusements. The statute provides for many exemptions from the sales tax, which are discussed in more detail below.[480] Each taxpayer should evaluate its amusement events and activities to determine whether they are taxable or if they fall within one of the tax exemptions on amusements.

Taxable Amusements

1. Dues/Fees to Membership Sports and Recreation Clubs

Sales tax is charged on dues or fees to membership sports and recreation clubs.[481] The taxable charges for dues and fees to membership sports and recreation clubs sales include membership fees, initiation fees, required stock purchases, and any other fees required for membership but does not include member assessments for capital improvements.[482]

Clubs and organizations whose charges for membership dues or fees are taxable include:[483]

Aviation clubs	Baseball clubs	Boating/yacht clubs	Bridge clubs
Football clubs	Golf clubs	Gun clubs	Hockey clubs
Hunting clubs	Racquetball	Riding clubs	Soccer clubs
Shooting clubs	Swimming clubs	Tanning Salon	Tennis clubs

In addition to the membership fees, charges for the use of facilities or services offered at a health spa or club or any similar facility or business are taxable.[484] For example:

- A golf club provides locker rentals and golf bag storage to its members. Both charges are subject to sales tax as fees paid for the use of facilities and for services rendered.[485]

Free or complimentary dues or fees are subject to tax when a valuable contribution to the related establishment or organization is made that has the value equivalent to the charge that would otherwise have been made.[486] For example:

- A riding club charges members an annual fee of $600, but members may have that fee waived if they perform work valued at $600 for the club or contribute tangible property to the club worth that amount. Sales tax should be remitted for both the membership fees paid by cash and those paid by services and tangible property.

This also applies to the use of facilities or services rendered at a health spa or club or any similar facility or business. However, free amusements provided to employees as fringe benefits are not taxable because the employee's labor will not be considered "a valuable contribution" in connection with the free amusement. For example, free tans provided to employees of a tanning bed operator or free memberships to employees of a health spa are not subject to tax.

⚠ **Free amusements provided to the amusement provider's employees as fringe benefits are not taxed.**

2. Admissions to Entertainment/Recreational Facilities, Activities, or Events

Sales of tickets, fees, or other charges for admission to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities are taxable.[487]

Voluntary contributions made to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities are taxable at the value equivalent to the charge that would have otherwise been made.

Free or complimentary admission when made in connection with a valuable contribution to any organization or establishment holding or sponsoring such activities is subject to tax on the value equivalent to the charge that would have otherwise been made.[488]

Taxable admission charges include:

- Admissions to concerts, movies, plays, sports events, and other entertainment activities[489]
    - Professional sports including seat licenses, skyboxes, and luxury suites[490]
- Admissions to museums, boat shows, and similar venues
- Pit passes[491]
- Admission to private land to hunt, unless exempted by statute[492]
- Admission to art galleries, botanical, and zoological gardens[493]
- Admission to walking or vehicle tours conducted for amusement, such as horse-drawn carriage rides,[494] ghost tours, celebrity bus tours, cave tours, facility tours, city tours, sight-seeing tours, boat tours, etc.[495]
- Admission to hayride events
- Admission to agritourism activities involving amusement, entertainment, or recreational activity (e.g., corn maze)

⚠ **Amusement tax does not apply to charges for skydiving from a plane. For more information, see Important Notice 20-01.**

3. Charges for Engaging in a Recreational Activity When Spectators Are Not Charged a Fee for Admission

Charges made for the privilege of entering or engaging in any kind of recreational activity, when no admission is charged to spectators, are taxable.[496] [497] This is in addition to membership fees or admissions. Fees or charges for the following recreational activities are taxable *(note, this list is not all-inclusive)*:

- Golf
- Tennis, racquetball, or handball courts
- Skiing
- Rafting tours
- Camping ground use
- Horse-back riding
- Riding in a horse-drawn carriage

- Riding in an aerial tram
- Charges for mobile video gaming truck
- Charges for indoor rock climbing
- Charges for indoor skydiving, go cart riding, miniature golf, and the like.

⚠ **Per Tenn. Comp. R. & Regs. 1320-05-01-.122 ("Rule 122"), a separate charge for instruction or lessons in any of these activities is not taxable.**

4. Providing Use of Tangible Personal Property for Sport, Entertainment/Recreational Activities

Charges made for the privilege of using tangible personal property for amusement, sports, entertainment, or recreational activities are taxable. They include charges for using:[498]

- Trampolines
- Golf carts
- Bowling shoes
- Roller or ice skates
- Sports and athletic equipment
- Entertainment equipment such as televisions, stereo equipment, and gaming consoles
- Electric scooters
- Bicycles

Sales or Use Tax Due on Tangible Personal Property Used on Amusement Premises

Typically, tangible personal property that is rented to a customer may be purchased for resale. However, tangible personal property purchased by a business and provided to the customer for use only on the premises of the owner is not deemed to be purchased for resale.[499] It is also not considered the lease of tangible personal property but instead is a license to use the property.[500] The business, therefore, must pay sales tax when purchasing such tangible personal property.[501] For example:

- A waterpark owns various tubes and floats that it provides for use on the waterpark's premises. The waterpark may not purchase such tubes or floats on a resale certificate because they are provided for use only on the waterpark's premises.

Exemptions

There are numerous exemptions from the amusement tax, many of which are found in Tenn. Code Ann. § 67-6-330. Below is a general overview of such exemptions.

1. Dues, Fees, and Memberships including Physical Fitness

Exempt from the amusement tax are dues or fees to:

- Facilities run by nonprofits or municipalities/counties[502]
    - Institutions and organizations that are exempt pursuant to 26 U.S.C. § 501(c)(3), (8) and (19) and that are currently operating under such exemption.
- Organizations such as business and professional organizations in Major Group 86 of the Standard Industrial Classification Index.[503] [504] [505]
    - Professional memberships – bar associations, dental associations, engineering associations, medical associations
    - Labor unions
    - Civic, social, fraternal-alumni clubs, booster clubs, civic organizations, fraternal lodges, fraternities, sororities, homeowners' organizations, university clubs, veterans' organizations, youth associations
    - Political organizations
    - Religious organizations
- The fee paid by an establishment operated primarily for the sale of prepared food to one or more persons for the purpose of providing live entertainment to the patrons of such establishment.[506]
- Fees in any form resulting from the production of television, film, radio, or theatrical presentations. This exemption does not include any dues, fees, or other charges made on, or for the admission of the public to, such presentations.[507]

Physical Fitness Facilities

Effective July 1, 2019, the General Assembly added a sales tax exemption for persons principally engaged in offering services or facilities for the development or preservation of *physical fitness* through exercise or other active physical fitness conditioning.[508] [509] This includes, but is not limited to, services and facilities such as:

- Gyms
- Fitness centers
- Fitness studios
- High intensity interval training
- Cross training
- Ballet barre
- Pilates
- Yoga
- Spin classes
- Aerobics classes
- Other substantially similar services and facilities that principally provide for exercise or other active physical fitness conditioning

This exemption has undergone numerous changes in the past few years. The exemption prior to the 2019 amendment applied to a more limited group of facilities. For example, previously, the facility had to have at least 15,000 square feet for physical fitness use, have at least one full-time employee certified in administering health assessments, and one full-time employee licensed by the state in a medical or paramedical discipline.

⚠ **Beginning July 1, 2019, admissions, dues, and fees paid to businesses principally engaged in offering services or facilities for the development or preservation of physical fitness are exempt from sales tax.**

⚠ **Tangible personal property sold by physical fitness facilities, such as clothing, equipment, and beverages, are still subject to sales and use tax.**

2. Admissions to Entertainment Facilities, Activities, or Events

Examples of exempt admissions charges to entertainment facilities, activities, or events include, but are not limited to:

- Events or activities held for or sponsored by public or private schools, kindergarten through grade twelve.[510]
- Athletic events for participants under eighteen years of age sponsored by civic or not-for-profit organizations.[511]
- County or agriculture fairs.[512]
    - Includes any charges to let the entrant engage in any otherwise taxable amusement activity held there, including games, rides, shows, contests, or grandstand events.
- Events or activities produced and controlled by employers for their employees.[513]
- Amusements or recreational activities such as swimming pools, ice skating rinks, and greens fees to golf courses conducted and controlled by counties or municipalities.[514]

Also, admission charges are exempt if certain entities promote, produce, and control the entire production or function.[515][516] These entities are:

- Not-for-profit museums, not-for-profit entities that operate historical sites, and not-for-profit historical societies, organizations, or associations.
- Not-for-profit community group associations that promote, produce, and control musical concerts.[517]
- Organizations that have received and currently hold a determination of exemption from the Internal Revenue Service, pursuant to 26 U.S.C. § 501(c).[518]
- Organizations listed in Major Group No. 86 of the Standard Industrial Classification Index.[519] [520]
- Tennessee historic property preservation or rehabilitation entities.[521]

For example:

- A 501(c)(3) entity has a charity golf tournament. The entity promotes the tournament, produces the tournament, and otherwise maintains control over the entire tournament. The entry fee to play golf in the tournament is not subject to

sales tax and neither the 501(c)(3) entity nor the golf course would owe tax on the sales of the admission to the tournament.

3. Engaging in Recreational Activities When Spectators are not Charged Admission

Examples of exemptions from this category include:

- Contest or game fees charged at county or agriculture fairs.[522]
- Fishing tournament registration fees.[523]
- Entry fees for contests, tournaments, or charity horseshows.[524]
- Entry fees for races, such as marathons or 5ks.

4. Air Commerce Recreational Activities[525]

The Anti-Head Tax Act ("AHTA") is a federal law that preempts amusement tax on admissions, dues, and fees on air commerce recreational activities. Recreational and entertainment activities to which the AHTA applies include, but are not limited to:

- Scenic helicopter tours,
- Skydiving, and
- Untethered hot air balloon rides.

A provider of recreational and entertainment air commerce activities must collect and remit sales and use tax on its sales of goods or services, other than those involving air commerce (e.g., the sale of gift shop items).

Sourcing Amusements

Sales of taxable amusements are sourced according to the Tennessee general sourcing rules.[526]

- If a sale is made by a marketplace facilitator, the sale is sourced to the event venue location. For example:
    - Sales of admission tickets to a music concert in Nashville sold online by a ticket broker or entity whose platform facilitates the sales of tickets to multiple events from multiple sellers are sourced to the Nashville event venue location address. The 7% state tax rate plus the 2.25% Nashville local tax rate must be collected and remitted on the ticket sales. Local tax collected on the admission ticket sales by the marketplace facilitator are

then reported under the Nashville local jurisdiction on Schedule B of the facilitator's sales tax return.

- If a sale is made from a business location in Tennessee, the sale is sourced to the location from which the sale is made. For example:
  - Sales of admission tickets to a music concert in Nashville made from the box office at the event venue location are sourced to the event venue location. The 7% state tax rate plus the 2.25% Nashville local tax rate must be collected and remitted on the admission ticket sales.
  - Sales of admission tickets to an amusement event by an organizer or promoter from their own website whose business location (i.e., event venue location) is in Franklin are sourced to the organizer's or promoter's business location. The 7% state tax rate plus the 2.75% Franklin local tax rate must be collected and remitted on the promoter's sales tax return.
  - Sales of admissions tickets to an amusement event (e.g., music concert) held at a leased facility (e.g., arena, stadium, concert hall, theater, amphitheater, or park) in this state (e.g., Nashville) by an organizer or promoter are sourced to the local jurisdiction of the leased event venue facility location. The 7% state tax rate plus the 2.25% Nashville local tax rate must be collected and remitted on the organizer or promoter's sales tax return. In-state organizers or promoters that do not have a profile/ location ID for the leased facility local jurisdiction (e.g., Nashville) must register for a profile/location ID for the local jurisdiction of the leased facility.

- If a sale of admission to an amusement in Tennessee is made from an out-of-state location, the sale is sourced based on the location address of the purchaser's receipt of the amusement.
  - Sales of admission tickets to a music concert in Nashville by an out-of-state seller are sourced to the event venue location address. The 7% state tax rate plus the 2.25% Nashville local tax rate must be collected and remitted on the admission ticket sales. Local tax collected on the ticket sales by the out-of-state seller are reported under the Nashville local jurisdiction on Schedule B of the out-of-state seller's sales tax return.

Coin Operated Amusement Devices

Tennessee law imposes a separate privilege tax under the Coin-Operated Amusement Machine Tax Act on the privilege of owning "bona fide coin-operated amusement machines," for commercial use.[527] Bona fide coin-operated amusement machines are defined in the law

as any coin or token operated game, machine or device which, as a result of depositing a coin, token, or other object, automatically or by or through some mechanical or electrical operation involving skill, chance or a combination thereof, affords music, amusement, or entertainment of some character without vending any merchandise.[528] Coin-operated amusement devices are not vending machines, and the receipts from the coin-operated amusement devices are not subject to sales and use tax as an amusement or otherwise.[529] [530]

Owners of coin-operated amusement machines are subject to an annual license tax as follows:[531]

- 1-50 machines - $500
- 51-200 machines - $1000
- Over 200 machines - $2000

Additionally, there must be a machine tax sticker affixed to each machine. Each sticker costs $10.[532]

Any devices operated for the purpose of unlawful gambling are not coin-operated amusement machines and the receipts from such unlawful gambling devices are subject to sales tax as the sale of an amusement.[533] Tennessee law does not authorize the Department to regulate or opine on the legality or illegality of a specific coin-operated amusement machine because it is a question involving the interpretation of the Tennessee Constitution. The Department relies on the determinations of the Tennessee Attorney General's office and law enforcement officials regarding the legality or illegality of a specific machine. The Department only administers the tax.

The purchase or lease of the machine by the owner or operator of a business where the coin-operated amusement machines are available for commercial use is subject to sales or use tax.

Supplies such as tokens to operate the machines, redemption tickets, prizes (e.g., toys, stuffed animals, etc.), and balls and bats used in coin-operated batting cages are subject to sales and use tax and may not be purchased tax free on a resale certificate.

Digital audio works used in coin-operated jukeboxes are subject to sales and use tax and may not be purchased tax free on a resale certificate.

Chapter 17: Telecommunications, Ancillary Services, and Television Programming

Overview

Tennessee law imposes sales tax on the furnishing of intrastate, interstate, and international telecommunications services, ancillary services, and certain television programming services (e.g., video programming services, direct-to-home satellite services) for consideration.[534] In 2004 and 2005 Tennessee adopted the Streamlined Sales and Use Tax Agreement ("SSUTA") definitions related to telecommunications services and ancillary services. Television programming and ancillary services are not defined as telecommunications services. Each of these taxable services have special state and/or local tax rates and are reported on the TV Programming and Telecommunications Sales and Use Tax Return (also referred to as the TVTC sales and use tax return).

Telecommunications services and ancillary services are taxable if sourced to this state under the telecommunications sourcing sales tax statutes. However, the telecommunications sourcing statutes do not apply to taxable television programming services.

Telecommunications Services

Telecommunications services are defined as:

> [T]he electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added.[535]

Telecommunications services include services to transmit, convey, or route signals regardless of the transmitting technology used (e.g., electrical, electromagnetic, optical, wireless) and regardless of whether the content is voice, audio, video, data, or other information. The definition makes it clear that it is irrelevant whether the telecommunications service is regulated by the Federal Communications Commission or the Tennessee Public Utility Commission, formerly known as the Tennessee Regulatory Authority.

Telecommunications service is broadly defined to include services that are for the primary purpose of transmission, conveyance, or routing of content regardless of whether the services are considered basic, enhanced, or value-added services.[536]

Telecommunications services do not include:[537]

- Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information.
- Installation or maintenance of wiring or equipment on a customer's premises.
- Tangible personal property.
- Advertising including, but not limited to, directory advertising.
- Billing and collection services provided to third parties.
- Internet access service.
- Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but are not limited to cable services (47 U.S.C. § 522(6)), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3. Ancillary services.
- Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials, or ringtones.

When the purchaser's primary purpose is to obtain from the seller information that is electronically delivered, (e.g., check guaranty services, database search services), the service is not a telecommunication services but is an information service[538]. Information services and data processing services are not subject to sales tax in Tennessee.

Internet access service[539] is not a telecommunications service and is not subject to sales tax in Tennessee.[540]

Television programming services are not telecommunications services. However, television programming services provided by a video programming service provider, direct-to-home satellite service provider or through online streaming services are subject to sales tax.

Ancillary services are not telecommunications services. However, sales tax is separately imposed on ancillary services.[541]

Sales of digital products are not sales of telecommunications services. However, tax is separately imposed on sales of computer software and specified digital products (i.e., music, video, reading material and ringtones). See Chapter 13: Computer Software and Chapter 14: Specified Digital Products for detailed discussions of the topics.

1. Telephone Services

Telephone services are taxable telecommunications services, regardless of whether the services are provided via land line, wireless, or similar technologies. Taxable telephone services include local, long-distance, wireless (i.e., fixed, and mobile)[542], air-to-ground radiotelephone service (i.e., radio telecommunications services in aircrafts), voice over internet protocol ("VOIP"), 800 service (i.e., services designated as toll-free)[543], and 900 service[544]. The following are examples of charges made to customers that are part of the gross charge for telephone services. These charges are subject to sales tax if the telephone services are subject to sales tax, regardless of whether such charges are separately itemized:

- Federal access charges
- Connection, disconnection, and reconnection charges
- Federal universal service fees
- Local telephone number portability charges
- Charges for establishing new service
- Minimum charges
- Telecommunication nonrecurring charges[545]

Coin-Operated Telephone Services

Coin-operated telephone service is specifically exempt from sales tax.

2. Wireless Telecommunications Services

Fixed wireless service (i.e., radio communications between fixed points) and mobile wireless services (i.e., origination and/or termination transmission points are not fixed) are telecommunications services subject to sales tax. Examples include mobile telephone services, paging, and beeper services[546], mobile radio services, and air-to-ground radiotelephone services. Wireless telecommunications services include transmission services

for voice, as well as transmissions of other types of content, including data or video, (e.g., via text messaging).

3. Prepaid Calling Services[547]

"Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.[548]

"Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless services, as well as other non-telecommunications services, including the download of digital products delivered electronically and content and ancillary services that must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.[549]

Sales of prepaid telephone cards, long distance calling cards, prepaid wireless cards, authorization codes, and recharge of service are sales of telecommunication services subject to tax at the general state tax rate of 7% plus the applicable local tax rate.[550] The sales of these services are subject to the sales tax at the time of the sale of the card or authorization codes or upon recharge of the service. Retailers must collect tax at the time of the sale of the prepaid calling card or authorization code in Tennessee. No additional tax is due when the card is used or when the authorization code accesses or receives the telecommunication service. The special state and/or local tax rates applicable to other telecommunication services do not apply to prepaid calling services.

Sales for Resale

Dealers of prepaid telephone cards and authorization codes may purchase the telecommunication services for resale. Because the sale of the prepaid cards and authorization codes are sales of telecommunication services, dealers of prepaid telephone cards may purchase the telecommunication services associated with the cards on a resale certificate.

4. Enhanced Telecommunications Services

The terms "basic" and "enhanced" are used in Federal Communications Commission (FCC) regulations to distinguish between "basic" telecommunications services provided by regulated providers and "enhanced" (also referred to as value-added) telecommunications services provided by unregulated providers. Enhanced services combine basic telecommunications services with computer processing applications that act on the form,

code, or protocol of the content for purposes of transmission, conveyance, or routing of the content. Services that are for the purpose of transmitting, conveying, or routing a subscriber's data or information between or among termination points is a telecommunications service that is subject to tax. Enhanced services are taxable in Tennessee at the same tax rates as other telecommunications services even though they may not be regulated by the Federal Communications Commission (FCC). Examples include voice over internet protocol (VOIP) and electronic data interchange (e.g., electronically communicating information traditionally done via paper such as invoices and purchase orders[551]).

"Value-added non-voice data services" are services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data. For purposes of example, such value-added non-voice services include but are not limited to use of network protocols, encryption services, device management, security authentication, and data monitoring. Where telecommunications service providers make separate charges for value added non-voice data services from the basic transmission services provided, the value-added non-voice data services are telecommunications services and are part of the sales price of enhanced telecommunications services. Even if separately itemized the value-added non-voice data services are subject to sales tax in the same manner as the transmission services provided.

5. Private Communication Services

Private communication services are telecommunication services that entitle the customer to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the way the channels are connected and includes any switching capability, extension lines, stations, and any other associated services that are provided in connection with the use of such channels.[552]

Private communications services are subject to Tennessee sales tax based on the location of customer channel termination points. A customer channel termination point is the location where the customer either inputs or receives the communications.

- Charges for services where all the customer channel termination points are in Tennessee are intrastate and subject to tax at the 7% state rate and the 2.5% local rate, regardless of the local tax rate levied by the local jurisdiction.
- A separately itemized service charge for a communications channel between two customer channel termination points, one of which is located outside Tennessee, is an interstate or international services. Fifty percent of the separately itemized charge for the communications channel is subject to sales tax in Tennessee at the state rate of 7.5% and is exempt from local tax, assuming the service is sold to a business.

- Service charges for communications channels with customer channel termination points in multiple states, when the service charges are not separately itemized, are interstate or international services. The nonitemized charge shall be prorated based on the number of customer channel termination points in Tennessee and the prorated charge is subject to Tennessee sales tax at the state rate of 7.5% and is exempt from local tax, assuming such services are sold to businesses.

Private Communication Network Services

Private communication network services are telecommunication services that interconnect computers and other devices to transmit, convey, and route voice, data and/or video between and among channel terminations points. Local area network (LAN) private communication services interconnect computers and other devices in a specific geographic area such as a business location or metropolitan area. Wide area network (WAN) private communications services interconnect multiple LANs to a wide geographic area such as a company headquarters to branch offices, retail locations and other facilities. A virtual private network (VPN) may be built within a public switched network or internet backbone or both, with wireline and/or wireless technologies through the use of software, network protocols, firewalls, encryption, authentication (i.e., value added non-voice services) and equipment such as network routers, network switches, modems, bridges, etc. Dedicated access lines may be used to connect customers' locations or sites to a WAN or VPN. Such access lines are also taxable private communication services. Private communication network services (e.g., LAN, WAN, VPN, etc.) are taxable regardless of whether the provider is regulated as a telecommunications provider and regardless of whether the network is constructed using internet protocol, frame relay, or other types of protocol.

Private Communications for a Headquarters Computer or Telecommunications Center

Private communication services utilized by a taxpayer that has qualified for the headquarters tax credit, or by an affiliate[553] of such taxpayer, to communicate with a computer center or telecommunications center located in Tennessee is exempt from sales tax. The taxpayer must apply to the Department for authorization to make such purchases tax-exempt.[554] A taxpayer will qualify for the headquarters tax credit if it meets the following criteria:

- It constructs, expands, or remodels a headquarters facility in Tennessee;
- Has a minimum capital investment of at least $10,000,000 dollars; and
- Creates at least 100 new, full-time employee jobs.

To claim the headquarters private communication services exemption, qualified purchasers must provide a copy of the authorization issued by the Department, or a fully completed Streamlined Sales Tax Certificate of Exemption to each dealer from which it intends to make exempt purchases.[555]

If the private communication services are not utilized in accordance with the criteria discussed above, then the purchaser is liable for tax at a rate applicable to the retail sale of the private communication service.

For a full discussion of the headquarters tax credit, see Chapter 21 of this manual.

6. Telecommunications Service Tax Rates

The telecommunications services discussed above are subject to sales tax at different rates, based on whether the services are intrastate, interstate, or international.

Intrastate Telecommunication Services

"Intrastate," means a telecommunications service that originates and terminates in the same United States state, territory, or possession.[556]

Intrastate telecommunications services rates:

- State – 7%
- Local – 2.5%[557]

Interstate Telecommunication Services

"Interstate," means a telecommunications service that originates in one United States state, territory, or possession, and terminates in a different United States state, territory, or possession.[558]

- Interstate Business Rates:
  - State – 7.5%
  - Local – 0%[559]
- Interstate Residential Rates:
  - State – 7%
  - Local – 1.5%[560]

International Telecommunication Services

"International," means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively.[561]

- International Business Rates:
  - State – 7.5%
  - Local – 0%[562]
- International Residential Rates:
  - State – 7%
  - Local – 1.5%[563]

Telecommunications Credits and Exemptions

1. Hotels, Motels, Colleges, Universities, and Hospitals

Tenn. Code Ann. § 67-6-507(h) allows hotels, motels, colleges, universities, and hospitals a credit for any sales tax paid to a vendor for telecommunication services when those services are resold as such, and sales tax is collected on the resale. A hotel, motel, college, university, or hospital may not purchase telecommunication services on a resale certificate.

Hotels, motels, colleges, universities, and hospitals must collect sales tax on sales of intrastate, interstate, and international telecommunications to guests, students and patients using the residential telecommunications state and local tax rates.

- Intrastate telecommunications tax rates – 7% state and 2.5% local
- Interstate and international telecommunications tax rates – 7% state and 1.5% local

Hotels, motels, and for-profit colleges, universities, and hospitals will pay tax to service providers on purchases of telecommunications services at the business telecommunications tax rates.

- Intrastate telecommunications tax rates – 7% state and 2.5% local
- Interstate and international telecommunications tax rates – 7.5% state and 0% local

The hotel, motel, college, university, or hospital must have accurate records indicating the telecommunication services that are resold and which portion of the telecommunication services purchased are used by the taxpayer and which portion are resold.

For example, a purchase invoice shows a long-distance call billed on a per-call basis with the tax paid to the telecommunications vendor. A sales invoice shows a guest's room was charged for that same long-distance call and tax was collected. In this case the hotel's records show it may take a credit on its sales and use tax return for the sales tax paid to its vendor on the long-distance call. If unable to trace the telecommunication services sold and corresponding tax collected to the taxpayer's original purchase showing tax was paid on the purchase of the telecommunications service, the tax credit may be denied.

2. Headquarters Taxpayer Sales of Telecommunications to Affiliates

Sales of telecommunications services between affiliates, when one of the entities that is a member of the affiliated group has qualified for the headquarters tax credit, are not subject to sales tax. The entity that is part of the affiliated group that purchases the telecommunications services from a vendor that is not a member of the affiliated group is deemed the user and consumer of such services and should pay any applicable Tennessee sales tax on its purchases of telecommunications services.[564]

3. ATM and Wire Transfer Services

The seller of automatic teller machine (ATM) services is deemed the user and consumer of telecommunications services necessary to deliver the ATM service. Also, the seller of wire transfer or other similar services is deemed the user and consumer of telecommunications services necessary to deliver the wire transfer service.

4. Telecommunications Used in Operation of Qualified Call Center

There is a sales tax exemption for the purchase of interstate and international telecommunications services used in the operation of a call center.[565]

A call center is a single location that uses telecommunications services in customer services, soliciting sales, reactivating dormant accounts, conducting surveys or research, fundraising, collection of receivables, receiving reservations, receiving orders, or taking orders. The call center must have at least 250 employee jobs engaged primarily in call center activities.

Before making exempt purchases, the taxpayer must submit an application, the application must be approved by the Department, and the taxpayer must be issued a Call Center Exemption Certificate.

5. Access to the Local Exchange Area and Landline Network

Local exchange carriers'[566] telecommunications charges to interexchange carriers[567] and long-distance resellers[568] for providing access to the local exchange area is exempt from sales tax.

Local exchange carriers' telecommunications charges to cellular telephone companies for interconnection to the landline network is exempt from sales tax.

Charges made between local exchange and interexchange carriers for use of intercompany facilities pursuant to shared network arrangements is exempt from sales and use tax.

6. Sales for Resale

Telecommunications services purchased for subsequent resale by a purchaser or to be used as a component part of another telecommunication service may be purchased tax-exempt using a resale certificate. In addition, telecommunications services purchased by an internet access provider to provide internet access service to subscribers may be purchased tax-exempt using a resale certificate.[569]

Ancillary Services

Ancillary services are "services associated with, or incidental to, the provision of telecommunications services." Ancillary services include, but are not limited to, detailed telecommunications billing,[570] directory assistance,[571] vertical services,[572] voice mail services[573] and conference bridging services (i.e., audio and video teleconferencing services).[574] Vertical services include such services as call waiting, call forwarding and conference calling.[575] Ancillary services are subject to a 7% state tax rate and a 2.5% standard local tax rate.[576]

- Detailed telecommunications billing service – service of separately stating information pertaining to individual calls on a customer's billing statement.
- Directory assistance – service of providing telephone number information, and address information.
- Vertical service – service offered in connection with one or more telecommunications services that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.[577]

- Voice mail service – service that enables the customer to store, send, or receive recorded messages. Voice mail service does not any vertical services that the customer may be required to have to utilize the voice mail service.[578]
- Conference bridging service – service that links two or more participants of an audio or video conference call and may include the provision of a telephone number.[579] Conference bridging service does not include the telecommunications services used to reach the conference bridge.

Ancillary services are taxed at the same local tax rate as intrastate telecommunications services and is reported on Schedule B, Line 7 of the TV Programming and Telecommunications Sales and Use Tax Return with intrastate telecommunications.

Sourcing Sales of Telecommunications and Ancillary Services

1. General Telecommunications Services Sourcing

Generally, telecommunications services, except for the services listed below, are sourced to Tennessee and subject to Tennessee sales tax if:

- The telecommunications services are billed on a call-by-call basis and either originate or terminate in Tennessee and are charged to a service address in Tennessee;[580] or
- The telecommunications services are not billed on a call-by-call basis but are billed to a customer's place of "primary use," which is in Tennessee.[581]

Call-by-call Basis

Services billed on a call-by-call basis mean any method of charging for telecommunications services where the price is measured by individual calls. Telecommunications services that are <u>not</u> billed on a call-by-call basis include billings for a fixed or flat monthly amount and the customer is entitled to make an unlimited number of calls.

Service Address

Service address[582] means the location of the telecommunications equipment from which the call originates or terminates and to which the call is charged.

Place of Primary Use

Place of primary use[583] means the street address where the customer's use of the service primarily occurs, which is either the residential address or primary business address of the customer.

2. Sourcing Mobile Telecommunications Service

Mobile telecommunications services other than air-to-ground radiotelephone services are sourced to Tennessee and subject to Tennessee sales tax if the customer's place of primary use is in Tennessee as required by the Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116-126).[584] In the case of mobile wireless services, place of primary use must be within the licensed service area of the home service provider.

3. Sourcing Post-paid Calling Service

Post-paid calling services[585] are telecommunication services paid for using a credit or debit card or charged to a telephone number not associated with the origination or termination of the telecommunication service call and are sourced to the origination point of the telecommunication signal as first identified by the seller's telecommunications system or information received by the seller from its service provider.[586]

4. Sourcing Private Communication Service

Private communications services are sourced to Tennessee based on the location of customer channel termination points located in this state. A customer channel termination point is the location where the customer either inputs or receives the communications.[587] See Private Communication Service section for more details about sourcing this service.

5. Ancillary Service

Ancillary services are subject to Tennessee tax when sourced to the customer's place of primary use which is in Tennessee.[588]

6. Sourcing Prepaid Calling Services and Prepaid Wireless Calling Services

Telecommunications and ancillary services are sourced according to Tenn. Code Ann. § 67-6-905. Public Chapter 377 Sections 31 and 32 (2023) update these sourcing statutes to add Tennessee's current sourcing rules for prepaid calling service and prepaid wireless calling service.

Prepaid calling sales made from a place of business within Tennessee are sourced under Tenn. Code Ann. § 67-6-903.

Prepaid calling sales from out of state into Tennessee are sourced according to Tenn. Code Ann. § 67-6-902(a)(2) and this provision includes an option for sourcing to the location associated with the mobile telephone number.

For more information concerning general sourcing for sales into Tennessee and sales from a place of business in Tennessee see Chapter 7 Sourcing Sales to Tennessee.

Emergency Communications 911 Surcharge

The 911 surcharge is a fee imposed on subscribers of telecommunications services for the provision of 911 emergency communications services provided by emergency communication districts and the Tennessee Emergency Communications Board. The 911 surcharge funds the statewide 911 emergency communications services.

Beginning January 1, 2021, the 911 surcharge is $1.50. The 911 surcharge was previously $1.16. The 911 surcharge is the same for prepaid wireless calling services (prepaid wireless phone cards, recharge of service, authorization codes and prepaid cell phones or other prepaid wireless devices preloaded with airtime minutes) and monthly communication services (wireline and non-prepaid wireless telecommunications services). However, the 911 surcharge does not apply to prepaid long distance calling cards.

911 surcharge appearing on telephone bills or charged by retailers when selling a prepaid wireless calling card or prepaid cellular phone is not part of the sales price of the telecommunications services or of the prepaid wireless calling card, phone, or authorization code pursuant to Tenn. Code Ann. § 7-86-117 and is not subject to tax.

1. Collecting the 911 Surcharge

Telecommunications service providers must collect a 911 surcharge in the amount of $1.50 from subscribers of monthly communication services if the monthly charge for the communication service is $5 or more. If a service provider collects the charge for the services on a less than monthly basis (e.g., annually), the 911 surcharge still must be collected for each month or partial month to which the services apply. If more than one separately priced monthly communications service is sold, each service is subject to the 911 surcharge. A single subscriber of monthly communication services may not be charged more than 200 surcharges per month for a single building with a single fixed address.

Retailers, which include marketplace facilitators, collect the 911 surcharge in the amount of $1.50 from purchasers at the time of the sale of a prepaid wireless calling service (e.g., card or phone) if the price of the prepaid wireless calling service is $10 or more. If more than one separately priced prepaid wireless calling item is sold, each item is subject to the 911 surcharge.

The 911 surcharge must be separately stated on the invoice, receipt or other sales document given to the purchaser. Purchasers of both prepaid wireless calling services and monthly communications services are required to pay the 911 surcharge even if the purchaser is a nonprofit organization or governmental agency that is exempt from paying sales and use tax.

Resale Certificates

A reseller may provide a sales and use tax resale certificate to purchase communications services for resale without paying the 911 surcharge if the reseller collects the 911 surcharge from its customers.

2. Uncollected 911 Surcharges

911 surcharge audits are conducted by the Department of Revenue and whenever possible coincide with audits of sales and use tax. If unreported and/or uncollected 911 surcharges are discovered in an audit, separate schedules from sales and use tax are prepared for the unpaid 911 surcharges. A separate notice of proposed assessment is issued for a 911 surcharge audit. Unpaid 911 surcharges are subject to penalty and interest.

3. Administrative Fee

A retailer of the monthly communications services or prepaid wireless calling services is permitted to retain a 2% administrative fee only when the retailer actually collects and remits the 911 surcharge. Therefore, if the Department collects the surcharge pursuant to an audit, then the retailer is not entitled to any part of the administrative fee.

4. Statute of Limitations

The statute of limitations for making a 911 surcharge assessment applies in the same manner as for sales and use tax. In the event of an audit, a separate completed agreement to extend the statute of limitations for the 911 surcharge audit is needed.

For more information on the 911 surcharge, see Important Notices 20-18, 17-05, and 15-02.

Television Programming Services

Tennessee law imposes sales tax on sales of subscriptions to, access to and use of television programming services provided by video programming service providers and direct-to-home satellite service providers that are comparable to broadcast television programming. The programming services also include the pay-per-view or on-demand audio, or video programming services provided by a video programming service provider and direct-to-home satellite service provider. Sales of subscriptions to and access to electronically transferred or accessed (e.g., online streaming) of television programming is also subject to sales tax. Each of the taxable television programming services are subject special state and/or local tax rates.

1. Video Programming Services

Tennessee law imposes sales tax on fees for subscription to, access to, or use of television services provided by a provider of video programming services.[589] *Video programming service* is defined as programming provided by or comparable to programming provided by a television broadcast station and includes:

- Authorized cable television providers
- Wireless cable television providers
- Video services provided through wireline facilities located at least in part in the public rights-of-way, commonly known as broadband television.[590]

Video programming services do not include:

- Direct-to-home satellite services
- Specified digital products
- Video services provided incidental to the provision of internet access
- Audio or video services provided by a commercial mobile service provider[591]

There is an exemption for the first $15.00 of each subscriber's monthly fee for television programming services provided by a video programming service provider.[592] Bulk subscribers must pay sales tax on the monthly fee in excess of $15.00 for the video programming services, even if the bulk subscriber establishes separate accounts for each unit in a multiple-unit dwelling. Bulk subscribers are persons who contract with a video programming service provider to receive video programming services for multiple viewing units.[593]

- This applies to apartment complexes, residential communities, hotels, motels, for-profit hospitals, etc. Occupants that separately contract with video programming service providers are entitled to an exemption for the first $15.00 of the monthly charge for the services.[594]

The application of the state and local tax rates to the monthly fees for video programming services is somewhat complex.

Application of Tax to the Monthly Fee for Video Programming Services:

- $0 - $15.00 – exempt from state and local tax;

- $15.01 - $27.50 – state tax 8.25% and local tax 0%; and
- Above $27.50 – state tax 7% and applicable local tax rates.[595]

Home Communication Terminals

Video programming service providers may purchase without tax home communication terminals (e.g., cable boxes), remote control devices and other similar customer premises equipment used to provide video programming services that will be sold or leased to subscribers.[596]

2. Direct-to-Home Satellite Services

Tennessee law imposes sales tax on fees for subscription to, access to, or use of television programming services delivered by a provider of direct-to-home satellite service.[597]

While "direct-to-home satellite services" are not defined in Tennessee law, the Federal Telecommunications Act of 1996 defines the service to mean "only programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite."

The federal act prohibits local taxation on fees for the direct-to-home satellite service. The federal local tax prohibition does not apply to sales or leases of subscriber equipment or other tangible personal property (e.g., satellite dish, receiver, and remote control).[598]

Monthly fees for direct-to-home satellite services are subject to a state sales tax rate of 8.25%. There is not a monthly $15 exemption for direct-to-home satellite services.

3. Streaming Television Programming Services

Tennessee law imposes sales tax on sales of subscription to, access to and use of electronically transferred or accessed (e.g., streaming via the internet) television programming services. Such television programming services are specified digital products[599] and more specifically digital audio-visual works.[600]

Specified digital products are taxed at the general state tax rate currently 7% and a special local tax rate of 2.5%, instead of the local tax rate in effect in a county or municipality. There is not a monthly $15 exemption for digital audio-visual works.

While other television programming services must be reported on the TVTC sales and use tax return, sales of specified digital products may be reported on either the regular sales and use tax return or on the TVTC sales and use tax return.

4. Hotels, Motels, and Other Lodging Service Providers

Hotels, motels, and other lodging service providers may not use a resale certificate to purchase without tax television programming services from video programming service providers and direct-to-home satellite service providers that are provided free to guests. Sales of pay-per-view movies and pay-per-use electronic games to a guest of a hotel, motel and other lodging service are subject to sales tax as an amusement, pursuant to Tenn. Code Ann. § 67-6-212 and taxed at the general state tax rate currently 7% and the applicable local tax rate in effect in the county or municipality where the lodging business is located.

Registration and Filing

All businesses including providers of telecommunications services, video programming services and direct-to-home satellite services must register each business/ store location in Tennessee for sales and use tax. Each location profile is assigned a 10-digit location ID and a city or county situs code with the corresponding applicable local tax rate for the physical location in Tennessee. For sales from out-of-state into Tennessee, a taxpayer must have one out-of-state location profile ID (usually registered with an out-of-state corporate headquarters address) that is assigned an out-of-state situs code (9900).[601] The taxpayer must apply the specific local sales tax rate in effect for the city or county jurisdiction into which the sale is shipped or delivered. Sales of tangible personal property, most taxable services, amusements, and taxable digital products are reported on the State and Local Sales and Use Tax Return (Form SLS 450). However, as a result of special state and local tax rates, sales of telecommunications services, video programming services, and direct-to-home satellite services must be reported on the TV Programming and Telecommunications Sales and Use Tax Return (Form SLS 458) (TVTC).

1. Telecommunications Service Providers Filing

A telecommunications provider must report sales of tangible personal property (e.g., cell phones and accessories) made from each business/ store location using the SLS 450 sales and use tax return. Detailed tax filing information must be included for each store/ business location ID and one out-of-state location ID for reporting sales into Tennessee and purchases imported for use in Tennessee that are shipped to or delivered to a Tennessee address.

A telecommunications provider must register to file one TVTC SLS 458 sales and use tax return to report sales of telecommunications and ancillary services for the entire state and to report 911 surcharge collections. Detailed reporting of local tax by jurisdiction for sales into Tennessee is not available on Schedule B of the TVTC SLS 458 sales and use tax return. Sales of other products into Tennessee is reported using a SLS 450 sales and use tax return.

2. Video Programming Service Providers Filing

A video programming services provider making sales of video programming services (i.e., cable, wireless cable, and broadband television services) from business locations in this state must register each location to report the sales using the TVTC SLS 458 sales and use tax return. Each location account is assigned a city or county situs code with the corresponding applicable local tax rate for the business location. The monthly charge for video programming services above $27.50 is subject to the applicable local tax rate for that business location. Sales or leases of tangible personal property (e.g., home communication terminals and remote controls) made from the same business location and purchases imported for use at the same business location is also reported under the account for that location using the TVTC SLS 458 sales and use tax return.

For sales of video programming services provided from outside Tennessee, the sales are sourced to the customer's service address. A video programming services provider making sales of video programming services and sales of tangible personal property to Tennessee customers from outside Tennessee must register to file a TVTC SLS 458 sales and use tax return for each city and unincorporated area of a county in which the video programming services are provided to a customer's service address.

When a video programming service provider also makes sales of telecommunication services, the provider may register to file a separate TVTC SLS 458 sales and use tax return to report sales of telecommunications and ancillary services for the entire state and to report the 911 surcharge collections.

3. Direct-to-home Satellite Service Providers Filing

A direct-to-home satellite service provider is required to register for one TVTC sales tax account to report sales for the entire state of direct-to-home satellite services using the TVTC SLS 458 sales and use tax return. Direct-to-home satellite services are not subject to local tax.

The service provider must also register to file using the SLS 450 sales and use tax return to report the sales or lease of tangible personal property (e.g., satellite dish, receiver, remote control) from out-of-state that are shipped to or delivered to a customer's address. Detailed reporting of local tax by jurisdiction for sales into Tennessee is not available on Schedule B of the TVTC SLS 458 sales and use tax return.

Bundled Transactions Involving Services

Tennessee law specifically addresses the taxation of bundled transactions involving internet access, telecommunications services, ancillary services, internet access, and audio or video

programming services such as cable, wireless cable, broadband television programming or direct-to-home satellite television programming services.[602] [603] These bundled transaction procedures do not apply to transactions where other types of services or tangible personal property are also included in the bundled sale of services.

1. Bundled Transaction

A "bundled transaction" is the retail sale of two or more services, where:

- The services are otherwise distinct and identifiable; and
- The services are sold for one non-itemized price.

The sale of any services in which the sales price varies or is negotiable, based on the selection by the purchaser of the services included in the transaction, is not a bundled transaction. For example:

- A telephone company sells at retail a package of services for one flat monthly amount of $50. The deal includes local telephone service, internet access, and four ancillary services: call waiting, caller identification, call forwarding, and voice mail services. The purchaser cannot pick or choose among the different services that are to be included in the bundle. Thus, this is a bundled transaction. This transaction is for a retail sale of more than one distinct service where the sales price of each of the services was not itemized either in the invoice given to the purchaser or in the pricing of the services provided to the purchaser.

2. Calculation of Tax

Methods for billing and pricing services to customers continue to change as retailers continue to expand the types of services they provide to customers. While internet access is not subject to sales tax, ancillary and telecommunications services are subject to different state and local tax rates from the rates that apply to cable, wireless cable, broadband television programming and direct-to-home satellite television services. To prevent retailers of these services from being required to collect, and the consumer from paying, more tax than might otherwise have been due because the retailer packaged certain services together for a special price, the following procedures are provided for determining the proper taxation for transactions involving telecommunications services, internet access, ancillary services, and audio and video programming services such as cable, wireless cable, broadband television programming and direct-to-home satellite television services.

Bundle of Taxable and Non-Taxable Communication Services

If the bundled transaction is for taxable telecommunications, ancillary and video programming services and non-taxable internet access, tax will be calculated using the total price for the bundled services, unless the seller can document from the seller's books and records the portion of the sales price that is for the non-taxable internet access.

Sellers, who as a part of their regular business practices account separately in their books and records for the sales of the different services in a bundle, should collect tax only on the sales price apportioned to the taxable services in the bundled transaction. Sellers must use a reasonable method of apportionment. Sellers that *do not* separately account for bundled services in their books and records must collect tax on the single, non-itemized price.

Bundle of Communication Services Taxed at Different Tax Rates

If the bundled transaction is for the purchase of telecommunications, ancillary and video programming services that are subject to different state or local tax rates,[604] tax will be calculated using the total price at the higher combined state and local tax rate, unless the seller can document from the seller's books and records the portion of the sales price subject to the lower tax rates. For example:

- A mobile telephone company sells at retail to residential customers a bundle of services for a $45 flat monthly amount. The deal includes a total of 700 minutes for both intrastate and interstate calls, and voice mail services. The company accounts for the sales of each of these products separately in its books and records in the following manner: intrastate sales – $20; interstate sales – $20; voice mail services – $5. Tax should be calculated on the apportioned price of the bundled transaction in the following manner:

Service	Tax Base	Tax Rate	Tax
Intrastate	$ 20	9.5%	$ 1.90
Residential interstate	$ 20	8.5%	$ 1.70
Ancillary - voicemail	$ 5	9.5%	$ 0.48
Total Tax Due			**$ 4.08**

If the bundled services are not accounted for in the seller's books and records separately, tax must be calculated on the single, non-itemized price ($45) at the higher tax rate measured by combining the state and local tax rates together. The tax due in this example would be calculated using the state rate of 7% and local rate of 2.5% since the combination of these rates equals the higher rate applicable to one of the services included in the bundle.

Example 2: A cable television company sells at retail to residential customers a bundle of services for a $100 flat monthly amount. The deal includes assorted cable television channels including premium channels and internet access. The company accounts for the sales of each of these products separately in its books and records in the following manner:

- cable television services – $75
- internet access – $25

In this example, tax should be calculated on the apportioned price of the bundled transaction in the following manner, assuming the applicable local tax rate is 2.25%:

Service	Tax Base	Tax Rate	Tax
Cable television:			
$0 - $15	$ 0 *	-	-
$15 - $27.50	$ 12.50 *	8.25%	$ 1.03
$27.50 - $75	$ 47.50 *	9.25%	$ 4.39
Internet access	$ 0 *	-	-
Total tax due			**$ 5.42**

***** Exempt

If the bundled services are not accounted for in the seller's books and records separately, tax must be calculated on the single, non-itemized price ($100) at the higher tax rate measured by combining the state and local tax rates together. In this example, the tax due would be calculated using the state rate of 7% and local rate of 2.25% since the combination of these rates equals the higher rate applicable to the cable television services included in the bundle. The total tax of $9.25 would be due if the services were not accounted for separately in the seller's books and records.

Chapter 18: Food

Overview

The retail sale of food and food ingredients is subject to a state rate of 4%,[605] plus the applicable local tax rate.[606] This reduced sales tax rate applies to items that meet the statutory definition of "food and food ingredients."[607]

Effective May 3, 2024, Pub. Ch. 917 (2024) creates a new "city tax rate" that may apply to food and food ingredients. "City tax rate" means a rate adopted in a city or town that is equal to the difference between the county rate and city rate, when the county rate is below 2.75%. For example, Stewart County has a local tax rate of 2.25%. The City of Dover, which is located in Stewart County, has a local tax rate of 2.75%. Dover's "city tax rate," therefore is .50%.

Pub. Ch. 917 authorizes a city or town that has a city tax rate to:

- Levy a tax on the retail sale of food and food ingredients within the jurisdiction of the city or town at a rate lower than the city tax rate levied for other privileges, goods, and services; or
- Exempt from the city tax rate the retail sale of food and food ingredients within the city or town.

Continuing with the Dover example, Dover may, by city ordinance, adopt a city rate of .25% or .0%. But please note, food and food ingredients purchased within Dover would still be subject to the 2.25% Stewart County rate and all other taxable products purchased in Dover would remain subject to the full 2.75%.

Food and Food Ingredients

Food and food ingredients taxed at a reduced rate of 4% are:

- Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form;
- that are sold for ingestion or chewing by humans;
- consumed for their taste or nutritional value; and
- are not specifically excluded items.

Items specifically excluded from being classified as food and food ingredients are subject to the full state rate of 7% plus the applicable local tax rate. The following are not classified as food and food ingredients:

- Alcoholic beverages[608]
- Tobacco[609]
- Candy[610]
- Dietary supplements[611]
- Prepared food[612]

⚠ **Prepared food, candy, dietary supplements, tobacco, and alcoholic beverages are taxed at the full sales tax rate on retail sales. The reduced rate only applies to "food and food ingredients," as defined by statute.**

The below subsections further explain which products qualify as food and food ingredients. The below lists show that similar items may be taxed differently. For example:

- Dried fruit with sweeteners is taxed at 7%, whereas dried unsweetened fruit is taxed at 4%. The key to making the proper classification is understanding the statutory definitions of food and food ingredients, alcoholic beverages, tobacco, candy, dietary supplements, and prepared food.

1. Qualifying Food and Food Ingredients

The following items qualify for the reduced tax rate on "food or food ingredients" if the seller does not prepare them:[613]

- Baby food
- Baking powder
- Baking soda
- Beverage powders, not dietary supplements
- Biscuit mix
- Bottled water (carbonated, flavored, sweetened, or unsweetened)
- Bouillon cubes
- Bread
- Butter
- Cake mixes
- Cakes
- Canned foods
- Cereal
- Cheese
- Chip dip
- Chips (potato, corn, etc.)
- Chocolate (unsweetened)
- Cocoa powder
- Coffee
- Condiments (e.g., ketchup, mustard, mayonnaise)
- Cookies
- Cooking oils
- Dairy products
- Eggs
- Fish and meats
- Flavoring extracts
- Flour
- Food colorings
- Frostings
- Frozen meals
- Fruit (fresh or unsweetened and dried)
- Fruit juices
- Gelatin
- Granola and breakfast bars
- Gravies and sauces (mixes or extracts)
- Herbs and spices
- Honey
- Ice (e.g., cubes, crushed)
- Ice cream
- Jams and jellies
- Luncheon meats
- Margarine
- Meat extracts
- Meat tenderizers
- Nuts (unsweetened or salted)
- Olives
- Pasta
- Pastries
- Peanut butter
- Pepper
- Pickles
- Pies
- Popcorn
- Popsicles
- Poultry
- Pretzels
- Pumpkins
- Raisins
- Relishes
- Salad dressing and mixes
- Salt (granular)
- Seasonings
- Sherbet
- Shortening
- Soft drinks
- Sugar and sugar substitutes
- Sweeteners
- Tea (bags, leaves, bottled)
- Trail mix
- Vegetable juices
- Vegetables (fresh, frozen, dried, etc.)
- Vinegar

- Yeast
- Yogurt

2. Items that do not Qualify as Food or Food Ingredients

The following is a list of items that are not considered food or food ingredients and are taxed at the 7% rate. This list is not all-inclusive.[614]

- Alcoholic beverages
- Baking chips and baking bars (sweet and unsweetened)
- Beer
- Breath mints, spray, and strips
- Cake decorations
- Candy-coated items
- Cigarettes and other tobacco items
- Cough drops
- Cough lozenges
- Dried fruit with sweeteners
- Gum
- Herbal supplements
- Honey roasted or coated nuts
- Marshmallows
- Party trays
- Vitamins and minerals

3. Alcoholic Beverages

An alcoholic beverage is defined for sales and use tax purposes as a beverage that is "suitable for human consumption and contains one half of one percent (.5%) or more of alcohol by volume." Alcoholic beverages include:

- Beer

- Wine
- Distilled spirits
- Any other beverage that contains alcohol and is regulated pursuant to Title 57.[615]

Alcoholic beverages are taxed at the general state sales tax rate of 7%, plus the applicable local tax rate.

4. Tobacco

Tobacco is defined for sales and use tax purposes as cigarettes, cigars, pipe or chewing tobacco, and any other item containing tobacco.[616] Tobacco is taxed at the general state sales tax rate of 7%, plus the applicable local tax rate.

5. Candy

Candy is taxed at the general state sales tax rate of 7%, plus the applicable local tax rate. Candy is defined as a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Any preparation containing flour or requiring refrigeration is not considered candy.[617]

The definition of candy should be used to determine if a product that is commonly thought of as candy is in fact candy. For example, the definition would be applied where a person is trying to determine if a product is candy taxable at 7% as opposed to a cookie taxable at 4%.

To determine if a product is classified as candy, consider the following:[618]

- Preparation:
  - Candy is a preparation that contains certain ingredients other than flour.
  - A preparation is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the candy definition. For example:
    - Reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.
- Bars, drops, or pieces:
  - A bar is a product that is sold in a square, oblong, or similar form.

- A drop is a product that is sold in a round, oval, pear-shaped, or similar form.
- A piece is a portion that has the same make-up as the product as a whole.
  - Individual ingredients and loose mixtures of items that make up the product as a whole are not pieces. However, if the loose mixture of different items that make up the product are all individually considered candy and are sold as one product, the product is classified as candy.

- Flour:
  - A product contains flour if the product label specifically lists the word flour as one of the ingredients.
  - There is no requirement that the flour be grain-based, and it does not matter what the flour is made from.
- Other ingredients or flavorings:
  - Other ingredients or flavorings are those that are similar to chocolate, fruits, or nuts. This includes candy coatings such as carob, vanilla, and yogurt; flavorings and extracts such as vanilla, maple, mint, and almond; and seeds and other items similar to the classes of ingredients or flavorings.
  - For example, the labeling for a pack of barbeque flavored peanuts indicates that the product contains peanuts, sugar, and various other ingredients, including barbeque flavoring. Because the peanuts are a preparation of sweeteners, nuts, and barbeque flavoring that are sold in pieces, the label does not list flour as an ingredient, and the nuts do not require refrigeration, the barbeque flavored peanuts are candy.
- Sweeteners:
  - The term “natural or artificial sweeteners” means an ingredient that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt honey, maltitol, agave, sugar derived from monk fruit, and artificial sweeteners.
- Refrigeration:

- A product "requires refrigeration" if it must be refrigerated at the time of sale or after being opened.
- The product label must indicate that refrigeration is required.
- A product that is otherwise classified as candy is candy even if the product is not required to be refrigerated but is sold refrigerated. If an item requires refrigeration, as stated on the label, it is considered food or a food ingredient and is taxed at the reduced food state tax rate of 4%, plus the applicable local tax rate.

- Bundled:
  - A packaged combination of individually wrapped bars, drops, or pieces, with some considered candy and others considered food and food ingredients, is a bundled sale and subject to the higher tax rate applied to candy.[619]
  - Products whose ingredients are a combination of various unwrapped food ingredients, some of which are candy and others are food ingredients (e.g., breakfast cereals and trail mix with candy pieces), are considered food and food ingredients and subject to the reduced tax rate.
  - A packaged combination of various unwrapped pieces, all of which individually are considered candy, is candy.

Some examples of items that meet the statutory definition of candy include:

- Baking bars (sweet or semi-sweet)
- Beer nuts
- Breath mints
- Cake decorations
- Candy bars (no flour listed in ingredients)
- Candy-coated items
- Caramel or candy-coated apples
- Caramel or candy-coated popcorn
- Cereal bars (no flour listed)
- Chewing gum

- Chocolate chips or other sweet or semi-sweet baking chips
- Chocolate-covered nuts or seeds
- Chocolate-covered potato chips
- Chocolate or carob-covered raisins
- Dried fruit with sweeteners
- Fruit roll-ups with sweeteners
- Glucose tablets[620]
- Honey roasted or sweetened nuts
- Marshmallows
- Peanut brittle
- Sugarless candy (no flour listed in ingredients)
- Yogurt-covered raisins or nuts

6. Dietary Supplements

Dietary supplements are subject to the general state sales and use tax rate of 7%, plus the applicable local tax rate. A dietary supplement is a product that:[621]

- Contains a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, and/or a concentrate, metabolite, constituent, or extract;
- is not represented as conventional food, is not intended to be the sole item of a meal, and generally comes in the form of a tablet, capsule, powder, soft gel, gel cap, or liquid; and
- is labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label.[622] See the following example:

Supplement Facts

Serving Size 1 Capsule

Amount Per Capsule	% Daily Value
Calories 20	
Calories from Fat 20	
Total Fat 2 g	3%*
Saturated Fat 0.5 g	3%*
Polyunsaturated Fat 1 g	†
Monounsaturated Fat 0.5 g	†
Vitamin A 4250 IU	85%
Vitamin D 425 IU	106%
Omega-3 fatty acids 0.5 g	†

* Percent Daily Values are based on a 2,000 calorie diet.
† Daily Value not established.

Ingredients: Cod liver oil, gelatin, water, and glycerin.

The following are examples of items that are dietary supplements, which are subject to the general state sales and use tax rate of 7%, plus the applicable local tax rate:[623]

- Amino acids
- Appetite suppressants and stimulants
- Antioxidants
- Bee pollen
- Enzymes
- Garlic capsules
- Ginseng
- Herbal supplements
- Immune supports
- Lecithin
- Metabolic supplements
- Vitamins and minerals
- Zinc lozenges

7. Prepared Food

Prepared food is subject to the general state sales and use tax rate of 7%, plus the applicable local tax rate.[624]

"Prepared food" means:[625]

- Food that is sold in a *heated state* or that is heated by the seller.
- Food where *two or more food ingredients* are mixed together by the seller for sale as a single item.
- Food sold by, but not prepared by, a seller who also *provides eating utensils*, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws.

To be considered prepared food, the legal entity that sells the product at retail must do an activity in addition to selling the item: heat, mix, or provide utensils. The serving size or quantity does not affect the taxability of a food item. Cold or frozen meals and soups prepared by the seller that are ready to heat are considered prepared foods. The seller may prepare the item where the food is sold at another location. However, if the seller contracts with another legal entity to prepare the food, the food is not prepared *by the seller* and is taxed at the reduced rate for food, unless the legal entity preparing the food is an agent of the seller.

Prepared food includes the following items made or prepared by the seller:

- Bakery goods
- Coffee or tea
- Fruit trays
- Ice cream served in cones, as sundaes, or any other such preparation
- Party trays
- Salad greens mixed by the seller
- Ready to eat meats, poultry, or fish (cooked, smoked, or dried, such as summer sausage, beef or venison sticks, rotisserie chicken, and smoked fish)
- Sandwiches
- Soups, casseroles, or meals sold warm and ready to eat

- Take and bake pizzas
- Warmed nuts

Prepared food is **not**:

- Food that is only cut, repackaged, or pasteurized by the seller; or
- Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the U.S. Food and Drug Administration (FDA)[626] to prevent food borne illnesses.

For example:

- Deli meats or cheeses that are sliced and repackaged for sale to the customer or potato salad that is not made by the seller and is only repackaged into smaller containers and sold in the deli are not prepared food.
- Eggs, fish, meat, poultry, and foods containing these raw animal foods that require cooking by the consumer are not prepared food. Qualifying foods include:
    - Marinated raw meats or seafood; and
    - cookie dough containing raw eggs.

Heated Food

Food sold in a heated state or food that has been heated by the seller is prepared food taxable at the 7% rate. Food is sold in a "heated state" if the food is sold at a temperature that is higher than the air temperature of the place where it is sold. Additionally, food does not have to be sold heated to qualify as prepared food if the seller previously heated the item.

Examples of heated food include:

- A rotisserie chicken that is cooked by the seller and then placed in a warmer for sale.
- Nuts heated and sold warm.
- Cookies that are cooked by the seller and sold to the consumer at room temperature.
- Coffee or tea prepared by the seller.

Food is not considered heated by the seller if the seller does not actually heat the food, but the seller provides a means for customers to heat the food themselves. For example:

- A seller offers for sale prepackaged muffins that are stored at room temperature, but the seller provides a microwave that its customers can use to heat the muffins if they desire. In this case, the muffins are not considered to be sold in a heated state by the seller.

Ingredients Combined by the Seller and Sold as a Single Item

Food may qualify as prepared food if the seller mixes ingredients together to create a new food item to sell. For example:

- A bakery mixes two or more ingredients to make a cake and bakes and ices the cake for sale. The requirement is also met if the seller combines two or more items and sells them as one item, even if a new distinct food item is not created.
- A deli combines several different cheeses and sliced meats along with garnishes to make a party tray for a single sales price.

Food Sold with Eating Utensils Provided by the Seller

Food may qualify as prepared food, subject to the 7% tax rate, if the food is sold with eating utensils provided by the seller, even if the seller did not heat the food or mix ingredients to create the food. Examples of eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, napkins, cups, and straws. A container or packaging used to transport the food is not considered a plate.

Box lunches with straws, napkins, plastic forks, and other utensils are considered prepared food. However, if the manufacturer, rather than the seller, provides an eating utensil with the food, it falls under the definition of food or food ingredients rather than prepared food and is taxable at the lower food tax rate. For example:

- A manufacturer of tuna lunch kits includes a napkin and spoon with the kit.
- A prepackaged container of crackers with spreadable cheese comes with a manufacturer-provided plastic cheese spreader.
- Both of the above items are properly taxed as food at the 4% rate rather than prepared food at the 7% rate.

75% Test – Utensils Deemed Provided by the Seller

Eating utensils, other than plates, bowls, glasses, or cups, that are necessary for the purchaser to receive the product are “provided by the seller” if the seller’s practice is to:

- Physically give or hand the utensils to the purchaser; or
- Make the utensils, such as napkins or straws, available on the premises (self-service), *but only if* the seller's percentage of food that is otherwise considered prepared food is greater than 75% of all food sales.

The 75% test is calculated as follows:

- The numerator includes all the following and does not include alcoholic beverages:
  - Sales of food heated by the seller;
  - Sales of food ingredients mixed or combined and sold as a single item; and
  - Sales of food where plates, bowls, glasses, or cups are necessary to receive the food.
- The denominator includes all the following and does not include alcoholic beverages:
  - Food and food ingredients
  - Candy
  - Dietary supplements
  - Soft drinks
  - Prepared food

If the resulting percentage is greater than 75%, even though the utensils are made available on counters and not physically given or directly handed to the purchaser, the utensils are considered "provided by the seller." Food sold with eating utensils provided by the seller is considered prepared food and is taxed at a state rate of 7%.

The 75% test does not apply to items (not otherwise prepared by the seller) that contain four or more servings packaged as one item sold for a single price. Therefore, any four-or-more serving sized item does not become prepared food even if the seller meets the 75% test. However, if the seller physically hands utensils to the purchaser with the purchase of such an item, then the item is considered prepared food. Whenever available, serving sizes will be determined based on a label on an item sold. If no label is available, a seller will reasonably determine the number of servings of an item.

Sellers that physically give or directly hand utensils to the purchaser and do not have utensils such as napkins or straws available for self-serve out on counters do not need to perform the 75% test. These sellers are only required to collect tax at the higher prepared

food tax rate on food that is otherwise prepared by the seller and food sold with utensils that the seller physically hands to the purchaser.

8. Meal Substitutes and Other Ingestible Items

Meal Substitutes

Meal substitutes are considered food or food ingredients and are taxable at the 4% state rate and the applicable local rate. Meal substitutes are identifiable by a "Nutrition Facts" box found on the label. See below. Examples of meal substitutes include, but are not limited to, unsweetened breakfast bars, sweetened breakfast bars containing flour, unsweetened dried fruit snacks, drinks such as Ensure or Boost, pop tarts, and soup mixes.

Sample label for
Macaroni & Cheese

Nutrition Facts

Serving Size 1 cup (228g)
Servings Per Container 2

Amount Per Serving	
Calories 250	Calories from Fat 110
	% Daily Value*
Total Fat 12g	18%
Saturated Fat 3g	15%
Trans Fat 3g	
Cholesterol 30mg	10%
Sodium 470mg	20%
Total Carbohydrate 31g	10%
Dietary Fiber 0g	0%
Sugars 5g	
Protein 5g	
Vitamin A	4%
Vitamin C	2%
Calcium	20%
Iron	4%

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Other Ingestible Items

As stated, items sold for ingestion or chewing by humans and consumed for their taste or nutritional value are taxed at a reduced sales tax rate, unless specifically excluded from the definition of food and food ingredients. The following discussion considers the proper classification of a variety of ingestible items:

- Cough drops and lozenges with a "Drug Facts" box or "active ingredients" labeling
  - Over-the-counter drugs purchased without a prescription are subject to the 7% state sales tax and the applicable local tax rate.[627]
  - Drugs that are purchased under a prescription are exempt from sales and use tax. Over-the-counter drugs that are *purchased pursuant to a prescription* are also exempt from tax. In this case, sellers are cautioned to keep documentation to support these exempt sales.
- Herbal supplements, vitamins, and minerals with a "Supplement Facts" box on the label that indicates a dietary supplement
  - Dietary supplements are not considered food or food ingredients for sales tax purposes and are subject to the standard 7% state sales tax rate, plus the applicable local sales tax rate.
- Spray candy that is not sold in bars, drops or pieces
  - It is not "candy" for sales tax purposes because it is not sold in bars, drops or pieces
  - Taxed as" food and food ingredient" at a 4% rate
- Pixie sticks
  - It is not "candy" for sales tax purposes because it is not sold in bars, drops or pieces
  - Taxed as "food and food ingredient" at a 4% rate
- Cotton candy
  - Is not "candy" for sales tax purposes because it is not sold in bars, drops or pieces
  - If prepared by the seller is considered prepared food taxable at the 7% rate

    - If not prepared by the seller, the reduced rate for food and food ingredients applies

- Breath sprays and breath strips
    - Is not food and food ingredients
    - Taxed as tangible personal property at the 7% rate unless it is exempt from sales tax as a drug purchased pursuant to a prescription and there is a "Drugs Facts" box or "active ingredients" label
- Blood glucose tablets that are preparations of sweeteners, flavorings and sold in pieces
    - If no "Drug Facts" box or "active ingredients" labeling, they are taxed as candy at the 7% rate
- Non-alcoholic cocktail mixes and beers
    - Taxed as food and food ingredients at a 4% sales tax rate
- Pedialyte oral electrolyte replacement solutions
    - If no "Drugs Facts" box or "active ingredients" labeling and no "Supplement Facts" box, they are taxed as food and food ingredients
- Rock salt
    - Is not classified as a food or food ingredient
    - Taxed as tangible personal property at a rate of 7%

Restaurants

Restaurants routinely encounter transactions that may or may not be subject to the sales or use tax. Many of these common transactions are identified below and categorized based on their taxing requirement. For more information on marketplace facilitators and delivery network companies, see Chapter 10 of this manual.

1. Taxable Transactions

The following charges are subject to the sales or use tax.

Meals Furnished to the Public

Meals sold to the public are sales of prepared food and are subject to sales tax at the rate imposed on sales of tangible personal property. This applies to meals furnished at a hotel, drug store, club, resort, or other place at which meals are served to the public.[628]

Delivery Charges

Delivery charges are included in the sales price and are taxable for sales tax purposes when the restaurant delivers the food.[629] Transportation, shipping, postage, handling, crating, and packing charges are all taxable. However, separate taxable charges for delivery by a third party (other than the restaurant) are not included in the sales price. For example, charges from a delivery network company, as discussed in Chapter 10 – Marketplace Facilitators, are not taxable.

Free Meals and Drinks to the Public

If a free meal or drink is provided to a customer (e.g., free meals to military personnel on Veterans Day or complimentary coffee to patrons) and no additional purchase is required, the restaurant must pay *use tax on the cost* of the ingredients, or the items withdrawn from inventory.

Employee Meals

Meals sold or given to employees are subject to sales tax on the greater of the sales price to the employee or the cost of the ingredients of the meal.[630]

Tangible Property Used by the Restaurant (does not accompany the transfer of food or beverage to the consumer)

Disposable items used by restaurants, such as aluminum foil, paper towels, toothpicks, toilet tissue, and other similar items that are used by the restaurant may not be purchased on a resale certificate. The restaurant is considered the end user of these items and it must pay sales tax when the purchase is made. In addition, dinnerware, flatware, glassware,

cookware, cooking/serving utensils, tablecloths, cloth napkins, and place mats, may not be purchased tax exempt on a resale certificate.

- Note: A restaurant is not considered a manufacturer for sales and use tax purposes and therefore, cannot qualify for the industrial machinery exemption.[631]

Mandatory Tips

Tips that are automatically added to the customer's bill or that are not returned to the persons performing the service are included in the sales price and are subject to sales tax.[632]

Catering, Delivery Charges, and Other Charges

Restaurants catering for parties, weddings, receptions, and other functions should collect sales tax on food items at the prepared food rate. If catered food is delivered and a delivery fee is charged to the customer, the delivery charge would be part of the selling price that is subject to sales or use tax. Labor and service charges made as part of the sale of catered food and beverages and other miscellaneous charges such as fuel surcharges or mileage charges would also be part of the sales price. However, separately stated charges for servers, setup services, bartenders, valets, etc., are not part of the sales price of the catered food and are not subject to tax.

Sales of Merchandise

T-shirts, cups/mugs, and other merchandise that a restaurant may offer for sale are subject to sales tax. In the event a restaurant withdraws such items from its inventory for promotional purposes or for employee gifts, use tax should be accrued and remitted on the cost of such items.

Alcoholic Beverage Sales

All sales of alcoholic beverages are subject to the sales or use tax. The sales price includes all applicable federal and state taxes, except the liquor-by-the-drink tax imposed by Tenn. Code Ann. § 57-4-301(c).[633]

2. Nontaxable Transactions

The following charges are not subject to the sales or use tax:

Gift Certificates

The sale of a gift certificate is not subject to the sales tax. Sales tax is charged on the item purchased when the gift certificate is redeemed.

Discounts and Coupons Offered by a Restaurant

These items are not included in the sales price and are not subject to tax.[634]

Free Meals and Drinks to the Public when a Purchase is Required

If the customer is required to purchase an item to receive the free item (e.g., "buy one entrée at the regular price, and receive an entrée of the same or lesser value free" or a "free drink with the purchase of a burger"), the "free" item is not subject to use tax. The tax base is the amount charged for the paid-for item.

Disposable Supplies

Restaurants may purchase exempt from sales and use tax disposable items such as foam/paper plates, plastic/foam cups, paper napkins, paper bibs, plastic eating utensils, straws, carry out containers or bags, and other similar disposable products that accompany the transfer of food and beverages to the customer. These items that accompany the transfer of food and beverages by restaurants are either exempt packaging[635] or are considered part of or incidental to the sale of the food and beverages. *Therefore, such disposable items may be purchased tax exempt on a resale certificate.* This is true whether the food and beverages are dine-in or carry-out.

Nontaxable Tips

Most tips are not subject to tax and are excluded from the sales price of the item sold.[636] However, tips automatically added to the customer's bill or tips that are not returned to the persons performing the service *are* included in the sales price.

Catering with Separately Stated Charges for Bartenders, Servers, etc.

Charges for servers, setup services, bartenders, valets, etc., are not subject to tax and are not part of the sales price of the catered food *if separately stated* on the invoice.

Convenience Stores

Convenience stores routinely encounter a variety of transactions. The following are some common transactions categorized based on their taxing requirement.

1. Taxable Transactions

The following charges are subject to the sales or use tax:

- Kerosene
  - Sales **not** dispensed through a "blocked" pump are subject to sales and use tax unless the sale is to a farmer or exempt entity. "Blocked" means the dispensers have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank.
  - Sales made over the counter in prepackaged containers are subject to the state sales and use tax rate of 7%.
- Prepaid calling cards
  - Prepaid calling services and prepaid wireless calling services are taxable[637] at the time of the sale of the calling card or authorization code to use the calling card.[638]
  - Retailers must collect a $1.50 prepaid wireless E911 fee[639] from consumers and report and remit the prepaid wireless E911 fees on their sales and use tax returns. Separately stated E911 fees are not included in the sales price subject to sales and use tax.[640]
- Services associated with service stations
  - Tire and tube repair, replacing parts in motor vehicles, charging batteries, switching tires, lubrication, and washing motor vehicles (where the service providers take custody of the vehicle and perform the majority of the washing for the customer), are subject to the sales tax.

- Any *tangible personal property* used in the performance of services which can be identified as going to the customer, such as parts, grease, and patches, may be purchased by the taxpayer on a *resale certificate*.

- *Other types of supplies and equipment* used in the performances of the services that are not passed on to the customer, such as machinery, car wash soap, and detergents, are subject to the sales or use tax at the time the taxpayer purchases such items.[641]

2. Nontaxable Transactions

The following charges exempt from sales or use tax:

- Lottery tickets are not subject to sales and use tax.

- Gasoline is exempt from sales and use tax.[642]

- Kerosene sold at retail through blocked pumps is exempt from sales and use tax, regardless of the consumer's use of the kerosene.[643] "Blocked" means the dispensers have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank.[644]

  - All sales of kerosene are exempt from local sales and use tax.[645]

- Automated car washes are not subject to sales tax where the customer remains in custody of the vehicle and the majority of the wash and related cleaning activities, such as rinsing, drying, polishing, and vacuuming, are completed by the customer or automated equipment. This is true even if the purchaser accesses the car wash with a computer access code.[646] See the section on car wash facilities in Chapter 5 of this manual for more information on car washes.

- However, a car wash *is* subject to sales tax if the service provider takes custody of the vehicle at any time or performs the majority of the cleaning activities for the customer. Such activities include rinsing, drying, polishing, and vacuuming.[647]

- Money orders

3. Tobacco Buydown Payments

A "tobacco buydown agreement" is an agreement between a retailer and a manufacturer or wholesaler of tobacco. In accordance with the agreement, the retailer receives a specified amount – the tobacco buydown payment – from the tobacco manufacturer or wholesaler. This amount may be paid in money, credit, or otherwise and is based on the quantity and unit price of tobacco sold at retail. The agreement requires the retailer to reduce the sales price of the tobacco product to the purchaser without requiring the use of a manufacturer's coupon or redemption certificate.[648]

- The price paid by the customer for the product is the amount subject to sales tax.
- Sales tax is not due on tobacco buydown payments received by the retailer.

Grocery Stores

Grocery businesses routinely encounter a variety of transactions. The following are some common transactions categorized based on their taxing requirement.

1. Taxable Transactions

The following charges are subject to the sales or use tax:

Discount and Coupon Amounts Reimbursed by a Third Party

The taxable "sales price" includes any amount a seller *receives from a third party as reimbursement* for the purchaser's use of a manufacturer's coupon at the time of the sale.

Withdrawals of Inventory

Items of tangible personal property that are withdrawn from the store's inventory for use and for which a resale certificate has been issued to its supplier are subject to tax. Items purchased for use as premiums or gifts, such as samples given away or door prizes, are subject to sales or use tax.[649]

2. Nontaxable Transactions

The following charges are not subject to the sales or use tax:

Food Stamps and WIC Vouchers

Food paid for by or through food stamps, food coupons, approved electronic benefits transfer systems, or any other means approved by the Department of Human Services and issued by the department or the federal government, and purchases made with a voucher issued under the Special Supplemental Food Program for Women, Infants, and Children, **are exempt**.[650]

Retailers who receive Supplemental Nutrition Assistance Program ("SNAP") payments must report those amounts on Form SLS 450, Sch. A, Line 3.

Volume Discounts, Cigarette Buydowns, Advertising Incentives Received by Sellers

The sales price subject to tax does not include consideration received by a seller from a third party on volume discounts, cigarette buydowns, or advertising incentives. For example, sales tax is due on the sales price *after* applying tobacco buydown credits.

Discounts from the Seller

The sales price subject to tax does not include seller discounts allowed on items sold where the seller does not receive reimbursement for the reduction in price given to a customer. The tax base is the amount paid by the customer.

This applies to discount percentages, buy one/get one free deals, store coupons, and loyalty discounts (e.g., a customer collects points on purchases that they can later redeem as a discount or free "purchase" of another item).

Packaging

Materials used for packaging a product are exempt from the sales or use tax if the product is sold in the packaging directly to the consumer or if shipping the product without the packaging is "impracticable" and there is no separate charge for the packaging. Exempt packaging may include, but is not limited to, grocery bags, sacks, containers, labels, and pallets.[651] [652]

Lottery Tickets

Receipts from sales of lottery tickets are not subject to the sales or use tax.

Bad Debt

A grocery store that has remitted sales or use tax on a sale that later becomes a bad debt[653] may recover the amount paid to the state.[654] In this case, sales tax was not actually received from the consumer because the check presented for payment was not honored. Therefore, a credit for the amount paid by the store to the state may be taken as a credit on the sales tax return when the sale is booked as a bad debt for federal income tax purposes. This adjustment may be claimed if the following requirements are satisfied:

- The account in question is a bad debt owed to the grocer/taxpayer;
- The bad debt arises from a sale on which the sales tax was paid;
- The grocer wrote off the debt as uncollectible on its books and records; and
- The grocer is eligible to deduct the debt for federal income tax purposes.

If the bad debt is later paid to the dealer, the dealer will report the amount paid and remit the tax due on that amount on the next return filing.

Chapter 19: Exemptions

Tennessee sales and use tax laws provide for numerous exemptions. Tennessee sales and use tax exemptions can generally be divided into three categories: entity-based exemptions, product-based exemptions, and use-based exemptions. Some exemptions require the use of an exemption certificate, and others do not. Perhaps the most common exemption requiring the use of a certificate is the sale for resale exemption.

The below list includes a very brief description of Tennessee sales and use tax exemptions available to taxpayers. For more information regarding a specific exemption, please look to this chapter and the appropriate Tennessee Code sections.

And please note, this list does not create or eliminate any exemptions contained in Tennessee law. While this list is meant to be comprehensive, it may not contain every statutory exemption, thus should it only be used as a general reference, not a substitute for the law.

- Sale for resale
- Occasional and isolated sales
- Agricultural products[655] (See Agriculture Manual for a full analysis)
- Broadband equipment purchased by internet service provider
- Manufacturer (See Chapter 20 for a full analysis)
    - Industrial machinery
    - Energy/water
    - Industrial supplies
- Material handling equipment in warehouse or distribution facility
- Watershed districts[656]
- Municipal or local utilities, electric cooperatives, and electric membership corporations[657]
- Research & development
- Non-profit & educational entities[658]
- Credit unions
- Qualified Data Center
- Headquarters computer/telecom center
- Telephone cooperatives[659]
- Health/fitness club
- Government exemptions[660]
- Foreign missions & diplomats
- Commercial marine vessels[661] and repairs to these vessels[662]
- Taxidermists' charges to customers[663]
- Dentists' charges to patients[664]
- Charges made by optometrists, opticians, or ophthalmologists to their patients for tangible personal property used in the practice[665]
- Component parts of prescription eyewear including replacement parts and industrial materials sold to and used by a person operating an optical laboratory in Tennessee[666]
- Certain natural disaster

claimants[667]

- Telecommunication services between affiliates when one of the entities that is a member of the affiliated group has qualified for the headquarters tax credit[668]
- Interstate or international telecommunications services provided to businesses operating a call center
- Private communications services when the services are utilized for communications with a computer or telecommunications center located in this state by a taxpayer that has qualified for the headquarters tax credit[669]
- Automobiles when sold to a qualifying member of the armed forces[670]
- Automobiles transferred pursuant to a divorce decree[671]
- Gasoline[672]
- Motor fuel taxed by the gallon, pursuant to Title 67, Chapter 3, Part 2[673]
- Transfers by dealers in personal property of motor vehicles used by common carriers [674]
- Detailing services and repair services performed on motor vehicles held for resale by a licensed motor vehicle dealer or licensed automobile auction[675]
- Certain leased motor vehicles for insurance proceeds paid on damage settlements [676]
- Rental of films to theaters that pay tax imposed by or in lieu of the tax imposed by Tenn. Code Ann. § 67-6-212[677]
- Rental of films, transcriptions, and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission[678]
- Steam produced by a qualifying energy or resource recovery facility[679]
- Gas, electricity, fuel, oil, coal, and other energy fuels sold to the consumer for residential use[680]
- Materials used to line and create protective coatings on railroad tank cars and charges for installation of the coatings[681]
- Chemicals and supplies used in air or water pollution control facilities for pollution control purposes[682]
- Gun shows sponsored by any nonprofit organization of gun collectors[683]
- Public safety or public works related goods sold to a nonprofit property owners association[684]
- Tangible personal property, computer software, or services that are necessary to and primarily used for qualified production[685]
- Construction machinery transferred between parent and subsidiary corporations[686]
- Qualified building materials used to construct, expand, or renovate qualified warehouse or distribution facilities[687]
- Industrial materials and explosives for future processing, manufacturing, or conversion into articles of tangible personal property for resale[688]

- Used factory-manufactured structures[689]
- Products sold to or used by structural metal fabricators[690]
- Rental for films, transcriptions, and recordings to certain radio stations
- Textbooks and workbooks[691]
- Newspapers and certain periodicals[692]
- Liquified gas and compressed natural gas[693]
- Parking privileges sold by colleges and universities to students at the school[694]
- Film, including negatives, used in the business of printing or typesetting[695]
- Home communication terminals, remote control devices, and similar equipment purchased by a video programming service provider for sale/lease to its subscribers[696]
- United States and Tennessee flags sold by nonprofit organizations[697]
- Packaging[698]
- Utility poles, anchors, guys, and conduits[699]
- Blood and plasma[700]
- Pharmaceutical samples[701]
- Qualifying medical equipment and devices[702]
- Prescription drugs[703]
- Parts of prescription eyewear including replacement parts sold to and used by the operator of an optical laboratory[704]
- Demonstration or display property[705]
- Transfer of preliminary artwork by an advertising agency to its client[706]
- Repair services on qualified tangible personal property that is delivered or shipped out of this state[707]
- Certain replacement goods or parts[708]
- Items listed in Tenn. Code Ann. § 67-6-393 as exempt for the sales tax holiday
- School meals[709]
- Sales paid for with food stamps[710]
- Sales paid for with vouchers from the Special Supplemental Food Program for Women, Infants, and Children[711]
- Copies of hospital records sold or provided pursuant to a lawsuit[712]
- OEM headquarters company vehicles[713]
- Coins, currency, and bullion
- The use of computer software that is developed and fabricated by an affiliated company[714]
- The repair of computer software or any services otherwise taxable that are rendered by a company for an affiliated company[715]
- Fabrication of computer software by a person or employee for the person's own use or consumption[716]
- Access and use of software that remains in the possession of the dealer who provides the software or in the possession of a third party on behalf of the dealer when the software is used solely by a person or the person's direct employee for the purpose of fabricating other software[717]

- Online access to continuing education courses provided by certain nonprofits to meet certain regulatory requirements for licensed individuals[718]
- Coin-operated telephone services[719]
- ATM service[720]
- Wire transfer or other services provided by a financial institution[721]
- Specified digital goods that are not taxable in their tangible form[722]
- Railroad rolling stock or stock of vessels or barges of fifty tons or more of displacement when the stock or vessels are being purchased for use in interstate commerce or outside this state[723]
- Property leased by an airport authority[724]
- Parts, components, software, systems, accessories, materials, equipment, and supplies sold to or by a large aircraft service facility or affiliate
- Sale of guaranty, warranty, or service contracts for repair or refurbishment services of large aircrafts, engines, and accessories by authorized aircraft service facilities
- Replacement, installation, sale, use, storage, or consumption of parts, components, software, systems, accessories, materials, equipment, and supplies pursuant to guaranty, warranty, or service contracts
- Aircrafts owned or leased by commercial interstate or international air carriers when used in interstate commerce
- Aircraft used in flight training program[725]

Tennessee does not accept exemption certificates from other states aside from resale exemption certificates presented by out-of-state dealers.[726] However, out-of-state purchasers can generally apply for Tennessee exemption certificates. The Department provides an online lookup tool to verify resale and exemption certificates through TNTAP under the Information and Inquiries section.

Resale and Sale for Resale

Sales of property and services that are sold to another seller who intends to resell such property or services, rather than use such property or services, are considered "sales for resale" and are not subject to sales tax. "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser.[727] Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the Commissioner, such as Rules 62 and 68.[728]

The sales tax is imposed on retail sales and not on sales for resale. A sale for resale is treated the same as an exemption from sales tax for administration purposes. When a seller makes a sale for resale to a purchaser, the seller must obtain a resale exemption certificate

from the purchaser to document the purchaser's claim that the sale was for resale and, thus, not subject to tax.

For a transaction to qualify as an exempt sale for resale, the property or services being purchased must be resold "as such" (the property or services resold by the purchaser must be the same property or services that it purchased, without any changes made to the property or services before the resale) or they must become part of a product that the purchaser is fabricating and selling.[729]

Airplanes

Taxpayers may claim a purchase of an airplane as a sale for resale. However, these transactions can be complicated and are very fact specific; thus, it is imperative for taxpayers to closely follow the law to ensure they remain in strict compliance with the sale for resale regulations. For a complete analysis of the application of sales and use tax to purchases of airplanes, see Chapter 6 of this manual.

Leased Property

Sales for resale include sales of tangible personal property that will be leased or rented out by the purchaser.[730] In addition, repair and replacement parts that will become a component part of the leased property may be purchased by the lessor without tax on a resale certificate. For a full analysis of how sales and use tax applies to property held for lease or rent, see Chapter 5 of this manual.

1. Sales to Dealer/Lessor

Sales for resale do not include the sale of services to a dealer that uses such services in its business of selling, leasing, or renting tangible personal property or computer software. Services may include cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rent by a dealer. The dealer is considered the end user and consumer of the services. The cleaning, maintenance, and repair services made to leased property purchased by the dealer or lessor may not be purchased tax exempt on a resale certificate.[731]

Also, a sale of tangible personal property to a dealer that uses such property in its sales of services is *generally not a sale for resale*. Instead, the dealer is considered the end user and consumer of the property it uses in the performance of its services. This includes property that the dealer passes on to its customer in the performance of a service for which it does not separately charge its customer. However, there are several exceptions to this general rule.[732]

Sales to service providers of the following items qualify as sales for resale under the circumstances described regardless of whether there is a separately stated charge by the service provider to a purchaser for such property:

- Repair parts and installation parts sold to and used by a dealer in performance of repair services and installation services (when such property installed remains tangible personal property) and is subsequently transferred to the customer in conjunction with such services.
- Mobile telephones and similar devices that are sold to and transferred by a dealer to its customers in conjunction with the sale of commercial mobile radio services.
- Food or beverages sold to hotels, motels, or other dealers that provide lodging accommodations, if such food or beverages are subsequently transferred to the dealer's customers in conjunction with the dealer's sale of lodging accommodations to the customer.

Loaner Property Provided Free of Charge

The sale, lease, or rental of property to a dealer that provides the property to its customer free of charge as loaner property while the customer's property is being repaired is a sale for resale.[733] This is true whether the customer's property is being repaired under a warranty contract or not.

The purchase, lease, or rental of a vehicle by a dealer that provides the vehicle to its customer free of charge as a loaner vehicle while the customer's vehicle is being repaired is not a taxable retail sale. Also, because the dealer's transfer of such property is considered a resale, the dealer does not owe use tax on the customer's use of the property. Dealers buying and using tangible personal property to fulfill sales, warranty, or guarantee obligations to a customer may purchase and use the tangible personal property without the payment of any sales or use tax.[734]

Dealers obtain vehicles used as loaner vehicles several different ways, including the following:

- The loaner vehicle may be from the dealer's inventory.
- It may be part of a fleet of vehicles that the dealer purchased from the manufacturer for this purpose.
- It may be part of a fleet of vehicles that the dealer leased for this purpose.

- It may be a short-term rental that the dealer obtained from a third party particularly for this purpose.

The dealer may purchase, lease, or rent a vehicle to use as a loaner vehicle tax-free in one of two ways:

- The dealer may use a Tennessee blanket certificate of resale with the line item "other" marked and provide an explanation of "purchase of loaner vehicle" written in the space provided; or
- The dealer may use a completed Streamlined Sales Tax Certificate of Exemption form with "Other" checked under 4. Reason for Exemption and provide an explanation of "purchase of a loaner car" or "lease of loaner car" written in the space provided.

2. Resale Exemption Certificates

Retailers are automatically issued a Tennessee Sales and Use Tax Certificate of Resale when they register for a Tennessee sales and use tax account.[735]

Certificates of Resale are available in TNTAP in the section designated for letters. To access your certificate, please follow the steps below:

- Log on to TNTAP.
- Click the More… tab towards the top of the page.
- Click the View Letters link under the Letters column.[736]

Sellers are required to obtain, and purchasers are required to present, resale exemption certificates to document a nontaxable sale for resale. Resale certificates *may not be used* to purchase property or services that are for use or consumption by the purchaser and are not for resale.[737]

When a purchaser withdraws inventory items for business or personal use that were purchased from a Tennessee vendor on a resale certificate, the purchaser is liable for the sales tax that would have been due but for the issuance of the resale certificate.[738] Any sale for resale for which the seller has failed to obtain a fully completed resale certificate is considered a retail sale. The seller is liable for the sales tax on those sales. Like other types of sales and use tax exemptions, the seller must maintain exemption certificates and make them available to the Department upon request.

A seller outside of Tennessee making purchases for resale from a vendor in Tennessee may furnish the Tennessee vendor with an out-of-state certificate of resale showing that it is a

retailer located outside Tennessee and entitled to make such purchases tax exempt on a resale certificate.

To make a nontaxable purchase for resale, a purchaser may present to the seller a:

- Tennessee Blanket Certificate of Resale issued by the Department.
- Other state-issued resale certificate (only out-of-state dealers).
- Streamlined Sales Tax ("SST") Certificate of Exemption.
- Multistate Tax Commission ("MTC") Uniform Sales and Use Tax Certificate – Multijurisdiction.

The SST Certificate of Exemption and the MTC Uniform Sales and Use Tax Certificate – Multijurisdiction are the only two multijurisdictional certificates accepted by Tennessee. The purchaser must include its Tennessee sales tax number, or a sales tax number issued by another state.

Out-of-state dealers that are not required to register for sales and use tax in any state (e.g., home state does not impose sales and use tax) may furnish a Tennessee suppler with a fully completed Streamlined Sales Tax Exemption Certificate that includes a tax ID number issued by its home state for another tax type (e.g., income tax or excise tax) or its federal identification number (FEIN) to make purchases that are for resale without paying tax.

For foreign dealers that are not registered in any state in the United States, the foreign dealer must provide a fully completed Streamlined Sales Tax Exemption Certificate with a tax ID number issued by its home country to claim it is entitled to purchase such products for resale without paying tax.

These forms allow dealers to provide vendors with a single certificate with tax identification numbers for all the states in which the dealer is authorized to make purchases for resale and to make retail sales. Alternatively, sellers may obtain from a purchaser an SST Certificate of Exemption in electronic form. Electronic signatures are not required.

The MTC and SST Multijurisdiction Certificates may be used in Tennessee to document sales for resale only. For other types of exemptions, Tennessee law requires use of certificates of exemption issued by the Tennessee Department of Revenue or the SST exemption certificate in paper or electronic form.

⚠ **A business registered for sales and use tax may use a resale certificate only when purchasing merchandise that will be resold by the business. A business cannot use a resale certificate to purchase merchandise that will be used or consumed in the conduct of the business. Merchandise extracted from inventory for promotional purposes, for gifts, or for personal use must be reported on the sales tax return and tax must be paid to the Department of Revenue.**

3. Third Party Drop Shipments and Use of Resale Certificates

"Drop shipment" delivery generally means the shipment of goods from a manufacturer or other supplier directly to the customer of an intermediate supplier. Prior to the repeal of TENN. COMP. R. & REGS. 1320-05-01-.96 (Rule 96), if a Tennessee registered dealer sold goods to an *unregistered*, out-of-state dealer but delivered the goods directly to the out-of-state dealer's customer in Tennessee, the Tennessee registered dealer would have been liable for sales tax unless an exception existed.[739]

However, effective January 10, 2022, with the repeal of Rule 96, if a Tennessee registered dealer sells to an unregistered out-of-state dealer personal property or taxable services for resale and drop ships the goods to the out-of-state dealer's Tennessee customer, the Tennessee supplier may accept a resale certificate issued by another state or a fully completed Streamlined Sales and Use Tax Exemption Certificate that includes the sales tax ID number issued by the other state to make drop shipped sales for resale without tax.[740]

As stated above, prior to the repeal of Rule 96, the Tennessee supplier had to collect Tennessee sales tax on the sales price of the product sold to the out-of-state dealer unless the out-of-state dealer provided a *Tennessee* resale certificate or Streamlined Sales Tax Exemption Certificate with a Tennessee sales tax ID number. In other words, the out-of-state dealer was required to be registered in Tennessee.

Types of Acceptable Certificates

OUT-OF-STATE DEALER

An out-of-state dealer (including an out-of-state marketplace seller) may provide a Tennessee supplier its resale certificate issued by another state or a fully completed Streamlined Sales and Use Tax Exemption Certificate including the sales tax ID number issued by another state, to purchase products for resale (including products for resale through a marketplace facilitator) that are drop shipped from a Tennessee supplier to the out-of-state dealer's Tennessee customer.

Out-of-State Dealer Not Registered for Sales Tax in Any State

An out-of-state dealer (including an out-of-state marketplace seller) that is not registered for sales tax in any state (e.g., home state does not impose sales tax) may provide a Tennessee supplier with a fully completed Streamlined Sales and Use Tax Exemption Certificate including a tax ID number for another tax type (e.g., business tax or excise tax) issued by its home state or its federal identification number.

If the seller does not have any tax ID number issued by its home state or a federal identification number, the out-of-state seller must pay tax on its purchases. A state driver's license number may not be used as a tax ID number to claim a resale exemption.

Foreign Seller Not Registered in Any State in the United States

A foreign seller that is not registered in any state in the United States may provide a fully completed Streamlined Sales and Use Tax Exemption Certificate with a tax ID number issued by its home country to purchase products for resale without tax that are drop shipped from a Tennessee supplier to a Tennessee customer.

If the foreign seller does not have any tax ID number issued by its home country, the foreign seller must pay tax on its purchases. A driver's license number may not be used as a tax ID number to claim a resale exemption.

Deliveries to a Contractor/Dealer's Customer's Job Site

A contractor/dealer is someone who sells goods and uses goods to fulfill contract obligations. If the Tennessee registered dealer sells materials or supplies to a contractor/dealer and delivers the materials or supplies to the contractor/dealer or the contractor/dealer's customer at a job site in Tennessee, the Tennessee registered dealer must collect the applicable sales or use tax. A resale certificate presented by a contractor/dealer where materials or supplies are delivered to the job site will be disallowed, and the dealer will be held liable for the tax.[741]

4. Credit for Tax Paid - Resale

If a retailer can show reasonable proof that the retailer *paid Tennessee sales or use tax* to a vendor on personal property or a taxable service that the retailer *subsequently sold* without collecting tax on the resale of the personal property or taxable service, the retailer is *given credit* for the Tennessee tax paid in computing the amount of liability for sales or use tax due.[742]

If the retailer *paid another state's sales or use tax* to a vendor on personal property or a taxable service that the retailer *subsequently sold* in Tennessee without collecting tax on the resale of the personal property or taxable service, the retailer will need to *seek a refund or credit from the other state or vendor in that state* for any sales or use tax paid in the other state.

Persons paying a legally imposed sales or use tax to another state on tangible personal property or taxable services imported into Tennessee may claim such payment as a credit against any use tax liability accruing in this state.[743] The name of the vendor from whom the property or service was purchased, and an affidavit that such tax was paid, may be required as support for the credit.

Business and Occasional and Isolated Sales

"Business" is defined as "any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect."[744] Activities excluded from the definition of business are not subject to sales or use tax.

1. Activities Included in "Business"

Activities included in the definition of business may be subject to sales or use tax. The following activities are included in the definition of business:[745]

- All purchases by public and private school grades kindergarten through twelve (K-12) and school support groups of property or services that are intended for resale (except food for school meals, textbooks, and workbooks).[746]
    - These schools and support groups are required to pay tax on all purchases intended for resale. The occasional and isolated provisions (discussed below) do not apply.
- Occasional and isolated sales of aircraft, vessels, or motor vehicles between corporations and their members or stockholders, including such transactions caused by the merger, consolidation, or reorganization of corporations. These sales are subject to the sales tax.
- Occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. These sales are subject to the sales tax.
    - However, "business" does <u>not</u> include transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three or

more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership. These sales are not subject to sales and use tax.

- There are some exceptions, but generally, each time a transfer of title to a motor vehicle occurs, the transaction is subject to sales or use tax. For clarification on taxability of motor vehicle transfers, see Sales and Use Tax Manual for Automobiles and Boats.

2. Activities that are Not Included in "Business"

"Business" does not include:[747]

- Occasional and isolated sales of tangible personal property or services by a person not regularly engaged in business.
  - Example: a garage sale conducted by a person.
- Occasional and isolated sales of tangible personal property or services by someone who does not regularly sell such property or services.
  - Example: a grocery store is downsizing and sells some of its shelving and refrigerators. The sales are exempt from both sales *and* use tax.
- Sales of tangible personal property by someone who regularly sells such property but only during a temporary sales period that lasts no more than 30 days and occurs only once or twice per year.
  - Example: Girl Scouts regularly sell cookies twice a year during temporary sales periods.
- There are exceptions to the "two temporary sales periods per year" law:
  - Volunteer fire departments may make regular sales during temporary sales periods that occur up to four times per year;
  - Charitable entities making fundraising sales that are in support of a city, county, or metropolitan library system may elect to make its sales during the calendar year so long as its sales do not exceed $300,000 for the year; and
  - Community foundation sales taking place during no more than two auctions lasting no more than 24 hours in each county may be conducted in lieu of temporary sales periods.

- Sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings, are also excluded from the definition of "business" and, thus, are not subject to sales or use tax.
    - This exception is commonly applied to transfers of motor vehicles but may also apply to other sales of tangible personal property such as aircraft and vessels.

Entity-Based Exemptions

This manual discusses thirteen different entity-based exemptions and whether entities are required to apply for the exemption with the Department. The entity may only utilize its sales and use tax exemption after the Department determines the entity qualifies for the exemption and issues an authorization/certificate. Qualifying governments and foreign missions need not apply to the Department for an authorization for their sales and use tax exemptions. The following entity-based exemptions are discussed in this manual:

- Agriculture (See Agriculture Manual for a full analysis)[748]
- Common Carrier Limited Direct Pay[749]
- Manufacturer (See Chapter 20 for a full analysis)
    - Industrial machinery[750]
    - Energy/water[751]
    - Industrial supplies[752]
- Warehouse or Distribution Facility[753]
- Research & Development[754]
- Non-profit & educational entities[755]
- Credit unions[756]
- Qualified Data Center[757]
- Headquarters' Computer/Telecom Center[758]
- Health/Fitness Club[759]
- Call Centers[760]
- Government exemptions[761]

- Foreign missions & diplomats[762]
- Qualified Production
- Broadband Communications and Internet Service Providers[763]

1. Common Carriers

For Tennessee sales and use tax purposes, a common carrier is any person that transports persons or property in interstate commerce while holding a certificate of public convenience and necessity as a common carrier from the Interstate Commerce Commission or the United States Department of Transportation or its predecessor agency of the federal government.[764]

The sale of tangible personal property to a common carrier for use outside this state is subject to a reduced state tax rate of 3.75% and a 1.5% local tax rate.[765] The law also requires a common carrier to apply to the Department for authorization to make such purchases of tangible personal property without tax and then to remit the tax at the reduced state and local rate directly to the Department.

Taxpayers must submit a letter requesting the authorization to pay tax at the reduced state and local rate and detail its qualifications for the authorization. If the taxpayer qualifies, the Department will issue a Sales and Use Tax Direct Pay Permit for Common Carrier through the Department's tax system (TNTAP).

Common carriers could use the multi-purpose Streamlined Sales and Use Tax Certificate of Exemption or provide a copy of the letter issued by the Department to their vendors.

⚠ **The common carrier, not the retailer, is responsible for reporting and remitting the tax at the reduced state and local tax rates on purchases in this state of tangible personal property for use outside Tennessee.**

The reduced rate does not apply to food, alcoholic beverages, tobacco, candy, dietary supplements, prepared food, and fuel. The common carrier must keep adequate records to document exemptions. If a common carrier remits the reduced rate of state and local tax but uses the property inside Tennessee, the common carrier is liable for tax at the full state and local tax rates.

Vehicles and Trailers Used in Interstate Commerce

A common or contract carrier with federal or state operating authority may purchase exempt from sales and use tax motor vehicles and trailers used in interstate commerce.[766] This includes carriers operating under an independent service provider agreement with a

carrier that holds such operating authority. The following requirements must be met for the tax-exempt purchase of a motor vehicle:

- It must have a gross vehicle weight rating of Class 3 or above, meaning the vehicle weight must exceed 16,000 lbs.;[767]
- Be used to transport property or passengers;
- Principally (50% or more) used in interstate commerce; and
- Be used by a common or contract carrier with the proper operating authority mentioned above.

Regarding the interstate commerce requirement, this applies when the passengers or cargo originated at a point outside the state and were delivered to a point inside the state, originated at a point inside the state and were delivered to a point outside the state, or originated at a point outside the state and were delivered to a point outside the state, but traveled through the state.[768] This determination is focused on whether the passengers or cargo being transported are in interstate commerce. Therefore, if the passengers or cargo are moving in interstate commerce, then the qualifying vehicle or trailer that transports them may be exempt, even if the vehicle itself never leaves the state.

A vehicle that is used to haul ordinary livestock, fish, and unmanufactured agricultural commodities is excluded from federal motor vehicle regulation[769] and, thus, is not required to register for common or contract carrier authorization. However, the vehicle may still qualify for the exemption if it would otherwise meet the qualifications for a common or contract carrier authorization.

Such common or contract carriers may also purchase freight trailers, semi-trailers, and pole-trailers[770] exempt from sales and use tax. Said trailers must meet the same requirements outlined above that apply to motor vehicles.

⚠ **It is important to note that the vehicles and trailers do not have to be used by a common or contract carrier that only operates "for hire." Therefore, persons who use the vehicle or trailer for their own passengers or property and do not provide services for a fee may still qualify for the exemption, assuming the above requirements are met.**

Aircraft Owned by Interstate or International Air Carriers

There is a specific exemption for the sale, use, storage, or consumption of aircraft owned or leased by commercial interstate or international air carriers and parts, accessories, materials, and supplies sold to or used by these carriers exclusively for servicing and

maintaining their aircraft.[771] This exemption does not apply to shop equipment and tools used to work on the aircraft.[772]

To qualify for this exemption, the aircraft must be used to transport passengers or cargo. Furthermore, the air carrier must have:

- A certificate from the Federal Aviation Administration (FAA) as required by the Federal Aviation Regulations (FAR) under Parts 135 or 121 – Operations Specifications (Safety Authority); *and*
- A certificate for interstate or foreign passenger and/or cargo authority from the U.S. Secretary of Transportation (Economic Authority).

There is an exemption for aviation fuel used by an air common carrier for flights destined for or continuing from a location outside the United States.[773] This exemption includes fuel for all international flights (a scheduled trip made by one plane with one flight number), whether the flight is a direct flight, or it includes several stops prior to its ultimate destination.

Railroad Exemptions

Railroads have several specific exemptions. Railroad track materials and locomotive radiators are exempt if purchased by railroads in this state for use in another state.[774] Railroad rolling stock, along with any repair parts and labor, is exempt if used in interstate commerce.[775] TENN. COMP. R. & REGS. 1320-05-01-.86 addresses the taxability of railroad ties bought, treated, and/or used in this state. Generally, said ties are subject to Tennessee sales and use tax.

Diesel Fuel

The Transportation Fuel Equity Act provides that a commercial carrier is required to report and pay Tennessee diesel tax quarterly on each gallon of dyed diesel fuel it uses to produce power for a means of transportation in Tennessee.[776] The commercial carrier must apply for and receive a certificate to present to suppliers to purchase dyed diesel without the payment of sales or use tax or diesel tax. The commercial carrier is responsible for remitting the diesel tax on dyed diesel used to produce power as a means of transport and to pay sales or use tax on purchases of dyed diesel fuel used in Tennessee that is not used to produce power for a means of transportation.

2. Warehouse or Distribution Facility

Purchases of material handling and racking systems used directly and primarily for the storage or handling and movement of finished tangible personal property in a qualified

warehouse or distribution facility are exempt from sales and use tax.[777] The qualified warehouse or distribution facility *may not include a building where tangible personal property is fabricated, processed, assembled, or sold over-the-counter to consumers*, unless the taxpayer is configuring, testing, or packaging computer products (configuring means integrating a computer with peripheral computer products, e.g., a hard drive, additional memory, or software).

A qualified warehouse or distribution center is defined as:

- A newly constructed and previously unoccupied facility constructed through an investment of more than $10,000,000.
- The expansion of a previously qualified warehouse/distribution center through an investment of more than $10,000,000.
- A purchase and renovation/expansion of a warehouse/distribution center through an investment of more than $10,000,000.
- The renovation/expansion of an existing warehouse/distribution center through an investment of more than $10,000,000 plus the construction of a new building through the investment of more than $10,000,000, for a total investment of $20,000,000; or
- The purchase or lease of a previously occupied facility through an investment of more than $10,000,000.[778]

The material handling equipment and racking systems must be purchased beginning one year prior to the start of the construction or expansion and ending one year after the substantial completion of the construction or expansion of the facility. The total period may not exceed three years.[779]

The warehouse or distribution facility exemption does not include exemption for energy fuels, water, or industrial supplies.

A taxpayer must submit an application to qualify for and receive the Warehouse or Distribution Facility Material Handling and Racking Systems Exemption Certificate. Tax exempt purchases of material handling and racking systems may be made using the certificate only during the period beginning on the effective date and ending on the date of expiration of the certificate.[780]

3. Research and Development

The purchase of machinery and equipment and all accessories and appurtenances that are necessary to and primarily for research and development is exempt from sales and use

tax.[781] Repair parts and labor and installation of research and development machinery and equipment are also exempt.[782] The research and development exemption does not include exemption for energy fuels, water, or industrial supplies. For additional information, see Important Notice #16-08 on this topic.

TENN. COMP. R. & REGS. 1320-05-01-.128 contains most of the text related to the research and development exemption, including definitions of the activities that qualify as research and development, which are as follows:

- Research and development must have *at least one* of the following as its goal:
  - Basic research in a scientific field of endeavor.
  - Advancing knowledge or technology in a scientific or technical field of endeavor.
  - The development of a new product, whether the new product is offered for sale or not.
  - The improvement of an existing product, whether the improved product is offered for sale or not.
  - The development of new uses of an existing product, whether a new use is offered as a rationale to purchase the product or not.
  - The design and development of prototypes, whether a resulting product is offered for sale or not.
- Research and development does **not** include:
  - Ordinary testing or inspection of materials or products used for quality control, other than that occurring during the activities listed in the above list.
  - Market research
  - Efficiency surveys
  - Consumer surveys
  - Advertising and promotions
  - Management studies
  - Research in connection with literary, historical, social science, psychological, or other similar nontechnical activities.

An applicant is not required to engage in the business of fabricating or processing tangible personal property. The applicant could provide research and development services to a customer. Before qualifying for the credit, taxpayers must complete an application for the research and development exemption. If the applicant qualifies, the Department will issue a Research and Development Exemption Certificate. A manufacturer that has qualified for the industrial machinery and energy fuel and water exemptions will be required to make a separate application for the research and development exemption.

Persons who have obtained the research and development tax exemption authorization for research and development shall provide their vendors with a copy of the authorization or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the research and development exemption authorization number included on the certificate issued by the Commissioner.

4. Nonprofit, Charitable Organizations, and Schools

Sales and donations of tangible personal property, computer software, specified digital products, or taxable services are exempt from sales tax when sold or donated to the organizations listed in Tenn. Code Ann. § 67-6-322, including, but not limited to, the following organizations, that are not organized or operated for profit and have applied and received a Certificate of Exemption from the Department of Revenue:[783]

- Churches
- Schools
- Hospitals
- Community health councils
- Volunteer fire departments
- Organ and blood banks
- Boys-girls clubs
- Orphanages
- Labor organizations
- IRC § 501(c)(3) organizations
- Labor, agricultural, and horticultural organizations[784]
- Not-for-profit cemetery companies[785]

- A post or organization of members of the U.S. Armed Forces that meets certain criteria in 26 U.S.C. 501(c)(19)
- Any war-time era veterans' organization that has received a determination of exemption under the Internal Revenue Code § 501(c)(4), and that is chartered by the United States congress
- Tennessee historic property preservation or rehabilitation entity as defined in Tenn. Code Ann. § 67-4-2004

The exemption applies only to sales and donations made **directly** to the tax-exempt organization.[786] An organization may not claim this exemption until it has been issued the Certificate of Exemption by the Department. For example:

- A tax-exempt hospital employee leases a vehicle that the employee will use in performing official hospital business. The tax-exempt hospital is not a co-signer or otherwise part of the sale. However, the hospital reimburses the employee for its monthly lease payments. Although the sale is for official hospital business, the sale is not directly to the hospital, thus it is subject to sales tax.[787]

Every exempt sale made to a nonprofit or other exempt entity, regardless of how the sale is paid for, must be supported by an exemption certificate issued by the Commissioner, a completed Streamlined sales tax certificate that must include the exemption number issued by the Commissioner, or a copy of a federally issued 501(c)(3) determination letter issued to an out of state nonprofit organization. An out-of-state 501(c)(3) organization may use its federal authorization to make exempt purchases instead of applying for and receiving a Tennessee exemption number. Tennessee does not allow the use of nonprofit, charitable organizations, and schools exemption certificates issued by other states.

If the sale is made by cash, then the supporting sales receipt must include the purchaser's name and the amount of the sale. No additional documentation is required to accept the cash sale as exempt. If the sale is a non-cash sale, then it must be made with the exempt entity's check or credit card. The credit card must list the exempt entity's name or the entity's name and a signor, and the credit card must be billed directly to the exempt entity.

⚠ **A purchase made with a personal check or personal credit card is not an exempt sale even if the purchaser is an employee of the exempt entity and the purchaser will be reimbursed by the entity.**

These organizations are also exempt from paying any Tennessee use tax. However, this exemption does not apply to regular sales of taxable products or services made **by** the qualified organization.[788] This exemption also does not apply to the purchase of bingo

materials, supplies, equipment, or cards.[789]

Nonprofit and charitable organizations that make *regular* sales of taxable products or services must register to collect sales tax. Public and private schools, grades kindergarten through twelve (K-12), and school support groups must pay tax to their vendors on the purchase price of products or services that are intended for resale by the school or school support group. The resale of such products and services are not subject to sales tax.[790]

Contractors and subcontractors may not use an exempt organization's authorization for exemption to make tax-exempt purchases to fulfill contracts with a tax-exempt organization, except in the limited circumstances further described below for churches and certain private universities. For additional information, see Important Notice #15-16 on this topic.

Exemption Certificates for Each Location

A non-profit entity that has multiple locations in Tennessee should have a separate certificate of exemption for each location to make purchases exempt from Tennessee sales and use tax, pursuant to Tenn. Code Ann. § 67-6-322. If a non-profit entity operates one site or campus that has buildings that span multiple streets, it is only necessary for it to obtain one certificate of exemption that lists the physical address of its main office. See Letter Ruling # 17-10 for additional information.

5. Credit Unions

Both federal and Tennessee credit unions are instrumentalities of the government and are exempt from paying sales and use tax on their purchases of tangible personal property and taxable services.[791] However, any sales made by a credit union would be subject to the sales and use tax. For example:

- A Tennessee credit union repossesses vehicles that it finances (has a security interest) and lists the vehicles for sale. The Tennessee credit union must register with the Department and collect and remit sales tax on such sales.

Sales of tangible personal property by a finance company, due to default of payments by its customers, are subject to sales and use tax when sold to a consumer.[792]

Federal and Tennessee credit unions can apply for exemption by filling out this application.

6. Qualified Data Center

Businesses that qualify as data centers may purchase computers, software, and any computer related devices, including repair, installation, warranties, and service contracts

used in the operation of a qualified data center, tax exempt. A "data center" is defined as "a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment."[793]

To be considered a qualified data center,[794] a business must meet the following requirements over a 3-year period:

- Make a capital investment of more than $100,000,000; and
- Create at least 15 net new full-time employee jobs during the investment period paying at least 150% of the states' average occupational wage.[795]

For the purposes of this section, "capital investment" is:[796]

- An increase of a business investment in real property, tangible personal property, or computer software owned or leased in the state valued in accordance with generally accepted accounting principles.
- A capital investment is deemed to have been made as of the date of payment or the date the business entered into a legal binding commitment or contract for purchase or construction.

For the purposes of this section, a "full-time employee job" means:[797]

- A permanent, rather than seasonal or part-time position, for at least 12 consecutive months to a person for at least 37.5 hours a week with minimum healthcare.

There is also an exemption for backup power infrastructure and cooling equipment used primarily for and necessary to the operation of the qualified data center and a 1.5% reduced sales tax rate for the purchase of electricity.[798]

The taxpayer must submit an application for each qualified data center location. A Qualified Data Center exemption certificate is used to make sales tax exempt purchases of the qualified items and purchases of electricity at the 1.5% reduced rate for the qualified data center. For additional information, see Important Notice #16-06 on this topic.

Electricity sold to a qualified data center should be reported on the sales and use tax return in the following manner:

- Report sales on Line 1.
- Exempt the qualified data center electricity sales on Schedule A, Line 9.

- Report sales on Schedule C, Line 5.
- Tax will be calculated at the reduced state rate of 1.5% on Line 6.

Effective May 1, 2024, a qualified data center also includes a data center that previously made the required capital investment described above and previously created at least 15 net new full-time employee jobs and the data center is transferred to an affiliate, as defined in Tenn. Code Ann. § 67-4-2004, pursuant to a reorganization under I.R.C. § 368(a).[799]

7. Headquarters/Telecommunication Center

Private communications services are exempt from the sales tax,[800] when such services are utilized for communications with a computer or telecommunications center located in this state; by a taxpayer that has qualified for the headquarters tax credit provided for in Tenn. Code Ann. § 67-6-224; or by an affiliate of such taxpayer.

A taxpayer will qualify for the headquarters tax credit if it meets the following criteria:

- It constructs, expands, or remodels a headquarters facility in Tennessee;
- Has a minimum capital investment of at least $10,000,000 dollars; and
- Creates at least 100 new full-time employee jobs.

For a full discussion of the headquarters credit, see Chapter 21 of this manual.

"[A]ffiliate," for the purpose of this exemption, "means any person controlling, controlled by or under common control with such person. For purposes of this section, 'control' means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise."[801]

Persons seeking to make purchases of private communications exempt from tax shall apply to the Commissioner for an authorization declaring that the purchaser is entitled to the exemption. To obtain the exemption, qualified purchasers must provide a copy of the authorization or a fully completed Streamlined Sales Tax certificate of exemption to each dealer from which it intends to make exempt purchases.[802]

If a person purchases exempt private communications and the private communications services are not utilized in accordance with the criteria discussed above, then the purchaser

shall be liable for tax at a rate applicable to the retail sale of the private communications service.

Furthermore, any taxpayer that moves tangible personal property into this state in conjunction with establishing a qualified headquarters facility is exempt from any sales and use tax liability that arises solely because of moving the property into the state, provided that the tangible personal property was previously used by the taxpayer in the operation of its business.[803]

8. Health and Fitness Facilities

Admissions, dues, fees, or other charges paid to any person principally engaged in offering services or facilities for the development or preservation of physical fitness through exercise or other active physical fitness conditioning are exempt from Tennessee sales and use tax.[804] General examples include facilities offering exercise classes, fitness conditioning, calorie burning, strength building, or body sculpting classes. These entities are not required to apply for exemption.

More specifically, the exemption applies to services and facilities such as:

- Gyms
- Fitness centers
- Fitness studios
- High intensity interval training
- Cross training
- Ballet barre
- Pilates
- Yoga
- Spin classes
- Fitness bootcamps
- Boxing and kickboxing fitness classes
- Aerobics classes
- Other substantially similar services and facilities that principally provide for exercise

or other active physical fitness conditioning.

This exemption does **not** apply to persons principally engaged in offering recreational activities such as:

- Country clubs
- Tennis clubs
- Golf courses
- Other substantially similar recreational facilities and activities

These facilities must collect sales and use tax on tangible personal property such as clothing, sports equipment, beverages and dietary supplements, and other miscellaneous items. Furthermore, these facilities must pay sales or use tax on the purchase of equipment and machinery used in the facility.

Fees and charges for instruction in sports or recreational facilities are not subject to sales tax. However, if nonessential recreation activities are also provided in addition to the instruction, the entire charge is subject to sales tax unless separately billed.

For more information on this topic, see Important Notice #19-11 – Physical Fitness Facilities Exemption.

9. Operation of Call Center

There is a sales tax exemption for the purchase of interstate and international telecommunications services used in the operation of a call center.[805]

A call center is a single location that uses telecommunications services in customer services, soliciting sales, reactivating dormant accounts, conducting surveys or research, fundraising, collection of receivables, receiving reservations, receiving orders, or taking orders. The call center must have at least 250 employee jobs engaged primarily in call center activities.

Before making exempt purchases, the taxpayer must submit an application, the application must be approved by the Department, and the taxpayer must be issued a Call Center Exemption Certificate.

10. Government Exemptions

No sales or use tax applies to sales or leases of personal property or taxable services made **directly** to the United States and any agency created by Congress.[806]

In addition, no sales or use tax applies to sales made **directly** to the state of Tennessee or any county or municipality within this state.[807] Other states, counties, and municipalities are not exempt from paying Tennessee sales tax on Tennessee purchases.

As mentioned above, purchases made by government employees (federal, state of Tennessee, and Tennessee counties and municipalities) who pay the bill and are later *reimbursed* by the government are *taxable* and do not qualify for the sales and use tax government exemption.

Federal government purchases made by government employees with charge cards that are connected to centrally billed accounts are considered direct sales to the United States government. Centrally billed accounts are accounts directly billed and paid for by the federal government or its agencies. For additional information, see Important Notice #09-01 on this topic.

The Tennessee Government Exemption Certificate paper form that is available on the Department's website may be used by the Federal Government and its agencies, the State of Tennessee and its agencies, or a county or municipality of the State of Tennessee and their agencies to claim the government sales and use tax exemption for sales made directly to the government entity. When a seller uses the Streamlined Sales Tax Certificate of Exemption in paper form or the data elements of the certificate in electronic form (e.g., online purchases) the Federal or Tennessee government entities and their agencies must include the government agency's FEIN for the tax ID number that is required on the exemption form.

11. Foreign Missions & Diplomats

To comply with reciprocity and foreign convention obligations, the U.S. Department of State's Office of Foreign Missions issues diplomatic tax exemption cards to eligible foreign missions. These cards allow the cardholders to make purchases in the United States free from sales tax, occupancy tax, and other similar taxes, including taxes in Tennessee. This exemption is completely unrelated to the exemption for sales to the United States federal government.[808]

There are two types of diplomatic tax exemption cards:

- A mission tax exemption card; and
- A personal tax exemption card.

Mission Tax Exemption

Cards labeled "Mission Tax Exemption" are issued for a specific mission. These cards can only be used to make tax exempt purchases of items for the mission. Purchases must be

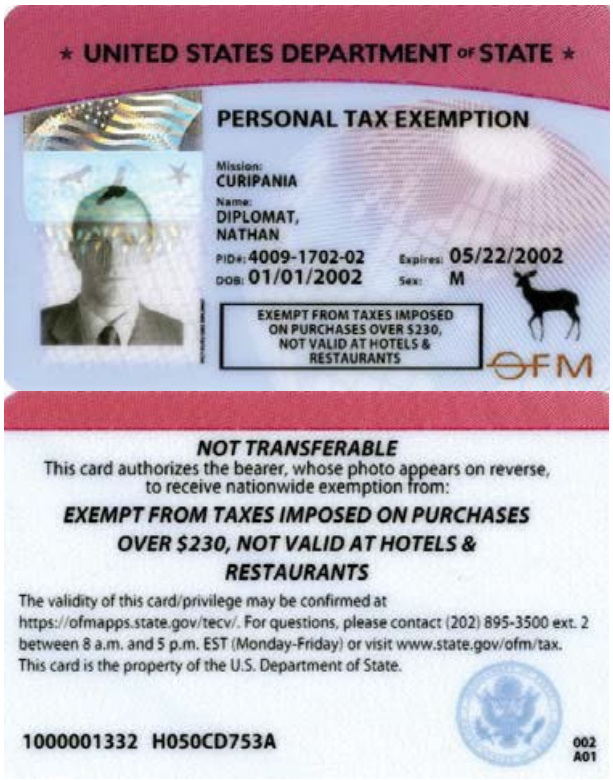
paid for with a check or card in the mission's name. While the mission card bears the photo and name of a principal member of the mission, that person does not need to be present when the card is used to make purchases for the mission.

The following is an example of the front and back of a Mission Tax Exemption card. This particular example includes the *owl symbol*, which means there are no restrictions on the mission's exempt purchases.

Personal Tax Exemption

Cards labeled as "Personal Tax Exemption" are issued to specific individuals for personal purchases. These cards are not transferable and can only be used by the individual pictured on the card.

The following is an example of the front and back of a Personal Tax Exemption card. This card includes the *deer symbol*, which means there are certain restrictions on the cardholder's exempt purchasing. This cardholder would be restricted from making exempt purchases that are less than $230 and could not use the card to make exempt purchases in hotels or restaurants.



A vendor may verify the validity of the card electronically at https://egov.ofm.state.gov/tecv. In addition to presenting a diplomatic tax exemption card, the purchaser must also submit a fully completed Streamlined Sales Tax Certificate of Exemption.

A diplomatic tax exemption card may not be used to make tax-exempt purchases over the internet or catalog purchases. The card also may not be used to make purchases of motor vehicles, gasoline, utility services, airline tickets, or cruises.

12. Qualified Production Exemption

Effective July 1, 2021, Public Chapter 70 creates a sales and use tax exemption relating to qualified productions in Tennessee.[809]

The exemption applies to the sale, use, storage, or consumption of tangible personal property, computer software, or services that are necessary to and primarily used for a "qualified production" in this state.

A "qualified production" means:

- The production of a film, pilot episode, series, esports event, or other episodic content;
- The creation of computer-generated imagery, video games, or interactive digital

media; or

- Stand-alone audio or visual post-production scoring and editing.

"Esports," as included in the above definition of a qualified production, means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of ranking, prizes, money, or entertainment.

To apply for the exemption, the taxpayer must first apply to the Tennessee Film, Entertainment and Music Commission (the "Commission"), describing the taxpayer's basis for the exemption, including the nature of the production activities involved. If the Commission determines that the taxpayer is engaging in a qualified production in this state, the Commission will notify the taxpayer and the Department of Revenue of such determination. The taxpayer may then apply to the Department of Revenue for the exemption.

The taxpayer's exemption application will be subject to the approval of the Commissioner of Revenue and the Commissioner of Economic and Community Development. If the exemption is approved, the Department of Revenue will issue a sales and use tax exemption certificate to the taxpayer that identifies the qualified production. A third party that purchases or uses tangible personal property, computer software, or services that are necessary to and primarily used for a qualified production in this state, for which a sales and use tax exemption is granted, may separately apply to the Department of Revenue for a sales and use tax exemption certificate relating to such qualified production.

A sales and use tax exemption certificate that is issued for a qualified production in this state will expire two years from its effective date. Individuals to whom the exemption certificate is granted may apply for a renewal of the exemption certificate through the process described above. Each renewed exemption certificate also expires two years from its effective date.

13. Broadband Communications and Internet Service Providers

In the 2022 legislative session, the Tennessee General Assembly passed the "Tennessee Broadband Investment Maximization Act." Effective July 1, 2022, the Act creates a sales and use tax exemption for the period beginning July 1, 2022, and ending June 30, 2025, for equipment, machinery, software, ancillary components, appurtenances, accessories, or other infrastructure used by broadband communications service providers or internet access service providers to produce broadband communications services or to provide internet access.

The application for exemption is available here and on the Department's website.

Who Qualifies to Make Exempt Purchases?

Service providers eligible for this exemption include providers of telecommunication services, mobile telecommunication services, video programming services, direct-to-home satellite television programming services, and internet access services. Contractors may also apply to purchase items exempt from sales and use tax if the items will be used by a qualifying service provider to produce broadband communications services or provide internet access.

Exempt Equipment

Exempt equipment includes, but is not limited to, wires, cables, fiber, conduits, antennas, poles, switches, routers, amplifiers, rectifiers, repeaters, receivers, multiplexers, duplexers, transmitters, circuit cards, insulating and protective materials and cases, power equipment, backup power equipment, diagnostic equipment, storage devices, modems, and other general central office or headend equipment, such as channel cards, frames and cabinets, or equipment used in successor technologies, including items used to monitor, test, maintain, enable, or facilitate qualifying equipment, machinery, software, ancillary components, appurtenances, accessories, or other infrastructure that is used in whole or in part by a provider of broadband communication services or internet access.

Retail sales of personal consumer electronics including, but not limited to, smartphones, computers, tablets, consumer-grade modems, and wi-fi routers do *not* qualify for the exemption.

Product-Based Exemptions

Tennessee has several product-based exemptions. Many of the miscellaneous sales and use tax exemptions are found in Tenn. Code Ann. § 67-6-329. Some examples include:

- Gasoline
- Motor fuel taxed by the gallon, pursuant to Title 67, Chapter 3, Part 2
- Textbooks and workbooks
- Liquified gas and compressed natural gas
- Parking privileges sold by colleges and universities to students at the school
- Film, including negatives, used in the business of printing or typesetting
- Home communication terminals, remote control devices, and similar equipment purchased by a video programming service provider for sale/lease to its subscribers

- Air and water pollution control chemicals
- United States and Tennessee flags sold by nonprofit organizations
- Packaging[810]
- Utility poles, anchors, guys, and conduits
- Newspapers and certain periodicals
- School meals
- Coin-operated telephone services
- Aircraft used in flight training program

In general, product exemptions do not require an exemption certificate to document an exempt sale. A product that meets the definition or description for purposes of the exemption is simply exempt from tax.

1. Textbooks and Workbooks

School instructional materials are defined in Tennessee law for Streamlined Sales Tax Agreement purposes. However, only textbooks and workbooks, both subsets of school instructional materials, are exempt from sales tax.[811] The following is an all-inclusive list of "school instructional materials:"

- Reference books
- Reference maps and globes
- Textbooks
- Workbooks[812]

School instructional materials are excluded from products that may qualify for one of Tennessee's sales tax holidays. Tennessee adopted the definitions of textbook and workbook primarily to use in the miscellaneous product exemption in Tenn. Code Ann. § 67-6-329 instead of using the undefined term "schoolbooks."

A textbook is "a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but it does not include a book primarily published and distributed for sale to the general public."[813]

"Workbook" means a printed booklet that contains problems and exercises in which a

student may directly write answers or responses to the problems and exercises.[814]

Neither textbooks nor workbooks include a computer or computer software.

Although a student may need a book for a class, if the book is primarily published and distributed for sale to the general public, the book does not qualify for the exemption (e.g., *To Kill a Mockingbird* or *Adventures of Huckleberry Finn*).

Reference books (e.g., dictionary, thesaurus) are not textbooks and do not qualify for the exemption even if use of the book is required for the class.

If a CD copy of the printed textbook or workbook is provided free and incidental to the sale, the textbook or workbook continues to qualify for the exemption. If the CD contains more than a copy of the textbook or workbook, it will be considered computer software and the bundled price for the software and textbook, or workbook is subject to tax. A computer or computer software is not a textbook or workbook.

⚠ **Auditors may review the publisher's detailed description of the book to determine if the book is properly categorized as a textbook or workbook. Many publishers and online retailers will categorize the books on their websites as either textbooks or books. In some cases, publishers may have textbooks listed under different courses of study.**

For additional information on this topic see Letter Ruling # 16-05 and for historical information on this topic, see Letter Ruling # 04-25.

2. Aircraft Used in Flight Training

Tennessee law exempts from sales and use tax "[a]ircraft used for and owned by a person providing flight training."[815]

Aircraft Purchase

Purchased/Leased by Flight Training School/Certified Flight Instructor

If an aircraft is owned and used by a flight training school or certified flight instructor ("CFI"), then the sale of the aircraft to the flight training school or CFI is exempt from the sales and use tax. Thus, to qualify for this exemption, the aircraft must be both:

- Owned by a flight training school or CFI; and
- Used for flight training.

The "**owned by**" requirement includes aircraft that are purchased out-right by flight schools or CFIs as well as aircraft that are leased by flight schools or CFIs from a third party. Furthermore, while "owned" is not defined by the statutes, for Tennessee sales and use tax purposes, an owner of tangible personal property has traditionally included one who leases or rents that property.

The "**used for**" requirement refers to the aircraft's primary use. Attorney General Opinion 84-213, dated July 3, 1984, states that "when an airplane is bought or leased, the taxability of that transaction must be determined according to the primary use of the plane." In other words, if the aircraft is primarily used (more than 50% of the time it is used) for flight training, then it will meet this requirement for the exemption. If, however, the primary use of the aircraft is for something other than for flight training (i.e., the school or CFI rents out the aircraft to independent pilots), then it will not qualify for the exemption.

Note: If the flight training school or CFI uses the aircraft primarily to rent to independent pilots (with the remaining use dedicated to flight training), not only will the aircraft not qualify for the exemption, but the school or CFI may not purchase it on a resale certificate. For the sale of an item of tangible personal property (e.g., an aircraft) that is purchased to lease or rent to third parties to qualify as an exempt sale for resale, the item must be used *exclusively* for leasing or renting.[816]

Purchased by Non-Flight School Entity

If the aircraft is purchased by an entity that does not provide flight training but leases the aircraft to an entity that does provide flight training, the purchasing entity may obtain the aircraft free from sales tax by providing a resale certificate. Further, the entity should not charge sales tax on the lease payments made by the flight training school or CFI.

However, if the purchasing entity only leases the aircraft to the flight school or CFI on a part-time basis and retains the aircraft for its own use part of the time, or if it cancels the lease at a future time and commits the aircraft at that time to its own use, then the original purchase is not truly a purchase for resale, and the entity will owe sales or use tax.

Uses of an Aircraft Purchased by a Flight Training School or CFI

Charges made by the flight training school or CFI to students for flight training are considered charges for nontaxable services and are not subject to the sales and use tax. Further, if the flight training school or CFI occasionally charters the aircraft and provides the pilot, the charges for the charter service are for a nontaxable service and are not subject to the sales and use tax. However, if the flight training school or CFI occasionally leases the

aircraft without an operator to independent pilots, those charges are for the lease or rental of tangible personal property and are subject to the sales and use tax.

3. Newspapers and Periodicals

Tennessee law exempts periodicals printed entirely on newsprint or bond paper and distributed no less frequently than monthly and advertising supplements or other printed matter distributed with the periodicals.[817] Periodical is defined as:

- Publications consisting of successive issues published at regular intervals.[818]

4. Healthcare Products

Effective January 1, 2008, Tennessee law was amended to adopt new medical equipment and drug definitions that follow the Streamlined Sales and Use Tax Agreement. The sales and use tax exemptions were also amended to conform to the use of the new definitions.

Prescription Drugs

Drugs prescribed by a licensed physician for human use are exempt from sales and use tax. This exemption includes prescription medical oxygen. Furthermore, all insulin, whether it is dispensed pursuant to a prescription, is exempt from the sales and use tax.[819]

"Drug" is defined as:

- A compound or substance that is recognized in the US Pharmacopoeia, Homeopathic Pharmacopoeia of US, or National Formulary, is used in diagnosing, curing, mitigating, treating, or preventing disease, and affects the structure or function of the body.[820]

A drug is **not** food or food ingredients, a dietary supplement, or an alcoholic beverage.

"Prescription" is defined as:

- An order, formula or recipe issued in any form of oral, written, electronic, or other means or transmission by a duly licensed practitioner authorized by the laws of this state and includes doctor's orders written on a patient's chart.[821]

The licensed practitioner prescribing the drug is not required to be licensed in Tennessee if the practitioner's licensed profession (e.g., physician, physician's assistant) is one that *could* be licensed in Tennessee with the authority to issue the prescription. This exemption may include over-the-counter drugs if they are obtained by a prescription. An over-the-counter drug must contain a label identifying it as a drug, with either a drug facts panel (example below) or an active ingredients list.

Drug Facts

Active ingredient (in each tablet) **Purpose**
Chlorpheniramine maleate 2 mg.....Antihistamine

Uses temporarily relieves these symptoms due to hay fever or other upper respiratory allergies: ■ sneezing ■ runny nose ■ itchy, watery eyes ■ itchy throat

Warnings
Ask a doctor before use if you have
■ glaucoma ■ a breathing problem such as emphysema or chronic bronchitis
■ trouble urinating due to an enlarged prostate gland

Ask a doctor or pharmacist before use if you are taking tranquilizers or sedatives

When using this product
■ drowsiness may occur ■ avoid alcoholic drinks
■ alcohol, sedatives, and tranquilizers may increase drowsiness
■ be careful when driving a motor vehicle or operating machinery
■ excitability may occur, especially in children

If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help or contact a Poison Control Center right away.

Directions

adults and children 12 years and over	take 2 tablets every 4 to 6 hours; not more than 12 tablets in 24 hours
children 6 years to under 12 years	take 1 tablet every 4 to 6 hours; not more than 6 tablets in 24 hours
children under 6 years	ask a doctor

Drug Facts (continued)

Other information ■ store at 20-25°C (68-77°F) ■ protect from excessive moisture

Inactive ingredients D&C yellow no. 10, lactose, magnesium stearate, microcrystalline cellulose, pregelatinized starch

The exemption does not include grooming and hygiene products that are not prescription drugs, such as soaps, shampoos, antiperspirants, and mouthwashes, even if such items are prescribed by a physician.

Durable Medical Equipment

Durable medical equipment is exempt from sales and use tax if it:[822]

- Is for home use; and
- Is prescribed by a physician for human use.

The exemption includes repair and maintenance parts and labor for qualified equipment.

"For home use" means that the equipment is suitable and appropriate for use in the patient's home and will be used in the patient's home. Home use may include use in residential facilities, such as nursing homes, assisted care centers, and dormitories, if the equipment is sold to the individual using the equipment. It does not include sales of the equipment to a facility itself, such as a hospital, clinic, or dental office.

"Durable medical equipment" is equipment that:

- Can withstand repeated use;
- Is primarily and customarily used to serve a medical purpose;
- Generally, is not useful to a person in the absence of illness or injury; and
- Is not worn in or on the body.[823]

Some examples of durable medical equipment include:

- Hospital beds
- Ultrasounds
- Humidifiers
- IV poles
- Blood pressure equipment
- Blood glucose monitors
- Nebulizers
- X-ray machines

Durable medical equipment *does not include* mobility enhancing equipment; accessories, attachments, and parts used in conjunction with durable medical equipment that are intended for single patient use (e.g., masks, mouth pieces, tubing, filters); and disposable medical supplies. For example:

- Lancets, lancet devices, glucose test strips, and control solutions are disposable medical supplies and are subject to tax. Disposable medical supplies are *not* durable medical equipment for sales and use tax purposes and do *not* qualify for the exemption for durable medical equipment for home use sold pursuant to a prescription. Insulin and Insulin syringes *are exempt* from tax.
- Nebulizer accessories such as the masks, mouth pieces, tubing, and tee pieces are considered single patient use items. When single patient use items are purchased as a replacement or repair item, they are not durable medical equipment and do not qualify for the exemption from tax for such equipment for home use sold pursuant to a prescription.
    - However, initial sales of masks, mouth pieces, tubing, and tee pieces sold in conjunction with a nebulizer, whether separately itemized from the sales price of the nebulizer, *are* durable medical equipment. Masks, mouth pieces,

tubing, and tee pieces sold in conjunction with the nebulizer to individuals pursuant to a prescription *are exempt* from sales and use tax.

For additional information, see Important Notice #15-26 on this topic.

Mobility Enhancing Equipment

Mobility enhancing equipment is exempt from the sales and use tax if it is prescribed by a physician for human use. The exemption includes repair parts and labor for qualifying equipment.[824]

"Mobility enhancing equipment" is equipment that is:

- Primarily used to increase that ability to move from one place to another;
- Appropriate to use in the home or a vehicle;
- Not intended for use by people with normal mobility; and
- Not a motor vehicle or equipment on a motor vehicle that is normally provided by a motor vehicle manufacturer.[825]

Some examples of mobility enhancing equipment include:

- Wheelchairs
- Canes
- Crutches
- Grab bars
- Chair lifts
- Walkers
- Controls installed on motor vehicles
- Motorized carts

Prosthetic Devices

Prosthetic devices that are for human use are exempt from the sales and use tax. The exemption includes repair parts and labor for qualifying devices.[826]

"Prosthetic device" is a replacement or corrective device that is worn on or in the body and:

- Artificially replaces a missing part of the body;
- Prevents or corrects a physical deformity; or
- Supports a weak or deformed part of the body.[827]

Some examples of prosthetic devices include:

- Artificial arms and legs
- Necessary items worn to wear an artificial limb
- Hearing aids
- Dental prosthesis
- Insulin pumps
- Ankle braces
- Molded orthopedic shoes
- Pacemakers
- Heart valves

⚠ **Corrective eyeglasses and contact lenses are specifically excluded from the definition of "prosthetic devices."**

Optometrists or opticians are considered the end users of corrective eyeglasses and contact lenses and must pay the tax on their purchases of such items.[828]

Tennessee provides a sales or use tax exemption for component parts of prescription eyewear, including replacement parts and industrial materials, sold to, and used by a person engaged in Tennessee in the business of operating an optical laboratory at which prescription eyewear is manufactured or fabricated. A taxpayer claiming this exemption must also own or operate the facilities at which the eyewear is ultimately dispensed to patients. However, the taxpayer must pay sales or use tax on the purchase price of all prescription eyewear that it dispenses to patients in Tennessee.[829]

Other Healthcare Exemptions

Several other medical devices, equipment, and items are exempt from sales and use tax, including:

- Oxygen delivery equipment – this exemption includes repair parts and labor, components and attachments for single patient use, and disposable medical supplies used to deliver the medical oxygen;[830]
- Kidney dialysis equipment – this exemption includes repair parts and labor and components and attachments for single patient use;[831]
- Enteral feeding systems – this exemption includes repair parts and labor and components and attachments for single patient use;[832]
- Syringes used to administer insulin;[833]
- Disposable medical supplies prescribed by a physician, such as bags, tubing, needles, and syringes, used for intravenous administration of prescription drugs outside of medical facilities;[834]
- Drug samples produced in state but distributed outside the state;[835]
- Prescription drugs distributed free by manufacturers;[836]
- Ostomy products – non-prosthetic and disposable;[837] and
- Diabetic testing supplies such as lancets, test strips for blood glucose monitors, visual read test strips, and urine test strips are exempt from tax.[838]

Medical Professionals and Facilities

Physicians and dentists are the users and consumers of tangible personal property and taxable services that they use in the practice of the medical and dental professions and must pay sales or use tax on taxable purchases. Fees for their professional services are not subject to tax. In cases where physicians or dentists engage in making sales of taxable products apart from their professional services, they must collect and remit sales or use tax on such retail sales.[839]

Hospitals, treatment facilities, clinics, and sanitariums are engaged in the business of rendering medical services and are the users and consumers of tangible personal property or taxable services that are used and consumed in connection with the operation of the institution or facility. In cases where the hospital or other treatment facility engages in making sales of taxable products apart from rendering medical services, it must collect and remit sales or use tax on such retail sales.[840]

Please see the following links for the Department's published guidance on prescription drugs, medical equipment, and a comprehensive list of specific products and equipment:

Important Notice 07-18 - Prescription Drugs

Important Notice 07-22 - Medical Equipment

Healthcare Products List

5. Firearm Safes and Safety Devices

Effective November 1, 2023, the retail sale of firearm safes and firearm safety devices are exempt from sales and use tax.[841]

"Firearm safe" means a locking container or other enclosure, excluding glass-faced containers, equipped with a padlock, key lock, combination lock, or other locking device that is designed and intended for the secure storage of one (1) or more firearms.

"Firearm safety device" means:

A device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; or

A device to be equipped or installed on a firearm that is designed to prevent the operation of the firearm by anyone who does not have authorized access to the firearm.

Use-Based Exemptions

1. Vehicles, Vessels, Trailers, and Aircraft – Removal from Tennessee

Motor vehicles and certain trailers (semi-trailers or pole trailers) that are subject to registration and titling or identification in Tennessee may be purchased tax exempt if the vehicles/trailers are removed from Tennessee within three days of the purchase.[842] Sellers and purchasers should use the three-day removal affidavit available here.

This exemption includes automobiles, trucks, recreational vehicles (RVs), off-highway motor vehicles (all-terrain vehicles (ATVs)), any motorcycle commonly referred to as a dirt bike, dune buggies, snowmobiles, or other vehicles designed to travel exclusively over snow or ice.[843]

Note, this exemption does not apply to trailers that are not registered.

- Stand-alone purchases of boat trailers or other watercraft trailers and purchases of utility trailers for personal, noncommercial use are not required to be registered in Tennessee and, therefore, do not qualify for the three-day removal exemption.

Trailers

Effective July 1, 2023, the three-day removal exemption also includes trailers, as defined in Tenn. Code Ann. § 55-1-105(e), that are removed for registration and use in another state within three calendar days of purchase. Use of a trailer within Tennessee after purchase, but prior to removal from the state, does not constitute a use subject to tax.

Tenn. Code Ann. § 55-1-105(e) defines "trailer" as "every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle."

Holders of Tennessee Agricultural Certificates of Exemption are authorized to purchase livestock trailers, trailers used for transporting farm products, nursery stock, or equipment, supplies or products used in agriculture, or for other agriculture purposes relating to the operation and maintenance of a farm, exempt from Tennessee tax upon presentation of a copy of the exemption certificate.

Boats, Motorboats, and Other Vessels

Boats, motorboats, and other vessels subject to registration under Tenn. Code Ann. § 69-9-206 that are not registered in this state and are removed within three days of the buyer taking physical possession of the vessel are exempt from sales and use tax. This exemption also applies to sail boats, jet skis, and any other watercraft propelled by sail or machinery and used as a mode of transportation on water.[844]

Motor Vehicles, Trailers, Boats, Motorboats, and Other Vessels 3-day Removal Affidavit

Purchasers must complete an affidavit stating their intention to register the item in their home state and the dealer must keep the affidavit on file to document the exempt sale. The Seller/Purchaser Affidavit of Exemption for Motor Vehicles, Trailers, and Boats Sold for Removal from Tennessee within Three Days must be completed and signed by both the buyer and seller. This form must be completed in duplicate at the time of sale. The seller should retain the original as a part of the transaction documents and provide the copy to the purchaser. The seller should not attach this form to its sales and use tax returns or mail it to the Department of Revenue.

Helicopter and Airplane Sales

For helicopter and airplane sales, out-of-state residents may purchase the aircraft in Tennessee without the payment of tax if the aircraft will be located outside of Tennessee and is in fact removed from Tennessee within 30 days from the date of purchase.[845]

Anytime an aircraft is purchased, sold, or imported into Tennessee, a person is required to complete the Affidavit of Transfer of Aircraft/Helicopter and send it in to the Department of Revenue.

When the affidavit is completed, both the seller and the purchaser should sign it. A copy of the purchase agreement or sales invoice should be attached along with the affidavit, to verify the sales price of the aircraft. When both documents are complete, they should be mailed to the address listed on the affidavit form. A taxpayer that does not believe sales or use tax is due on the purchase, sale, or importation of the aircraft, should still provide the Department with the affidavit along with an explanation and documentation to support this determination.

2. Pollution Control

Tennessee provides a sales and use tax exemption, credit, or refund of tax paid for any system, method, improvement, structure, device, or appliance that is required and primarily used to bring the purchaser into compliance with the federal, state, or local pollution control laws or regulations.[846]

An exemption is also available for repairs, repair parts, and installation services for a pollution control system, method, improvement, structure, device, or appliance that is required and primarily used for pollution control.

Tennessee provides an additional exemption or credit for 100% of the sales and use tax for equipment purchases by an automobile body paint shop to comply with emission control standards and regulations.[847] This exemption may be taken in addition to the general pollution control exemption.

Tennessee also provides an exemption or credit for 50% of the sales and use tax for purchases of replacement equipment that dry cleaners purchase to comply with emission control standards imposed by governmental agencies.[848] This exemption may be taken in addition to the general pollution control exemption.

Entities that process, treat, or control pollution *created by others* are not eligible for this exemption. A taxpayer may complete an application and be issued the Pollution Control Exemption Certificate. Alternatively, the purchaser of qualified materials may contact the Department for a refund of taxes paid and provide the Department with the information included in the application for exemption to receive the refund.

Contractor Use of Pollution Control Exemption Certificate

A contractor can be issued an exemption certificate for a specific pollution control project if the contractor provides or installs pollution control items that will be owned or leased by the

purchaser on whose behalf the work is being performed. The contractor's exemption certificate will be valid only for a specific purchaser's pollution control project. If the sales and use taxes have already been paid by the contractor, the approved application, contract information, refund claim, and copies of purchases invoices will be used to support a refund or credit directly to the purchaser.

3. Green Energy Production Facility

Tennessee law provides a sales and use tax exemption or authorization to receive a credit (100% of sales tax paid) or refund for sales or use tax paid on purchases of machinery and equipment used to produce or store electricity in a certified green energy production facility.[849]

A certified green energy production facility is:

- A facility certified by the Tennessee Department of Environment and Conservation ("TDEC") as producing or storing electricity using clean energy technology. This technology generates electricity using renewable energy sources.

Purchasers must first complete and submit to TDEC the Application for Certification of Green Energy Production Facility / Production of Electricity. The application and instructions are available on TDEC's website. TDEC will review the application to determine if the facility meets the criteria of a Certified Green Energy Production Facility. Approved applications certifying that the facility qualifies are sent to the applicant and to the Department of Revenue.

The purchaser must then submit to the Department of Revenue the Supplement Application for the Certified Green Energy Production Facility sales and use tax exemption. A contractor for the purchaser can be issued an exemption certificate if the contractor provides or installs pollution control items that will be owned or leased by the purchaser. The contractor's exemption certificate will be valid only for a specific purchaser's pollution control project.

Exemption Administration

1. Exemption Certificates

"Ordinary Care" Provision – History

Prior to adoption of the Streamlined definition of "retail sale," Tennessee's definition of "retail sale" included the following language that provided the authority for "Rule 68" and the "ordinary care" provision. This language was deleted from Tennessee's definition effective January 1, 2008:

> Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the Commissioner. Any dealer making a sale for resale which is not in strict compliance with rules and regulations shall be personally liable for and pay the tax.

In connection with the removal of the above language from the definition of "retail sale," TENN. COMP. R. & REGS. 1320-05-01-.68(4) was amended in 2008 to remove the following language:

- If a wholesaler or dealer sells tangible personal property or taxable services free of the Sales or Use Tax on a certificate of resale when he knows, or should know in the use of ordinary care, that the property or service which he is selling is not for resale by the purchaser but is for the purchaser's own use or consumption in his business or otherwise, the registration certificate of the wholesaler may be revoked by proper action by the Commissioner, and he shall be liable for the tax.

In conjunction with the above changes, which became effective as of January 1, 2008, Tenn. Code Ann. § 67-6-409 was amended to provide exemption administration procedures for *sellers* when purchasers claim an exemption. While the "ordinary care" requirement for sellers when accepting resale certificates has been repealed, the provisions of Tenn. Code Ann. § 67-6-409 replace the "ordinary care" provision with revised and updated obligations of the seller that apply to all types of claims of exemption, including but not limited to sales for resale.

Types of Exemption Certificates

To claim a sales or use tax exemption in Tennessee, a taxpayer must first apply and qualify for that exemption. Once the purchaser has qualified for the exemption, the Department will issue a certificate or letter confirming the taxpayer's exemption. The purchaser then should provide the retailer with a copy of the certificate/letter when making its purchase. The following certificates/letters are issued by the Department and can be found here:

- Agricultural certificate of exemption or card
- Common carrier limited direct pay
- Direct pay permit
- Industrial machinery certificate of exemption
- Warehouse or distribution facility
- Research and development

- Non-profit certificate of exemption (out-of-state entity may use copy of 501(c)(3) determination letter)
- Headquarters private communication exemption letter
- Call-center tax exemption certificate
- Pollution control exemption certificate
- Green energy exemption
- Data center exemption
- Qualified film production exemption
- Broadband infrastructure exemption

2. Streamlined Certificate of Exemption

A taxpayer that has qualified for an exemption may use a Streamlined Sales and Use Tax Certificate of Exemption. The Streamlined Certificate is a multi-purpose exemption form designed to make it easier for sellers to obtain and maintain exemption documentation by using a single form instead the various state forms. The Streamlined Certificate authorizing tax exemption or direct pay by another state may not be used by the purchaser to make tax exempt purchases in Tennessee. For example:

- A taxpayer with a manufacturer's exemption certificate issued by the Georgia Department of Revenue cannot make purchases tax exempt in Tennessee using the Georgia exemption authorization number.

The Streamlined Certificate of Exemption form may be completed on paper or electronically. The certificate can be completed so that a purchaser can complete one form for all states. The form must be fully completed and contain **the purchaser's name, address, type of business, reason for exemption, and the Tennessee tax exemption number or direct pay permit number**, and the form must be signed by the taxpayer (this only applies to the paper certificates).[850] See the section above titled "Resale and Sales for Resale" for information regarding tax ID numbers required when claiming the resale exemption.

The following is a list of common exemptions that a purchaser can report using the Streamlined Certificate, including the accompanying Tennessee exemption information that is required to be reported on the certificate:

- Agricultural exemption – TN agricultural exemption number

- Common carrier – TN common carrier sales tax number/exemption letter
- Direct pay permit – TN direct pay permit number
- Industrial machinery/energy/water exemptions – TN industrial machinery number
- Warehouse or distribution facility – TN exemption number
- Research and development – TN exemption number
- Nonprofit and education exemption – TN nonprofit exemption number
- Headquarters comp/telecom center (private communications) – TN exempt license number
- Call center (telecommunications) – TN exempt license number

A Tennessee tax exemption certificate or license number is required to authorize direct pay or to claim an entity-based tax exemption for Tennessee sales and use tax purposes, except in the case of a non-resident entity with a valid 501(c)(3) federal exemption. Certain Tennessee paper exemption forms do not require the purchaser to include a Tennessee exemption number on the form, such as a Tennessee government exemption. In such instances, a purchaser must provide another tax ID number issued by this state (sales tax account number) or its FEIN, as is the case for a Tennessee government or a non-resident entity with 501(c)(3) federal exemption. Purchasers *may not* use a Streamlined Registration "S" ID number issued to persons that register in states through the Streamlined Registration System to claim a tax exemption or direct pay authorization for Tennessee sales and use tax purposes. For example:

- A non-resident entity with a 501(c)(3) federal exemption may use a Streamlined Certificate to claim exemption by marking "Other" under "Reason for Exemption" (No. 4, Line L) and adding an explanation that the purchaser is a non-resident 501(c)(3) entity. Auditors with concerns regarding the validity of a claim for exemption may contact the IRS Exempt Organizations Customer Account Services at (877) 829-5500 to verify if an entity has a valid federal exemption.

If the Streamlined Certificate indicates the purchaser is claiming a tax exemption (other than resale exemption) or direct pay authorization under another state's laws, the tax ID number on the certificate is for a state other than Tennessee, the auditor may allow the seller an opportunity to obtain from the purchaser the missing Tennessee exemption certificate or direct pay authorization, which must include the exemption or license number issued by Tennessee. There are certain exceptions when claiming the sale for resale exemption.

The Streamlined Certificate must indicate the purchaser's reason for exemption. When the "Reason for Exemption" is "Other" (No. 4, Line L), the purchaser is required to include an additional explanation.

3. Exemptions Not Requiring a Certificate

There are other types of Tennessee exemptions that do not require pre-qualification with the Department and issuance of a Tennessee exemption certificate. The Department has blank fill-in forms available on its website that may be used for claiming these types of exemptions. Sellers and purchasers may use the Streamlined Certificate instead of the Tennessee fill-in-the-blank exemption forms for claiming and documenting the following Tennessee exemptions:

- Federal government
- Rural electric cooperatives
- Community service cooperatives
- Governmental utility districts
- Tennessee state government
- Tennessee county or municipality government
- Veterinarians purchase of livestock drugs
- Aircraft used for flight training
- Home communication terminals purchased by video programming service providers for lease
- Electric generating and distribution systems[851]
- Resource recovery facilities
- Coal gasification plants and distribution systems
- Telephone cooperatives
- Churches and private universities, when purchasing construction materials

4. Relief of Liability

Dealers making sales of tangible personal property and furnishing services that are subject to the sales tax to vendees exempt from payment of the sales and use tax shall obtain and

keep, as a part of their books and records, appropriate exemption certificates. Dealers shall likewise obtain and keep, as a part of their records, appropriate exemption certificates for sales of tangible personal property that is not specifically exempt from sales and use tax, but which may be used in a manner that will exempt it from the sales or use tax.[852]

Absent fraud or illegal solicitation, when the seller obtains a fully completed exemption certificate at the time of sale or within 90 days subsequent to the time of sale, the seller is not liable for sales tax if it is determined that the purchaser improperly claimed an exemption.

If a fully completed exemption certificate or electronic identifying information is obtained by the seller more than 90 days following the date of the sale, the seller is liable for the sales tax unless the certificate or electronic identifying information was taken in "good faith."

"Good faith" means that the seller obtained a certificate that claims an exemption that:

- Was statutorily available on the date of the transaction;
- Could be applicable to the item being purchased; and
- Is reasonable for the purchaser's type of business.

If the claim for exemption does not meet all three criteria above and the completed certificate was obtained more than 90 days after the sale, the claim for exemption should be denied and the seller assessed the sales tax.

All sales for which an exemption has been claimed, but which are not supported by exemption certificates, will be deemed retail sales, and the dealer will be held liable for the sales or use tax due thereon.[853]

Chapter 20: Manufacturers

There are numerous exemptions that apply specifically to manufacturers, including the purchase of industrial machinery, industrial supplies, and energy fuel and water used in the manufacturing process. Below is an overview of these exemptions, specific examples, and information about how to apply for and use the Certificate of Exemption for Industrial Machinery.

1. Industrial Machinery

The sale, lease, or rental of "industrial machinery" is exempt from Tennessee state and local sales and use tax.[854] "Industrial machinery" is defined in pertinent part as:

- Machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts, and any necessary repair or taxable installation labor therefor, that is:
- **Necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises . . . where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business.**[855]

For purposes of the exemption, a manufacturer is defined as:

- One who engages in the fabrication or processing of tangible personal property for resale and consumption off the premises as one's principal business.[856]

Manufacturing is a taxpayer's principal business if more than 50% of its revenues at a given location are derived from fabricating or processing tangible personal property for resale.[857] A manufacturer does not include any entity whose principal business is the preparation of food for immediate sale.[858] Additionally, a manufacturer does not include contractors who fabricate and install their products to realty, such as a structural steel contractor.

"Processing" is not defined in Tennessee sales tax law; however, the Tennessee Supreme Court defined the term to mean "essentially a transformation or conversion of materials or things into a different state or form from that in which that originally existed – the actual operation incident to changing them into marketable products."[859]

In addition to machinery and associated parts and accessories, the following items may qualify for exemption when purchased by a qualified manufacturer:

- Machines used to generate, produce, and distribute electricity, steam, and water.

- Equipment for transport of raw materials and finished product to and from the process.
- Repair and installation of industrial machinery.
- Pollution control equipment needed to control or eliminate air or water pollutants resulting from the manufacturing.
- Separately metered energy fuel coming in direct contact with the product during manufacturing.
- Separately metered water coming in direct contact with the product.
- Machinery for packaging manufactured items.
- Machinery for remanufacture of industrial machinery.
- Machinery, apparatus, equipment, and materials for mining.
- Machinery, apparatus, and equipment for conversion of tangible personal property into taxable specified digital products for resale.
- Machinery for fabrication of asphalt/crushed stone to be used by contractors for roads funded by tax revenues.
- Industrial materials and supplies (A Certificate of Exemption for Industrial Machinery is not required to purchase industrial materials).[860]

Pollution Control Facilities

Industrial machinery includes:

> Pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business, . . . or such use by a county, municipality, or water and wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 6, or a contractor pursuant to a contract with the county, municipality, or water and wastewater treatment authority for use in water pollution control or sewage systems[861]

A pollution control facility is defined as:

> Any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or

> reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest[862]

Qualifying pollution control facilities *do not include* freshwater treatment facilities, as these facilities are not likely treating water to remove contaminants that constitute pollution. However, freshwater treatment facilities still likely qualify for the industrial machinery exemption.[863]

Additionally, the industrial machinery exemption for pollution control facilities in Tenn. Code Ann. § 67-6-102 applies separately from the pollution control credit available in Tenn. Code Ann. § 67-6-346. Manufacturers may also apply for the pollution control credit available in Tenn. Code Ann. § 67-6-346.

2. Industrial Materials and Supplies

To be exempt, the industrial supplies must be for future processing, manufacture, or conversion into articles of tangible personal property for resale where the industrial materials become a component part of the finished product or are used directly in fabricating, dislodging, or sizing.[864] Furthermore, materials and supplies coming in direct contact with, and which are consumed within 25 consecutive calendar days of the processing of manufactured products are not subject to sales tax.[865]

3. Energy Fuel and Water

Energy fuel and water used by a manufacturer in a manufacturing facility that does not qualify for the industrial machinery exemption may be purchased at reduced rates:[866]

- Energy fuel is subject to a reduced state tax rate of 1.5% (there is no local tax on electricity and other energy fuels).[867]
- Water is subject to a reduced state tax rate of 1% and a local tax rate of 0.5%.[868]

If the purchases are used for administrative offices, warehouses, or nonmanufacturing buildings that are not located at the same location at which the manufacturing occurs, even if owned by the qualified manufacturer, the reduced tax rates would *not* apply.

Exempt Energy Fuels and Water

If the water, electricity, or other energy fuels purchased by a qualifying manufacturer are used exclusively in the manufacturing process and come in **direct contact** with the product being manufactured, then such purchases may be made exempt from sales tax.[869]

"Direct contact" means:

- The water, electricity, or energy fuel must touch the product, with no intervening barrier between the two. An example of a barrier might be a container that is holding a product being heated. The container would act as a barrier and prevent the water, electricity, or chemical energy produced from the combustion of energy fuels from coming into direct contact with the product being manufactured.

- Note, however, that if the container did not completely encompass the product, but instead left a portion of the product exposed, then the water, electricity, or chemical energy produced from the combustion of energy fuels may still come in direct contact with the exposed portion.

Electricity qualifies for this exemption only when the electrical current is directly applied to the product being manufactured. Examples include:

- Electrolysis, and

- Induction melting, where an electrical current flows through the product, heating the product to a molten state. This process is often used in a foundry operation.

If either of these processes are used, the manufacturer will be entitled to the exemption because the electricity is deemed to come in direct contact with the product being manufactured.

Alternatively, an electrical current that is converted to thermal energy through a heating element and then transferred to the product being manufactured by the heating process (unless the product is glass) does not qualify for the exemption because the electrical current itself does not come into direct contact with the product being manufactured.[870]

Gas, fuel oil, coal, and other energy fuels qualify for the exemption if they come in direct contact with the product being made or if the chemical energy resulting from the chemical reactions occurring through the process of combustion or burning comes in direct contact with the product being made.[871] Note that it is not necessary for the flame/fire created as a

result of the burning to come in direct contact with the product if the chemical energy produced does.

To receive the above-described exemption, the manufacturer must be able demonstrate that the water or energy fuel is used exclusively in a qualifying manner.

> ⚠ **A manufacturer can demonstrate water or energy fuel is used exclusively in a qualifying manner generally by metering the water, electricity, or other energy fuels separately from any other such fuels used in the facility.**

Thus, in the case of an audit, taxpayers should be aware that the auditor will likely check for separate metering or other evidence demonstrating an exclusive use. Taxpayers should carefully consider how to track usage if not using metering, as this will undergo additional scrutiny during an audit.

In addition to the above-described exemption, there are several other specific exemptions for water, electricity, or other energy fuels, such as:

- Any water or energy fuel produced by the manufacturer or extracted by the manufacturer from its own facilities.[872]
- Electricity used to generate radiant heat to produce heat-treated glass.[873]
- Natural gas used in the production of primary aluminum, aluminum sheet and foil, and aluminum can sheet products.[874]

The above items are exempt from sales or use tax if purchased or used by a qualified manufacturer in the manufacturing process.

To report sales of electricity, energy fuels, natural or artificial gas, coal, and fuel oil ***sold to a qualified manufacturer*** on the sales and use tax return, follow the below steps:

- Report sales on Line 1.
- Exempt the industrial energy fuels on Schedule A, Line 9.
- Then, report sales (excluding direct contact/fully exempt energy fuels) on Schedule C, Line 5.
- Tax will be calculated at the reduced state rate of 1.5% on Line 6.

To report sales of water ***sold to or used by a qualified manufacturer*** on the sales and use tax return, follow the steps below:

- Report sales on Line 1.
- Exempt industrial water on Schedule A, Line 9.
- Report sales (excluding direct contact/fully exempt water) on Schedule C, Line 3.
- Tax will be calculated at the reduced state rate of 1% on Line 4 and the reduced local rate of 0.5% on Line 10.

4. Manufacturing Location

As previously mentioned, the Department considers a location to be a manufacturing location if over 50% of the taxpayer's revenues *at a given location* are derived from processing or fabricating tangible personal property for resale. This is referred to as the **51% test**.[875] Determining what constitutes a location is a fact-specific inquiry.

Example of a Location

- A company manufactures concrete blocks and has a retail sales office at one single property. The property is enclosed by one fence, has one address, and receives one property tax bill. The manufacturing division and retail sales office have separate managers and employees that work independent of each other. The divisions have separate utility bills and have separate books and records. However, these divisions coexist. All concrete blocks made by the manufacturing division are sold out of the retail sales office.
    - This property would be considered one "location" for the purposes of determining whether more than 50% of revenues are derived from the processing or fabricating of tangible personal property.[876]
    - Note that, depending on the factual circumstances, it may be possible for two locations to exist at the same property.

Manufacturer Exemption Certificate – Generally

A manufacturer must file an application with the Department of Revenue for *each manufacturing location* and receive the Certificate of Exemption for Industrial Machinery.

Instead of presenting a copy of the Certificate of Exemption for Industrial Machinery, a manufacturer may issue a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the industrial machinery exemption number.

1. Contractor Use of a Manufacturer's Industrial Machinery Exemption

Contractors installing industrial machinery may not use the manufacturer's exemption certificate to make exempt purchases. However, the contractor may apply for its own exemption authorization number, which will apply only to that manufacturer's project. This enables the contractor to purchase the industrial machinery and any installation supplies for the manufacturer's facility exempt from tax.

To apply, contractors should use the same application form used by manufacturers that is available on the Department's website and linked here.

Miscellaneous Issues and Examples

- Concrete companies may purchase front or rear dispensing trucks. *Front dispensing trucks* are designed to dispense from the front and are sold standard with such dispensing configuration (an example is a Terex mixer truck). A *rear dispensing truck* is a modification that can be installed on a truck. Front dispensing trucks are completely exempt as industrial machinery. However, for rear dispensing trucks, the cost of the mixer portion is exempt as industrial machinery, but the truck is not. If a rear dispensing type truck and mixer are purchased, and the mixer portion is separately stated on the invoice, the mixer would be considered exempt industrial machinery.

- A business that holds an industrial machinery exemption certificate purchases or rents scaffolding for work on a large piece of machinery. *The scaffolding does not qualify for the industrial machinery exemption.* Generally, industrial machinery and equipment, along with all associated parts, are exempt from sales tax. Furthermore, repair parts and any necessary repair or installation labor is also generally exempt. However, *the scaffolding is not a repair part to which exempt repair and installation labor relates.* The scaffolding is one step removed from the industrial machinery exemption in that it is equipment used by a person performing an exempt repair or installation service.

- In *Beare Co. v. Tenn. Dept. of Revenue*, 858 S.W.2d 906 (Tenn. 1993), the Tennessee Supreme Court considered whether the freezing and preservation of food products constituted "processing" for purposes of Tenn. Code Ann. § 67-6-206.[877] Specifically, the court considered whether The Beare Company engaged in the business of preserving food products through freezing and cold storage and was entitled to the

reduced sales tax rate under Tenn. Code Ann. § 67-6-206(b)(1) for retail sales of certain energy fuels, when sold to or used by manufacturers. In making its determination, the court examined the definition of "manufacturer" under Tenn. Code Ann. § 67-6-206(b)(2), which states that a manufacturer is "one whose principal business is fabricating or processing tangible personal property for resale."

- The Beare Company's revenues were derived from four types of activities: "blast freezing," "handling," "preservation," and "special services."[878] "Blast freezing" was performed on food products received by the company in a fresh or raw condition. These goods were frozen by lowering the temperature of the products to zero degrees Fahrenheit or below within a period of 72 hours.[879] "Preservation" was the storage of previously frozen goods in holding freezers, where the products were maintained in a frozen state.[880] The purpose of preservation storage was to maintain the low temperature of the products to prevent deterioration or spoilage.[881]
- The Tennessee Supreme Court examined different definitions of "processing" put forth by courts in other states, all of which required a change in the state, form, or condition of the original material in order for "processing" to occur.[882] The court concluded that the change in form of the raw food products to a frozen condition, and the maintenance of such frozen condition, could be considered "processing."[883] Specifically, the court held that the initial blast freezing, together with the maintenance of that frozen condition, constituted "processing" for purposes of Tenn. Code Ann. § 67-6-206(b)(2).[884] Conversely, the court held that, with respect to the "preservation" service whereby the taxpayer stored already frozen goods in holding freezers, "the mere preservation of the prefrozen condition" did not constitute "processing."[885]

- The Department has numerous additional examples on its website by way of tax rulings. Rulings dealing with industrial machinery or equipment include, but are not limited to, 14-13; 13-10; 13-06; 13-02; 12-24; 12-16; 12-02; 11-39; 11-30; and 10-23.

Chapter 21: Credits

Tennessee law provides numerous credits against sales and use tax. This chapter contains a brief overview of many of the most frequently used sales and use tax credits.

Sales or Use Tax Paid in Another State

To prevent multi-state taxation, persons who have paid a legally imposed sales or use tax in another state on the following items that are used or consumed in Tennessee may claim that payment as a credit against any use tax liability in this state:

- Tangible personal property;
- Computer software;
- Computer software maintenance contracts;
- Warranty or maintenance contracts covering tangible personal property; and
- Taxable digital products.[886]

If the tax paid was less than what is due in Tennessee, the taxpayer will be liable for the difference.[887] For example:

- A Tennessee consumer visits Virginia and purchases an expensive guitar while he's there. He carries the guitar out of the store with him and returns to Tennessee. He was charged Virginia sales tax on the purchase price of the guitar, but he owes use tax on the guitar to Tennessee. The sales tax he paid to Virginia was a legally imposed tax because he took title and possession of the guitar in Virginia. Therefore, he owes the difference between the Virginia sales tax he paid and the Tennessee use tax due.
- In contrast, the same customer ordered the guitar from the Virginia store. The Virginia store shipped the guitar to the customer in Tennessee via FedEx and charged the customer Virginia tax. The customer owes the full amount of use tax to Tennessee. The Virginia tax he was charged was not a legally imposed tax. This sale was in interstate commerce. Virginia law does not impose sales tax on these sales. The customer took title and possession in Tennessee, not Virginia. In this case, the customer would have to seek a refund of the tax paid from Virginia.

Persons claiming this credit may be required to furnish the name of the vendor from whom they purchased the property and an affidavit that tax has been paid to such vendor. It is important to note that a fee paid in another state to register a motor vehicle is not a sales or use tax and may not be claimed as credit for sales or use tax paid to another state.

Returned Merchandise

If a consumer voluntarily returns articles of property to a dealer after the sales or use tax has been collected and remitted, **the dealer may deduct the sales price of that property from the taxable transactions shown on the current month's return**.[888] The dealer must maintain records clearly indicating that the price of the item plus the sales or use tax was refunded to the consumer.[889]

1. Merchandise Priced Over $1,600

If a single article of tangible personal property with a price greater than $1,600 is included in Gross Sales on Line 1 of a previous or current sales tax return, the article is returned, and the retailer refunds the purchaser the full price including sales tax collected, then the sales tax return must be adjusted for the retailer to claim credit for the refunded tax. For example:

- A retailer sells a ring in May for $3,500. The customer returns the ring in July. The retailer reports $3,500 on Schedule A, Line 5 Returned Merchandise on its July return. On Schedule B, Line 2 Adjustments, the retailer reports $1,900, which is the amount of the ring in excess of the $1,600 local option single article tax limitation that was previously reported in May on Schedule B, Line 4. On Schedule C, Line 1 Single Article Sales from $1,600–$3,200, the retailer deducts $1,600 (the amount on which the previously paid state single article sales tax was calculated).

If a retailer does not report the original sale of the item in Gross Sales on Line 1 because the item was returned in the same month, the retailer should not claim credit for the refunded tax.

2. Merchandise less than or equal to $1,600

Adjustments must be made to the sales tax return to claim credit for sales tax relating to merchandise that:

- Has a price that is less than or equal to $1,600;
- Was included in Gross Sales on Line 1 of a previous or current sales tax return;
- Is returned to the retailer; and
- The retailer refunds the purchaser the full price plus sales tax collected.

For example:

- A furniture store sells a chair in April for $1,500. The customer returns the chair in May. The retailer should report on the May sales tax return $1,500 on Schedule A,

Line 5 Returned Merchandise to receive a credit for state and local tax refunded to the purchaser.

Trade-In Credit

Tennessee law provides that where a used item is traded in as a credit or partial payment toward the purchase of a used or new item, the sales tax on the purchased item is calculated on the price of the item less any credit given for the traded-in item.[890]

1. Partial Payments

If a used item of tangible personal property is traded in as a partial payment towards the purchase of another *like kind* item of tangible personal property ("trade-in credit"), the sales tax on the purchased item is calculated by taking the sales price of the purchased item and subtracting the credit received for the traded-in item. This applies to all trade-ins of tangible personal property. For purposes of purchasing an automobile or truck, off-highway motorized vehicles (as defined in Tenn. Code Ann. § 55-3-101(c)(2)), jet skis, and boats are considered like kind items that may be traded in as partial payment towards the purchase of the automobile or truck. For example:

- A person is purchasing a new computer from a new and used electronics vendor. Purchaser trades in his old computer and receives a $500 credit for it. He applies this towards the purchase of a new $1,500 computer. He will owe sales tax on $1,000 ($1,500 - $500 credit = $1,000). The purchaser is not required to provide proof that tax was paid previously, whether in Tennessee or in another state, on the traded-in item to receive any trade-in credit.

- A purchaser moves to Tennessee from Kentucky and brings with him his vehicle that is registered in Kentucky. According to Tenn. Code Ann. § 67-6-210(b), he does not have to pay Tennessee use tax on his personal vehicle that he has brought into Tennessee. Purchaser decides to purchase a new vehicle in Tennessee a week after moving to the state and before he registers his old vehicle in the state. He trades in his Kentucky registered vehicle for the new vehicle. He is allowed a trade-in credit for the old vehicle (without having to show that tax was previously paid on the old vehicle), and sales tax on the new vehicle is calculated on the difference between the price of the new vehicle and the amount of trade-in credit he received.

More than one item of like kind and character can be used in the transaction if needed. Dealers should carefully note the required information for each item involved in the trade.

2. Trade-In from Dealer's Business

A motor vehicle dealer may also receive a trade-in credit for sales and use tax purposes when trading in a vehicle used in the dealership's business for another vehicle from the dealership's inventory to use for the same purpose. Contrary to other transactions involving a trade in, the sales or use tax must have been paid previously on the vehicle being traded in, and both vehicles must be titled and registered in the dealership's name. For example:

- A new and used vehicle dealership withdraws a vehicle from its inventory for use by the dealership. Sales tax is paid on the vehicle at the time of the withdrawal. The dealership titles and registers the vehicle in its name. Two years later, the dealership trades in the vehicle for a newer vehicle from its inventory. The trade-in value of the used vehicle according to the NADA Official Used Car Guide is $15,000. The price of the new vehicle is $20,000. The used vehicle will go back into the dealership inventory. The new vehicle is titled and registered in the name of the dealership. The dealership will owe sales or use tax on $5,000 ($20,000 - $15,000 = $5,000).

3. Receiving Credit

To receive the credit for sales tax purposes, actual credit must be given. If the vendor pays for the item that is being traded in and the purchaser pays the full amount of the sales price, then no trade-in credit is allowed, and sales tax is owed on the full purchase price. For example:

- A purchaser sells his used refrigerator to an appliance vendor for $50 cash. The purchaser notices a new refrigerator the appliance vendor is selling. The purchaser leaves the vendor and goes home to take measurements to ensure the new refrigerator will fit in his kitchen. Later that afternoon, the purchaser goes back to the appliance store and buys the new refrigerator. The new refrigerator is on sale for $100, and the purchaser pays $100 cash to the vendor. The purchaser is not entitled to a trade-in credit for the amount he received for the used refrigerator earlier that day and will owe sales tax on the full purchase price of the new refrigerator ($100).

4. Imported Vehicles

TENN. COMP. R. & REGS. 1320-05-01-.03(6) provides one limited exception to the general rule regarding trade-ins. This rule prohibits a trade-in credit to be taken when calculating use tax owed on an imported vehicle, if the traded-in vehicle was not registered in Tennessee in the name of the purchaser of the imported vehicle. This rule specifically states that it only applies to the calculation of use tax and does not apply to sales tax calculations. For example:

- A purchaser lives in Tennessee. He purchases a new vehicle in Kentucky and imports the vehicle into Tennessee. The purchaser uses a Kentucky registered vehicle as a trade-in toward the purchase of the new vehicle in Kentucky. The purchaser will owe Tennessee use tax on the vehicle (note that he will get credit for any legally imposed Kentucky tax that he paid on the purchase of the new vehicle). The purchaser will not be allowed the trade-in credit when calculating the use tax owed on the new vehicle and will owe use tax on the full purchase price of the new vehicle.

Repossession

A dealer who repossesses, or enforces a lien against, property the dealer has sold that has an unpaid balance greater than $500 may deduct on the current return an amount equal to the unpaid balance minus $500.[891] The amount of unpaid balance eligible for deduction only includes the amount that constitutes the principal and does **not** include:

- Interest
- Carrying charges
- Other similar charges[892]

The dealer must document the credit by maintaining records regarding the sale. The documentation should include the following information:

- Identification of parties and items involved.
- The dates of the sale and repossession.
- The amount of the original price to the purchaser upon which sales tax was due to be paid.
- The amount of unpaid balance which forms the basis for the deduction.[893]

Banks or other financial institutions purchasing contracts without recourse from dealers selling tangible personal property may not claim any deduction or credit for any unpaid balances remaining due on any property which has been sold by the other dealer on a security agreement or other title retained instrument, and later repossessed, or which resulted from any other action to enforce the lien.[894] This concept applies even if the financial institution is owned by the same party that owns the dealer.

1. Examples

Example 1

A dealer sold a car for $5,000. The dealer financed the sale. The buyer defaulted on the note after paying a $500 down payment and monthly payments totaling $2,500. $500 of the monthly payments was for interest. The buyer also paid a $100 doc fee and business tax of $15.30.

On the car dealer's books, the customer's account appeared 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 (2.75%)	$ 44.00
State single article	$ 44.00
Total sales price plus tax	$ 5,561.38
Down payment	$ 500.00
Payments ($500 applied to interest)	$ 2,500.00
Loan amount (sales price, less down payment)	$ 5,061.38
Payment on principal (payments, less interest)	$ (2,000.00)
Late fees	$ 250.00
Towing fees	$ 100.00
Balance owed, per dealer's records	$ 3,411.38

Payment amounts attributed to the principal and to interest should be separately specified in records.

The amount of credit for sales tax that the dealer is allowed is computed as follows:

	State Taxable	Local Taxable	State Single Article
Sales price, excluding tax	$ 5,115.30	$ 1,600.00	$ 1,600.00
Less: down payment	$ (500.00)	$ (500.00)	-
Less: payments on principal	$ (2,000.00)	$ (1,100.00)	$ (900.00)
Unpaid principal	$ 2,615.30	$ 0.00	$ 700.00
Less: required reduction	$ (500.00)	-	$ (500.00)
Repossession credit base	$ 2,115.30	$ 0.00	$ 200.00
Multiplied by tax rate	x 7.00%	x 2.75%	x 2.75%
Credits	**$ 148.08**	**$ 0.00**	**$ 5.50**

On the sales tax return, $2,115.30 would be deducted on Schedule A, Line 8 for repossessions. This amount would also be added back on Schedule B, Line 2 for local tax.

To receive the state single article credit on the sales tax return, divide the $5.50 credit by 0.07 and enter this amount, $79.00, on Schedule A, Line 9 and Schedule B, Line 2. This amount would be included on Sch. B, Line 2 – Adjustments, to ensure local tax is not refunded (because the local taxable amount of $1,600 was paid by the down payment and part of the payments on principal). This will ensure that the deduction on Sch. B, Line 2 from will not be excluded from the local taxable base.

Because the local single article is taxed before the state single article tax is applied, any payments that are made would first apply to the local tax base, including the $500 required reduction. In this example, the total payments made were greater than the local tax base. Therefore, the dealer did not receive a credit for unpaid local tax.

Example 2

Use the same example above, but in this example the buyer put $500 down and made monthly payments of $1,000. $500 of the monthly payments is applied towards interest.

The amount of credit for sales tax that the dealer is allowed is computed as follows:

	State Taxable	Local Taxable	State Single Article
Sales price, excluding tax	$ 5,115.30	$ 1,600.00	$ 1,600.00
Less: down payment	$ (500.00)	$ (500.00)	-
Less: payments on principal	$ (500.00)	$ (500.00)	-
Unpaid principal	$ 4,115.30	$ 600.00	$ 1,600.00
Less: required reduction	$ (500.00)	$ (500.00)	-
Repossession credit base	$ 3,615.30	$ 100.00	$ 1,600.00
Multiplied by tax rate	x 7.00%	x 2.75%	x 2.75%
Credits	**$ 253.08**	**$ 2.75**	**$ 44.00**

On the sales tax return, $3,615.30 would be deducted on Schedule A, Line 8 for repossessions. This amount would be added back on Schedule B, Line 2 for local tax. For the $2.75 local single article credit, the $100.00 from the repossession credit base in the local tax column above would be reported on Schedule B, Line 6. To calculate the state single article credit on the sales tax return, divide the $44.00 credit by 0.07. This amount, $629.00, should be reported on Schedule A, Line 9 and Schedule B, Line 2.

Example 3

Use the same example above, but in this example the buyer put $500 down and made monthly payments of $1,300. $500 of the monthly payments is applied towards interest.

The amount of credit for sales tax that the dealer is allowed is computed as follows:

	State Taxable	Local Taxable	State Single Article
Sales price, excluding tax	$ 5,115.30	$ 1,600.00	$ 1,600.00
Less: down payment	$ (500.00)	$ (500.00)	-
Less: payments on principal	$ (800.00)	$ (800.00)	-
Unpaid principal	$ 3,815.30	$ 300.00	$ 1,600.00

Less: required reduction	$ (500.00)	$ (300.00)	$ (200.00)
Repossession credit base	$ 3,315.30	$ 0.00	$ 1,400.00
Multiplied by tax rate	x 7.00%	x 2.75%	x 2.75%
Credits	**$ 232.08**	**$ 0.00**	**$ 38.50**

On the sales tax return, $3,315.30 would be deducted on Schedule A, Line 8 for repossessions; this amount would also be added back on Schedule B, Line 2 for local tax. To calculate the state single article credit on the sales tax return, divide the $38.50 credit by 0.07. The resulting amount, $550.00, should be reported on Schedule A, Line 9 and Schedule B, Line 2.

Note, in this example, only $300 of the $500 required deduction was needed to reduce the unpaid local tax base to zero. Therefore, the remaining $200 of the reduction was applied to the state single article tax base.

Example 4

A dealer, owned by Company A, sold a car for $5,000. The dealer sold the sales contract to Finance Company, also owned by Company A, without recourse. The buyer defaulted on the note after paying a $500 down payment and monthly payments totaling $2,500. Finance Company claimed the credit on its sales and use tax return. **However, claiming this credit was improper because the finance company purchased the sales contract without recourse**.

Pollution Control Credit

An exemption, credit, or refund of sales or use tax is available for any system, method, improvement, structure, device, or appliance that is required and primarily used to bring a purchaser into compliance with federal, state, or local pollution control laws or regulations.[895] The credit also applies to repairs and installation of the required pollution control equipment.

The pollution control credit/exemption covers the entire pollution control system and is not limited to purchases of tangible personal property. Therefore, a taxpayer may make tax-exempt purchases of installation and repair services for equipment, appliances, devices, or appurtenances that are required for and primarily used in a pollution control system, method, improvement, or structure.

⚠ **The pollution control credit available in Tenn. Code Ann. § 67-6-346 applies separately from the industrial machinery pollution control credit in Tenn. Code Ann. § 67-6-102.**

1. Eligible Entities

The credit is available to businesses whose business activities create pollution and who are required to comply with pollution control laws or regulations to prevent, control, treat, or process pollution.

⚠ **The pollution control credit is not available to entities that process, treat, or control pollution created by others.**

Eligible entities include:

- Private landfills
- Manufacturers
- Dry cleaners
- Auto body paint shops
- Land developers
- Gas stations

Auto Body Paint Shops

Auto body paint shops may claim an exemption or take a credit of 100% of the sales and use tax paid on purchases of equipment to comply with emissions control standards. Auto body paint shops may also qualify for a specialized sales tax exemption under Tenn. Code Ann. § 67-6-507(i). This exemption varies from the pollution control credit available under Tenn. Code Ann. § 67-6-346 in that it covers auto body paint equipment used in the course of business and must be purchased to comply with emissions control standards, but that may not be considered primarily used for pollution control.

Dry Cleaners

Additionally, under Tenn. Code Ann. § 67-6-507(j), dry cleaners may take a credit of 50% of the sales and use tax paid on replacement equipment purchased to comply with emissions control standards.

2. Application Requirements

To receive the pollution control credit, qualifying businesses must submit an Application for Pollution Control Sales and Use Tax Exemption.

Alternatively, a purchaser of qualified materials may contact the Department for a refund of taxes paid and should provide the Department adequate information to receive the refund. In these cases, the application for exemption may not be required.

Contractors

Each business must submit one application to the Department for each pollution control project. The application must include the contractor's information as well as information for the business. For large projects with multiple contractors, applicants should attach a list of the information for each contractor purchasing, installing, or repairing pollution control items for the project.

Applicants may subsequently request to add additional contractors to the project by sending a letter to the Department. The letter should include the information required by Line 10 of the application.

Compliance with Pollution Control Laws/Regulations

Businesses taking this credit must provide documentation showing that the equipment was necessary for compliance with federal, state, or local pollution control laws and regulations.

3. Certificates

If the application is approved, separate pollution control sales and use tax exemption certificates will be issued to the business and to each qualifying contractor whose information has been included with the application. Pollution control exemption certificates may be issued retroactively.

Location IDs

Each entity (business or contractor) that is issued a pollution control exemption certificate must have a location ID under its sales and use tax account that matches the location of the pollution control project on the application. If a location ID does not exist, a new location ID with a non-filing status must be created for the location of the pollution control project.

Expiration Dates

Pollution control sales and use tax exemption certificates have expiration dates. If a business applies for the exemption for a specific pollution control project, Line 9 of the application should show the anticipated start and end dates for the project.

If, however, a business owner has a continuous and ongoing need for the pollution exemption that is not for a specific project (e.g., annual inspection and repair of pollution control equipment), Line 9 should include only a start date and the completion date should be left blank. An attachment for Line 11 should include an explanation of the ongoing pollution control need. Under these circumstances, the Department may issue an exemption certificate that is valid for up to three years.

4. Federal or Tennessee State or Local Government Entities

A government entity will not be issued a pollution control exemption certificate because government entities use government exemption certificates to make tax exempt purchases. However, *government contractors* are issued pollution control sales and use tax exemption certificates for their pollution control projects.

Example

A Tennessee municipality owns and operates a wastewater treatment facility. The municipality entered into a contract with an unrelated contractor to expand the facility. The contractor purchased materials required to construct the expansion including pumps, tanks, piping, equipment to process sewage, concrete, reinforcing materials, and building materials to construct the foundation of the facility.

- The purchases of materials by the municipality's contractor for construction of the facility and the purchase of the equipment that will be used by the expanded facility are both exempt from Tennessee sales and use tax. The contractor may apply to the Department of Revenue for its own industrial machinery authorization number to enable the contractor to purchase the industrial machinery for the facility expansion exempt from Tennessee sales and use tax.[896]

5. Credits or Refunds

Refunds or credits may be issued to either the qualifying business owner or its contractors. However, the Department will only issue refunds directly to the business or contractor for purchases made before the issuance of the exemption certificate (i.e., the date of the issuance listed on exemption authorization letter). If the business owner or its contractor pays sales tax on a qualified purchase after the exemption certificate is issued, the purchaser should be directed to use the exemption certificate to obtain a refund of the tax

paid to its vendor. In such case, the vendor would refund or credit the purchaser and the vendor would obtain a refund from the Department.

Certified Green Energy Production

Tennessee law provides a sales and use tax exemption, credit, or refund for tax paid on purchases of machinery and equipment used to produce or store electricity in a certified green energy production facility.[897]

To apply for this credit, the applicant must first apply to the Tennessee Department of Environment and Conservation ("TDEC") for each certified green energy production facility.

> ⚠ **Individuals that do not otherwise register for sales and use tax do not need to register to get a sales and use tax account number.**

1. Facility Requirements

A certified green energy production facility must be certified by TDEC as producing or storing electricity using clean energy technology. Clean energy technology is technology used to generate electricity from renewable energy sources such as geothermal, hydrogen, solar, or wind sources.

2. Application Procedures

TDEC Application

Purchasers must complete the Application for Certification of Green Energy Production Facility/Production of Electricity. The application and instructions are available on TDEC's website at www.tn.gov/environment/. Following submission, TDEC will review the application to determine if the facility meets the criteria to be considered a Certified Green Energy Production Facility. Approved applications are sent to the applicant and the Tennessee Department of Revenue.

Submissions to the Department of Revenue

After TDEC approves the purchaser's application, the applicant must then complete and submit the Department of Revenue Supplement Application for Certified Green Energy Production Facility. The Supplement Application asks for additional information that is not included on the TDEC application.

Purchasers must supply the Department of Revenue with:

- A copy of the Certification issued by TDEC; and
- A completed supplemental application for the green energy production facility sales and use tax exemption, credit, or refund.

Purchasers of materials may hire contractors to construct machinery and equipment for the green energy facility. If the purchaser hires a contractor to construct or install the machinery and equipment for the green energy facility, the purchaser must include the contractor's business information and attach a copy of the contract to the application to the Department. The contractor is not required to file an application because contractor information should be included in the application filed by the purchaser.

3. Exemption Certificate

If a purchaser's application is approved, the Department will issue a Certified Green Energy Production Facility Sales and Use Tax Exemption Certificate to the purchaser or the contractor. Either the purchaser or the contractor may receive a refund or credit of tax paid, depending on who paid the tax.

Green Energy Production Facility Exemption Certificates have expiration dates. The certificate is good for purchases of qualifying machinery and equipment during that time. Certificates may be issued retroactively.

Contractors who purchase and install equipment for certified green energy production facilities do not need to separately apply for the exemption. The facility will provide the Department of Revenue with the contractor's information on the Department of Revenue Supplement Application for Certified Green Energy Production Facility and will attach a copy of the contract with the submission of the application (along with the TDEC certification) to TDEC.

After TDEC submits the applications to the Department of Revenue, the contractor's information will be reviewed. If the Department of Revenue approves the contractor for the project, it will issue a separate exemption certificate to the contractor. This exemption certificate will include the facility address, an expiration date, and an exemption number.

Bad Debt

A dealer who has paid the sales or use tax on a sale made to an account that later becomes a bad debt that qualifies as a bad debt that may be charged off for federal income tax purposes, may take that same amount as a credit on the current sales tax return for the tax period during which the debt is written off as uncollectable and eligible to be deducted for federal purposes.[898] If that account is subsequently paid to the dealer, the dealer will report the amounts paid on the next sales tax return filing and remit the tax amount due.

For purposes of calculating a bad debt deduction for Tennessee sales and use tax, "bad debt" is as defined in the Internal Revenue Code ("IRC") § 166.[899] A full explanation of how I.R.C. § 166 operates can be found in Revenue Ruling # 11-59. However, the amount calculated pursuant to I.R.C. § 166 is adjusted for sales and use tax purposes. The bad debt deduction taken for Tennessee sales tax purposes does not include:

- Financing charges or interest;
- Sales or use tax charged on the purchase price;
- Uncollectible amounts on property that remains in the possession of the seller until the full price is paid;
- Expenses incurred in attempting to collect any debt; and
- Repossessed property.[900]

Except for the narrow circumstance described below, the entity claiming the bad debt deduction must be the entity that writes the bad debt off its books and records. For example:

- Department Store Inc. sells various types of tangible personal property in its department stores. Department Store Inc. also offers a credit card under a private, co-branded label: "Department Store Inc. Card." Financial Institution Inc., pursuant to an agreement with Department Store Inc., issues the credit cards and sets all credit policies. Financial Institution Inc. also holds all customer accounts on its books and records on a nonrecourse basis. Department Store Inc. has been claiming the bad debt deduction when Financial Institution Inc. writes off any bad debt accounts. Although Department Store Inc. and Financial Institution Inc. have an agreement regarding the credit card accounts, they are not considered the same "dealer" for purposes of the bad debt deduction. **Because Department Store Inc. does not carry the accounts on its books and records, it is not entitled to the bad debt deduction.**[901]

Effective July 1, 2023, the bad debt credit is available to a dealer principally (50% or more) selling used automobiles to retail purchasers if the dealer assigns the security agreement or other title retained instrument resulting from the sale to an affiliate finance company.[902] A finance company is considered an affiliate if the dealer "controls" the finance company.[903] "Control" is defined as "the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise."[904] The affiliate finance company must occupy

the same physical headquarters location as the dealer, and such headquarters location must be in Tennessee. Additionally:

- The dealer must collect from its retail purchasers a down payment averaging not more than 5% of the total used automobile sales price;
- The dealer must advance from its own funds the sales tax amount on each purchase and remit the tax to the Department;
- The dealer must assign 100% of its security agreements or other title retained instruments solely to the affiliate finance company in exchange for consideration that includes a sum intended to reimburse the dealer for sales tax remitted to the Department;
- The dealer must remain obligated to and reimburse the finance company for sales tax that the finance company is unable to collect from the retail purchaser; and
- The finance company must have the right to repossess or enforce any lien against the automobile.

To qualify for this narrow exception and utilize the credit, the dealer must first obtain from the Commissioner of Revenue an agreement based on information satisfactory to the Commissioner that the dealer and finance company are affiliates and satisfy all of the conditions outlined above.

Headquarters Facility Tax Credit

The headquarters facility tax credit is a credit for all sales and use tax paid to the State of Tennessee, except tax at the rate of 0.5% on qualified tangible personal property, for construction of a new, expanded, or remodeled headquarters facility.[905]

1. Eligibility Requirements

To qualify for the credit, a taxpayer must be subject to Tennessee franchise and excise taxes. The taxpayer or lessor to the taxpayer also must:

- Make a capital investment of at least $10,000,000 in a building or buildings; and
- Create at least 100 new full-time headquarters staff employee jobs paying at least 150% of the state average occupational wage with minimal health care.[906]

The required capital investment and job creation must be completed within the investment period. The investment period may not exceed six years. The investment period must:

- Begin one year before construction, expansion, or remodeling of the facility; and

- End one year after the substantial completion of construction, expansion, or remodeling of the facility.

Substantial completion of the construction, expansion, or remodeling of the facility is generally covered in the construction contract. For example, substantial completion may occur when the appropriate authority has issued an occupancy permit to the taxpayer.

2. Headquarters Facility

A qualifying headquarters facility is a facility in Tennessee that houses the international or national headquarters of a taxpayer where executive, administrative, or professional workers perform headquarters-related functions. These functions include administrative, planning, research and development, marketing, personnel, legal, computer, or telecommunications services.[907] Headquarters-related functions and services *do not include* manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center.

The facility must be a building or buildings that are newly constructed, expanded, or remodeled, and either purchased or leased during the investment period.[908] It must be used as a headquarters facility for at least 10 years from the end of the investment period.

3. Minimum Investment

The taxpayer or lessor to the taxpayer must invest a minimum of $10 million in a building or buildings that are newly constructed, expanded, or remodeled. The minimum investment may include the purchase price of existing buildings, costs of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities, and landscaping, but not the purchase of land or inventory. The required capital investment must occur within the taxpayer's investment period that is listed on the application.[909]

4. Qualified Tangible Personal Property

Qualified tangible personal property is directly related to the creation of 100 new full-time headquarters staff employee jobs and is either purchased or leased during the investment period.[910] Qualified tangible personal property includes:

- Building materials
- Machinery and equipment
- Furniture and fixtures
- Computer software used in the qualifying facility

Such property must be directly related to the creation of qualifying new full-time employee jobs to qualify for exemption. Delivery charges by the seller, shipping and handling, and freight are part of the sales price of qualified tangible personal property and qualify for the tax credit.

Qualified tangible personal property can include asphalt, concrete, and other building materials used in construction of roads, sidewalks, and curbing and signs that are either part of the headquarters facility or parking area. However, temporary materials (e.g., lumber and nails that build concrete forms) *do not qualify*. Parking areas and facilities must be exclusively for the headquarters staff employees and built in conjunction with the headquarters facility construction, expansion, or remodel.

If owned by the headquarters taxpayer, machinery, equipment, furniture, and fixtures used in a daycare, fitness/exercise room, or employee cafeteria/breakroom also qualify.

Taxpayers that move tangible personal property into Tennessee in conjunction with establishing a qualified headquarters are exempt from any sales and use tax that arises because of moving property into Tennessee, if that property was previously used in the operation of the taxpayer's business.[911]

Non-qualifying Property

Non-qualifying items include:

- Supplies (office, breakroom, restroom, etc.)
- Repair parts
- Lease payments beyond the investment period
- Materials, machinery, equipment, furniture, or fixtures that replace tangible personal property that previously generated a credit
- Blueprints or transparencies
- Food
- Labor
- Warranty or service contracts covering repair or maintenance of tangible personal property
- Rental of construction machinery or equipment
- Office machinery and equipment used by contractors

- Vehicles
- Construction tools
- Office décor (e.g., artwork, sculptures, paintings, plants, lamps)
- Computer software (including prewritten and custom software) used primarily in the headquarters facility
    - However, installation, implementation, and training services relating to the computer software and any software license payments made after the completion of the investment period *do not qualify*.

5. Headquarters Staff Positions

To qualify for the credit, the taxpayer must create at least 100 new jobs that are:

- Full-time – at least 37.5 hours per week;
- Permanent – for at least 12 consecutive months; and
- Headquarters staff employee jobs – executive, administrative, or professional positions.[912]

Additionally, these positions must pay at least 150% of the state average occupational wage and offer minimal healthcare.[913] The state average occupational wage is reported by the Department of Labor and Workforce Development and is the average wage for all industries from the most recent annual quarterly census of employment and wages data.[914]

The position cannot have existed at the taxpayer or another business entity in Tennessee for at least 90 days prior to the investment period. However, the position can be in a temporary location until the headquarters facility is complete.

An executive employee is one that is primarily engaged in the management of the whole or part of the enterprise. An administrative employee is one whose work is directly related to management policies or the operation of the headquarters. An administrative employee is not engaged primarily with manual work. A professional employee is an individual whose work requires knowledge acquired by a prolonged course of specialized study. Headquarters staff employees do not include employees that work in manufacturing, processing, warehousing, distributing, wholesaling, or operating a call center.

6. Application Process

The eligible taxpayer and, if applicable, the lessor must submit an application with a business plan and receive an authorization letter from the Department.

To receive the credit, the taxpayer must submit a claim for credit along with documentation as required. The Department will notify the taxpayer of the approved amount of the tax credit along with instructions for taking the credit. A taxpayer that has qualified for the headquarters tax credit or an affiliate of such taxpayer can enjoy a sales tax exemption for "private communication services" used for communication with a computer or telecommunications center located in Tennessee.

To make purchases of private communication services without the payment of sales tax, the taxpayer must provide sellers a copy of an exemption certificate issued by the Department.[915]

If the credit requirements are not met within the investment period, including the capital investment and jobs creation requirements, the taxpayer will be subject to assessment for any sales or use tax, penalty, or interest that would otherwise have been due and for which credit was taken. The statute of limitations on such assessment will not begin to run until December 31 of the final year of the ten-year period following the end of the investment period.[916]

7. Procedures

Registration of the Headquarters Facility

Whether a taxpayer is new to the state or already has an active Tennessee sales and use tax account, the taxpayer is directed to establish a sales and use tax account number that is designated for the headquarters facility only. This will assist the taxpayer and the Department in reviewing payments of sales and use tax and credit claims on the qualified tangible personal property. Often, the Department will issue a Direct Pay Permit for the headquarters facility account. This allows the headquarters taxpayer to directly pay sales or use tax on qualified tangible personal property to the Department. Auditors review the tax directly reported and paid to the Department to determine the amount of approved tax credit. The Direct Pay Permit may not be used for purchases at other in-state locations.

Claiming the Credit

Often, a taxpayer who has tentatively qualified for the headquarters tax credit will begin submitting claims for credit before the project is complete. When the taxpayer is ready to submit its first claim for the headquarters credit, it must submit a schedule of qualified tangible personal property.

Generally, the Department will approve claims for the tax credit prior to the completion of the project based on a tentative approval, even if the total minimum capital investment has not yet been made and the 100 new full-time staff employee positions have not been filled.

This allows the taxpayer to take advantage of the tax credit during the construction and equipment purchasing phase of the project. Any adjustments, either increasing or decreasing claims previously approved, are made when all information concerning the requirements have been received to verify qualification at the end of the investment period.

8. Private Communication Services

A taxpayer or affiliate of a taxpayer that qualified for the headquarters tax credit may use the credit for the purchase of "private communication services" used for communication with a computer or telecommunications center located in Tennessee. To make purchases of private communication services without the payment of sales tax, the taxpayer must provide sellers a copy of an exemption certificate issued by the Department of Revenue.[917]

Fire Protection Sprinkler Contractors

There is a sales and use tax credit for the amount of any special contractor tax paid in another state on the sale of materials sold to or used by fire protection sprinkler contractors. The materials must be used for fabrication of pipe and pipe fittings or use valves and pipe fittings in the performance of out-of-state contracts.[918] The credit is limited to the amount of tax on the value of the materials.[919]

A qualifying sprinkler contractor is a person engaged in the activities described in Industry Group 349, Miscellaneous Fabricated Metal Products, 3494 Valves and Pipe Fittings, Not Elsewhere Classified, and 3498 Fabricated Pipe and Pipe Fittings, of major Group 34 of the Standard Industrial Classification Index of 1972.[920]

Fuel or Petroleum Products Sold to Air Common Carriers

A dealer selling fuel or other petroleum products to air common carriers on which Tennessee sales tax was collected, and the product is subsequently used by the air common carrier in flights destined for or continuing from a location outside the United States, under Tenn. Code Ann. § 67-6-349(a), may, upon meeting certain criteria, take a credit equal to the amount of tax previously remitted to the Department.[921]

The dealer must:

- Provide a credit/refund to the common carrier;
- Obtain documentation that is sufficient to establish that the fuel was used in flights destined for or continuing from a location outside the United States; and
- Take the credit on a tax return filed within one year of the date the tax was initially remitted to the Department.

Motor Vehicle Incentive Payments

Eligible taxpayers may receive a credit for the sales tax owed on the sales price of a motor vehicle less any otherwise taxable motor vehicle manufacturer's incentive payment associated with the sale. A motor vehicle manufacturer's incentive payment is the amount due to a retailer pursuant to a motor vehicle manufacturer's incentive purchase program.[922]

The motor vehicle manufacturer's incentive purchase program is a program sponsored by a motor vehicle manufacturer pursuant to which an amount, whether paid in money, credit, or otherwise, is received by a retailer from a motor vehicle manufacturer. The amount received is based upon the unit price of motor vehicles sold at retail. The program requires the retailer to reduce the sales price of the product to the purchaser without the use of a manufacturer's coupon or redemption certificate.[923]

For example:

- A dealership receives incentive payments under a program whereby a motor vehicle manufacturer offers special price incentives to eligible customers, such as an employee. The incentive applies on a per-model basis. The dealership uses the incentive to reduce the purchase price of the vehicle by the amount of incentive it receives from the manufacturer when selling to an eligible customer. After reducing the price and selling the vehicle, the dealership contacts the manufacturer who reimburses the dealership for the price reduction offered to the eligible customer.
    - For Tennessee sales and use tax purposes, the incentive payment is included in the sales price of the vehicle sold to the eligible customer, but an immediate credit is given for the portion of the sales tax attributable to the incentive payment. As a result, the amount of sales tax due on the sale of the vehicle is as if the incentive payment had not been included in the sales price of the vehicle.[924]

Retail Tobacco Sales Tax – Tobacco Buydowns

There is a credit against sales and use tax for sales tax owed on tobacco buydown payments included in the sales price of tobacco sold at retail.[925] The credit applies to the amount of sales tax owed on the sales price of the tobacco less the amount of the tobacco buydown payment associated with the sale.[926]

A tobacco buydown agreement is:

- An agreement where an amount, whether paid in money, credit, or otherwise,
- Is received by a retailer from a manufacturer or wholesaler

- Based on the quantity and unit price of tobacco sold at retail
- That requires the retailer to reduce the sales price of the product to the purchaser
- Without the use of a manufacturer's coupon or redemption certificate.[927]

The tobacco buydown payment is the amount due to the retailer pursuant to the tobacco buydown agreement.[928] Taxpayers should be sure to keep accurate records related to tobacco buydown agreements/payments.

Transaction Accommodation Fees

There is a sales and use tax credit for the amount of the sales tax due on a transaction accommodation fee included in the sales price of a sale or the gross proceeds of a lease.[929] The credit applies to sales tax that is owed on the sales price or gross proceeds, less the transaction accommodation fee associated with the sale or lease.[930]

"Transaction accommodation fee" is the standard charge made by a franchised motor vehicle dealer to a qualified motor vehicle manufacturer[931] in consideration for selling or leasing a motor vehicle produced by the qualified manufacturer to one of the qualified manufacturer's full-time employees. Records documenting the amount of the standard transaction accommodation fee shall be maintained by the dealer, in accordance with Tenn. Code Ann. § 67-6-523.

A full-time employee is a permanent employee, rather than a seasonal or part-time employee, who is normally scheduled to work at least 37.5 hours per week and receives minimal healthcare.[932]

Chapter 22: Miscellaneous Sales and Use Tax Provisions

Sales and Use Tax Applications to Aircrafts and Boats

Use tax is due on occasional and isolated sales of items such as aircraft, motor vehicles, trailers, off-highway vehicles, and boats that occur between people who are not motor vehicle or boat dealers.[933] These kinds of occasional and isolated sales are generally subject to sales or use tax. Generally, each time there is a change of ownership the change of ownership results in sales or use tax being due.

1. Aircrafts

Sales for Resale

Many taxpayers purchase aircrafts with the intent to lease or resell. However, many taxpayers fail to strictly adhere to the sale for resale requirements as laid out in more detail in Chapter 19.

For the sale of an item of tangible personal property (e.g., an aircraft) that is purchased to lease or rent to third parties to qualify as an exempt sale for resale, the item must be used *exclusively* for leasing or renting.[934]

The Tennessee Supreme Court has addressed the exclusive use requirement. In *CAO Holdings,* the Court was asked to decide whether the purchase of a jet leased to a related company qualified for the sale for resale exemption. In arriving at its decision, the Court identified two central issues: (1) whether CAO Holdings used the aircraft exclusively for leasing and (2) whether an individual's personal use of the aircraft was inconsistent with the exclusive use requirement. The Court then addressed the meaning of the "exclusive" language found in TENN. COMP. R. & REGS. 1320-05-01-.32(3):

> The meaning of the phrase "used exclusively for renting or leasing" is clear and requires no construction. The word "exclusive" and its derivatives connote "with no exceptions" or "[e]xcluding all but what is specified." Accordingly, tangible personal property that is "used exclusively for renting or leasing" consists of tangible personal property that is used solely for renting or leasing to the exclusion of any other use to which the property could be put.[935]

For example:

- Company A owns aircrafts that it leases to third parties. Company A purchased an aircraft using a resale certificate. Company A purchased the aircraft for the purpose

of leasing it and entered a lease with another company that provides scenic tours. Company A used the aircrafts exclusively for leasing. Company A would not owe sales or use tax on the aircraft.

Aircrafts Purchases by Out-of-State Residents

For helicopter and airplane sales, out-of-state residents may purchase the aircraft in Tennessee without the payment of tax if the aircraft will be located outside of Tennessee and is in fact removed from Tennessee within 30 days from the date of purchase.[936] For example:

- An out-of-state company purchased an airplane that it hangered in Tennessee for six years. A vast majority of the airplane's flight segments either arrived at or departed from a Tennessee airport, and the airplane was stored in Tennessee. As such, the company used the airplane in Tennessee and would owe consumer use tax on the purchase of the airplane.

Aircraft Purchased for Flight Lessons

If an aircraft is owned and used by a flight training school or certified flight instructor ("CFI"), then the sale of the aircraft to the flight training school or CFI is exempt from the sales and use tax. Thus, to qualify for this exemption, the aircraft must be both:

- Owned by a flight training school or CFI; and
- Used for flight training.

The "owned by" requirement includes aircraft that are purchased out-right by flight schools or CFIs as well as aircraft that are leased by flight schools or CFIs from a third party. Pursuant to Tenn. Code Ann. § 67-6-102(84)(A), the definition of sale includes lease or rental. Further, while "owned" is not defined by the statutes, for Tennessee sales and use tax purposes an owner of tangible personal property has traditionally included one who leases or rents that property.

The "used for" requirement refers to the aircraft's primary use. Attorney General Opinion 84-213, states that "when an airplane is bought or leased, the taxability of that transaction must be determined according to the primary use of the plane." In other words, if the aircraft is primarily used (more than 50% of the time it is used) for flight training, then it will meet this requirement for the exemption. If, however, the primary use of the aircraft is for something other than for flight training (i.e., the school or CFI rents out the aircraft to independent pilots), then it will not qualify for the exemption.

If the flight training school or CFI uses the aircraft primarily to rent to independent pilots (with the remaining use dedicated to flight training), not only will the aircraft not qualify for the exemption, but the school or CFI may not purchase it on a resale certificate.

Uses of an Aircraft Purchased by a Flight Training School or CFI

Charges made by the flight training school or CFI to students for flight training are for nontaxable services and are not subject to the sales and use tax. Further, if the flight training school or CFI occasionally charters the aircraft and provides the pilot, the charges for the charter service are for a nontaxable service and are not subject to the sales and use tax. However, if the flight training school or CFI occasionally leases the aircraft without an operator to independent pilots, those charges are for the lease or rental of tangible personal property and are subject to the sales and use tax.

If the aircraft is purchased by an entity that does not provide flight training but that leases the aircraft to an entity that does provide flight training, the purchasing entity may obtain the aircraft free from sales tax by providing a resale certificate. Further, the entity should not charge sales tax on the lease payments made by the flight training school or CFI.

However, if the purchasing entity only leases the aircraft to the flight school or CFI on a part-time basis and retains the aircraft for its own use part of the time, or if it cancels the lease at a future time and commits the aircraft at that time to its own use, then the original purchase is not truly a purchase for resale and the entity will owe sales or use tax.

Unmanned Aircraft Systems ("Drones")

A taxpayer that purchases a drone in another state without paying sales tax on the purchase in that state and uses and stores it in Tennessee is subject to use tax because the drone is tangible personal property used and stored in this state unless an exemption applies.

The Department considers drones to qualify for the agricultural equipment exemption when they are used to monitor and manage farms. Taxpayers who have an agricultural exemption certificate can purchase drones that monitor and manage farms free of tax.

Aircraft Parts and Supplies

Aircraft parts and supplies purchased by aircraft maintenance and repair facilities in Tennessee are generally subject to the Tennessee sales and use tax, unless the sale falls within one of the following statutory exemptions.

- Tenn. Code Ann. § 67-6-313(c) provides a sales and use tax exemption for "all repair service labor performed with respect to aircraft engine equipment and aircraft mainframes" provided that the repair services on such aircraft engine equipment or

aircraft mainframes are "initiated, performed or completed in repair facilities within the state." This exemption applies only to the repair service labor performed and does not extend to parts and supplies purchased by aircraft maintenance facilities.

- "Aircraft engine equipment" is defined as "any aircraft engine, including all associated parts, appurtenances and accessories, for the propulsion of aircraft used by a commercial interstate or international air carrier."[937]
- "Aircraft mainframes" is defined as "any aircraft body, wing, tail assembly, aileron, rudder, landing gear, engine housing, and any other assembly or component integral to the aerodynamic structure of aircraft used by a commercial interstate or international air carrier."[938]
- "Repair service labor" is defined as "all labor performed in connection with the repair, maintenance, overhauling, rebuilding, or modifying of aircraft engine equipment or of aircraft mainframes together with any test or inspection necessary or appropriate thereto."[939]

- Tenn. Code Ann. § 67-6-302(a) provides a sales and use tax exemption for the "sale, use, storage or consumption of aircraft owned or leased by commercial interstate or international air carriers, and parts, accessories, materials and supplies" sold to such carriers "for use exclusively in servicing and maintaining such carriers' aircraft." This exemption is limited to aircrafts that are used "principally in interstate or international commerce," and does not apply to fuel, other petroleum products, or shop equipment and tools. *Id*.
- Tenn. Code Ann. § 67-6-347 exempts all repair services, including parts and labor, to equipment "used in connection with helicopters or other aircraft owned by not-for-profit hospitals, government entities or other not-for-profit medical facilities used for the purpose of medical evaluation or transport.
- Under Tenn. Code Ann. § 67-6-207(a), the retail sale, lease, rental, use, consumption, distribution, repair, storage for use or consumption in Tennessee of certain tangible personal property, including aircraft designed and used for crop dusting, is exempt from sales and use tax when sold to a "qualified farmer or nurseryman."

A "qualified farmer or nurseryman" is one who:

- Is the owner or lessee of agricultural land from which one thousand five hundred dollars ($1,500) or more of agricultural products were produced and sold during the year.

- Is in the business of providing for-hire custom agricultural services for the plowing, planting, harvesting, growing, raising, or processing of agricultural products or for the maintenance of agricultural land.
- Is the owner of land that qualifies for taxation under the Agricultural Forest and Open Space Land Act of 1976.
- Has a federal income tax return containing one or more of the following: (A) business activity on IRS schedule F, profit or loss from farming; and (B) farm rental activity on IRS form 4835, farm rental income and expenses or schedule E, supplemental income and loss.
- Otherwise establishes to the satisfaction of the Commissioner that they are actively engaged in the business of raising, harvesting, or otherwise producing agricultural commodities.[940]

For information on the sourcing of leases and rentals of aircraft please see Chapter 7 of this manual.

2. Boats

A taxpayer who brings a watercraft valued over $10,000 into Tennessee owes use tax on the value of the boat. Taxpayers are allowed a credit for any sales or use tax already paid to another state if taxpayers can provide proof of the tax paid.

Tennessee provides an exemption from use tax for personal effects, household furnishings, and personal automobiles brought to Tennessee when a taxpayer moves from another state. However, the exemption does not apply to personal watercrafts. Tax is due on personal watercrafts unless otherwise exempted.[941]

Boats with Fair Market Values Less Than $10,000

If a watercraft has a fair market value of less than $10,000 at the time it was brought into Tennessee, then it may be exempt from use tax with supporting documentation showing that it was properly registered in another state prior to it being brought to Tennessee and that the owner is a bona fide resident of Tennessee. Fair market value of a watercraft or vehicle is determined "by reference to the most recent issue of an authoritative automotive [or boat] pricing manual, such as the NADA Official Used Car Guide, Southeastern Edition."[942]

Boats Removed from Tennessee

Boats, motorboats, and other vessels subject to registration under Tenn. Code Ann. § 69-9-206 that are not registered in this state and are removed within three days of the buyer taking physical possession of the vessel are exempt from sales and use tax.[943]

Vending Machine Sales

Generally, sales of tangible personal property from vending machines are subject to the sales tax.[944] A vending machine operator reports its vending sales on the same monthly return it uses to report non-vending sales and use of tangible personal property.[945]

1. Tax Rate for Vending Machines

Vending machine sales are subject to the state tax rate of 7% on sales of tangible personal property or 4% on sales of qualified food and food ingredients, in addition to a flat local option tax rate of 2.25%.[946]

A vending machine operator may include the sales tax due in the amount the customer must deposit in the vending machine to purchase the item. However, vendors must indicate in some definite manner whether their customers are paying any sales tax. This indication may be shown by posting a sign on the vending machine indicating that the prices shown include any applicable sales tax.[947]

2. Filing Requirements

Vending machine operators should report vending sales on the sales tax return used to report non-vending sales and are not required to have a separate vending-only sales tax account to report vending sales.[948]

All vending sales should be included with non-vending sales and reported on Line 1 (gross sales) of the monthly return. Food sales (vending and non-vending) subject to the reduced state rate are included on Schedule A, Line 1, and the amount of the reduced state sales tax due on food is reported on Line 9 of the return.

To report local tax correctly, vending sales (food and nonfood) should be deducted on Schedule B, Line 6 from the total local taxable amount that is subject to the applicable local tax rate for the vending operator's business location. The vending sales amount (food and non-food) and the local tax due at the 2.25% standard rate are reported on Schedule C, Lines 13 and 14.

3. Vending Machines Operated for Benefit of Charitable Nonprofit Organization

Sales of 25 cents or less from vending machines operated for the benefit of charitable nonprofit organizations are not subject to the sales tax. Instead, the operators pay a minimal tax on the gross receipts from such machines.[949] A decal must be affixed to each vending machine registered to remit the gross receipts tax in lieu of sales and use tax.[950]

To qualify for this exception, a vending machine must:

- Be operated for the benefit of a charitable nonprofit organization,
- Dispense merchandise with a market value of twenty-five cents or less, and
- Be built so that only a fixed, predetermined price can be paid for the item dispensed by the machine.[951]

Micro Markets

A micro market is defined as "an unattended food establishment that:

- Includes one (1) or more micro market displays.
- Has an automated payment kiosk or other device designated for self-checkout by the consumer by means of electronic payment.
- Has controlled entry not accessible by the general public.
- Provides commercially prepackaged food or ready-to-eat food, including, without limitation:
    - Items prepackaged in tamper-evident packaging.
    - Products containing nutrition information required by the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et. seq.). Or
    - Products containing a freshness or expiration date.

A micro market display is "a place where food being sold by a micro market is displayed including a:

- Refrigerator
- Freezer
- Vending machine
- Open rack
- Beverage dispenser
- Single-service coffee brewer

Micro markets must collect sales on the sales price of the tangible personal property sold at a display.[952]

1. Registration Requirement

Generally, every person desiring to engage in or conduct business as a dealer in Tennessee must file an application for a certificate of registration for each place of business; however, a person operating multiple micro markets in Tennessee may file a single certificate of registration for each local jurisdiction in which it operates micro markets.

2. Filing Requirement

A dealer who owns and operates multiple micro markets in Tennessee may file a single return for all sales or purchases made at micro markets within this state and report on a consolidated basis all sales and purchases made at micro markets within each local jurisdiction owned and operated by the dealer and taxable under the sales and use tax statutes.

[1] Tenn. Code Ann. § 67-6-202, Tennessee Retailers' Sales Tax Act, codified at Tenn. Code Ann. §§ 67-6-101 *et seq*.
[2] Tenn. Code Ann. § 67-6-203.
[3] Tenn. Code Ann. § 67-6-202, Tennessee Retailers' Sales Tax Act, codified at Tenn. Code Ann. §§ 67-6-101 et seq.
[4] Tn.gov/Revenue.
[5] Tenn. Code Ann. §§ 67-6-501 and 67-6-502.
[6] Tenn. Code Ann. § 67-6-201.
[7] Tenn. Code Ann. § 67-6-203.
[8] Tenn. Code Ann. § 67-6-202.
[9] Tenn. Code Ann. § 67-6-201.
[10] Tenn. Code Ann. § 67-6-203.
[11] Tenn. Code Ann. § 67-6-541.
[12] Tenn. Code Ann. § 67-6-202 and 67-6-203.
[13] Tenn. Code Ann. § 67-6-228.
[14] Tenn. Code Ann. § 67-6-217.
[15] Tenn. Code Ann. § 67-6-206.
[16] *Id*.
[17] *Id*.
[18] Tenn. Code Ann. § 67-6-221.
[19] Tenn. Code Ann. § 67-6-226.
[20] Tenn. Code Ann. §§ 67-6-103(f) and 67-6-226.
[21] Tenn. Code Ann. § 67-6-227.
[22] Tenn. Code Ann. § 67-6-219 and Tenn. Code Ann. § 67-6-528.
[23] Tenn. Code Ann. § 67-6-202.
[24] Tenn. Code Ann. § 67-6-702.
[25] TENN. COMP. R. & REGS. 1320-05-02-.02.
[26] Tn.gov/Revenue/taxes/sale-and-use-tax/local-sales-tax-and-single-article.html.
[27] Tenn. Code Ann. §§ 67-6-313(f) and 67-6-507(a); TENN. COMP. R. & REGS. 1320-05-01-.91.
[28] *Id*.
[29] Tenn. Code Ann. § 67-6-209(e).
[30] *National Bellas Hess, Inc. v. Department of Revenue of Ill.* 386 US. 753 (1967).
[31] *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).
[32] *South Dakota v. Wayfair*, 138 S.Ct. 2080, 2084 (2018).
[33] *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018). Tenn. Code Ann. § 67-6-210.
[34] See *Scholastic Book Clubs, Inc. v. Farr, 373 S.W.3d 558 (Tenn. Ct. App. 2012).*
[35] See Important Notice 15-12 for more information. Additionally, Tennessee does not have a de minimus exception.
[36] TENN. COMP. R. & REGS. 1320-05-01-.129.
[37] *Id*.
[38] See Important Notice 19-05.
[39] Tenn. Code Ann. § 67-6-504(m) and 67-6-712(a)(3).
[40] Tenn. Code Ann. § 67-6-102(67).

[41] Tenn. Code Ann. §§ 67-6-102, 67-6-201, 67-6-211, and 67-6-602.
[42] https://tntap.tn.gov/eservices/_/.
[43] Tenn. Code Ann. § 67-6-203; TENN. COMP. R. & REGS. 1320-05-01-.63(2).
[44] Tenn. Code Ann. § 67-6-220.
[45] Tenn. Code Ann. §§ 67-6-603 and 67-6-604.
[46] Tenn. Code Ann. § 67-6-606.
[47] TENN. COMP. R. & REGS. 1320-05-01-.63 ("Rule 63"). Rule 63 allows the Commissioner, at his discretion, to permit dealers with average monthly gross sales of $400 or less and taxable services of $100 or less to pay their suppliers in lieu of registering and paying tax to the Department.
[48] TENN. COMP. R. & REGS. 1320-05-01-.74.
[49] The amount of sales and use tax liability is adjusted every five years to account for inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers. Any sales and use tax liability amount that is adjusted for inflation must be rounded to the nearest $10. The first adjustment made to account for inflation will occur January 1, 2026. Tenn. Code Ann. § 67-6-505.
[50] Important Notice 16-01. Tenn. Code Ann. § 67-6-411.
[51] TENN. COMP. R. & REGS. 1320-05-01-.90.
[52] TENN. COMP. R. & REGS. 1320-05-01-.28.
[53] Tenn. Code Ann. § 67-6-102(84)(B).
[54] Tenn. Code Ann. § 67-1-1802.
[55] *See also* Important Notice 21-18
[56] Tenn. Code Ann. § 67-1-1501(b).
[57] Tenn. Code Ann. § 67-1-1802(b)(1).
[58] Tenn. Code Ann. § 67-1-1802(c).
[59] Tenn. Code Ann. § 67-1-1501(b)(5).
[60] Tenn. Code Ann. § 67-1-802.
[61] Tenn. Code Ann. § 67-1-804(c)(2).
[62] Tenn. Code Ann. §§ 67-1-804(d) and 67-1-1400-1445.
[63] Tenn. Code Ann. § 67-6-504(g).
[64] Tenn. Code Ann. § 67-1-803(c)-(d).
[65] Tenn. Code Ann. § 67-1-803.
[66] Tenn. Code Ann. §§ 67-1-803(c)(1)(A)-(E).
[67] Tenn. Code Ann. §§ 67-1-803(d)(1)(A)-(I).
[68] Tenn. Code Ann. § 67-1-107.
[69] Tenn. Code Ann. § 67-1-803.
[70] Tenn. Code Ann. § 67-1-803(b).
[71] Tenn. Code Ann. § 67-1-801(a)(1)(B).
[72] Tenn. Code Ann. § 67-1-801(a)(2).
[73] Tenn. Code Ann. § 67-6-523(a).
[74] Records must be open for inspection to the Commissioner at all reasonable hours. *See* Tenn. Code Ann. § 67-6-523. If the taxpayer maintains any such records in an electronic format, the taxpayer shall comply with reasonable requests by the Commissioner, or the

Commissioner's authorized agents, to provide those electronic records in a standard record format. *See* Tenn. Code Ann. § 67-1-113.

[75] Tenn. Code Ann. § 67-1-113.

[76] Tenn. Code Ann. §§ 67-1-1501 and 67-6-523.

[77] Tenn. Code Ann. § 67-6-523(c).

[78] Tenn. Code Ann. § 67-1-1501.

[79] Tenn. Code Ann. § 67-1-113(b).

[80] Tenn. Code Ann. § 67-1-1438.

[81] Tenn. Code Ann. § 67-6-602.

[82] Tenn. Code Ann. § 67-6-513(b)(1).

[83] *Id*.

[84] Tenn. Code Ann. § 67-6-513(b)(2).

[85] *Id*.

[86] *Id*.

[87] Tenn. Code Ann. § 67-6-513(b)(3).

[88] Tenn. Code Ann. § 67-1-1443.

[89] *Id*.

[90] *Quattrone Accountants, Inc. v. Internal Revenue Service,* 895 F.2d 921, 927 (3rd Cir. 1990). In the case of *In re Young*, 215 B.R. 366 (Bankr.W.D. Tenn. 1997), the Bankruptcy Court reviewed the Department's attempt to collect taxes from a responsible person under Tenn. Code Ann. § 67-1-1443. Because no other Tennessee cases discussing this statute had been reported, the Court looked to the many federal cases that interpret the almost identical Internal Revenue Code section (26 U.S.C. § 6672) for guidance in construing Tennessee's statute.

[91] *Turnbull v. United States,* 929 F.2d 173, 178 (5th Cir. 1991).

[92] *Plett v. United States,* 185 F.3d 216, 219 (4th Cir. 1999); *Thibodeau v. United States,* 828 F.2d 1499, 1504-1505 (11th Cir. 1987).

[93] Tenn. Code Ann. § 67-1-1443(b)(2).

[94] *Turnbull,* 929 F.2d at 179.

[95] *Id.*

[96] *Gephart v. United States*, 818 F.2d 469, 475 (6th Cir. 1987).

[97] TENN. COMP. R. & REGS. 1320-05-01-.01.

[98] Tenn. Code Ann. § 67-6-102(8)(A).

[99] *Id*.

[100] Tenn. Code Ann. § 67-6-102(15).

[101] Tenn. Code Ann. § 67-6-102(23)(A).

[102] Tenn. Code Ann. § 67-6-102(23)(B).

[103] Tenn. Code Ann. § 67-6-102(23)(C).

[104] Tenn. Code Ann. § 67-6-102(23)(D).

[105] Tenn. Code Ann. § 67-6-102(23)(E).

[106] Tenn. Code Ann. § 67-6-102(23)(F).

[107] Tenn. Code Ann. § 67-6-102(23)(G).

[108] Tenn. Code Ann. § 67-6-102(23)(H).

[109] Tenn. Code Ann. § 67-6-102(23)(I).

[110] Tenn. Code Ann. § 67-6-102(23)(J).
[111] Tenn. Code Ann. § 67-6-102(23)(K).
[112] Tenn. Code Ann. § 67-6-102(23)(L).
[113] Tenn. Code Ann. § 67-6-102(23)(M).
[114] Tenn. Code Ann. § 67-6-102(23(N).
[115] Tenn. Code Ann. § 67-6-102(60).
[116] Tenn. Code Ann. § 67-6-102(61).
[117] Tenn. Code Ann. § 67-6-102(62).
[118] *Id*.
[119] Tenn. Code Ann. § 67-6-102(51).
[120] Tenn. Code Ann. § 67-6-102(51) This definition was adopted 1/1/08 and is applied prospectively. See Important Notice 07-15.
[121] This applies to agreements entered into on or after January 1, 2008.
[122] Important Notice 19-07.
[123] Tenn. Code Ann. §§ 67-6-204(a) and 67-6-201(6).
[124] TENN. COMP. R. & REGS. 1320-05-01-.32(2), (3) and (6).
[125] *Penske Truck Leasing Co. v. Huddleston*, 795 S.W.2d 669, 671 (Tenn. 1990). Tenn. Code Ann. § 67-6-204.
[126] Tenn. Code Ann. § 67-6-102(51)(B).
[127] Tenn. Code Ann. §§ 67-6-102(51) and (84)(I)(J).
[128] TENN. COMP. R. & REGS. 1320-05-01-.28.
[129] Tenn. Code Ann. § 67-6- 204(b); TENN. COMP. R. & REGS. 1320-05-01-.32(5).
[130] Tenn. Code Ann. § 67-6-102(51).
[131] Important Notice – Leasing of Tangible Personal Property.
[132] Tenn. Code Ann. § 67-6-388.
[133] Important Notice 04-20 - Leased Vehicles – Sales Tax Application to Damage Settlements.
[134] Tenn. Code Ann. § 55-3-209(b)(8)(B)(ii).
[135] Tenn. Code Ann. § 67-6-102(67).
[136] *Id*.
[137] Tenn. Code Ann. §67-6-102(81)(A).
[138] *Id*.
[139] *Id*.
[140] Tenn. Code Ann. § 67-6-102(82).
[141] Tenn. Code Ann. § 67-6-102(83).
[142] Tenn. Code Ann. § 67-6-102(84)(A).
[143] Tenn. Code Ann. § 67-6-102(84).
[144] *Nashville Clubhouse, Inn v. Johnson*, 27 S.W.3d 542 (Tenn. Ct. App. 2000); *Trailer Conditioners, Inc. v. Huddleston*, 897 S.W.2d 728 (Tenn. Ct. App. 1995).
[145] Tenn. Code Ann. § 67-6-102(85)(A).
[146] Tenn. Code Ann. § 67-6-223.
[147] Tenn. Code Ann. § 67-6-102(85)(A).
[148] Tenn. Code Ann. § 67-6-102(92).
[149] *Id*.
[150] Tenn. Code Ann. § 67-6-102(95)(A).

[151] *Id*.
[152] Tenn. Code Ann. § 67-6-102(95)(B).
[153] Tenn. Code Ann. § 67-6-102(97)(C).
[154] Tenn. Code Ann. § 67-6-102(97)(D).
[155] Tenn. Code Ann. § 67-6-102(97)(E).
[156] Tenn. Code Ann. § 67-6-102(100)(A).
[157] Tenn. Code Ann. § 67-6-102(100)(B).
[158] Tenn. Code Ann. § 67-6-102(96).
[159] Tenn. Code Ann. § 67-6-102(100)(A).
[160] Tenn. Code Ann. § 67-6-205(c).
[161] Tenn. Code Ann. § 67-6-101 *et seq.*
[162] Tenn. Code Ann. §§ 67-6-226, 67-6-103(f), 67-6-102(106), and 67-6-227.
[163] Tenn. Code Ann. § 67-6- 205.
[164] Tenn. Code Ann. § 67-6- 205(c)(4).
[165] TENN. COMP. R. & REGS. 1320-05-01-.54(1).
[166] TENN. COMP. R. & REGS. 1320-05-01-.54.
[167] Tenn. Code Ann. § 67-6-903(e).
[168] *LeTourneau Sales & Serv., Inc., v. Olsen*, 691 S.W.2d 531, (Tenn. 1985).
[169] Tenn. Code Ann. § 67-6-203.
[170] Tenn. Code Ann. § 67-6-395.
[171] Tenn. Code Ann. § 67-6-206.
[172] Tenn. Code Ann. § 67-6-102(46).
[173] Tenn. Code Ann. §§ 67-6-206(a) and 67-6-409(a)(2).
[174] TENN. COMP. R. & REGS. 1320-05-01-.27. Tenn. Code Ann. § 67-6-205(c)(6).
[175] *Id*.
[176] Tenn. Code Ann. § 67-6-205(c)(6).
[177] TENN. COMP. R & REGS. 1320-05-01-.27.
[178] *Id*.
[179] Tenn. Code Ann. § 67-6-205(c)(1).
[180] TENN. COMP. R & REGS. 1320-05-01-.70.
[181] Tenn. Code Ann. § 67-6-205(c)(1).
[182] Ruling 11-41.
[183] Tenn. Code Ann. § 67-4-702(25).
[184] Tenn. Code Ann. § 67-4-702(a)(14). "Property management company" means a person who, for consideration, manages a vacation lodging for an individual property owner that provides such lodging for a rental fee to consumers.
[185] Tenn. Code Ann. § 67-4-702(8).
[186] Important Notice – Short-Term Leases or Rental of Private Residences, Homes, Condos, and other Accommodations.
[187] Tenn. Code Ann. §§ 67-6-501(d) and 67-6-502.
[188] Vrbo.co, Airbnb.com, flipkey.com, homeaway.com are examples of online companies.
[189] Tenn. Code Ann. §§ 67-6-205(c)(1) and 67-6-102(92).
[190] Tenn. Code Ann. § 67-6-205(c)(1).
[191] Tenn. Code Ann. § 67-6-102(98).

[192] Tenn. Code Ann. §§ 67-6-102(23)(M), 67-6-102(86)(E), and 67-6-205(c)(8).
[193] Ruling 11-57.
[194] Tenn. Code Ann. § 67-6-205(c)(5).
[195] TENN. COMP. R & REGS. 1320-05-01-.53.
[196] *Id*.
[197] *Id*.
[198] Important Notice 05-03 – Animal Bathing.
[199] Tenn. Code Ann. § 63-12-103.
[200] Important Notice 18-03 – Animal Bathing and Grooming.
[201] Important Notice 19-12 – Automated Car Wash Facilities.
[202] Tenn. Code Ann. § 67-6-392(b)(1)(B).
[203] Tenn. Code Ann. § 67-6-205(c).
[204]TENN. COMP. R. & REGS. 1320-05-01-.53(1).
[205] Tenn. Code Ann. § 67-6-392(a).
[206] Important Notice 04-15 – Motor Vehicle Detailing and Repair.
[207] Tenn. Code Ann. § 67-6-392 (b)(1).
[208] Tenn. Code Ann. §§ 55-3-101 and 67-6-392 (b)(2).
[209] Tenn. Code Ann. § 55-17-102.
[210] Tenn. Code Ann. § 67-6-392(a); TENN. COMP. R. & REGS. 1320-05-01-.53(1).
[211] TENN. COMP. R. & REGS. 1320-05-01-.54.
[212] TENN. COMP. R. & REGS. 1320-05-01-.05.
[213] TENN. COMP. R. & REGS. 1320-05-01-.53.
[214] Tenn. Code Ann. § 67-6-205(c)(2).
[215] TENN. COMP. R. & REGS. 1320-05-01-.104(1).
[216] Tenn. Code Ann. § 67-6-205(c)(2).
[217] *Id.*
[218] Tenn. Code Ann. § 67-6-329(a)(7).
[219] TENN. COMP. R. & REGS. 1320-05-01-.104.
[220] TENN. COMP. R. & REGS. 1320-05-01-.21.
[221] Tenn. Code Ann. § 67-6-205(c)(3).
[222] Tenn. Code Ann. § 67-6-102(96)(A).
[223] Tenn. Code Ann. § 67-6-102(7).
[224] Tenn. Code Ann. § 67-6-205(c)(7).
[225] Tenn. Code Ann. §§ 67-6-102(106) and 67-6-226.
[226] Tenn. Code Ann. § 67-6-227.
[227] Tenn. Code Ann §§ 67-6-102(94) and 67-6-233.
[228] TENN. COMP. R & REGS. 1320-05-01-.41.
[229] TENN. COMP. R & REGS. 1320-05-01-.54(2).
[230] Tenn. Code Ann. § 67-6-102(85)(A)(vi).
[231] TENN. COMP. R & REGS. 1320-05-01-.27(2).
[232] Tenn. Code Ann. §§ 67-6-102 and 67-6-202.
[233] Tenn. Code Ann. § 67-6-102(97).
[234] Tenn. Code Ann. § 67-6-102(84)(A).
[235] Tenn. Code Ann. § 67-6-102(82).

[236] Tenn. Code Ann. § 67-6-232 (2023).
[237] Tenn. Code Ann. § 43-27-202 (2023).
[238] Tenn. Code Ann. § 67-6-312.
[239] Tenn. Code Ann. § 67-6-102.
[240] Tenn. Code Ann. §§ 67-6-203 and 67-6-210; TENN. COMP. R. & REGS. 1320-05-01-.95.
[241] Tenn. Code Ann. §§ 67-6-102(100) and (101).
[242] Tenn. Code Ann. § 67-6-102(101).
[243] Tenn. Code Ann. § 67-6-102(100).
[244] Tenn. Code Ann. § 67-6-102(94).
[245] Tenn. Code Ann. § 67-6-202.
[246] Tenn. Code Ann. § 67-6-202.
[247] Tenn. Code Ann. § 67-6-203.
[248] Tenn. Code Ann. § 67-6-541.
[249] Tenn. Code Ann. § 67-6-210.
[250] States without a sales tax include Alaska, Delaware, Montana, Oregon, and New Hampshire.
[251] Tenn. Code Ann. § 67-6-210.
[252] *Id.*
[253] Tenn. Code Ann. § 67-6-203.
[254] *Id*.
[255] Important Notice 07-15.
[256] Tenn. Code Ann. § 67-6-203.
[257] *Id*.
[258] *Id*.
[259] Tenn. Code Ann. § 67-6-233.
[260] Tenn. Code Ann. § 67-6-203.
[261] Tenn. Code Ann. §§ 67-6-205, 67-6-203, 67-6-226, and 67-6-227.
[262] Tenn. Code Ann. § 68-126-202(2). "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width, or 40 feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure; except that "manufactured home" includes any structure that meets all these requirements except the size requirements and the manufacturer voluntarily files a certification required by the secretary and complies with certain standards.
[263] Tenn. Code Ann. § 67-6-210; TENN. COMP. R. & REGS. 1320-05-01-.09(1).
[264] Tenn. Code Ann. § 67-6-210(c)(2).
[265] Tenn. Code Ann. § 67-6-224(b)(3). "Headquarters facility" means a facility in this state that houses the international or national headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters-related functions and services are performed. A regional headquarter may qualify if an application and business plan was filed with the Department prior to July 1, 2015.
[266] Tenn. Code Ann. § 67-6-224.

[267] Tenn. Code Ann. § 67-6-389(e).
[268] Tenn. Code Ann. § 67-6-313(a).
[269] Tenn. Code Ann. § 67-6-211.
[270] Tenn. Code Ann. § 67-6- 313.
[271] Tenn. Code Ann. §§ 67-6- 102(94) and 67-6-313(a); *Young Sales v. Benson*, 450 S.W.2d 574, 577 (Tenn. 1970); *Beecham Laboratories v. Woods*, 569 S.W.2d 456, 458 (Tenn. 1978).
[272] Tenn. Code Ann. § 67-6-203.
[273] Tenn. Code Ann. § 67-6-102(81)(A).
[274] TENN. COMP. R. & REGS. 1320-05-01-.07.
[275] *Id*.
[276] TENN. COMP. R. & REGS. 1320-05-01-.08(1).
[277] *Id*.
[278] *Id*.
[279] *Id*.
[280] Tenn. Code Ann. §§ 67-6-102, 209, and 384.
[281] Tenn. Code Ann. § 67-6-209(b).
[282] *Id*.
[283] Tenn. Code Ann. § 67-6-209(e).
[284] Tenn. Code Ann. § 67-6-209(f).
[285] Tenn. Code Ann. § 67-6-209(e).
[286] Tenn. Code Ann. § 67-6-384.
[287] TENN. COMP. R. & REGS. 1320-05-01-.103(2).
[288] TENN. COMP. R. & REGS. 1320-05-01-.103(3).
[289] Tenn. Code Ann. § 67-6-209. TENN. COMP. R. & REGS. 1320-05-01-.103.
[290] Tenn. Code Ann. § 67-6 209.
[291] Tenn. Code Ann. § 67-6-235.
[292] Tenn. Code Ann. § 67-6-902(B)(i).
[293] Tenn. Code Ann. § 67-6-902(B)(ii).
[294] Tenn. Code Ann. § 67-6-902(a)(1)(A).
[295] Tenn. Code Ann. § 67-6-902(a)(2)(A).
[296] Tenn. Code Ann. § 67-6-902(a)(2)(B).
[297] Tenn. Code Ann. § 67-6-902(a)(2)(C).
[298] Tenn. Code Ann. § 67-6-902(a)(2)(D).
[299] Tenn. Code Ann. § 67-6-902(a)(2)(E).
[300] Tenn. Code Ann. § 67-6-902(a)(2)(A).
[301] Tenn. Code Ann. § 67-6-903(a).
[302] Tenn. Code Ann. § 67-6-903(b).
[303] Tenn. Code Ann. § 67-6-902(B)(i).
[304] Tenn. Code Ann. § 67-6-902(B)(ii).
[305] Tenn. Code Ann. § 67-6-902(a)(1)(A).
[306] Tenn. Code Ann.§ 67-6-102(32).
[307] Tenn. Code Ann. § 67-6-102(32) defines direct mail as "printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser

when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address."

[308] Tenn. Code Ann. § 67-6-904(a).

[309] Tenn. Code Ann. § 67-6-904(a)(3).

[310] *Id*.

[311] Tenn. Code Ann. § 67-6-904(a)(4).

[312] Tenn. Code Ann. § 67-6-904(c).

[313] Tenn. Code Ann. § 67-6-904(b)(1).

[314] Tenn. Code Ann. § 67-6-904(b)(2).

[315] Tenn. Code Ann. § 67-6-904(b)(3).

[316] Tenn. Code Ann. § 67-6-904(b)(4).

[317] Tenn. Code Ann. § 67-6-702(a)(1).

[318] Tenn. Code Ann. § 67-6-704.

[319] Tenn. Code Ann. § 67-6-702.

[320] *Id.*

[321] *Id.*

[322] *Id.*

[323] *Id.*

[324] Tenn. Code Ann. § 67-6-714.

[325] Tenn. Code Ann. § 67-6-702(g).

[326] Tenn. Code Ann. § 67-6-702(f)(4).

[327] Tenn. Code Ann. § 67-6-702(a)(4); Important Notice #15-22.

[328] TENN. COMP. R. & REGS. 1320-05-01-.63.

[329] Tenn. Code Ann. § 67-6-301(a)(1).

[330] Tenn. Code Ann. § 67-6-102(8)(B

[331] Tenn. Code Ann. § 67-6-702(d).

[332] *See Colemill Enterprises, Inc. v. Huddleston*, 1996 WL 693677 (Tenn.Ct.App. 1996), *rev'd on other grounds*, 967 S.W.2d 753 (Tenn. 1998) (the court found that a rebuilt airplane was not a single article for the single article cap purposes because the taxpayer charged one price for the airplane, which covered the components as well as installation services; when the cost of services was included in the price, the Commissioner of Revenue had no means to determine the price of each individual component).

[333] Tenn. Code Ann. § 67-6-702(d).

[334] Single Article Local Tax Base Limitation with Effective Dates. Effective April 2020, Grundy County has a single article local tax limitation of $1,600; prior to this date, Grundy County's single article limitation was $333.

[335] Tenn. Code Ann. § 67-6-102(84)(A).

[336] TENN. COMP. R. & REGS. 1320-05-01-.32(2).

[337] *Id.* at 2.

[338] Please see Chapter 2 for a more in-depth discussion of the *Wayfair* case.

[339] Tenn. Code Ann. § 67-6-102. Public Chapter 783 (2022).

[340] The former sales threshold of $500,000 was established in Sales and Use Tax Rule 129(2)1. For periods beginning October 1, 2019 to October 1, 2020, out-of-state dealers with $500,000 or more in total sales made to consumers in this state during the previous twelve-month period must register for and remit sales tax.
[341] Tenn. Code Ann. § 67-6-102(87).
[342] Tenn. Code Ann. § 67-6-510.
[343] Tenn. Code Ann. § 67-6-102(85)(A)(vi). Letter Ruling 14-10.
[344] Tenn. Code Ann. § 67-6-539.
[345] Tenn. Code Ann. § 67-6-102(85)(A).
[346] *D. Canale & Co. v. Celauro, Comm'r of Revenue*, 765 S.W.2d 736 (Tenn. 1989).
[347] 26 U.S.C. § 4071.
[348] *See also* Tenn. Code Ann. § 67-1-112 and TENN. COMP. R. & REGS. 1320-04-05-.03 (when separately itemized, the business tax is to be included in the tax base for both business tax and sales and use tax purposes).
[349] TENN. COMP. R. & REGS. 1320-05-01-.100.
[350] TENN. COMP. R. & REGS. 1320-05-01-.23.
[351] 26 U.S.C. § 5000B.
[352] TENN. COMP. R. & REGS. 1320-05-01-.25.
[353] *Id.*
[354] TENN. COMP. R. & REGS. 1320-05-01-.107 and .110.
[355] *See* Important Notice #07-20.
[356] Tenn. Code Ann. §§ 67-6-102(25); TENN. COMP. R. & REGS. 1320-05-01-.99(3).
[357] *See, e.g., AT&T v. Johnson,* No. M2000-01407-COA-R3-CV (Tenn. Ct. App. 2002).
[358] TENN. COMP. R. & REGS. 1320-05-01-.76.
[359] Tenn. Code Ann. § 67-6-510; TENN. COMP. R. & REGS. 1320-05-01-.02.
[360] Tenn. Code Ann. § 67-6-357.
[361] Tenn. Code Ann. § 67-6-102(87).
[362] Tenn. Code Ann. § 67-6-102(87)(a)(ii).
[363] Tenn. Code Ann. § 67-6-102(25).
[364] *See* Letter Ruling 02-27
[365] Tenn. Code Ann. -§ 67-6-102(87)(A)(vi).
[366] *See, e.g.*, *Thomas Nelson, Inc. v. Olsen*, 723 S.W.2d 621, 624 (Tenn. 1987) (holding that a transaction involving the sale of non-taxable intangible advertising concepts was nevertheless subject to sales tax on the entire amount of the transaction because advertising models, which were tangible personal property, were an "essential," "crucial," and "necessary" element of the transaction).
[367] *Id.*; see also AT&T Corp. v. Johnson, No. M2000-01407-COA-R3-CV, 2002 WL 31247083, at *8 (Tenn. Ct. App. Oct. 8, 2002) (holding that a transaction involving the sale of engineering services along with separately itemized tangible telecommunications systems was subject to sales tax on the entire amount of the contract because "equipment, engineering, and installation combine in this instance to produce BellSouth's desired result: a functioning item of tangible personal property assembled on the customer's premises," and further

describing the engineering services as "'essential'" and "'integral'" to the sale of tangible personal property).
[368] Ruling 14-10.
[369] *Id*.
[370] *Qualcomm Incorporated v. Loren L. Chumley*, No. M2006–01398–COA–R3–CV, 2007 WL 2827513 (Tenn. CT. App. Sept. 26, 2007).
[371] Unreported case of *Barnes & Noble Superstores, Inc. v. Huddleston*, No. 01A01-9604-CH-00149, 1996 WL 596955, at *2 (Tenn. Ct. App. Oct. 18, 1996).
[372] The fact that the equipment was leased to the service provider's customer and not sold has no bearing. Leases may qualify for the sale for resale exemption. The term "sale" as used in the statute, includes the lease of tangible personal property. Tenn. Code Ann. § 67-6-102(78).
[373] See *Nashville Mobilphone Co., Inc., v. Woods,* 655 S.W.2d 934 (1983).
[374] See *Cape Fear Paging Co. v. Huddleston*, 937 S.W.2d 787 (Tenn. 1996).
[375] Tenn. Code Ann. § 67-6-205.
[376] Ruling 17-17.
[377] Tenn. Code Ann. § 67-6-102(95); TENN. COMP. R. & REGS. 1320-05-01-.107, .108, and .110.
[378] Tenn. Code Ann. §§ 67-6-205(c)(6) and 67-6-203.
[379] TENN. COMP. R. & REGS. 1320-05-01-.54(2) and 1320-05-01-.53(2).
[380] TENN. COMP. R. & REGS. 1320-05-01-.27(4).
[381] *See, e.g., Gen. Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241 (Tenn. 1974) (holding that for sales and use tax purposes, the dispositive issue regarding whether a contractor is improving realty is whether the property being installed becomes a fixture to the realty).
[382] *Id. at* 242-43.
[383] *Magnavox Consumer Electronics v. King*, 707 S.W.2d 504, 507 (Tenn. 1986) (quoting *Hickman v. Booth*, 173 S.W. 438 (Tenn. 1914)).
[384] *Id*.
[385] *ANR Pipeline Co., et al. v. Tenn. Bd. of Equalization*, Nos. M2001-01098-COA-R12-CV, M2001-01117-COA-R12-CV, M2001-01119-COA-R12-CV, 2002 WL 31840689, at *3 (Tenn. Ct. App. Dec. 19, 2002), *perm. app. denied*, June 30, 2003.
[386] *Id*.
[387] *Hubbard v. Hardeman Cnty. Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993).
[388] *See Process Sys., Inc. v. Huddleston*, No. 101801-I, 1996 WL 614526, at *3 (Tenn. Ct. App. Oct. 25, 1996) (citing *Memphis Hous. Auth. v. Memphis Steam Laundry-Cleaner, Inc*., 463 S.W.2d 677, 679 (Tenn. 1971)).
[389] *See id*. (finding that conveyor system's essential character would be destroyed upon removal, which required cutting system components into pieces with an acetylene torch) (citing *Green v. Harper*, 700 S.W.2d 565, 567 (Tenn. Ct. App. 1985)).
[390] 610 S.W.2d at 714.
[391] *Id*.
[392] *Id*.
[393] *Keenan v. Fodor*, No. M2011-01475-COA-R3CV, 2012 WL 3090303, at *8-9 (Tenn. Ct. App. July 30, 2012).
[394] *Id.*

[395] 868 S.W.2d at 660.
[396] *Id*.
[397] 511 S.W.2d at 243.
[398] *Id*.
[399] 1996 WL 614526 at *3.
[400] *Id*.
[401] *Hermann Holtkamp Greenhouses, Inc. v. Metro. Nashville & Davidson Cnty.*, No. M2009-00345-COA-R3-CV, 2010 WL 366697, at *9 (Tenn. Ct. App. Feb. 2, 2010).
[402] *Id.*
[403] *See* Letter Ruling 11-48.
[404] *See* Letter Ruling 96-31.
[405] *See* Letter Ruling 96-20.
[406] *See* Letter Ruling 00-20.
[407] *See* Letter Ruling 08-18.
[408] *See* Letter Ruling 01-21.
[409] *See* Letter Ruling 03-08.
[410] *See* Letter Ruling 97-32.
[411] Tenn. Code Ann. § 67-6-102(95). Public Chapter 86 (2021).
[412] Public Chapter 501 (2019).
[413] 1977 Tenn. Pub. Acts Ch. 42 (defining "tangible personal property" to include computer software); *see also Univ. Computing Co. v. Olsen*, 677 S.W.2d 445, 447 (Tenn. 1984) (detailing the General Assembly's actions taken to subject computer software to sales and use tax).
[414] Tenn. Code Ann. § 67-6-231(a).
[415] Tenn. Code Ann. § 67-6-102(86)(K).
[416] Tenn. Code Ann. § 67-6-231(b).
[417] Tenn. Code Ann. § 67-6-102(18).
[418] Tenn. Code Ann. § 67-6-102(95)(A).
[419] *See* Tenn. Code Ann. § 67-6-701(a)(1) (which provides that the single article cap only applies to the sale of single articles of personal property).
[420] Tenn. Code Ann. § 67-6-102(74).
[421] *Id*.
[422] *See* Important Notice #15-14.
[423] *See* Important Notice #15-24.
[424] Tenn. Code Ann. § 67-6-102(85)(A).
[425] Tenn. Code Ann. § 67-6-205(c)(6).
[426] See generally Tenn. Dept. of Rev. Ltr. Rul. 14-10 (Oct. 14, 2014) [hereinafter "Ltr. Rul. 14-10"] (discussing Tennessee law regarding bundling and the "true object" test), available at http://www.tennessee.gov/assets/entities/revenue/attachments/14-10.pdf.
[427] See, e.g., *Thomas Nelson, Inc. v. Olsen*, 723 S.W.2d 621, 624 (Tenn. 1987) (holding that a transaction involving the sale of non-taxable intangible advertising concepts was nevertheless subject to sales tax on the entire amount of the transaction because advertising models, which were tangible personal property, were an "essential," "crucial," and "necessary" element of the transaction). See *Rivergate Toyota, Inc. v. Huddleston*, No. 01A01-9602-CH-00053, 1998 WL 83720, at *4 (Tenn. Ct. App. Feb. 27, 1998) (holding that a

transaction involving the commission and distribution of advertising brochures was subject to sales tax on the "'entire cost of the transaction'" because, although the transaction involved a number of services, the brochures themselves "were not inconsequential elements of the transaction but, in fact, were the sole purpose of the contract"). see also *AT&T Corp. v. Johnson*, No. M2000-01407-COA-R3-CV, 2002 WL 31247083, at *8 (Tenn. Ct. App. Oct. 8, 2002) (holding that a transaction involving the sale of engineering services along with separately itemized tangible telecommunications systems was subject to sales tax on the entire amount of the contract because "equipment, engineering, and installation combine in this instance to produce BellSouth's desired result: a functioning item of tangible personal property assembled on the customer's premises," and further describing the engineering services as "'essential'" and "'integral'" to the sale of tangible personal property).

[428] *See* Letter Ruling 15-07, Letter Ruling 15-08, Letter Ruling 15-09, Letter Ruling 16-01, Letter Ruling 16-02, Letter Ruling 16-04, Letter Ruling 16-07, and Letter Ruling 16-12.

[429] *Nashville Mobilphone Co., Inc. v. Woods*, 655 S.W.2d 934, 937 (Tenn. 1983); *Equifax Check Services, Inc. v. Johnson*, No. M1999-00782-COA-R3-CV, 2000 WL (Tenn. Ct. App. 2000).

[430] *See* Letter Ruling #15-07.

[431] Tenn. Code Ann. § 67-6-205(c)(4) and (c)(6).

[432] Tenn. Code Ann. § 67-6-395.

[433] *Id.*

[434] Tenn. Code Ann. § 67-6-203.

[435] Tenn. Code Ann. § 67-6-702.

[436] Tenn. Code Ann. § 67-6-387.

[437] Tenn. Code Ann. § 67-6-395.

[438] *Teksystems, Inc. ex rel. Maxim Group, Inc. v. Farr*, 2009 WL 1312835 (Tenn. Ct. App. 2009).

[439] *See* Letter Ruling # 14-11.

[440] *See* Important Notice #15-13.

[441] Tenn. Code Ann. § 67-6-231; *See also* Important Notice #15-14.

[442] *See* Important Notice #15-24.

[443] Tenn. Code Ann. § 67-6-102(33).

[444] *See* Important Notice #15-24.

[445] Tenn. Code Ann. § 67-6-387(b).

[446] Tenn. Code Ann. § 67-6-208; *See also* Important Notice #15-25.

[447] Tenn. Code Ann. § 67-6-102(19).

[448] Tenn. Code Ann. § 67-6-102(94).

[449] Tenn. Code Ann. § 67-6-233(a).

[450] Tenn. Code Ann. § 67-6-233(b).

[451] *Id.*

[452] Tenn. Code Ann. § 67-6-102(30).

[453] Revenue Ruling 20-03.

[454] Tenn. Code Ann. § 67-6-102(29).

[455] Revenue Ruling 20-03.

[456] Tenn. Code Ann. § 67-6-102(31).

[457] *See* Revenue Ruling 20-03.

[458] Tenn. Code Ann. § 67-6-702(f)(4).
[459] Tenn. Code Ann. § 67-6-233(c).
[460] Tenn. Code Ann. § 67-6-702(f)(4).
[461] Tenn. Code Ann. § 67-6-329(d).
[462] Tenn. Code Ann. § 67-6-329(a)(3).
[463] TENN. COMP. R. & REGS. 1320-05-01-.113(1).
[464] TENN. COMP. R. & REGS. 1320-05-01-.113(2).
[465] Tenn. Code Ann. §§ 67-6-233(f) and 67-6-329(d)(1).
[466] Tenn. Code Ann. § 67-6-102(46)(L).
[467] Tenn. Code Ann. § 67-6-329(d)(2).
[468] Tenn. Code Ann. § 67-6-233(f).
[469] Tenn. Code Ann. § 67-6-208.
[470] Tenn. Code Ann. § 67-6-102(44)(K).
[471] Tenn. Code Ann. § 67-6-208.
[472] Tenn. Code Ann. § 67-6-324.
[473] TENN. COMP. R. & REGS. 1320-05-01-.04.
[474] Tenn. Code Ann. § 67-6-208.
[475] Important Notice 15-11 – Sales of Warranty or Service Contracts.
[476] TENN. COMP. R. & REGS. 1320-05-01-.54(2).
[477] See Revenue Ruling #04-20 for additional examples.
[478] Tenn. Code Ann. § 67-6-202. Amusement tax is not subject to the single-article provisions.
[479] Tenn. Code Ann. § 67-6-102(86)(G).
[480] Tenn. Code Ann. § 67-6-330.
[481] Tenn. Code Ann. § 67-6-212(a)(1).
[482] *Id.*
[483] TENN. COMP. R. & REGS. 1320-05-01-.116 identifies SIC Codes 7991 and 7997.
[484] Tenn. Code Ann. § 67-6-212(a)(1).
[485] Letter Ruling 11-24.
[486] Tenn. Code Ann. § 67-6-212(a)(1). TENN. COMP. R. & REGS. 1320-05-01-.121.
[487] TENN. COMP. R. & REGS. 1320-05-01-.115(2).
[488] Tenn. Code Ann. § 67-6-212(a)(2).
[489] TENN. COMP. R. & REGS. 1320-05-01-.117(1); Establishments listed in Major Group 79 of the Standard Industrial Classification Manual.
[490] Tenn. Code Ann. § 67-6-212(d).
[491] Important Notice – Sales Tax on Pit Passes
[492] Tenn. Code Ann. § 67-6-330(a)(18).
[493] TENN. COMP. R. & REGS. 1320-05-01-.117(3); Establishments listed in Major Group 84 of the Standard Industrial Classification Manual.
[494] *Brenda Smith d/b/a Sugar Creek Carriages v. Gerregano*, No. M2022-00941-COA-R3-CV (Tenn. Ct. App. 2023)
[495] Important Notice 16-09 – Amusement Tours.
[496] Tenn. Code Ann. § 67-6-212(a)(3).
[497] TENN. COMP. R. & REGS. 1320-05-01-.115.
[498] Tenn. Code Ann. § 67-6-212(a)(4).

[499] TENN. COMP. R. & REGS. 1320-05-01-.122.
[500] TENN. COMP. R. & REGS. 1320-05-01-.32(6).
[501] *Id*.
[502] Tenn. Code Ann. § 67-6-330(a)(3).
[503] Prepared by the Office of Management and Budget of the federal government.
[504] Tenn. Code Ann. § 67-6-330(a)(4).
[505] Important Notice 08-08 – Membership Dues & Fees; Important Notice 19-11 – Physical Fitness Facilities Exemption.
[506] Tenn. Code Ann. § 67-6-330(a)(19).
[507] Tenn. Code Ann. § 67-6-330(a)(6).
[508] Tenn. Code Ann. § 67-6-330(a)(16).
[509] Important Notice 19-11 – Physical Fitness Facilities Exemption.
[510] Tenn. Code Ann. § 67-6-330(a)(1).
[511] Tenn. Code Ann. § 67-6-330(a)(9).
[512] Tenn. Code Ann. § 67-6-330(a)(2).
[513] Tenn. Code Ann. § 67-6-330(a)(14).
[514] Tenn. Code Ann. § 67-6-330(a)(10).
[515] Tenn. Code Ann. § 67-6-330(a)(5).
[516] Please note, on or after January 1, 2027, this exemption does not apply to amusement or recreational activities conducted, produced, or provided at a facility owned by a sports authority organized pursuant to title 7, chapter 67, during a period in which the facility is eligible to receive a distribution of state sales tax pursuant to Tenn. Code Ann. § 67-6-103(d). *See* Public Chapter 480 (2023).
[517] Tenn. Code Ann. § 67-6-330(a)(13).
[518] Tenn. Code Ann. § 67-6-330(a)(3).
[519] Prepared by the Office of Management and Budget of the federal government.
[520] Tenn. Code Ann. § 67-6-330(a)(4).
[521] Defined in Tenn. Code Ann. § 67-4-2004.
[522] Tenn. Code Ann. § 67-6-330(a)(2).
[523] Tenn. Code Ann. § 67-6-330(a)(15).
[524] Tenn. Code Ann. § 67-6-330(a)(17).
[525] Important Notice 20-01 – Preemption of State Tax on Air Commerce Recreational Activities.
[526] TENN. COMP. R. & REGS. 1320-05-02-.05.
[527] Tenn. Code Ann. § 67-4-2202.
[528] Tenn. Code Ann. § 67-4-2203(2).
[529] Tenn. Code Ann. § 67-4-2202.
[530] See Important Notice 2002 Coin Operated Amusement Device Tax Changes.
[531] Tenn. Code Ann. § 67-4-2204(a)(1)(2) & (3).
[532] Tenn. Code Ann. § 67-6-2205(a).
[533] Tenn. Code Ann. § 67-6-212.
[534] Tenn. Code Ann. § 67-6-205(c)(3).
[535] Tenn. Code Ann. § 67-6-102(96)(A).
[536] *Id*.

[537] Tenn. Code Ann. § 67-6-102(98)(B).
[538] *Equifax Check Services, Inc. v. Johnson*, No. M1999-00782-COA-R3-CV, 2000 WL (Tenn. Ct. App. June 27, 2000).
[539] Internet Tax Freedom Act (Pub. L. No. 105-277, §§ 1100-1104, 112 Stat. 2681-719 (1998) (set out at note to 47 U.S.C. § 151), amended by Pub. L. No. 107-75, § 2, 115 Stat. 703 (2001), Pub. L. No. 108-435, §§ 2-6, 6A, 118 Stat. 2615 (2004), Pub. L. No. 110-108, §§ 2-6, 121 Stat. 1024 (2007)).
[540] Ruling 08-29.
[541] Tenn. Code Ann. § 67-6-205(c)(9).
[542] "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points. "Mobile wireless service" means a telecommunications services that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.
[543] "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the number "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.
[544] "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customer to call in to the subscriber's prerecorded announcement of live service. "900 service" does not include the charge for: collection services provided by the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.
[545] "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change or initiation of telecommunications services received by the customer.
[546] "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers, such transmissions may include messages and/or sounds.
[547] Tenn. Code Ann. § 67-6-905(a).
[548] Tenn. Code Ann. §§ 67-6-102(70) and 67-6-905(a).
[549] Tenn. Code Ann. §§ 67-6-102(71) and 67-6-905(a).
[550] Tenn. Code Ann. §§ 67-6-202 and 67-6-230(a).
[551] https://en.wikipedia.org/wiki/Electronic_data_interchange
[552] Tenn. Code Ann. § 67-6-102(77).
[553] Tenn. Code Ann. § 48-103-102.
[554] Tenn. Code Ann. § 67-6-389(a).
[555] Tenn. Code Ann. § 67-6-389(c).
[556] Tenn. Code Ann. § 67-6-102(49).
[557] Tenn. Code Ann. §§ 67-6-221 and 67-6-702(f).
[558] Tenn. Code Ann. § 67-6-102(48).
[559] Tenn. Code Ann. §§ 67-6-221 and 67-6-702(f).

[560] Tenn. Code Ann. §§ 67-6-205(a) and 67-6-702(f).
[561] Tenn. Code Ann. § 67-6-102(47). United States includes the District of Columbia and a United States territory or possession.
[562] Tenn. Code Ann. §§ 67-6-221 and 67-6-702(f).
[563] Tenn. Code Ann. §§ 67-6-205(a) and 67-6-702(f).
[564] Tenn. Code Ann. § 67-6-390.
[565] Tenn. Code Ann. § 67-6-356.
[566] Tenn. Code Ann. § 67-6-356(c)(2).
[567] Tenn. Code Ann. § 67-6-356(c)(1).
[568] Tenn. Code Ann. § 67-6-356(c)(3).
[569] Important Notice 07-21 Telecommunications Used by Internet Service Providers
[570] Tenn. Code Ann. §§ 67-6-102(7)(B) and 67-6-905(a).
[571] Tenn. Code Ann. § 67-6-102(7)(C).
[572] Tenn. Code Ann. § 67-6-102(7)(D).
[573] Tenn. Code Ann. § 67-6-102(7)(E).
[574] Tenn. Code Ann. § 67-6-102(7)(A).
[575] Tenn. Code Ann. § 67-6-102(7).
[576] Tenn. Code Ann. § 67-6-702(f).
[577] Tenn. Code Ann. § 67-6-905(a).
[578] *Id*.
[579] *Id.*
[580] Tenn. Code Ann. § 67-6-905(b).
[581] Tenn. Code Ann. § 67-6-905(c).
[582] Tenn. Code Ann. § 67-6-905(a)(12).
[583] Tenn. Code Ann. § 67-6-905(a)(9).
[584] Tenn. Code Ann. § 67-6-905(d)(1).
[585] Tenn. Code Ann. § 67-6-905(a)(10).
[586] Tenn. Code Ann. § 67-6-905(d)(2).
[587] Tenn. Code Ann. § 67-6-905(d)(3).
[588] Tenn. Code Ann. § 67-6-905(c).
[589] Tenn. Code Ann. §§ 67-6-201(9) and 67-6-226.
[590] Tenn. Code Ann. § 67-6-102(106)(A).
[591] Tenn. Code Ann. § 67-6-102(106)(B).
[592] Tenn. Code Ann. § 67-6-226.
[593] Important Notice – Cable Television – Wireless Cable Television and Direct-to-home Satellite Services.
[594] *Id*.
[595] Tenn. Code Ann. §§ 67-6-201, 67-6-226, 67-6-102(106), and 67-6-103(f).
[596] Tenn. Code Ann. § 67-6-329(a)(15).
[597] Tenn. Code Ann. § 67-6-227.
[598] Important Notice – Local Sales Taxability to Direct-to-home Satellite.
[599] Tenn. Code Ann. § 67-6-102(94).
[600] Tenn. Code Ann. § 67-6-102(30).

[601] The detailed Schedule B delivery destination local tax reporting on the SLS 450 return was added in 2018 and is now the required reporting for sales from out-of-state into Tennessee with the 2019 repeal of the 2.25% optional standard local tax rate. For more information, see Important Notice 19-05.
[602] Tenn. Code Ann. § 67-6-539.
[603] Important Notice 05-19 – Bundled Transactions – Telecommunications, Audio and Video Programming and Related Services.
[604] Tax Rates (as of 2005): 1) Intrastate – 7% state, 2.5% local; 2) *Business* interstate and international – 7.5% state, exempt local; 3) *Residential* interstate and international – 7% state, 1.5% local; 4) Ancillary services – 7% state, 2.5% local; 5) Cable and wireless cable – [$0 – $15] of monthly fee/charge per subscriber – exempt, state and local; [$15.01 – $27.50] – 8.25% state, exempt local; [$27.51 and over] – 7% state, applicable local rate; 6) Direct-to-home satellite – 8.25% state, exempt local.
[605] Prior rates – 6% until 7/1/2002; 5.5% until 7/1/12; 5% until 7/1/13; and 4% until 7/1/17.
[606] Tenn. Code Ann. § 67-6-228(a).
[607] Tenn. Code Ann. § 67-6-102(43).
[608] Tenn. Code Ann. § 67-6-102(6).
[609] Tenn. Code Ann. § 67-6-102(99).
[610] Tenn. Code Ann. § 67-6-102(9).
[611] Tenn. Code Ann. § 67-6-102(28).
[612] Tenn. Code Ann. § 67-6-102(72).
[613] Important Notice 17-20 – Food and Food Ingredients.
[614] *Id.*
[615] Tenn. Code Ann. § 67-6-102(6).
[616] Tenn. Code Ann. § 67-6-102(99).
[617] Tenn. Code Ann. § 67-6-102(9).
[618] Important Notice 17-22 – Sales Tax on Candy.
[619] Tenn. Code Ann. § 67-6-102(87)(A)(vi).
[620] Revenue Ruling 14-08.
[621] Tenn. Code Ann. § 67-6-102(28).
[622] The FDA requires all dietary supplements to be labeled with a supplement facts box.
[623] Important Notice 17-23 – Sales Tax on Dietary Supplements.
[624] Important Notice 17-21 – Sales Tax on Prepared Foods.
[625] Tenn. Code Ann. § 67-6-102(72).
[626] Chapter 3, § 401.11 of the FDA's food code.
[627] Important Notice 07-18 – Prescription Drugs.
[628] TENN. COMP. R. & REGS. 1320-05-01-.34(1).
[629] Tenn. Code Ann. § 67-6-102(25)(A).
[630] TENN. COMP. R. & REGS. 1320-05-01-.18.
[631] Tenn. Code Ann. §§ 67-6-102(46)(J) and 67-6-206(b)(8).
[632] TENN. COMP. R. & REGS. 1320-05-01-.76.
[633] TENN. COMP. R. & REGS. 1320-05-01-.100.
[634] Tenn. Code Ann. § 67-6-102(87)(B); If the seller is reimbursed by a third party, the amount of the coupon would be subject to tax.

[635] Tenn. Code Ann. § 67-6-329(a)(13).
[636] TENN. COMP. R. & REGS. 1320-05-01-.76.
[637] At the tax rate levied on the sale of tangible personal property at retail by Tenn. Code Ann. § 67-6-202.
[638] Tenn. Code Ann. § 67-6-230.
[639] Prior to January 1, 2021, the 911 surcharge rate was $1.16.
[640] Important Notice 15-02 – Prepaid Wireless Calling Service 911.
[641] TENN. COMP. R. & REGS. 1320-05-01-.72.
[642] Tenn. Code Ann. § 67-6-329(a)(1).
[643] Retailers are not required to document the exempt purchase; the documentation mentioned in Important Notice 07-17 is no longer required. Tenn. Code Ann. § 67-6-334(b)(4)(B).
[644] Important Notice 08-04 – Kerosene Fuel Sales Exemption.
[645] Tenn. Code Ann. § 67-6-704.
[646] Tenn. Code Ann. § 67-6-205(c)(5).
[647] Important Notice 19-12 – Automated Car Wash Facilities.
[648] Tenn. Code Ann. § 67-6-357.
[649] TENN. COMP. R. & REGS. 1320-05-01-.49(1).
[650] Tenn. Code Ann. §§ 67-6-337, 67-6-338.
[651] Tenn. Code Ann. § 67-6-329(a)(13); TENN. COMP. R. & REGS. 1320-05-01-.11.
[652] Important Notice 18-16 – Pallets and Packaging Exemption.
[653] A "bad debt" is as defined in 26 U.S.C. § 166. However, for sales tax purposes, the amount does not include financing 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. Tenn. Code Ann. § 67-6-507(e)(3).
[654] Tenn. Code Ann. § 67-6-507(e).
[655] Tenn. Code Ann. § 67-6-301.
[656] Tenn. Code Ann. § 67-6-328.
[657] Tenn. Code Ann. § 67-6-332.
[658] Tenn. Code Ann. § 67-6-322.
[659] Tenn. Code Ann. § 67-6-325.
[660] Tenn. Code Ann. § 67-6-308.
[661] Tenn. Code Ann. § 67-6-326.
[662] Tenn. Code Ann § 67-6-327.
[663] Tenn. Code Ann. § 67-6-333.
[664] Tenn. Code Ann. § 67-6-335.
[665] Tenn. Code Ann. § 67-6-316(a).
[666] Tenn. Code Ann. § 67-6-316(c).
[667] Tenn. Code Ann. § 67-6-396.
[668] Tenn. Code Ann. § 67-6-390.
[669] Tenn. Code Ann. § 67-6-389.
[670] Tenn. Code Ann. § 67-6-303.
[671] Tenn. Code Ann. § 67-6-306.

[672] Tenn. Code Ann. § 67-6-329.
[673] Tenn. Code Ann. § 67-6-329.
[674] Tenn. Code Ann. § 67-6-331.
[675] Tenn. Code Ann. § 67-6-392.
[676] Tenn. Code Ann. § 67-6-388.
[677] Tenn. Code Ann. § 67-6-309(a).
[678] *Id*.
[679] Tenn. Code Ann. §67-6-307.
[680] Tenn. Code Ann. § 67-6-334.
[681] Tenn. Code Ann. § 67-6-329.
[682] Tenn. Code Ann. § 67-6-329.
[683] Tenn. Code Ann. § 67-6-310.
[684] Tenn. Code Ann. § 67-6-317.
[685] Tenn. Code Ann. § 67-6-323.
[686] Tenn. Code Ann. § 67-6-311.
[687] Tenn. Code Ann. § 67-6-318.
[688] Tenn. Code Ann. § 67-6-329.
[689] Tenn. Code Ann. § 67-6-336.
[690] Tenn. Code Ann. § 67-3-339.
[691] Tenn. Code Ann. § 67-6-329.
[692] Tenn. Code Ann. § 67-6-329.
[693] Tenn. Code Ann. § 67-6-329.
[694] Tenn. Code Ann. § 67-6-329.
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[698] Tenn. Code Ann. § 67-6-329.
[699] Tenn. Code Ann. § 67-6-329.
[700] Tenn. Code Ann. § 67-6-304.
[701] Tenn. Code Ann. § 67-6-319.
[702] Tenn. Code Ann. § 67-6-314.
[703] Tenn. Code Ann. § 67-6-320.
[704] Tenn. Code Ann. § 67-6-316.
[705] Tenn. Code Ann. § 67-6-305.
[706] Tenn. Code Ann. § 67-6-312.
[707] Tenn. Code Ann. § 67-6-313.
[708] Tenn. Code Ann. § 67-6-324.
[709] Tenn. Code Ann. § 67-6-329.
[710] Tenn. Code Ann. § 67-6-337.
[711] Tenn. Code Ann. § 67-6-338.
[712] Tenn. Code Ann. § 67-6-329.
[713] Tenn. Code Ann. § 67-6-329.
[714] Tenn. Code Ann. § 67-6-395(a).
[715] Tenn. Code Ann. § 67-6-395(b).

[716] Tenn. Code Ann. § 67-6-387(a).
[717] Tenn. Code Ann. § 67-6-387(b).
[718] Tenn. Code Ann. § 67-6-329.
[719] Tenn. Code Ann. § 67-6-329.
[720] Tenn. Code Ann. § 67-6-329.
[721] Tenn. Code Ann. § 67-6-329.
[722] Tenn. Code Ann. § 67-6-329.
[723] Tenn. Code Ann. § 67-6-321.
[724] Tenn. Code Ann. § 67-6-302.
[725] Tenn. Code Ann. § 67-6-329.
[726] TENN. COMP. R. & REGS. 1320-05-01-.29(2).
[727] Tenn. Code Ann. § 67-6-102(83).
[728] TENN. COMP. R. & REGS. 1320-05-01-.62, .68.
[729] TENN. COMP. R. & REGS. 1320-05-01-.62.
[730] TENN. COMP. R. & REGS. 1320-05-01-.32(3).
[731] Tenn. Code Ann. § 67-6-102(83)(B)(ii).
[732] Tenn. Code Ann. § 67-6-102(83)(B)(i).
[733] Tenn. Code Ann. § 67-6-102(83)(B)(i)(a); TENN. COMP. R. & REGS. 1320-05-01-.04(2).
[734] *Id.*
[735] A Streamlined Sales and Use Tax Certificate of Exemption is available on the Department's website; when registering, mark "resale" and include your Tennessee sales and use tax account number.
[736] These steps apply to certificates issued after March 2017. Certificates prior to this date may not be available in TNTAP. This does not mean that the taxpayer does not have an active certificate. In this case, the taxpayer should contact the Department at 615-253-0600 and request to have a copy of the resale certificate published to the taxpayer's TNTAP account.
[737] The Commissioner may revoke the registration certificate of any dealer wrongfully making use of a certificate of resale. In addition to this penalty, it is a misdemeanor to misuse the certificate of registration and resale certificates for the purpose of obtaining tangible personal property or taxable services without the payment of the Sales or Use Tax when it is due. TENN. COMP. R. & REGS. 1320-05-01-.68 (3).
[738] *Security Fire Protection Co., Inc. v. Huddleston*, 138 S.W.3d 829 (Tenn. Ct. App. Dec. 31, 2003).
[739] Important Notice – Sales and Use Taxability of Drop Shipment Delivery.
[740] Important Notice 22-01 – Drop Shipment Rule Repealed.
[741] TENN. COMP. R. & REGS. 1320-05-01-.08(3).
[742] Tenn. Code Ann. § 67-6-507(b).
[743] TENN. COMP. R. & REGS. 1320-05-01-.91(1).
[744] Tenn. Code Ann. § 67-6-102(8)(A).
[745] Tenn. Code Ann. § 67-6-102(8)(C).
[746] Tenn. Code Ann. § 67-6-229; TENN. COMP. R. & REGS. 1320-05-01-.09.
[747] Tenn. Code Ann. § 67-6-102(8)(B).

[748] Tenn. Code Ann. §§ 67-6-207 and 67-6-301.
[749] Tenn. Code Ann. § 67-6-219.
[750] Tenn. Code Ann. §§ 67-6-102(46) and 67-6-206(a).
[751] Tenn. Code Ann. § 67-6-206(b).
[752] Tenn. Code Ann. § 67-6-206(b). TENN. COMP. R. & REGS. 1320-05-01-.40(2).
[753] Tenn. Code Ann. §§ 67-6-102(46)(H)-(I) and 67-6-206(a).
[754] Tenn. Code Ann. §§ 67-6-102(46)(M) and 67-6-206(a).
[755] Tenn. Code Ann. § 67-6-322.
[756] 12 U.S.C. § 1768; Tenn. Code Ann. § 45-4-803.
[757] Tenn. Code Ann. §§ 67-6-102(46)(K) and 67-6-206(c).
[758] Tenn. Code Ann. § 67-6-389.
[759] Tenn. Code Ann. § 67-6-330(a)(16).
[760] Tenn. Code Ann. § 67-6-356.
[761] Tenn. Code Ann. §§ 67-6-308 and 67-6-329(a)(4).
[762] *See* Important Notice 16-03 – Diplomatic Tax Exemption Cards.
[763] Tenn. Code Ann. § 67-6-391.
[764] Tenn. Code Ann. § 67-6-102(16).
[765] Tenn. Code Ann. §§ 67-6-219(a) and 67-6-702(e).
[766] Tenn. Code Ann. § 67-6-331. Important Notice 04-25 – Vehicles and Trailers used in Interstate Commerce.
[767] Tenn. Code Ann. § 55-4-113.
[768] *T.L. Herbert & Sons, Inc. v. Woods*, 539 S.W.2d 28 (Tenn. 1976) (finding that a tow boat used only on Tennessee waters was used entirely in interstate commerce because all of the cargoes it transported either originated at or were destined for a point outside of Tennessee).
[769] *See* 49 U.S.C. § 13506(a)(6). While there are certain agricultural items that a vehicle could haul that would prevent it from qualifying for this exclusion from federal regulation (*see* 49 C.F.R. § 372.115 for a list of these items), most of these type cases will involve the hauling of qualifying items, such as grain, cotton, tobacco, fruits, and vegetables.
[770] Tenn. Code Ann. §§ 55-4-105 and 55-4-113.
[771] Tenn. Code Ann. § 67-6-302.
[772] Tenn. Code Ann. § 67-6-302(a).
[773] Tenn. Code Ann. § 67-6-349(a).
[774] Tenn. Code Ann. § 67-6-340(a).
[775] Tenn. Code Ann. §§ 67-6-321 and 67-6-313.
[776] Tenn. Code Ann. § 67-3-1405.
[777] Tenn. Code Ann. §§ 67-6-102(46)(H)-(I) and 67-6-206(a).
[778] Tenn. Code Ann. §§ 67-6-102(46)(H)(i)(a)-(d).
[779] Tenn. Code Ann. § 67-6-102(46)(H)(i).
[780] Tenn. Code Ann. § 67-6-102(46)(H)(ii).
[781] Tenn. Code Ann. § 67-6-102(46)(M).
[782] TENN. COMP. R. & REGS. 1320-05-01-.128.

[783] Tenn. Code Ann. § 67-6-322.
[784] 26 U.S.C. § 501(c)(5).
[785] 26 U.S.C. § 501(c)(13).
[786] TENN. COMP. R. & REGS. 1320-05-01-.51(1).
[787] See also *Car Services Inc. d/b/a Budget Rent-a-Car v. Tidwell*, unreported, (Tenn. 1976).
[788] TENN. COMP. R. & REGS. 1320-05-01-.51(2).
[789] Tenn. Code Ann. § 67-6-322(h).
[790] Tenn. Code Ann. § 67-6-229. TENN. COMP. R. & REGS. 1320-05-01-.64.
[791] 12 U.S.C. § 1768; Tenn. Code Ann. § 45-4-803.
[792] TENN. COMP. R & REGS. 1320-05-01-.24.
[793] Tenn. Code Ann. § 67-6-102(22).
[794] Tenn. Code Ann. § 67-6-102(81).
[795] As defined in Tenn. Code Ann. § 67-4-2004.
[796] Tenn. Code Ann. § 67-6-102(81).
[797] *Id.*
[798] Tenn. Code Ann. § 67-6-206(c).
[799] Tenn. Code Ann. § 67-6-102; Pub. Ch. 886 (2024)
[800] Tenn. Code Ann. § 67-6-389(a).
[801] Tenn. Code Ann. § 48-103-102(1).
[802] Tenn. Code Ann. § 67-6-389(c).
[803] Tenn. Code Ann. § 67-6-389(e).
[804] Tenn. Code Ann. § 67-6-330(a)(16).
[805] Tenn. Code Ann. § 67-6-356.
[806] Tenn. Code Ann. § 67-6-308.
[807] Tenn. Code Ann. § 67-6-329(a)(4). TENN. COMP. R. & REGS. 1320-05-01-.55.
[808] *See* Important Notice #16-03 – Diplomatic Tax Exemption Cards.
[809] Tenn. Code Ann. § 67-6-323.
[810] When the property is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the property for resale.
[811] Tenn. Code Ann. § 67-6-329(a)(3).
[812] Tenn. Code Ann. § 67-6-102(107).
[813] Tenn. Code Ann. § 67-6-102(99).
[814] Tenn. Code Ann. § 67-6-102(107).
[815] Tenn. Code Ann. § 67-6-329(a)(17).
[816] TENN. COMP. R. & REGS. 1320-05-01-.32(3) (2008). See also *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 85 (Tenn. 2010).
[817] Tenn. Code Ann. § 67-6-329(a)(10).
[818] TENN. COMP. R. & REGS. 1320-05-01-.46 ("Rule 46"). Note that the "biweekly or more frequent basis/every fourteen days" language in Rule 46 has been superseded due to the enactment of Public Chapter 473 (2019), which expanded the periodicals exemption to include "periodicals . . . distributed no less frequently than monthly."
[819] Tenn. Code Ann. § 67-6-320.
[820] Tenn. Code Ann. § 67-6-102(35).

[821] Tenn. Code Ann. § 67-6-102(75).
[822] Tenn. Code Ann. § 67-6-314(2).
[823] Tenn. Code Ann. § 67-6-102(36)(A).
[824] Tenn. Code Ann. § 67-6-314(6).
[825] Tenn. Code Ann. § 67-6-102(61).
[826] Tenn. Code Ann. § 67-6- 314(1).
[827] Tenn. Code Ann. § 67-6-102(78)(A).
[828] Tenn. Code Ann. § 67-6-316.
[829] Tenn. Code Ann. § 67-6-316(c).
[830] Tenn. Code Ann. § 67-6-314(3).
[831] Tenn. Code Ann. § 67-6- 314(4).
[832] Tenn. Code Ann. § 67-6- 314(5).
[833] Tenn. Code Ann. § 67-6-314(7).
[834] Tenn. Code Ann. § 67-6-314(8).
[835] Tenn. Code Ann. § 67-6-319(a).
[836] Tenn. Code Ann. § 67-6- 319(b).
[837] Tenn. Code Ann. § 67-6-314(10).
[838] *See* Important Notice 15-07 – Exemption for Diabetic Testing Supplies.
[839] TENN. COMP. R. & REGS. 1320-05-01-.17 and .47. Tenn. Code Ann. § 67-6-335.
[840] TENN. COMP. R. & REGS. 1320-05-01-.26.
[841] Tenn. Code Ann. § 67-6-358.
[842] Tenn. Code Ann. § 67-6-343. Use of the motor vehicles in this state subsequent to purchase, but prior to removal from the state, within the three-day period does not constitute a use subject to tax.
[843] Tenn. Code Ann. §§ 55-3-101(c)(2) and 55-8-101(45).
[844] Tenn. Code Ann. § 67-6-345.
[845] Tenn. Code Ann. § 67-6-313(h). Effective January 1, 2016, the 15-day grace period for removal of the aircraft without the payment of tax was changed to 30 days.
[846] Tenn. Code Ann. § 67-6-346.
[847] Tenn. Code Ann. § 67-6-507(i).
[848] Tenn. Code Ann. § 67-6-507(j).
[849] Tenn. Code Ann. § 67-6-346.
[850] *See* Letter Ruling # 11-61.
[851] TENN. COMP. R. & REGS. 1320-05-01-.102.
[852] TENN. COMP. R. & REGS. 1320-05-01-.78(1).
[853] TENN. COMP. R. & REGS. 1320-05-01-.78(2).
[854] Tenn. Code Ann. § 67-6-206(a). See also *Bowater North America Corp. v. Jackson*, 685 S.W.2d 637 (1985).
[855] Tenn. Code Ann. § 67-6-102(46)(A)(i).
[856] *Id.*
[857] *Tenn. Farmers' Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 91-92 (Tenn. 1987).
[858] Tenn. Code Ann. § 67-6-102(46)(J).
[859] *Beare Co. v. Tenn. Dep't of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993).

[860] Tenn. Code Ann. § 67-6-329(a)(12). TENN. COMP. R. & REGS. 1320-05-01-.40.
[861] Tenn. Code Ann. § 67-6-102(46)(A)(i).
[862] Tenn. Code Ann. § 67-6-102(46)(A)(ii).
[863] *See* Letter Rulings 97-38, 00-46, and 20-05.
[864] Tenn. Code Ann. § 67-6-329(a)(12).
[865] TENN. COMP. R. & REGS. 1320-05-01-.40.
[866] Tenn. Code Ann. § 67-6-206(b).
[867] Tenn. Code Ann. § 67-6-704; TENN. COMP. R. & REGS. 1320-05-01-.15.
[868] Note that while Tenn. Code Ann. § 67-6-702(b) provides for two different reduced local rates for water sold to a manufacturer, either 1/3% or 0.5%, depending on whether the normal local rate for that jurisdiction is more than or less than 1%, there is no local rate in Tennessee that is currently below 1%. Therefore, the only reduced local rate applicable at this time is 0.5%.
[869] Tenn. Code Ann. § 67-6-206(b)(3).
[870] *AFG Industries, Inc. v. Cardwell*, 835 S.W.2d 583 (Tenn. 1992) (Note, however, that in 1993, a specific exemption was added for the electricity used in this process for the production of heat-treated glass under Tenn. Code Ann. § 67-6-206(b)(5); thus, because *AFG* was producing glass, it would be exempt today).
[871] *Id*. at 586.
[872] Tenn. Code Ann. § 67-6-206(b)(4).
[873] Tenn. Code Ann. § 67-6-206(b)(5).
[874] Tenn. Code Ann. § 67-6-206(b)(7).
[875] *Alley-Cassetty Coal Co., Inc. v. Johnson*, Not Reported in S.W.3d (2005). *Alley-Cassetty Coal Co., Inc. v. Johnson*, No. M2003-02327-COA-R3CV, 2005 WL 729180, at *6 (Tenn. Ct. App. Mar. 29, 2005).
[876] *Id*. at 6-7.
[877] The court did not consider whether the taxpayer in *Beare Co*. fabricated products because the company did not produce the food products that it blast froze and maintained in a frozen state.
[878] *Beare Co.*, 858 S.W.2d at 907.
[879] *Id*.
[880] *Id.*
[881] *Id.*
[882] *Id*. at 908. The court considered the following cases: *Comm'r of Carroll Cnty. v. B.F. Shriver Co.,* 146 Md. 412, 126 A. 71 (1924) (corn husked, sorted, washed, cut from the cob, and canned); *Stokely–Van Camp, Inc. v. State,* 50 Wash.2d 492, 312 P.2d 816 (1957) (vegetables sorted, cleaned, cut, blanched, packaged, and frozen); *Bornstein Sea Foods, Inc. v. State,* 60 Wash.2d 169, 373 P.2d 483 (1962) (filleting, packaging, and freezing fish); *Perdue Foods, Inc. v. State Dept. of Assessments,* 264 Md. 672, 288 A.2d 170 (1972) (chickens slaughtered, dressed, packaged, and cooled); *Bain v. Dept. of Revenue,* 293 Or. 163, 646 P.2d 12 (1982) (production of fish using "mechanical, chemical and electronic processes"); *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Comm'n,* 248 Iowa 497, 81 N.W.2d 437, 441 (1957).

[883] *Id*. at 909.
[884] *Id*.
[885] *Id*.
[886] Tenn. Code Ann. § 67-6-507. TENN. COMP. R. & REGS. 1320-05-01-.91.
[887] *Id*.
[888] Tenn. Code Ann. § 67-6-507.
[889] *Id*.
[890] Tenn. Code Ann. § 67-6-510(a).
[891] Tenn. Code Ann. § 67-6-507(d).
[892] TENN. COMP. R. & REGS. 1320-05-01-.52(1).
[893] *Id*.
[894] TENN. COMP. R. & REGS. 1320-05-01-.52(2).
[895] Tenn. Code Ann. § 67-6-346.
[896] Letter Ruling 20-05.
[897] Tenn. Code Ann. § 67-6-346.
[898] Tenn. Code Ann. § 67-6-507(e).
[899] Tenn. Code Ann. § 67-6-507(e)(3).
[900] *Id*.
[901] *See Sears, Roebuck & Co. v Roberts*, 2016 WL 2866141 (TN. App. Ct. 2016) for more detailed information.
[902] Tenn. Code Ann. § 67-6-507(d)(2) (2023).
[903] Tenn. Code Ann. § 48-103-102(1).
[904] *Id*.
[905] Tenn. Code Ann. § 67-6-224.
[906] Tenn. Code Ann. §§ 56-1-102(2) and 67-6-224.
[907] Tenn. Code Ann. § 67-6-224(b)(3).
[908] Tenn. Code Ann. § 67-6-224(b)(1).
[909] Tenn. Code Ann. § 67-6-224(b)(7).
[910] Tenn. Code Ann. § 67-6-224(b)(10).
[911] Tenn. Code Ann. § 67-6-389(e).
[912] Tenn. Code Ann. § 67-6-224(b)(5).
[913] Tenn. Code Ann. § 67-6-224(b)(2).
[914] Tenn. Code Ann. § 67-4-2004(3).
[915] Tenn. Code Ann. § 67-6-389.
[916] Tenn. Code Ann. § 67-6-224(f).
[917] Tenn. Code Ann. § 67-6-389.
[918] Tenn. Code Ann. § 67-6-355(a).
[919] *Id*.
[920] Tenn. Code Ann. § 67-6-355(b).
[921] Tenn. Code Ann. § 67-6-349.
[922] Tenn. Code Ann. § 67-6-341(c)(1).
[923] Tenn. Code Ann. § 67-6-341(c)(2).
[924] *See* Letter Ruling 13-11 for a more thorough analysis.
[925] Tenn. Code Ann. § 67-6-357(a).

[926] Tenn. Code Ann. § 67-6-357(b).
[927] Tenn. Code Ann. § 67-6-357(c)(1).
[928] Tenn. Code Ann. § 67-6-357(c)(2).
[929] Tenn. Code Ann. § 67-6-394(a).
[930] Tenn. Code Ann. § 67-6-394(b).
[931] *See* Tenn. Code Ann. § 55-17-123(b)(2) for more information on the definition of a qualified motor vehicle manufacturer.
[932] Tenn. Code Ann. § 67-6-394(c)(1).
[933] Tenn. Code Ann. § 67-6-102 (9)(C).
[934] TENN. COMP. R. & REGS. 1320-05-01-.32(3) (2008); see also *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 85 (Tenn. 2010).
[935] *CAO Holdings v. Trost,* 333 S.W.3d 73, 86 (Tenn. 2010) (internal citations omitted).
[936] Tenn. Code Ann. § 67-6-313(h); Affidavit of Transfer of Aircraft.
[937] Tenn. Code Ann. § 67-6-313(c)(2)(A).
[938] Tenn. Code Ann. § 67-6-313(c)(2)(B).
[939] Tenn. Code Ann. § 67-6-313(c)(2)(C).
[940] Tenn. Code Ann. § 67-6-207(e).
[941] Tenn. Code Ann. § 67-6-210(c).
[942] Tenn. Code Ann. § 67-6-406.
[943] Tenn. Code Ann. § 67-6-345; Affidavit of Sale to Non-resident Purchaser.
[944] Tenn. Code Ann. § 67-6-202(c).
[945] Important Notice 17-17 – Filing Changes for Vending Sales. Vending machine operators are no longer required to have a separate vending- only sales tax account in TNTAP to report sales of merchandise sold through vending machines.
[946] Tenn. Code Ann. § 67-6-702(g).
[947] TENN. COMP. R. & REGS. 1320-05-01-.90.
[948] Important Notice 17-17.
[949] Generally, 1.5% on gross receipts; tobacco 2.5%.
[950] Important Notice 03-14.
[951] Tenn. Code Ann. § 67-4-506.
[952] Tenn. Code Ann. § 67-6-202(c).