



REVENUE ...  
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# **Sales and Use Tax Guide**

December 2011

## SALES AND USE TAX

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Dear Tennessee Taxpayer,

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

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

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

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

Sincerely,

Taxpayer and Vehicle Services Division

Tennessee Department of Revenue  
Taxpayer and Vehicle Services Division  
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### Regional Offices

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225 Dr. Martin L. King Jr. Drive  
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## **SALES AND USE TAX**

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### **Changes to the Sales or Use Tax Guide for 2010**

(1) Revision of the Headquarters Tax Credit (Page 33) to specify that the tax credit is available only for tangible personal property that is directly related to the creation of the required new full-time jobs. Removes the provision allowing a taxpayer to qualify for the credit by making a \$50 million capital investment without the creation of any jobs.

(2) Authorizes the Commissioner of Revenue to require aviation fuel dealers to file a sales report monthly rather than quarterly for purposes of distributing revenue to the transportation equity fund. Imposes a \$500 penalty for failure to file the report as required. (Page 48)

(3) Persons who have purchased computer software or computer software maintenance contracts outside Tennessee and have paid sales tax to another state prior to becoming subject to sales tax in Tennessee are authorized a credit for the sales tax paid to the other state. (Page 19)

# SALES AND USE TAX

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## SALES OR USE TAX [Tenn. Code Ann. Sections 67-6-102, 67-6-202]

### Sales or Use Tax

The sales or use tax is a combination of a state tax (7%) and a local option tax (which varies from 1% to 2.75%) imposed by city and/or county governments. This tax is generally applied to the gross sales of any business, organization, or person engaged in retail sales, including the selling, leasing, or renting of tangible personal property and the selling of certain taxable services specified in the law. In addition, there is a state single article tax rate of 2.75%, which is discussed later in this text.

Tangible personal property and taxable services specifically intended for resale or sold to a government or sales or use tax-exempt agency are considered in the gross receipts total, but are not included in the net taxable total.

The “sales price” of an item of tangible personal property is the total amount of consideration (including cash, credit, property, and services) for which property or services are sold, including:

- + Cost of the property sold;
- + Cost of materials, labor, or service cost;
- + Costs of transportation or delivery to the seller;
- + All taxes imposed on the seller;
- + Expenses, interest, losses, and overhead;
- + Charges by the seller for services necessary to complete the sale;
- + Delivery charges made by the seller;
- + Installation charges, and
- + Exempt property given to the purchaser where taxable and nontaxable products are bundled and sold as a single product for one price.

The tax is imposed on the sales price of leases and rentals of tangible personal property and the sales price for taxable services and amusements. For example: A consumer buying four automobile tires subject to the sales or use tax is charged a fee for mounting the tires. The fee for mounting the tires is also subject to the sales or use tax.

The term “sales price” does not include:

- + Dealer cash discounts allowed on property or services purchases. Manufacturer rebates are included in the tax base.

- + Interest charges on purchases bought on an installment plan.
- + Any tax legally imposed on the consumer and separately stated on the invoice, bill of sale, or similar document given to the consumer.
- + The value of items taken as “trade-ins” on purchases of similar new or used items. The trade-in item must be listed by model and serial number, when applicable, on the customer’s invoice. [Tenn. Code Ann. Section 67-6-510]

There are some exceptions to the 7% general state sales or use tax rate:

- + Sales of food and food ingredients as defined in the law. These items are taxed at a state rate of 5.5%. What constitutes food and food ingredients is addressed later in this text.
- + Aviation fuel actually used in the operation of aircraft motors is taxed at 4.5%. [Tenn. Code Ann. Section 67-6-217]
- + Sales of property to common carriers for use outside Tennessee are taxed at the rate of 3.75%. [Tenn. Code Ann. Section 67-6-219]
- + When sold to or used by manufacturers, water is taxed at 1%, and gas, electricity, fuel oil, and other energy fuels is taxed at a rate of 1.5%. [Tenn. Code Ann. Section 67-6-206]
- + Interstate telecommunications services sold to businesses are taxed at a rate of 7.5%. [Tenn. Code Ann. Section 67-6-221]
- + Gross receipts from the sale of manufactured homes, including accessories, furnishings, and delivery or installation fees, are taxed at half the current rate of state tax. [Tenn. Code Ann. Section 67-6-216]
- + Property of a sole proprietorship that becomes property of a corporation as a result of incorporation of the sole proprietorship is not subject to tax. [Tenn. Code Ann. Section 67-6-223]
- + Cable and wireless cable television services are taxed at a state rate of 8.25% on all charges of \$15.01 - \$27.50. Charges of \$27.51 and higher are taxed at the regular state and local sales or use tax rates. Charges of \$15 or less are exempt from tax. [Tenn. Code Ann. Sections 67-6-103(f), 67-6-226, 67-6-227]
- + Sales of direct-to-home satellite television programming or television services are taxed at a state rate of 8.25% only. [Tenn. Code Ann. Section 67-6-228]
- + Electricity sold to or used by an qualified data center is taxed at a state rate of 1.5%. [Tenn. Code Ann. Section 67-6-206]

Tennessee vendors must indicate in specific ways whether customers are paying sales or use tax. If the purchase price of a product includes the tax, it must be indicated in writing on the invoice, on a sign posted in the business, or in a

## SALES AND USE TAX

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### SALES OR USE TAX (cont'd)

[Tenn. Code Ann. Sections 67-6-102, 67-6-202]

manner that is assured to make the customer aware of that fact. [Tenn. Code Ann. Section 67-6-503]

#### Local Option Sales or Use Tax

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%. The tax is imposed in the locality where water and telephone services are delivered to the consumer or where the dealer of other tangible personal property or services is located. [Tenn. Code Ann. Section 67-6-702]

The law limits some local option tax rates:

There is no local option tax on electric power or energy, natural or artificial gas, coal, or fuel oil.

The tax rate for water sold to manufacturers is 0.5%. If the local tax rate is less than 1%, the rate for water sold to manufacturers is 0.33%. [Tenn. Code Ann. Section 67-6-702]

The tax rate for sales of tangible property to common carriers for use outside Tennessee is 1.5%. [Tenn. Code Ann. Section 67-6-702]

Intrastate telecommunication services are taxed at the state rate of 7% and a flat 2.5% local tax rate regardless of the local tax rate levied by the local jurisdiction. [Tenn. Code Ann. Section 67-6-702]

Interstate and international telecommunication services sold to businesses are subject to the state tax rate of 7.5% and exempt from local tax. [Tenn. Code Ann. Section 67-6-702]

Interstate and international telecommunication services sold to persons other than businesses are subject to a state tax rate of 7% and a flat 1.5% local tax rate regardless of the local tax rate levied by the local jurisdiction. [Tenn. Code Ann. Section 67-6-702]

Video programming services including cable television, wireless cable television, and video services provided through wireline facilities that are offered for public consumption are exempt from local tax up to an amount of \$27.50. [Tenn. Code Ann. Section 67-6-714]

Vending machine sales of both food and non-food items are taxed at a flat rate of 2.25% local tax on all sales regardless of the local tax rate levied by the local jurisdiction.

Specified digital products are subject to tax, and, effective January 1, 2009, the local tax rate on digital audio-visual works, digital audio works, and digital books is set at a standard 2.50% local tax rate regardless of the local tax rate levied by the local jurisdiction. [Tenn. Code Ann. Section 67-6-702(g)]

#### Sales Tax Application to the Lease or Rental of Tangible Personal Property

For leases in which the lessee will make periodic (weekly or monthly) payments, sales tax is to be collected on each lease payment at the time the payment is due. For leases in which the lessee will make a lump sum payment up front, tax is due with that payment.

For lease contracts entered into on or after January 1, 2008, contracts for transfers of property that require the transfer of title upon completion of all payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total payments under the contract is a financing contract and not a lease. Sales tax is due at the time of sale, and the periodic payments, including interest and financing charges made under the agreement are not subject to tax.

Sales tax law assesses sales tax on the "sales price" of the lease or rental. Generally, the total amount received from the customer becomes the base for state sales tax. However, charges that are optional to the purchaser and separately stated are not part of the sales price that is subject to tax for the lease of the property. Interest charges associated with the lease or rental are included in the sales price upon which sales tax is to be collected.

For sales and use tax purposes, insurance policies such as accident, collision, and GAP on motor vehicles and charges for fuel used in motor vehicles are not included in the sales price of a lease or rental when the charges are separately stated on the invoice and the purchaser has the option of leasing the property without purchasing the insurance policy or fuel from the lessor.

## SALES AND USE TAX

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### **SALES OR USE TAX (cont'd)** [Tenn. Code Ann. Sections 67-6-102, 67-6-202]

Extended warranties or repair and maintenance agreements are specifically named in sales tax law as being subject to sales tax.

The state general sales tax rate of 7% is collected for the entire length of the lease contract. Tenn. Code Ann. Section 67-6-702 defines a “single article” for purposes of the local option tax. Generally, the local option tax is required only on the first \$1,600 of the cost of statutorily defined single articles of tangible personal property.

The state single article tax rate of 2.75% is levied on the sales price of single articles of tangible personal property beginning at \$1,600.01 and continuing up to and including \$3,200. On a lease or rental, this basically means the local tax applies to the first \$1,600 of lease or rental income on each single article, then the state 2.75% begins and continues up to and including \$3,200 on the single article lease price. Tenn. Code Ann. Section 67-6-204(c)(3) allows for a lump sum payment of the local option tax due on the cost price to the lessee; this can be remitted to the department on the sales tax return for the tax period in which the tax for the first periodic lease payment is due. [Tenn. Code Ann. Section 67-6-204 and Revenue Rule 1320-5-1-.32]

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 located in Tennessee. The lessor is required to register with the Department to collect and remit the use tax. If the lessor does not collect the tax, the lessee must remit the tax directly to the Department. If the lessor properly collects and remits sales tax to another state with respect to the lease payments, such sales tax will be a credit against the Tennessee use tax liability.

### **Who Must Have a Sales or Use Tax Registration?** [Tenn. Code Ann. Sections 67-6-102, 67-6-201, 67-6-211, and 67-6-602]

Any entity wishing to manufacture, distribute, sell, rent, or lease tangible personal property, or provide taxable services, in this state must hold a Certificate of Registration to conduct business in Tennessee. Business may be conducted by:

- + Selling, renting, or leasing, even by a transient vendor, any type of tangible personal property.
- + Selling any type of taxable service in the state.
- + Furnishing property or services that are subject to the sales or use tax.
- + Charging admission, dues, or fees that are subject to the sales or use tax.
- + Using tangible personal property not previously taxed.
- + Selling any item from a vending machine or device in which merchandise is provided upon deposit of money, other than certain vending machines operated for the benefit of tax-exempt organizations, is taxable under the sales or use tax law. A separate registration is required for vending sales.

This requirement applies whether your business is a sole proprietorship, partnership, LLC, corporation, or any other type organization including those that are not for profit. Retailers from other states that maintain a physical location in Tennessee, whether temporary or permanent, must also hold a Certificate of Registration. A business having more than one location must hold a certificate for each business location. For example: A clothing business with locations in two malls must hold a certificate for each location.

Dealers having average monthly gross sales of \$400 or less and taxable services of \$100 or less, may, at the discretion of the commissioner, be required to pay tax to their suppliers on purchases in lieu of registering for sales or use tax purposes. For these taxpayers, the department’s cost of administering the account would exceed the taxes reported.

### **Who is Liable for Sales Tax?** [Tenn. Code Ann. Sections 67-6-501, 67-6-502]

In Tennessee, the responsibility for sales tax rests on the dealer that provides the taxable transaction or service. The law requires that the dealer pass the tax to the customer; failure to do so does not relieve the dealer of the responsibility to timely remit the tax to the state. In the case of a property management company hired to manage vacation lodging for an individual property owner, the sales tax will be imposed on the gross charge for rental and will be remitted by the property management company.

Tax will be reported and paid each month based on the gross sales, or purchases, from all taxable

## SALES AND USE TAX

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### SALES OR USE TAX (cont'd) [Tenn. Code Ann. Sections 67-6-102, 67-6-202]

sales and purchases during the preceding month. The tax is will be paid on the return for the month in which the taxable event occurs, even if the tax is not collected from the customer during that month. For example: A charge sale is made during the month of June. The dealer must pay the tax on the June return even though the customer may not pay the account until July.

### Who is Liable for Use Tax? [Tenn. Code Ann. Section 67-6-203]

When a user of tangible personal property does not pay sales tax to a dealer, the user becomes personally liable for the tax. This generally occurs when a user purchases articles from an out-of-state dealer not registered for Tennessee tax. It also occurs when a dealer withdraws inventory items purchased on a resale certificate for business or personal use. For example: A clothing store owner purchases clothing on a resale certificate then takes items from inventory for personal use. Use tax is then due on that clothing.

The use tax rate is equal to the sales tax rate on both the state and local level. Use tax is due even when a citizen imports tangible personal property into Tennessee for use. For example: A business relocating to Tennessee brings property purchased in a state with no sales or use tax. The dealer would be liable for use tax on this property. [Tenn. Code Ann. Section 67-6-210]

Use tax is normally incurred when:

- + Purchasing a product in another state without paying sales or use tax and bringing it into Tennessee for use here. [Tenn. Code Ann. Section 67-6-210]
- + Purchasing a product from a mail-order catalog or on the Internet and paying no sales or use tax. [Tenn. Code Ann. Section 67-6-210]
- + Purchasing a product from a transient business that does not collect sales or use tax. [Tenn. Code Ann. Section 67-6-210]
- + Consuming or using a product that was purchased without paying sales or use tax. [Tenn. Code Ann. Section 67-6-203]
- + Consuming, as a service provider, taxable services or tangible products in the performance of a service. [Tenn. Code Ann. Section 67-6-316]

### How to Register [Tenn. Code Ann. Sections 67-6-601, 67-6-602]

#### Tennessee Retailers

Perhaps the best method of applying for the certificate of registration is to register online at <http://www.tennesseeanytime.org/bizreg/>. You may also visit one of the Department of Revenue offices listed on the inside front cover of this publication. Trained personnel are available there to explain Tennessee's tax system and answer any of your questions.

Whether registering online, in person, or by mail, you must have the following information to complete your application:

- + 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 the owner(s), partners, or officers.
- + The Federal Employer Identification Number (FEIN) issued by the U.S. Internal Revenue Service if you have one.
- + A description of the business, the type of ownership, a brief explanation of the nature of the business, and, if the business is a corporation, the date of incorporation.
- + If you have purchased your business, the name and address of the previous owner.
- + The signature, on the application, of the sole proprietor, a partner, or an officer of a corporation.

#### Out-of-state Retailers

Out-of-state retailers must register with the Department of Revenue and obtain a certificate of registration for payment of the sales or use tax if they have a "nexus" in Tennessee. Retailers are considered to have a nexus if they:

- + Have an office, distribution point, sales room, warehouse, or any other temporary or permanent place of business in Tennessee.
- + Have an agent, salesperson, canvasser, or solicitor operating in Tennessee for the purpose of making sales or taking orders for sales.
- + Furnish any property or services subject to the sales or use tax while in Tennessee.
- + Are the lessors of tangible personal property located in Tennessee?

## SALES AND USE TAX

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### SALES OR USE TAX (cont'd)

[Tenn. Code Ann. Sections 67-6-102, 67-6-202]

- + Are construction contractors performing jobs in Tennessee?
- + Have any other physical presence in Tennessee.

This requirement applies even though the sale of the product or its delivery is in interstate commerce. For example: An out-of-state computer company sells computer systems to Tennessee businesses through a salesperson that travels in this state. This business is required to obtain a certificate of registration and collect sales or use tax on the price of the system.

A business having a physical presence in Tennessee must collect and remit sales or use tax on all sales whether orders are taken in person, by phone, or by mail.

Mail-order companies that do not have a physical presence, either permanent or temporary, cannot be held responsible for collecting and remitting sales or use tax. They can voluntarily register to collect the tax for their customers. Out-of-state sellers who are not registered to collect and remit tax in Tennessee and wish to volunteer to collect tax for Streamlined states may register through the Streamlined Sales and Use Tax Central Registration System to collect tax on sales in this state. However, if sellers do not collect and remit the sales or use tax to the state, then the consumer is responsible for reporting and paying the tax. Use tax is due on products purchased from companies not registered to collect the Tennessee sales or use tax.

### Revocation of Certificate of Registration

[Tenn. Code Ann. Sections 67-6-603, 67-6-604]

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.

Any person engaging in business as a dealer in Tennessee without a certificate of registration from the department is guilty of a Class C misdemeanor. [Tenn. Code Ann. Section 67-6-606]

### Changes in Ownership, Address, or Business

[Tenn. Code Ann. Section 67-6-602]

You must notify the Department of Revenue if the business ownership changes in any manner. This change could be selling or closing the business, adding or changing partners, transferring or changing the ownership of the business, or changing corporate structure requiring a new charter or certificate of authority. You must also notify the Department of Revenue if the business location changes.

If any of the changes mentioned should occur, answer the questions on the back of the business's certificate of registration and mail it to the Department of Revenue. The new owners or officers, if applicable, must then apply for a new Certificate of Registration.

If you sell your business or go out of business, you must make a final sale or use tax return and pay all sales or use tax due within 15 days after the date you sold or quit the business. If you sold the business, the purchaser must apply for a certificate of registration in his or her own name. [Tenn. Code Ann. Section 67-6-513]

### Additional References

For additional information, or to view actual documents pertaining to Tennessee's tax laws, we invite you to visit these Internet Web sites:

For the Tennessee Code, as well as information or changes to the Sales or Use Tax law, Revenue Rulings, Important Notices, Answers to Frequently Asked Questions, and Tax Forms, visit the Department of Revenue's Web site: <http://www.TN.gov/revenue>.

Sales and Use Tax Rules and Regulations are available on the Secretary of State's web site at [www.TN.gov/sos/rules/1320/1320.htm](http://www.TN.gov/sos/rules/1320/1320.htm).

## SALES AND USE TAX

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### DEFINITIONS

#### Computer Software

Computer software is defined in sales tax law to mean a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. Computer software subject to tax includes both customized and prewritten computer software. Computer software is subject to Tennessee sales and use tax when created and sold or leased to another entity or when imported into and installed on a computer in this state. A sale of computer software is subject to tax regardless whether delivered electronically, via load and leave, or obtained on tapes, discs, cards, or other material. [Tenn. Code Ann. Section 67-6-102, 67-6-231]

Prewritten computer software means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. Computer software developed by the author to the specifications of a specific purchaser is considered to be customized computer software. [Tenn. Code Ann. Section 67-6-102]

Prewritten computer software includes: the combination of two or more prewritten computer software programs or portions; subsequent sales of computer software initially sold as customized computer software; and prewritten upgrades designed to modify or enhance previously purchased prewritten computer software.

Customized modification or enhancement to both customized and prewritten computer software is subject to tax. When a person who was not the original creator or author modifies or enhances a portion of prewritten computer software, that person is deemed the author of only those modifications and enhancements. Prewritten computer software that is modified or enhanced to the specifications of a specific purchaser remains “prewritten computer software.” However, if a separately stated reasonable charge is made for the modification or enhancement, the modification or enhancement will be considered customized computer software, not “prewritten computer software.”

A license to use computer software is a lease or rental of computer software and subject to sales and use tax.

Prewritten computer software is tangible personal property. Single articles of prewritten computer software qualify for the single article local tax limitation on the first \$1,600 of the sales price for each single article and are subject to the 2.75% additional state tax from \$1,600.01 up to and including \$3,200. Customized computer software is not tangible personal property. Customized computer software does not qualify as a “single article” as defined in Tenn. Code Ann. Section 67-6-702 and is subject to the full local sales tax, but not the 2.75% additional state tax on a single article.

Generally, all activity performed on computer software is subject to state and local sales tax. The sales price of computer software includes labor and service costs of the seller as well as services necessary to complete the sale. These activities even if separately billed as consulting services include creating, designing, developing, fabricating, programming, installing, repairing, modifying, upgrading, or other activities. Installation or repair of computer software, even in labor-only contracts when the customer provides the computer software materials and computers that are being installed or repaired, is subject to sales tax.

Activity performed on computer software for the consumer is deemed a sale subject to sales tax when the computer software remains in Tennessee, even though the billing for the sale is made to an out-of-state entity. If the software is sent out-of-state after its creation, it will constitute a sale in interstate commerce, exempt from Tennessee tax and governed according to the tax laws in the state of destination.

One area of confusion is the inclusion of services in the sales price, because the service is necessary to complete the sale of software. Tenn. Code Ann Section 67-6-102 includes services inherent to the sale of a product in the tax base in defining “sales price.” Unlike installation or repair services which are taxable services, stand alone training services are not subject to tax. Training services included in the price and not separately itemized are subject to tax as part of the sales price of the computer

## SALES AND USE TAX

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### DEFINITIONS (cont'd)

software. If the customer is required by the seller to purchase the training services with the computer software, or if the seller only provides the training services with the purchase of the computer software, the training services are considered part of the sales price of the computer software even if the seller separately itemized the price of the training services from the computer software.

Computer hardware and software maintenance contracts are subject to sales and use tax. A "computer software maintenance contract" is defined to mean 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.

A computer software maintenance contract does not include telephone or other support services that are optional purchases by the customer, that are sold separately and invoiced separately and that do not involve any transfer, repair, or maintenance of computer software on the part of the seller.

Computer software maintenance contracts are subject to Tennessee sales and use tax if:

- + The computer software maintenance contract is sold as part of or in connection with the sale of computer software that is subject to Tennessee sales or use tax;
- + The computer software maintenance contract applies to computer software installed on computers located within Tennessee; or
- + 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 located in Tennessee.

If a computer software maintenance contract applies to computer software installed on computers both in Tennessee and located outside Tennessee, sellers or users may allocate to Tennessee a percentage of the sales price or purchase price of the contract that equals the percentage of computer software installed on computers located in Tennessee.

No additional tax will be due on any repairs, modifications, updates, or upgrades provided under the terms of a computer software maintenance contract that is subject to Tennessee sales and use tax, unless the seller makes an additional charge, including a deductible charge, for such repairs, modifications, updates, or upgrades.

Additionally, a web site is considered computer software, so the sale of web site development and design are taxable under state law. If a web site is created in Tennessee for hosting outside of Tennessee, the sale is in interstate commerce and not subject to sales tax. However, if a web site is hosted in Tennessee, the sale of the computer software that is the web site is subject to sales tax. A dealer is liable for sales or use tax on any type of tangible personal property or computer software used in the conduct of business. Therefore, if a Tennessee seller creates a web site for an out-of-state customer and hosts the web site in Tennessee, the out-of-state customer is liable for tax if title to the computer software transfers to the out-of-state customer. Generally, a charge for merely hosting a web site is not taxable.

Tenn. Code Ann. Section 67-6-395 exempts, from the sales and use tax, the use of computer software that is developed or fabricated by an affiliated company, or the repair of computer software if the repair is performed by an affiliated company. For these purposes the term affiliated company requires 100% ownership between the two companies or a 100% ownership by a common parent

### **Occasional and Isolated Sales [Tenn. Code Ann. Section 67-6-102]**

Occasional and isolated sales, also known as casual and isolated sales, are sales made by persons not in the business of regularly selling the type of property being sold. These sales are not subject to tax. Occasional and isolated sales are also sales of tangible property taking place only during temporary sales periods of 30 days or less and occurring no more than twice per year. Volunteer fire departments are allowed to have such temporary sales periods which occur no more than four times per calendar year. For example: The sale of a piece of furniture in a

## SALES AND USE TAX

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### DEFINITIONS (cont'd)

yard sale and the sale of Girl Scout cookies are both considered occasional and isolated sales.

Charitable organizations whose primary purpose is fundraising in support of a county, municipal, or metropolitan library system to elect to make sales on a continuing basis in lieu of the two semi-annual sales periods. These sales will be exempt from tax as long as they do not exceed \$100,000 per calendar year. The election, once made, must remain in effect for at least four years. An election form is available on the Department of Revenue's web site. [Tenn. Code Ann. Section 67-6-102]

Churches or similar organization that regularly sells goods or taxable services are considered dealers and generally will be liable for tax on those sales. Sales of motor vehicles, boats, and airplanes are not considered occasional and isolated sales in sales tax law.

#### **Single Article** [Tenn. Code Ann. Section 67-6-702(d)]

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., that is capable of being sold as an independent item or as a common unit of measure. Independent units sold in sets, lots, suites, or such groupings, are not considered to be single articles. The local option tax rate cannot exceed 2.75% and may be assessed only on the first \$1,600 of the purchase price of any single item of tangible personal property.

Sales of taxable services, amusements, custom computer software, and warranty or maintenance contracts are subject to the full local option tax.

Applications of the "single article" include:

#### **Motor Vehicles**

Parts and accessories for motor vehicles that are installed at the factory and delivered as original equipment will be treated as part of the unit. Likewise, parts and accessories that are installed by the dealer or distributor prior to, or at the time of, sale and are included in the sale price will also be considered as part of the unit. This also applies to parts or equipment required to be installed prior to the sale because of state or federal law.

#### **Boats**

Boat motors and any dealer installed accessories that are installed prior to the sale, freight, and labor, excluding trailers, will be treated as part of the boat unit in the same manner as parts and accessories for motor vehicles are treated for purposes of the single article local tax limitation. Items such as skis, ski ropes, personal flotation devices, and similar items are not considered part of the single item. Boat trailers will be taxed as a separate single item. The state tax rate applies to the total bill of sale.

#### **Manufactured Homes**

Parts, accessories, furniture, appliances, and other items that are part of a manufactured home at the time of sale are treated as parts of the single unit for purposes of the single article local tax liability. Also included as part of the single article price are delivery fees, installation fees, and other incidental items that are part of the sale. Installation includes charges made for setup, plumbing hookup, and electrical hookup.

#### **State Tax on Purchases of Single Articles**

Effective July 15, 2002, an additional state sales or use tax at the rate of 2.75% is levied on the portion of the sales price, from \$1,600.01 up to and including \$3,200, of any single article sold.

This is a state tax only. This portion of the single article sales price is not subject to local tax.

#### **Computing Sales Tax Due on Single Articles**

Assume that the total sales price, including all associated charges, of a single article is \$20,000. Tax computation would be calculated as follows:

- (a) The general state sales tax rate of 7% applies to the total \$20,000 sales price.  $\$20,000 \times 7\% = \$1,400$ .
- (b) The local option sales tax applies to the first \$1,600 of the sales price. The local option sales tax rate in Davidson County is 2.25%.  $\$1,600 \times 2.25\% = \$36$ .
- (c) The state single article sales tax applies to the sales price from \$1,600.01 up to and including \$3,200 (the second \$1,600 of the sales price). The state single article rate is 2.75%.  $\$1,600 \times 2.75\% = \$44$ .

## SALES AND USE TAX

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### DEFINITIONS (cont'd)

(d) In this example, the total sales tax is \$1,480.

If a single article with a total sales price of \$20,000 has \$5,000 in manufacturer's rebates applied, making the total amount the consumer pays only \$15,000, the consumer still owes sales and use tax on the full \$20,000 sales price before application of the rebates. The sales price of \$20,000 has not changed, even though the consumer received a payment break because a portion of the sales price is rebated to the dealer by the manufacturer.

If a consumer purchases an extended warranty plan on a single article, the warranty plan is also taxable, and tax must be computed separately on the single article and the warranty. Failure to separately state the price and compute the tax may result in assessment of the full local tax from the consumer. And, because an extended warranty contract does not qualify as a single article of tangible personal property, the local option tax rate applies to the entire purchase price, even if it exceeds \$1,600. There would be no state single article tax application to the purchase price of the warranty contract.

#### **Tangible Personal Property** [Tenn. Code Ann. Sections 67-6-102, 67-6-202, 67-6-203]

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses, and includes electricity, steam, water, gas, and prewritten computer software.

Tangible personal property does not include stocks, bonds, notes, insurance, and other securities. It does not include signals broadcast over the airwaves.

#### **Third Party Drop Shipments** [Sales or Use Tax Rule 1320-5-1-.96]

Third party drop shipment transactions typically involve a dealer registered for Tennessee tax (Dealer A), selling to an out-of-state dealer not registered for Tennessee tax (Dealer B). Dealer A drop ships the product to Customer C (Dealer B's customer) in Tennessee.

If Customer C is a dealer buying for resale, a nonprofit entity issued a Tennessee exemption certificate, or if the transaction is exempt from the Tennessee tax in any way, Customer C's Tennessee exemption documentation can flow through Dealer B, back to Dealer A and relieve Dealer A of the Tennessee sales tax obligation.

If the transaction is a transfer of taxable merchandise to a non-exempt consumer, the only relief for Dealer A is a Tennessee resale certificate with a Tennessee registration number issued to Dealer B. Neither Dealer B's home state resale certificate nor Customer C's declaration that it will pay use tax is of any value in exempting Dealer A. That Dealer B may not have a physical presence in Tennessee is not material in this situation. However, Dealer B can pay the tax to Dealer A and pass its value to Customer C.

Dealer B's home state resale certificate is not acceptable in this scenario because there is never a transfer of ownership or possession outside Tennessee. Because the shipment begins with a Tennessee-registered dealer and ends with a Tennessee customer, the shipment is deemed an in-state shipment for purposes of determining sales tax liability.

#### **Specified Digital Products** [Tenn. Code Ann. Section 67-6-102]

Tennessee sales and use tax law defines specified digital products. Specified digital products are products that are electronically transferred to the purchaser or accessed electronically by the purchaser. The sale, lease, licensing, or use of products that are specified digital products are subject to the sales and use tax.

Products that are defined as specified digital products include the following products:

Digital audio-visual works: A series of related images which, when shown in succession, impart an impression of motion, together with any accompanying sounds, that are transferred electronically. Examples include motion pictures, musical videos, entertainment and news programs, and live events.

Not included are video greeting cards sent by electronic mail, video or electronic games, and

## SALES AND USE TAX

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### DEFINITIONS (cont'd)

individual digital photographs that do not impart an impression of motion when viewed successively.

Digital audio works: Works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recordings.

Not included are audio greeting cards sent by electronic mail.

Digital books: Works generally recognized in the ordinary and usual sense as “books” that are transferred electronically, including works of fiction and nonfiction and short stories.

Not included are newspapers, magazines, periodicals, web blogs, and chat room discussions.

Taxable retail sales of specified digital products include:

- + Obtaining the specified digital products by download or access online;
- + Subscription fees (monthly, yearly, etc.) for access to or downloads of specified digital products;
- + Sales in which the seller limited the time a purchaser has access to or can download the specified digital products; and
- + Sales of digital codes that are to be used by the purchaser to download or access specified digital products.

Digital codes may be obtained in a tangible form such as a card or through an e-mail. By entering the code, the purchaser can download or access the specified digital products.

## SALES AND USE TAX

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### FOOD AND FOOD INGREDIENTS

[Tenn. Code Ann. Sections 67-6-102, 67-6-228]

Tennessee sales or use tax law provides that sales of food and food ingredients are subject to a state rate of 5.5% plus the applicable local tax rate. [Tenn. Code Ann. Section 67-6-228]

#### What Are “Food or Food Ingredients?”

In specifying that food and food ingredients remains at the 5.5% state rate, the law defines “food and food ingredients” to mean “substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.”

The law also specifies that the 5.5% rate does not apply to candy, dietary supplements, or prepared food.

#### Examples of “Food or Food Ingredients”

The following is a partial listing of items that meet the requirements to be considered food and food ingredients and are subject to the 5.5% state rate, if not prepared by the seller. This list is not all-inclusive.

Baking powder, baking soda, bread, cakes and pies, cereal, chip dip, chips, cocoa and beverage powders other than dietary supplements, coffee, condiments, cookies, cooking oil, dairy products, fruit (fresh or dried), eggs, fish and meats, flour, frozen meals, fruit juices, gelatin, gravies and sauces, herbs and spices, ice cream, sherbet, frozen yogurt, ice, margarine and shortening, nuts, popcorn, poultry, pumpkins, raisins, relishes, salad dressing, salt and pepper, soft drinks, sugar, sweeteners, vegetables, tea, and water.

The following is a partial list of items that are not considered food or food ingredients and are taxed at the 7% rate. This list is not all-inclusive.

Baking chips, baking bars, candy-coated items, beer, alcoholic beverages, breath mints, cake decorations, cigarettes and other tobacco items, cough drops and lozenges, dried fruit with sweeteners, gum, herbal supplements, honey roasted or coated nuts, marshmallows, party trays, vitamins, and minerals.

### Items Not Taxable at the 5.5% Food Rate

#### Candy

“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. Candy does not include any preparation containing flour and must require no refrigeration. If an item requires refrigeration or has the word “flour” as an ingredient on the label, it is not candy.

Examples of items that are considered to be candy (the list is not all-inclusive) are breath mints; candy bars; chocolate chips; fruit roll-ups; marshmallows; caramel corn; caramel apples; chocolate- or carob-covered raisins or nuts; sweet or semi-sweet cooking bars or chips; gum; honey roasted or beer nuts; trail mix that includes candy; peanut brittle; sugarless candy; and yogurt-covered raisins or nuts.

#### Dietary Supplements

In order to be considered a dietary supplement, a substance must meet all of these criteria:

“Dietary supplements” contain one or more of the following dietary ingredients: 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; or a concentrate, metabolite, constituent, extract, or combination of the ingredients listed.

Dietary supplements are also intended for ingestion as a tablet, capsule, powder, softgel, gelcap, or liquid form. If it is not intended for ingestion in one of these forms, it is not represented as conventional food and is not represented to be the sole item of a meal or diet.

Dietary supplements must be labeled as a dietary supplement, identifiable by the “Supplement Facts” box found on the label and required by federal regulations. Any item that is required to have a “Supplement Facts” label is taxable at the full 7% state rate plus the applicable local rate.

These items include amino acids; antioxidants; bee pollen; enzymes; garlic capsules; ginseng;

## SALES AND USE TAX

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### FOOD AND FOOD INGREDIENTS (cont'd)

herbal supplements; immune supports; lecithin; metabolic supplements; vitamins and minerals; and zinc lozenges. This list is not all-inclusive.

#### Meal Substitutes

Meal substitutes are taxable at the 5.5% state rate and applicable local rate. Meal substitutes are labeled with "Nutrition Facts" and include unsweetened breakfast bars or those containing flour; unsweetened dried fruit snacks; drinks such as Ensure or Boost; pop tarts; and soup mixes. This list is also not all-inclusive.

#### Prepared Food

"Prepared food" means food that is sold in a heated state or that is heated by the seller; food where two more food ingredients are mixed or combined by the seller for sale as a single item; or food sold with eating utensils, provided by the seller, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws. The seller may prepare the item where the food is sold or at another location.

Food that is only repackaged, pasteurized, or sliced by the seller is not considered to be prepared food. Serving size or quantity does not affect the taxability of a food item.

Effective January 1, 2008, the definition of prepared food was amended to clarify: (1) tax application when utensils are provided by the seller, and (2) that food ingredients mixed or combined by the seller that contain raw animal foods requiring cooking by the consumer are no longer defined as prepared food. Examples include: marinated raw meats, uncooked meatloaf, marinated raw seafood, combined raw meats, and cookie dough containing raw eggs.

The term "seller" means the legal entity that sells the product at retail. If the seller prepares and sells the food item, the item is taxed at the 7% state rate plus the local option rate. 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 5.5% state rate plus the local option rate, unless the legal entity preparing the food is an agent of the seller.

Examples of prepared food items taxable at the 7% state plus local rate are any food item sold in a heated state, if prepared by the seller; bakery goods made by the seller; cold or frozen meals and soups that are ready to heat and eat; fruit trays, coffee or tea prepared by the seller; ice cream in cones, sundaes, or such preparations; party trays; ready to eat meats, poultry, or fish (cooked, smoked, or dried such as summer sausage, beef or venison sticks, and smoked fish); rotisserie chicken; salad greens mixed by the seller; salads and other deli dishes; sandwiches; soups, casseroles, or meals sold warm and ready to eat; warmed or honey roasted nuts.

Food that is not prepared by the seller, but is sold with eating utensils provided by the seller, is prepared food and is taxable at the 7% state rate plus the applicable local rate. Eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, napkins, cups, and straws. A plate does not include a container or packaging used to transport the food. An example is a container or tray that is packaging for a frozen dinner and also serves as a plate.

Box lunches with straws, napkins, plastic forks, and other utensils are considered prepared food. If the manufacturer, rather than the seller, provides an eating utensil with the food, that food is not considered prepared food and is taxable at the 5.5% state rate plus the applicable local rate. For example, a box of crackers with cheese spread that comes with a plastic spreader is subject to the 5.5% state tax plus the applicable local tax because the spreader is not provided by the seller.

Eating utensils other than plates, bowls, glasses, or cups necessary for the purchaser to receive the product are "provided by the seller" if the seller's practice is to: (1) physically give or hand the utensils to the purchaser, or (2) make the utensils, such as napkins or straws, available out on counters and the seller's percentage of food that is otherwise considered prepared food is greater than 75% of all food sales.

## SALES AND USE TAX

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### TAX CREDITS

#### **Credits** [Tenn. Code Ann. Section 67-6-507]

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 for the current month's return. The dealer must maintain records clearly indicating that the price of the item plus the sales or use tax was refunded to the consumer.

A dealer who repossesses, or enforces a lien against, property the dealer has sold, on which there is an unpaid balance of greater than \$500, may deduct on the current report an amount equal to the unpaid balance minus \$500. The amount of unpaid balance does not include interest, carrying charges, or other similar charges. The dealer must document the credit by maintaining records on the parties and items involved, dates of the sale and the repossession, the original purchase price, and the amount of the unpaid balance.

Auto body paint shops may take a credit of 100% of the cost of equipment purchased to comply with governmentally imposed pollution control standards. Dry cleaners may take a credit of 50% on replacement equipment purchased to comply with governmentally imposed pollution control standards. Application must be made to, and approval received from, the Department of Revenue. Those businesses taking either credit will provide documentation that the equipment was necessary for compliance with current standards.

A credit or refund is also available to anyone purchasing pollution control equipment required by law that is used to treat pollution created by the taxpayer. The credit does not apply to taxpayers that primarily treat pollution created by others.

The pollution control equipment credit also applies to machinery and equipment used to produce electricity in a certified green energy production facility, as defined in Tenn. Code Ann. Section 67-4-2004. A copy of the Certification issued by the Department of Environment and Conservation must be furnished to the Commissioner of Revenue by

the taxpayer to establish entitlement to the credit. [Tenn. Code Ann. Section 67-6-346]

A dealer who has paid the sales or use tax on a sale to an account that later becomes a bad debt and is charged off for federal income tax purposes may take that sale amount as a credit on the current report. If that account is then paid to the dealer, the dealer will report amounts paid in the next regular return and the tax amount due.

There is a credit of the amount of any special contractor tax paid in another state for the sale of materials used by fire protection sprinkler contractors for fabrication of pipe and pipe fittings or use valves and pipe fittings in the performance of out-of-state contracts. The credit will be limited to the tax on the value of the materials. [Tenn. Code Ann. Section 67-6-355]

#### **Sales or Use Tax Paid in Another State**

Persons having paid a legally imposed sales or use tax to another state on tangible personal property imported into Tennessee may claim that payment as a credit against any use tax liability in this state. If the tax paid was less than what is due in Tennessee, the taxpayer will be liable for the difference. [Tenn. Code Ann. Section 67-6-507]

Residents of other states who move to Tennessee and import their automobiles, personal effects, and household goods into the state are not liable for use tax on these goods purchased prior to the relocation. This does not apply to property imported for business purposes. [Tenn. Code Ann. Section 67-6-210]

Persons who have purchased computer software or computer software maintenance contracts outside Tennessee and have paid sales tax to another state prior to becoming subject to sales tax in Tennessee are authorized a credit for the sales tax paid to the other state.

#### **Emerging Industry Credit**

A taxpayer that establishes a qualified facility to support an emerging industry or major cultural attraction in Tennessee is eligible for a credit of all sales and use tax paid to Tennessee, less 0.5%, on the sale or use of qualified tangible personal property.

## SALES AND USE TAX

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### TAX CREDITS (cont'd)

“Emerging industry” is an industry promoting high-skill, high-wage jobs in high-technology areas, emerging occupations, or clean energy technology, including, but not limited to, clean energy technology research and development and installation as determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development.

Clean energy technology is technology resulting in energy efficiency, technology used to generate energy from biomass, geothermal, hydrogen, hydropower, landfill gas, nuclear, solar, and wind sources, and technology that is designed to result in the development of advanced coal through carbon capture and sequestration or other manner that significantly reduces CO<sub>2</sub> emissions.

Businesses engaged in the development and construction of coal-fired power plants are not eligible for the emerging industry tax credit.

“Qualified facility” means a building or buildings, improvements and other infrastructure built or installed in conjunction with operations at such building(s), either newly constructed, remodeled, or expanded, and located in a county or metropolitan statistical area in Tennessee where the taxpayer has made a minimum investment of \$100 million or more during an investment period beginning one year prior to the start of construction, expansion, or remodeling, and ending three years after substantial completion of the qualified facility. The investment period cannot exceed six years. The qualified facility must maintain 50 qualifying full-time employee positions and be utilized to support an emerging industry for a period of at least 10 years beginning from the date of substantial completion.

“Qualified tangible personal property” means building materials, machinery, equipment, furniture, and fixtures used exclusively in the qualified facility and purchased or leased during the investment period and computer software used primarily in the qualified facility and purchased or leased during the investment period. Supplies or repair parts are not included, nor are payments with respect to leases of qualifying tangible personal property that extend beyond the investment period. It does not include

materials, machinery, or equipment that replaces tangible personal property that previously generated an emerging industry credit.

A “major cultural attraction” means a historical site that has been in existence at least 25 years, attracts at least 500,000 tourists each year, and significantly contributes to the Tennessee tourism industry, as determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development, but does not include any theme park or trade show facility.

To qualify, a taxpayer must be subject to the franchise and excise taxes or be an insurance company as defined in Tenn. Code Ann. Section 56-1-102(2). Most other franchise and excise tax credits, exemptions, or reduced rates cannot be taken as a result of the same purchases or minimum investment claimed in connection with the emerging industry credit. The credits that can be taken are specified in the statute.

The taxpayer must submit an application to the Commissioner of Revenue to qualify as a qualified facility and a plan describing the investment to be made. If the qualified facility is leased, the lessor will also file an application and plan if any of the 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 of tentative approval to the taxpayer.

The taxpayer must submit a claim for credit and required documentation showing that sales and use tax has been paid to Tennessee on the qualified tangible personal property. When the 50 full-time employee and the minimum investment requirements have been met, the Commissioner will review the claim for credit and notify the taxpayer of the approved credit amount and how to take the credit. The credit cannot be taken until notification is received from the Commissioner. The credit can only be taken by the taxpayer establishing the qualified facility.

If the qualified facility does not maintain 50 qualifying full-time positions or is not used to support an emerging industry for at least 10 years, the taxpayer will be assessed the amount of sales and use tax, plus any penalty and

## **SALES AND USE TAX**

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### **TAX CREDITS (cont'd)**

interest, that would otherwise have been due or for which credit was taken prorated for the amount of time during which the taxpayer remained qualified for the credit. [Tenn. Code Ann. Section 67-6-232]

#### **Fuel or Petroleum Products Sold to Air Common Carriers** [Tenn. Code Ann. Section 67-6-349]

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 a manner exempt under Tenn. Code Ann. Section 67-6-349(a), may, upon meeting certain criteria, take a credit equal to the amount of tax previously remitted to the department.

The dealer must provide a credit/refund to the common carrier, obtain documentation sufficient to establish that the fuel was used in an exempt manner, and must take the credit on a tax return filed within one year of the date the tax was initially remitted to the Department of Revenue.

## SALES AND USE TAX

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### TAXABLE AND NON-TAXABLE PROPERTY AND SERVICES

#### Taxable Tangible Personal Property [Tenn. Code Ann. Sections 67-6-102, 212]

Most sales, leases, or rentals of tangible personal property are taxable under Tennessee sales and use tax law. “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses, and includes electricity, steam, water, gas, and prewritten computer software. Examples are:

- + Items sold by grocers to consumers at retail.
- + Clothing and other items of personal apparel.
- + Motor vehicles and marine vessels including repair parts and accessories.
- + Watches, rings, and other items of jewelry.
- + Building materials sold at retail or to realty contractors.
- + Supplies sold to and used or consumed by dentists and veterinarians.
- + Furniture, appliances, and home furnishings.
- + Electronic equipment and supplies.
- + Computer hardware, software, and peripherals.
- + Souvenirs, gifts, and novelty items.
- + Books, magazines, and other periodicals.
- + Cellular phones and pagers.
- + Prepared meals and beverages purchased from restaurants.
- + Water, gas, and electricity.

This list is not all-inclusive. Many other items of tangible personal property are subject to the sales or use tax.

#### Specified Digital Products

The retail sale, licensing, lease, or use of specified digital products electronically transferred to or accessed electronically by users in Tennessee is subject to sales and use tax. Specified digital products include digital videos, digital music, ringtones, and digital books, as defined in the law.

#### Services

Most services are not subject to the sales tax. However, some services are specifically named in the law as being subject to the tax. The following examples are services that are taxable under Tennessee law. While not necessarily all-inclusive, this list may assist you in determining if your type of service is taxable. Please contact

the Department of Revenue if you have questions about any specific service.

#### Prepaid Telephone Calling Cards

The sale of a prepaid calling service and prepaid wireless calling service is subject to the state and local tax at the time of the sale or the recharging of the calling card or authorization code to use the calling card. No additional tax is due when the telecommunications service is accessed or received by the user of the calling card or authorization code. [Tenn Code Ann. Section 67-6-230(a)]

#### Taxable Services [Tenn. Code Ann. Sections 67-6-205, 67-6-212, 67-6-226, 67-6-227]

Charges for the use of rooms or accommodations furnished for periods of less than 90 days by hotels, motels, inns, or other tourist lodgings. The tax does not apply to accommodations or rooms furnished to the same person for 90 or more continuous days.

Charges for the use of or the value of any time-share estate and any charges for the use of or the value of the use 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.

Amounts paid as a standard fee for the service of facilitating the exchange of one timeshare 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. 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 time-share lease.

Charges for services rendered in the operation of parking or vehicle storage facilities. The tax does not apply for parking in state and local government facilities or on the street where the fees are collected by state or local government parking meters. The storage of property other than motor vehicles is not a taxable service.

Charges for repair services, both parts and labor, of tangible personal property such as automobiles, business machines, and appliances.

## SALES AND USE TAX

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### TAXABLE AND NON-TAXABLE PROPERTY AND SERVICES (cont'd)

Charges for warranty or service contracts, provided that repairs performed under such contracts are not also subject to tax.

Charges for installation of items of tangible personal property that remain tangible personal property after installation. An example is the charge made by a retailer to set up computer hardware in the buyer's home.

Charges for laundry and dry-cleaning services except for coin-operated facilities.

Furnishing intrastate, interstate, or international telecommunications services or ancillary services for a consideration.

Charges for bathing and grooming animals. This service is taxable on the total charge if both the bathing and grooming are performed for a single charge. Bathing charges billed separately are 100% taxable. There is no tax applied to bathing performed for a medical purpose by a licensed veterinarian as a part of the practice of veterinary medicine. There is no tax on grooming services billed separately.

Enriching uranium materials, compounds, or products performed on a cost-plus or "toll enrichment fee" basis.

Charges for renting space to a dealer with no permanent location in Tennessee or to a dealer registered for sales in another part of Tennessee but making sales at this location on a temporary basis. This does not include space rental at flea markets, craft fairs, or antique malls. This does not include gun shows or book fairs sponsored by nonprofit organizations. This also does not include conventions, trade shows, or expositions that do not allow the general public to make sales in the exhibit area.

Charges for television programming services; charges or subscriptions for access to or use of television programming by a video programming services provider; and charges for or subscription to access or use direct-to-home satellite services.

Also taxable under Tenn. Code Ann. Section 67-6-212 are charges for a variety of amusement, recreation, and entertainment activities such as:

- + Membership dues to sports and recreation clubs or health spas.
- + Admissions to sporting events, musical and theatrical performances, and other amusements except as exempted by law.
- + Charges for entering or engaging in any kind of recreational activity.
- + Charges for using tangible personal property for amusements, sports, entertainment, or recreational activities such as golf carts, tennis courts, or bowling shoes.
- + Complimentary dues and fees, with a value equal to the normal cost, except when provided to students at a public school or university.

### Non-taxable Tangible Personal Property

Some items of tangible personal property are specifically exempted from sales or use tax either by Tennessee law or when purchased by specific entities or for specific purposes. These items and entities are discussed later in this publication.

### Non-taxable Services

Examples of some non-taxable services in Tennessee are:

- + Furniture moving.
- + Barber and beauty shop services.
- + Hospital, physician, and dental services.
- + Carpet cleaning.
- + Window washing.
- + Taxidermy services.
- + Use of recording studios and television studios.
- + Furnishing of equipment when the owner provides a person, or crew, to operate it. Continuous supervision and control are required.
- + Carpentry, painting, and carpet installing.
- + Lawn mowing.

Sales of goods or property to these providers that are consumed or used in the performance of their services are subject to the sales or use tax. Any items of tangible personal property sold by these providers, separately from their services are also subject to the sales or use tax.

These property and services listings are not necessarily all inclusive. Tax laws in Tennessee are also amended from time to time; some items may be added or deleted. Any questions concerning the taxability of tangible personal property or services should be directed to the Taxpayer and Vehicle Services Division.

## SALES AND USE TAX

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### EXEMPTIONS REQUIRING CERTIFICATES

Three general types of exemptions are provided in Tennessee sales or use tax law. These are exempt entities, exempt items, and exempt transactions. Many exempt transactions and sales to exempt entities require that the purchaser claiming the exemption provide specific documentation to the dealer. The dealer is required to keep the exemption documentation on file to support the exempt sales for audit purposes.

#### Documenting Exemptions

Certificates are used to document authorization for purchasing tangible personal property and taxable services free of tax. These certificates are issued directly to the specific taxpayer upon application to and verification by the Department of Revenue. A copy of the certificate is then given to the seller by the taxpayer wishing to purchase free of tax.

In lieu of obtaining copies of certificates, sellers may obtain a fully completed Streamlined Sales Tax Certificate of Exemption form which must include the exemption number appearing on the certificate issued to the purchaser by the Department of Revenue. Sellers may obtain the certificates claiming exemptions in an electronic format or medium. Sellers are liable for tax on sales where the seller failed to obtain and keep exemption certificates authorizing the tax-free sales.

**Blanket Certificate of Resale** [Tenn. Code Ann. Sections 67-6-102, 602; Sales or Use Tax Rule 1320-5-1-.68]

Sellers shall require certificates of resale for all tangible personal property sold, or services rendered in this state, for the purpose of resale. These certificates must be available for audit. A person duly registered under the provisions of the sales tax law, and continually engaged in the business of selling tangible personal property or taxable services at retail shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of the business operation and the purchases are of tangible personal property or taxable services of the kind usually purchased by the purchaser for resale. This

certificate remains good until revoked in writing by the issuer.

A “sale for resale” does not include a sale of tangible personal property or computer software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services will be considered the end user and consumer of property used in the selling, performing, or furnishing of the services sold.

“Sale for resale” does include:

- + Repair parts or other property sold to a dealer if the property is subsequently transferred to the customer in conjunction with the dealer’s performance of repair services.
- + Installation parts or other property sold to a dealer if the property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property after installation.
- + Mobile telephones and similar devices sold to a dealer if the property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services.
- + Food or beverages sold to a hotel, motel, inn, or other provider of lodging accommodations if such food and beverages are subsequently transferred to the customer in conjunction with the sale of lodging accommodations to the customer.

Whether or not the dealer makes a separately stated charge for the property is not material.

“Sale for resale” also does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental.

A dealer that sells, leases, or rents tangible personal property or computer software is considered the end user and consumer of the services used in conducting such business. [Tenn. Code Ann. Section 67-6-102]

## SALES AND USE TAX

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### EXEMPTIONS REQUIRING CERTIFICATES (cont'd)

All sales for resale that are not supported by resale certificates or a fully completed Streamlined Sales Tax Certificate of Exemption indicating the purchases are for resale shall be deemed retail sales, and the seller will be held liable for the tax.

Certificates of resale may not be used to obtain tangible personal property or taxable services that would be used by the purchaser, not resold.

Such use will be grounds for the commissioner to revoke the registration certificate of the purchaser wrongfully making use of the certificate of resale. In addition to this penalty, it is a misdemeanor to misuse the certificate of registration and resale certificate for the purpose of obtaining tangible personal property or taxable services without the payment of the sales or use tax when due.

Purchasers providing sellers with certificates of resale for property or services that are used and not resold will be held liable for the tax. Sellers that fraudulently fail to collect tax or that solicit a purchaser to participate in the unlawful claim of an exemption will be held liable for the tax.

For example, it would be proper use of a resale certificate for a candy wholesaler to accept a resale certificate for candy purchased by a grocery store. It is reasonable for the wholesaler to believe the candy will be resold by the grocery store; the sales or use tax will be collected on the final sale to the customers.

However, it would be improper for an automobile dealer to issue a resale certificate for its purchase of office furniture to a furniture dealer. The automobile dealer will be held liable for the tax not paid as a result of issuing a resale certificate for the furniture purchased for use and not resold. If it is determined that the furniture dealer unlawfully solicited the automobile dealer to issue the resale certificate to purchase the furniture tax free, the furniture dealer will be held liable for the tax.

If a buyer purchases for resale and later uses the product rather than reselling it, the buyer is responsible for reporting and paying sales or use tax on the items used. This must be done on the

sales or use tax return for the period in which the goods were used.

### Direct Pay Permits

A direct pay permit is special written permission granted to a registered taxpayer by the commissioner to make all purchases free of tax. The taxpayer must then report all sales or use taxes due directly to the Department of Revenue. Tennessee will not accept direct pay permits issued by other states. This permission may be extended only under exceptional circumstances or hardship to the taxpayer. A copy of the direct pay permit issued by the Department of Revenue shall be filed with the wholesalers or retailers. This special written permission to remit the sales or use tax shall in no way alter or affect the criteria for determining whether a transaction is taxable in Tennessee.

In lieu of obtaining a copy of the direct pay permit, sellers may obtain a copy of a fully completed Streamlined Sales Tax Certificate of Exemption form, which must include the account number appearing on the direct pay permit issued to the purchaser by the Department of Revenue. [Tenn. Code Ann. Section 67-6-102; Sales or Use Tax Rule 1320-5-1-.68(4)]

### Government Certificate of Exemption

This exemption is valid for entities of the United States government, the state of Tennessee, and counties and municipalities in Tennessee. Sales to other state governments or to cities and counties outside this state are not exempt from tax. This exemption form is generic in nature and is not issued to a specifically named government entity. The government entity must enter its name in the block provided on the exemption form. The completed form is valid for purchases made by the governing entity. Employees traveling on paid expense accounts or paying with personal funds (checks or credit cards) cannot use the government exemption for purchases. The government exemption form certificate has no expiration date.

In lieu of obtaining a government exemption form, sellers may obtain a fully completed Streamlined Sales Tax Certificate of Exemption form. On Line 4 of the Streamlined form, the purchaser should circle Item 18 for government

## SALES AND USE TAX

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### EXEMPTIONS REQUIRING CERTIFICATES (cont'd)

organizations and on Line 5, circle Item B, and include the name of the government entity claiming the government exemption.

#### **Certificate of Exemption for Nonprofit Organizations** [Tenn. Code Ann. Section 67-6-322]

This certificate is used by non-governmental organizations, that have been issued a certificate of exemption by the Commissioner of Revenue to purchase free of tax, to buy goods and taxable services that the organization will use, consume, or give away. The certificate will contain an exemption number that is unique to the organization receiving the letter.

The seller making a sale to one of these organizations must maintain a copy of the exemption certificate in the entity's files for audit purposes.

In lieu of obtaining a nonprofit organization exemption certificate, sellers may obtain a fully completed Streamlined Sales Tax Certificate of Exemption form. On Line 4 of the Streamlined form, the purchaser should circle either item 16 for education or health care services or item 17 for religious or educational organizations. On Line 5, the purchaser should circle either item E for charitable organizations or item F for religious or educational organizations. The Streamlined form must include the exemption number appearing on the nonprofit exemption certificate issued to the organization by the Department of Revenue.

When accepting an exemption, the seller must ensure that the purchase is billed to the exempt organization and is paid for with checks or credit cards of the organization. Members and employees of the organization may not use the exempt organization's exemption certificate to make tax-free purchases for the member or employee's own use.

Sellers that have obtained a copy of the nonprofit exemption certificate or a fully completed Streamlined exemption form and ensured billing to and payment by the exempt organization are not liable for the tax if the purchaser improperly claimed the exemption for the purchases. The purchaser will be liable for the tax.

These organizations include churches, temples, synagogues, mosques, boys' and girls' clubs, universities, colleges, schools, orphanages, foster home institutions, homes for the aged, hospitals, community health councils, volunteer fire departments, organ banks, organizations primarily for the spiritual and recreational environment of the armed forces, state-owned historical properties, nonprofit community blood banks, senior citizen centers, certain nonprofit talent and beauty contest corporations, and 26 USC Section 501(c)(3) organizations, (c)(5) labor organizations, (c)(13) nonprofit cemeteries, and (c)(19) wartime veterans' organizations.

Out-of-state organizations that hold a federal tax exemption under 26 USC Section 501(c)(3) must submit a copy of their federal exemption letter in lieu of a certificate of exemption from the Commissioner of Revenue. Instate Section 501(c)(3) entities require a certificate of exemption issued by the Commissioner of Revenue or a properly completed Streamlined Sales Tax Certificate of Exemption. A properly completed Streamlined Sales Tax Certificate of Exemption must include the nonprofit tax number issued to the entity by the Department of Revenue.

Other than out-of-state 501(c)(3) letters, Tennessee does not accept nonprofit or charitable exemption documents issued by other states.

#### **Certificate of Exemption for Qualified Call Centers** [Tenn. Code Ann. Section 67-6-356]

Sales of interstate telecommunications services to businesses for operation of one or more call centers are exempt upon presentation of an appropriate exemption certificate. Call centers are single locations having at least 250 employee jobs and utilizing telecommunications services in one or more of the following activities:

- + Customer services.
- + Soliciting sales.
- + Reactivating dormant accounts.
- + Fund raising.
- + Conducting surveys or research.
- + Collection of receivables.
- + Receiving or taking orders.
- + Receiving reservations.

## **SALES AND USE TAX**

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### **EXEMPTIONS REQUIRING CERTIFICATES (cont'd)**

#### **Agricultural Exemption Certificate** [Tenn. Code Ann. Section 67-6-207]

A discussion of this certificate is found later in this Sales or Use Tax Guide.

## SALES AND USE TAX

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### EXEMPTIONS REQUIRING DOCUMENTATION

Under sales or use tax law, some sales are tax-exempt without the necessity of a certificate issued by the department but do require documentation between the seller and buyer. Examples of the many exemptions that fall under this category are shown below, but this list is not all-inclusive. Dealers should contact the department for more information on the types of exemptions available.

#### **Removal from Tennessee by Buyer**

Tennessee law allows a buyer to purchase a motor vehicle in Tennessee and have up to three days to remove the motor vehicle to another state without having to pay sales or use tax on the purchase. This exemption applies to all motor vehicles that would be subject to registration and titling in Tennessee were the vehicle to remain in-state. This also includes all off-highway motor vehicles as defined in Tenn. Code Ann. Section 55-3-101(c)(2).

There is also a provision under Tennessee law that exempts, from the sales or use tax, the retail sale of boats, motorboats, and other vessels that are subject to registration in this state that are removed from Tennessee to another state within three days after purchase.

When purchasing these items under this privilege, the buyer presents the seller with the Seller/Purchaser Affidavit of Exemption for Motor Vehicles, Boats, and Vessels Sold For Removal From Tennessee Within Three Days indicating the city and state to which the item will be delivered. [Tenn. Code Ann. Sections 67-6-313, 343, 345]

#### **Exemption for Railroad Track Materials and Locomotive Radiators**

This exemption is for railroads seeking to purchase railroad track materials and locomotive radiators for use outside the state of Tennessee as provided in Tenn. Code Ann. Section 67-6-340. If the railroad fails to keep records sufficient to prove these materials were used out-of-state and not within Tennessee, then the railroad will be liable for the sales or use tax on these items. [Tenn. Code Ann. Section 67-6-529]

**Exemption for Rural Electric Cooperatives, Community Service Cooperatives, and Governmental Utility Districts** – for entities organized under Tenn. Code Ann. Sections 65-25-201, et seq., and Tenn. Code Ann. Sections 7-82-101, et seq.

**Exemption for Electric Generating and Distribution Systems, Resource Recovery Facilities, or Coal Gasification Plants** – for entities created by the federal, state, or local governments under the Electric Membership Corporation or the Electric Cooperative Laws.

## SALES AND USE TAX

### AGRICULTURAL EXEMPTIONS

#### Agricultural Exemption Certificate

Farmers, timber harvesters, and nursery operators must qualify for and receive an Agricultural Sales and Use Tax Certificate of Exemption from the Department of Revenue to make agricultural purchases exempt from tax. A qualified farmer, logger, or nursery operator must present a copy of the agricultural exemption certificate issued by the Commissioner of Revenue to the seller. The copy of the certificate is the seller's documentation of tax-exempt sales of goods and services to qualified farmers, loggers, and nursery operators.

This certificate replaced the Exemption Certificate for Farm Machinery and Equipment and for Purchase of Electricity and Liquefied Gas at a Reduced Rate that was previously used by farmer and nursery operators and which was no longer valid as of January 1, 2008.

Also, in lieu of providing the seller with a copy of the agricultural exemption certificate, qualified persons making exempt agricultural purchases can also provide a fully completed Streamlined Sales Tax Certificate of Exemption which must include the exemption number included on the agricultural exemption certificate issued by the commissioner.

The buyer is obligated to ensure that all goods and services purchased under this certificate are actually purchased for the production of agricultural or nursery products. The buyer is also liable if he or she allows others to use his or her exemption certificate or number to make tax-exempt purchases. Sellers may refuse acceptance of the agricultural certificate to make tax-free sales of items that obviously do not qualify for agricultural exemption. Sellers remain liable for the tax if they do not maintain copies of the agricultural certificate or card in their records or if the invoice or bill does not contain the name and address of the buyer and a description of the products sold. [Tenn. Code Ann. Section 67-6-207]

#### Agricultural Exemptions

[Tenn. Code Ann. Sections 67-6-207 and 301]

The retail sale, lease, rental, use, consumption, distribution, repair, or storage for use or

consumption of the following items may be purchased tax-exempt when sold to a qualified farmer, logger, or nursery that provides the seller with a copy of the agricultural exemption certificate or card. Exempt items include:

- + Farm equipment or machinery used for producing agricultural products for sale. Automobiles, trucks, household appliances, and tangible personal property that becomes real property upon installation are not included in this exemption.
- + Grain bins and attachments thereto.
- + Aircraft designed and used for crop dusting.
- + Equipment used solely for harvesting timber.
- + Trailers used for transporting livestock.
- + Self-propelled fertilizer or chemical spreading equipment not designed for over-the-road use.
- + Systems for poultry environmental control, feeding and watering, and conveying eggs.
- + Parts and labor used in the repair of exempt farm machinery.
- + Gasoline or diesel fuel used for "agriculture purposes" as defined in Tenn. Code Ann. Section 67-6-102. Effective January 1, 2008, this includes dyed diesel fuel used in cutting and harvesting trees by qualified timber harvesters.
- + Containers for farm products or plastic and canvas used in the care of plants or as a protective covering for agricultural products.
- + Feed for livestock, poultry, or other domestic animals usually found on a farm, other than pets, for commercial purposes.
- + Seeds, seedlings, and cuttings that will produce food, fiber, or tobacco.
- + Fertilizer and pesticides used to aid the growth and development of seeds, seedlings, or plants. Also included are solutions specifically for mixture with pesticides or for use as a soil conditioner.
- + Livestock wormers, medications, and instruments used to administer medications.
- + Any substance used in the reproduction of livestock, including embryos and semen.
- + Agri-sawdust – sawdust, wood shavings, chips, and slabs.
- + Any seeds, seedlings, cuttings, fertilizers, pesticides and additives, or containers, canvas, and plastic as previously indicated that are sold directly to a nursery operator.
- + Electricity, natural and liquified gas, including propane and butane, used directly for producing food or fiber for human or animal consumption or to aid in growing horticultural products for sale.
- + Coal, wood, wood products, or wood by-products or fuel oil used as energy fuel to produce food or fiber or nursery or greenhouse crops. [Tenn. Code Ann. Section 67-6-207]

## SALES AND USE TAX

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### AGRICULTURAL EXEMPTIONS (cont'd)

These items are only exempt when purchased by persons issued a personalized farmer, logger, and nursery operator exemption certificate by the Department of Revenue.

Straw purchased from a supplier other than the agricultural producer does not qualify for exemption when presenting the certificate. Straw is not one of the items specified in the statute as tax-exempt even when purchased by a farmer, logger, or nursery operator.

A farmer, logger, or nursery operator is qualified for issuance of the exemption certificate if one or more of the following criteria are met.

- + Is the owner or lessee of agricultural land from which one thousand dollars or more of agricultural products were produced and sold during the year, including payments from government sources;
- + Provides for-hire custom agricultural services of plowing, planting, harvesting, growing, raising, or processing agricultural products or the maintenance of agricultural land;
- + Is the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976;
- + The person's federal income tax return contains one or more of the following: (a) Business activity on IRS schedule F (Profit or Loss From Farming); or (b) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or Schedule E (Supplemental Income and Loss);
- + The person otherwise establishes to the satisfaction of the commissioner that the person is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in Tenn. Code Ann. Section 67-6-301(c)(2).
- + Persons qualifying as manufacturers cannot also qualify for the agricultural exemption certificate. [Tenn. Code Ann. Section 67-6-207(f)]

To receive an agricultural certificate of exemption, persons who qualify for the exemption must apply to the Department of Revenue using the farmer, logger, and nursery operator's application for exemption. The exemption application form is available on the department's web site.

If the Commissioner of Revenue determines that the applicant is entitled to be a qualified farmer, logger, or nursery operator, the commissioner

will issue a certificate granting the exemption for a period of four years. The exemption must be renewed by the farmer, logger, or nursery operator by submitting a renewal application every four years.

### Sales by Farmers and Nursery Operators

Proceeds from the sale of livestock, poultry, nursery stock, or other farm products by the farmer or nursery operator are exempt from the tax. A person does not have to qualify for the agricultural exemption certificate to make tax-exempt sales of agricultural products grown or produced by that person. If the farmer or nursery operator produced at least 50% of the agricultural products sold, then 100% of the proceeds are tax-exempt. If the farmer or nursery operator produced less than 50%, then the proceeds from products produced by them are tax-exempt. The 50% test is applied per calendar year. [Tenn. Code Ann. Section 67-6-301]

Sales made directly from a farmer to a consumer through an online nonprofit farmers' market are exempt from sales or use tax providing that:

- + An amount equal to the consumer's full purchase price is transmitted by the consumer or the online farmers' market to the farmer; and
- + The cooperative or other organizing body of the online farmers' market charges no fee or other charge for facilitating the sales other than "virtual booth" rental fees assessed to participating farmers to cover actual costs incurred in operating the online farmers' market. [Tenn. Code Ann. Section 67-6-301(a)]

### Purchase of Livestock Drugs by Veterinarians

Veterinarians who wish to make tax-exempt purchases of livestock drugs and instruments to administer livestock drugs must present a completed Streamlined Sales Tax Certificate of Exemption to the drug supplier.

This form is a multi-purpose exemption and is found on the department's web site at <http://www.TN.gov/revenue/streamlined/exempti oncertificate.pdf>.

## **SALES AND USE TAX**

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### **AGRICULTURAL EXEMPTIONS (cont'd)**

Veterinarians who are not registered for sales and use tax purposes because they do not make taxable sales do not need to register with the Department of Revenue to receive a sales and use tax account number.

If the veterinarian is not registered for sales and use, he or she can include some other identification number, such as a Federal Employers Identification Number (FEIN), and/or some other state identifying account number, such as a driver's license number.

## SALES AND USE TAX

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### EXEMPTIONS AND REDUCED RATES FOR QUALIFIED MANUFACTURERS

A manufacturer is a business whose principal activity (more than 50%) at a specific location is fabricating and processing tangible personal property for resale and consumption off the premises. A qualified manufacturer enjoys substantial tax benefits. Before receiving eligibility for these exemptions, a manufacturer must file an application with the Department of Revenue and receive an authorization letter with a unique Industrial Machinery Number assigned to each specific manufacturing location. [Tenn. Code Ann. Section 67-6-206]

Fabricating or processing tangible personal property for resale includes providing fabrication and repair services of aircraft for unrelated commercial or governmental entities provided the dealer engaged in such business qualifies for the jobs tax credit in Tenn. Code Ann. Section 67-4-2109(b). Dealers meeting these requirements may qualify for sales and use tax manufacturing exemptions. [Tenn. Code Ann. Section 67-6-102]

#### Industrial Machinery

Industrial machinery is machinery necessary to, and primarily for, fabricating or processing tangible personal property for consumption off the premises. The purchase, lease, or rental of qualified machinery, and repair and replacement parts, are exempt from the sales or use tax.

Exempt qualified machinery generally includes the machines that transfer raw materials from inventory and begin the processing cycle, process the product through the various phases of manufacture, and transfer the finished product from the final processing step to inventory. Any device that powers this machinery and the oils and lubricants used in the machinery are also tax exempt. [Tenn. Code Ann. Sections 67-6-102, 206]

The definition of industrial machinery includes machinery and equipment necessary and primarily for conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. The exemption does not include machinery and equipment used primarily for the storage or distribution of specified digital products after conversion. [Tenn. Code Ann. Section 67-6-102]

#### Industrial Machinery Authorization

To be eligible for this exemption, a manufacturer must file an application with the Department of Revenue and receive an authorization letter with a unique industrial machinery number. [Tenn. Code Ann. Section 67-6-206]

Once the department approves this authorization, the manufacturer may be entitled to tax-exempt purchases and service of qualified industrial machinery as well as reduced or tax-exempt purchases of electricity and water as provided under the law.

The industrial machinery exemption is also available for natural gas used to generate heat for the production of aluminum sheet foil.

A fully-completed Streamlined Sales Tax Certificate of Exemption can be accepted for industrial machinery and material exemption purchases provided the certificate contains the manufacturer's exemption authorization number issued by the commissioner. [Tenn. Code Ann. Section 67-6-206(b)]

#### Pollution Control Equipment

Pollution control machinery and equipment needed to control or eliminate air and water pollutants resulting from manufacturing are considered industrial machinery. As such, they are tax-exempt to the qualified manufacturer. [Tenn. Code Ann. Section 67-6-102]

#### Energy Fuel and Water

Qualified manufacturers are authorized to make purchases at a reduced 1.5% state tax rate on all forms of energy used in any manner on the manufacturing site. This includes electricity, natural gas, coal, firewood, fuel oil, and propane and butane gases. These energy sources are not subject to a local option tax. Any energy fuel that comes into direct contact with the product during manufacturing and is metered separately is tax-exempt. [Tenn. Code Ann. Section 67-6-206]

Manufacturers are also entitled to a reduced state tax rate of 1% and a local tax rate of 0.33% to 0.5% on water used within the manufacturing site. Water wetting the product during the manufacturing process that is separately metered is tax-exempt. [Tenn. Code Ann. Sections 67-6-206, 702]

## SALES AND USE TAX

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### EXEMPTIONS AND REDUCED RATES FOR QUALIFIED MANUFACTURERS (cont'd)

#### **Computers** [Tenn. Code Ann. Section 67-6-206]

Any computer, including software, which is primarily used to control the operation of industrial machinery, is tax-exempt.

Industrial machinery also includes any computer, computer network, computer software, or computer system, as defined in Tenn. Code Ann. Section 39-14-601, and any peripheral devices including hardware such as printers, plotters, external disc drives, modems, and telephone units, including repair parts, warranty or service contracts, and any necessary repair or taxable installation labor, when the equipment is used in the operation of a qualified data center. [Tenn. Code Ann. Section 67-6-102]

#### **Material Handling and Racking Systems Equipment**

Material handling and racking systems equipment used in a qualified new or expanded warehouse or distribution facility, purchased beginning one year prior to the start of, and ending one year after the substantial completion of, the construction or expansion of the facility, not to exceed three years, qualifies for the industrial machinery exemption. An investment of more than \$10 million is required. A taxpayer must submit an application with a plan describing the investment to be made, to the Department of Revenue. If approved, the taxpayer will receive an Industrial Machinery number authorization letter. [Tenn. Code Ann. Sections 67-6-102]

#### **Industrial Materials**

Chemicals, solvents, greases, and similar items coming into direct contact with the product, becoming a part of the finished product, or being rapidly used in production of the finished product are tax-exempt. Once removed from inventory, these items must be totally used or consumed within 25 days. This exemption is available to all manufacturers and is not subject to the 51% test. [Revenue Rule 1320-5-1-.40]

Also exempt are industrial materials and explosives for future processing, manufacturing,

or conversion into articles of tangible personal property for resale where such industrial materials or explosives become a component part of the finished product or are used directly in fabricating, dislodging, or sizing. [Tenn. Code Ann. Section 67-6-329(12)]

#### **Headquarters Facility**

Eligibility exists for a 95.5% credit for building materials and equipment used for construction of a new, expanded, or remodeled headquarters facility. The qualified tangible personal property must be directly related to the creation of the qualifying new full-time employee jobs to qualify for exemption.

The taxpayer or lessor to the taxpayer must invest a minimum of \$10 million in a building or buildings, either newly constructed, expanded, or remodeled along with the creation of not less than 100 new full-time employee jobs, created during the investment period with average wages or salaries equal to, or greater than, 150% of the average wage in the county or metropolitan statistical area in which the taxpayer is located.

The investment may include the purchase price of existing buildings, costs of building materials, labor, equipment, parking facilities, and landscaping, but will not land or inventory.

The completed facility must house the taxpayer's international, national, or regional headquarters. To be eligible for this credit, the taxpayer must apply for, and receive, authorization from the Department of Revenue.

A taxpayer that has qualified for the headquarters tax credit or an affiliate of such taxpayer can enjoy a sales and use 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 of Revenue.

Taxpayers moving tangible personal property into Tennessee in conjunction with establishing a qualified headquarters are exempt from any sales and use tax that arises as a result of moving

## SALES AND USE TAX

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### EXEMPTIONS AND REDUCED RATES FOR QUALIFIED MANUFACTURERS (cont'd)

property into Tennessee as long as that property was previously used in the operation of the taxpayer's business. [Tenn. Code Ann. Section 67-6-398]

Companies that establish a new headquarters facility in Tennessee may move otherwise taxable aircraft into the state without incurring use tax liability. This provision expires on July 1, 2010. [Tenn. Code Ann. Section 67-6-224]

Furniture and fixtures may be included in the calculation of "Minimum investment" and may also be included under the definition of the "Qualified tangible personal property" for purposes of qualifying for the qualified headquarters facility credit. Computer software purchased or leased during the investment period and used primarily in the qualified facility also qualifies as qualified tangible personal property for purposes of the headquarters facility credit. [Tenn. Code Ann. Section 67-6-322]

Taxpayers eligible for the headquarters sales and use tax credit are those taxpayers who are subject to the Tennessee franchise and excise taxes, insurance companies, as defined in Tenn. Code Ann. Section 56-1-102(2), and, effective with business plans filed on or after January 1, 2008, general partnerships entitled to compute a jobs tax credit under Tenn. Code Ann. Section 67-4-2109(b)(3)(H). [Tenn. Code Ann. Section 67-6-224]

### Food Service Establishments

The term "manufacturer" does not include any entity whose principal business is the preparation of food for immediate sale. In addition, Tenn. Code Ann. Section 67-6-102 was amended to state that "industrial machinery" does not include machinery that is used in the preparation of food for immediate retail sale.

## SALES AND USE TAX

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### OTHER EXEMPTIONS FROM SALES OR USE TAX

Many products and services are identified as exempt in the sales or use tax law. The sale of these items or services requires no special documentation between the seller and buyer. A number of them are identified below. If you have questions about specific exemptions, please contact Taxpayer and Vehicle Services.

#### **Aircraft, Parts, and Supplies** [Tenn. Code Ann. Sections 67-6-302, 329]

- + Charges for the sale, use, or storage of aircraft owned or leased by commercial air carriers primarily for use in interstate or international commerce and parts and supplies for servicing them. This does not apply to fuel, petroleum products, or shop tools. Dealers should maintain documentation of buyer's eligibility.
- + Payments on leases or rental of property, owned by airport authorities, to businesses primarily engaged in the repair of aircraft owned or leased by commercial air carriers.
- + Aircraft used for and owned by a person providing flight training.

#### **Amusements** [Tenn. Code Ann. Section 67-6-330]

- + Events held for, or sponsored by, schools in grades K-12 or athletic events for participants 18 years old or younger sponsored by civic or nonprofit organizations.
- + Admissions to county fairs and participation in fair activities such as rides, shows, or grandstand events.
- + Admission to museums, historical sites, and historical societies operated by nonprofit entities.
- + Fees resulting from the production of film, television, radio, or theatrical presentations. Charges for admission to these presentations are not exempted by this provision.
- + Receipts from coin-operated amusement devices.
- + Admissions to recreational or amusement facilities operated and controlled by city or county governments.
- + Member assessments made for capital improvements by recreation, community, or country clubs.
- + Proceeds from and entry fees to rodeos and beauty pageants, conducted by nonprofit

organizations, which have been held in the same city for 30 years or longer.

- + Admissions to musical concerts conducted solely by nonprofit community group organizations.
- + Events held entirely by employers and solely for the benefit of their employees.
- + Dues and fees paid to physical fitness facilities that meet certain program and staffing requirements established by law, if the exemption has been approved in advance by the Department of Revenue.
- + Entry fees for any contest, tournament, or charity horse show. Fishing tournament registration fees are also exempt.

#### **Automobiles**

- + Automobiles registered in Tennessee to active duty members of the armed forces stationed anywhere in Tennessee or at Ft. Campbell military installation. [Tenn. Code Ann. Section 67-6-303]
- + Transfer of automobiles between spouses as the result of a divorce. [Tenn. Code Ann. Section 67-6-306]
- + Motor vehicles sold in Tennessee but removed from the state within 3 days and registered outside the state. [Tenn. Code Ann. Section 67-6-343]
- + Equipment used to adapt motor vehicles for use by honorably discharged disabled veterans of the armed services of the United States. [Tenn. Code Ann. Section 67-6-353]
- + Sales of motor vehicles to members of the Tennessee National Guard and reserve component units who are called into active military service and who are stationed outside the United States during hostilities in which such person is actually engaged in combat. The exemption from sales tax begins on the effective date of the orders assigning the member to the combat zone and expires ninety days after the effective date the individual receives military orders releasing him or her from the combat zone. A copy of the military orders must be provided to the dealer or county clerk, as appropriate. [Tenn. Code Ann. Section 67-6-303]
- + Purchases of motor vehicles made by members of the Tennessee National Guard on Active Guard and Reserve (AGR) tour and stationed in Tennessee or at Ft. Campbell military installations. [Tenn. Code Ann. Section 67-6-303]

## SALES AND USE TAX

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### OTHER EXEMPTIONS FROM SALES OR USE TAX (cont'd)

#### Computer Software

- + Computer software fabricated by any person or that person's direct employee for that person's own use and consumption. A direct employee means an employee to whom the person is obligated to issue a federal W2 form and has an obligation to withhold taxes for FICA purposes. [Tenn. Code Ann. Section 67-6-387]
- + Computer software that is developed and fabricated by a qualifying affiliated company. Repair of such software is also exempt if the repair is rendered by a qualifying affiliated company. [Tenn. Code Ann. Section 67-6-395]

#### Design Professionals

- + Concept sketches, drawings, and models made by architects, engineers, landscape architects, and interior designers used to develop a prototype for production. [Tenn. Code Ann. Section 67-6-354]
- + The transfer of preliminary artwork by an advertising agency to its client and the use of preliminary artwork created by the advertising agency to provide advertising services. Preliminary artwork means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client. This includes, but is not limited to, concept sketches, illustrations, drawings, paintings, models, photographs, storyboards, and similar materials. [Public Chapter 530, Acts of 2009]

#### Display Property

- + Inventory items used by a dealer for display or demonstration that are returned to inventory within 120 days. Items consumed in display or demonstration or remaining out of inventory for more than 120 days are subject to the use tax. The dealer will pay use tax on the amount that the cost to the dealer exceeds the sales price of the article at the time it is sold. [Tenn. Code Ann. Section 67-6-305]

#### Energy

- + Money paid by customers of city and county utilities, electric cooperatives, and electric membership cooperatives, directed to capital construction. [Tenn. Code Ann. Section 67-6-332]

- + Charges for gas, electricity, or other energy fuels sold directly to consumers for residential use. [Tenn. Code Ann. Section 67-6-334]
- + Sales of propane in cylinders of 100 pounds or more made over the counter by the seller for residential use. Other over-the-counter sales of energy fuel, including propane in containers of less than 100 pounds, are subject to tax. [Tenn. Code Ann. Section 67-6-334]
- + Retail sales of kerosene through dispensers designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank. [Tenn. Code Ann. Section 67-6-334(b)(4)]

#### Exemptions for Tennessee Sales for Out-of-state Consumer Use

- + Sale or use of materials for fabrication of structural metal products for use on out-of-state jobs. [Tenn. Code Ann. Section 67-6-339]
- + Sale of boats or other marine vessels moved to another state within three days of purchase.
- + Sales to non-residents of helicopters and airplanes that will have a situs out of Tennessee and will be removed from Tennessee within 15 days of purchase. [Tenn. Code Ann. Section 67-6-313]
- + The sale of helicopters within Tennessee to purchasers who are not Tennessee residents are exempt when those helicopters remain in Tennessee after the sale solely for purposes of repair or refurbishment and are removed from Tennessee within 15 days of the completion of such repair or refurbishment. Repair and refurbishment includes modifications, conversions, and installations. This exemption works in conjunction with existing exemptions for the sale and repair of helicopters that are removed from the state within 15 days. [Tenn. Code Ann. Section 67-6-313(h)]
- + Repair and refurbishment services within Tennessee on airplanes and airplane components and parts, performed pursuant to a "supplemental type certificate" issued to the repairer by the FAA, where the airplane is situated outside of Tennessee and is removed from Tennessee within 15 days from the completion of the repair. [Tenn. Code Ann. Sections 67-6-313, 345]
- + Sales of fuel and petroleum products to air common carriers for flights destined for, or continuing from, outside the United States. [Tenn. Code Ann. Section 67-6-349]
- + Sales of computer media exchange services or other storage media when that media is to be shipped out of Tennessee or to a government agency or non-taxable business in Tennessee. [Tenn. Code Ann. Section 67-6-313]

## SALES AND USE TAX

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### OTHER EXEMPTIONS FROM SALES OR USE TAX (cont'd)

- + Sales of property for use by commercial marine vessels when the deliveries are made mid-stream in waterways that are part of the geographical boundaries of Tennessee. [Tenn. Code Ann. Section 67-6-326]
- + Repair services, including parts and labor, performed on certain tangible personal property, when the repair services are initiated and/or completed in Tennessee, where the repaired property is delivered or shipped out of state. The exemption applies to repairs to mining, logging, and other natural resource extraction equipment; road-building equipment; land-clearing, excavation, and construction equipment; and equipment for loading or unloading containers or truck trailers from railcars, ships, barges, or aircraft. [Tenn. Code Ann. Section 67-6-313(b)]
- + Repair service labor on aircraft engine equipment and aircraft mainframes, when the repair services are initiated, performed, or completed in Tennessee. "Aircraft engine equipment" and "aircraft mainframes" are defined by statute and limited to aircraft used by a commercial interstate or international air carrier. [Tenn. Code Ann. Section 67-6-313(c)]
- + Repair services, including parts and labor, performed out of state on equipment used primarily in interstate commerce, when the original purchase of the equipment was exempt from sales and use tax. [Tenn. Code Ann. Section 67-6-313(d)]
- + Repair parts and labor for firefighting equipment owned by an out-of-state fire department. [Tenn. Code Ann. Section 67-6-313(e)]
- + Repair service labor on railroad rolling stock, when the repair services are initiated, performed, or completed in Tennessee. [Tenn. Code Ann. Section 67-6-313(g)]
- + Parts and accessories, materials and supplies used in servicing and/or maintaining railroad rolling stock used, or intended to be used, in interstate commerce. [Tenn. Code Ann. Section 67-6-321(a)]
- + The transfers of railroad rolling stock and vessels or barges of 50 tons or more displacement that are used in interstate commerce or outside Tennessee. [Tenn. Code Ann. Section 67-6-321]
- + Repair services, including renovations and improvements, performed on barges and vessels of 50 tons and over displacement, used in interstate commerce, and the parts, accessories, material, and supplies used in such repairs if the parts, accessories, material, and supplies become a part of the barge. [Tenn. Code Ann. Sections 67-6-321, 327]

### Films [Tenn. Code Ann. Section 67-6-309]

- + Rental fees of films to theaters that charge tax on admission prices to view the films.
- + Rental prices for films, recordings, or transcriptions charged to radio and television stations operating under license by the Federal Communications Commission.

### Food [Tenn. Code Ann. Sections 67-6-337, 67-6-338]

- + Food paid for by food stamps, food coupons, or approved electronic benefits transfer systems from special supplemental food programs for women, infants, and children as required by federal law, or any other means approved by the Department of Human Services and issued by the department or the federal government.

### Fuel [Tenn. Code Ann. Section 67-6-329]

- + Motor vehicle fuels taxed per gallon under the petroleum products statutes of Tennessee law.
- + Gasoline on which a privilege tax is paid, not including premixed two-cycle engine fuel containing gasoline and oil sold in containers of one gallon or less.
- + Liquefied gas taxed under Tenn. Code Ann. Title 67, Chapter 3.

### Leased Vehicles [Tenn. Code Ann. Section 67-6-388]

- + Insurance proceeds paid to the owner of a leased vehicle pursuant to a damage settlement are exempt. The exemption applies when the vehicle has sustained damage that renders it a salvage vehicle, a non-repairable vehicle, or a flood vehicle, and the owner transfers title of the leased vehicle to the insurance company.

### Medical Equipment and Supplies [Tenn. Code Ann. Sections 67-6-314, 67-6-320]

- + Prosthetic devices for human use., repair and replacement parts, and repair services for such items. .
- + Durable medical equipment for home use sold with a prescription for human use. Items generally understood and intended to be used outside the home are not exempt. Repair and replacement parts and repair services are exempt only if the equipment qualified for exemption. Parts, components, or attachments that are for single patient use are not exempt.

## SALES AND USE TAX

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### OTHER EXEMPTIONS FROM SALES OR USE TAX (cont'd)

- + Kidney dialysis equipment for treatment of humans, repair parts and repair services for such equipment, and attachments, components, and parts that are for single patient use with such equipment.
- + Enteral feeding systems for treatment of humans, repair parts and repair services for such equipment, and attachments, components, and parts that are for single patient use with such equipment.
- + Mobility enhancing equipment sold with a prescription for human use, repair and replacement parts, and repair services for such equipment.
- + Oxygen prescribed for medical treatment of humans and equipment for administering medical oxygen; repair and replacement parts and repair services for such equipment; attachments and components that are for single patient use with such equipment; and disposable medical supplies needed to administer or deliver medical oxygen.
- + Insulin and any syringe used to dispense insulin for human use.
- + Disposable medical supplies, such as bags, tubing, needles, and syringes dispensed by a licensed pharmacist on a prescription by a practitioner of the healing arts for the intravenous administration of any prescription drug and which come into actual contact with the drug or medicine. This exemption applies only to such items used to treat a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center.
- + Computer software, prescribed by a practitioner of the healing arts, designed for the treatment of people with learning disabilities.
- + Sales or use of disposable non-prosthetic ostomy products for use by persons who have had colostomies, ileostomies, or urostomies.
- + Repair parts and services for helicopters and aircraft used by government organizations and nonprofit hospitals and medical facilities for medical evacuation or transportation. [Tenn. Code Ann. Section 67-6-347]
- + Prescription drugs distributed at no charge by the manufacturer. [Tenn. Code Ann. Section 67-6-319]
- + Drugs or medicines, including over-the-counter drugs, for human use dispensed on a prescription. [Tenn. Code Ann. Section 67-6-320]
- + Veterinarian purchases of drugs, including wormers, used to treat livestock. Other purchases of drugs by veterinarians are taxable based on the veterinarian's purchase price. [Tenn. Code Ann. Section 67-6-351]
- + Drugs, including over-the-counter drugs, sold to healthcare service providers such as hospitals, nursing facilities, physicians, and dentists that will be prescribed for treatment of humans.

Durable medical equipment and mobility enhancing equipment purchased and used by pharmacies and home health care providers in rendering outpatient health care services in the home is not eligible for the exemption for durable medical equipment for home use or mobility enhancing equipment. Exceptions are oxygen delivery equipment, kidney dialysis equipment, and enteral feeding systems. [Tenn. Code Ann. Section 67-6-352(b)]

### Miscellaneous Nonprofit Sales

- + Sales at gun shows conducted by a nonprofit organization of gun collectors. Sales by dealers who regularly conduct gun sales, and sales of guns for later delivery are not tax exempt. [Tenn. Code Ann. Section 67-6-310]
- + Sales of school textbooks and workbooks, including electronically accessed or transmitted digital textbooks and digital workbooks. [Tenn. Code Ann. Section 67-6-329]
- + Sales of school meals in grades K-12. [Tenn. Code Ann. Section 67-6-329]
- + Sales of parking privileges sold by colleges, universities, technical institutes, or technology centers to students. [Tenn. Code Ann. Section 67-6-329]
- + Sales of United States or Tennessee flags by nonprofit organizations. [Tenn. Code Ann. Section 67-6-329]
- + Sales made by schools (grades K-12) or school support groups. Such schools or school support groups are required to pay Tennessee sales tax on the purchase price of the goods or services purchased for resale to others but are not subsequently required to collect tax when the goods or services are resold. [Tenn. Code Ann. Section 67-6-229]

The requirement for schools or school support groups to pay tax to the supplier at time of purchase does not apply to purchases of textbooks and workbooks to be sold to students or purchases of food to be sold as meals for public or private school students in grades K – 12.

## SALES AND USE TAX

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### OTHER EXEMPTIONS FROM SALES OR USE TAX (cont'd)

#### Motor Vehicles Used by Common Carriers [Tenn. Code Ann. Section 67-6-331]

The transfer, by any dealer in personal property, of motor vehicles with a Gross Vehicle Weight Rating of Class 3 (maximum gross weight of vehicle and load of 16,000 pounds) [Tenn. Code Ann. Section 55-4-113] and above, and trailers, semi-trailers, and pole-trailers [Tenn. Code Ann. Sections 55-1-105, 55-4-113] which will be used in the service of passenger or cargo transportation, principally in interstate or foreign commerce, by a common carrier or contract carrier under authority granted by the federal government or other state regulatory agency, shall be exempt from the sales or use tax. The term "principally" means more than 50% use. This exemption is available regardless whether or not the carrier sells its services for a fee, provided that all requirements of Tenn. Code Ann. Section 67-6-331 are met.

A motor vehicle is used in the service of cargo or passenger transportation in interstate or foreign commerce if it transports passengers or cargo from:

- + A point of origin in another state or foreign country to a point within this state.
- + A point of origin within this state to a point in another state or foreign country.
- + A point of origin in another state or foreign country, moving through Tennessee, to a point in a different state or foreign country.

#### Packaging

- + Containers and packaging materials actually accompanying products sold, without which their delivery would be impracticable on account of their character, and for which there is no separate charge. [Tenn. Code Ann. Section 67-6-102]

#### Pollution Control

- + Sales of chemicals and supplies used in air and water pollution control. [Tenn. Code Ann. Section 67-6-346]

#### Preservation of Historic Property

- + Tangible personal property or taxable services sold, given, or donated to an entity that is directly or indirectly owned and controlled by

a nonprofit entity, is organized for the purpose of preserving or rehabilitating a historic property listed on the National Register of Historic Places, and the controlling nonprofit entity has received approval of its historic certification application by the U.S. Department of the Interior National Park Service. [Tenn. Code Ann. Section 67-6-322]

#### Publications

- + Magazines and books distributed to consumers via the United States Postal Service or common carriers by sellers or distributors whose only Tennessee activities involve the printing, storing, labeling, or delivering of these items to the postal service or common carrier, maintenance of stock or newsgathering activities. [Tenn. Code Ann. Section 67-6-329]
- + Publications printed on newsprint or bond paper and advertising supplements or other printed inserts delivered with the publications on a biweekly or more frequent basis. [Tenn. Code Ann. Section 67-6-329]
- + Direct mail advertising, in the form of discount coupons or advertising leaflets for more than one business, distributed in Tennessee from out of state. [Tenn. Code Ann. Section 67-6-344]
- + Direct mail delivery charges, including postage and mailing services, for direct mailing to a mass audience printed materials, such as advertising, are exempt if the delivery charges are separately itemized on the invoice. [Tenn. Code Ann. Section 67-6-102]
- + Hospital records, as defined in Tenn. Code Ann. Section 68-11-302, provided to an attorney, agent, or other authorized representative acting in a lawsuit on behalf of an exempt nonprofit hospital. [Tenn. Code Ann. Section 67-6-329(a)]

#### Railroad Tank Cars

- + Materials used for the lining or protective coating of railroad tank cars and charges made for installing or repairing such linings or protective coatings. [Tenn. Code Ann. Section 67-6-329]

#### Sales in Interstate Commerce

- + When title and possession of property passes from seller to buyer outside Tennessee, the sale is considered to be in interstate commerce and exempt from state and local sales or use tax in the state where the seller is located.

## SALES AND USE TAX

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### OTHER EXEMPTIONS FROM SALES OR USE TAX (cont'd)

#### Sales Tax Holiday

Tennessee holds an annual sales tax holiday from 12:01 a.m. on the first Friday of August through 11:59 p.m. on the following Sunday. During the holiday, these items are exempt from sales and use tax:

- + Clothing with a price of \$100 or less per item.
- + School supplies with a price of \$100 or less per item.
- + School art suppliers with a price of \$100 or less per item.
- + Computers with a price of \$1,500 or less per item.

Articles normally sold together as a single unit, cannot be priced and sold separately to obtain the exemption. For shipping charges, if all items in a shipment qualify individually for exemption, the shipping charge is also exempt. If both exempt and taxable items are shipped, the percentage of the shipping charge determined to be allocated to the taxable items is also part of the tax base.

Items specifically excluded from the holiday exemption include computer software, clothing accessories, protective equipment, sports and recreation equipment, school instructional material, and school computer supplies. The exemption also does not apply to items used in a trade or business or to items that are rented. [Tenn. Code Ann. Section 67-6-393]

#### Specified Digital Products

- + Sales of specified digital products are exempt from tax when the same product in tangible form is exempt from tax. [Tenn. Code Ann. Section 67-6-329]
- + Specified digital products provided to the customer without charge on a trial basis. [Tenn. Code Ann. Section 67-6-329]

#### Telephone Cooperatives

- + Sales of tangible personal property to telephone cooperatives organized under Tennessee law, for their own use or consumption. [Tenn. Code Ann. Section 67-6-325]

#### Telecommunications

- + Charges made by local telephone exchanges to long-distance resellers and cellular telephone companies for local access and use of intercompany facilities. [Tenn. Code Ann. Section 67-6-342]
- + Charges for Internet access or information services are exempt from sales and use tax. [Tenn. Code Ann. Section 67-6-102]

#### Transactions between Parent Companies and Wholly Owned Subsidiaries

- + The sale, transfer, or lease of construction machinery between parent companies and wholly owned subsidiaries is not taxable provided the Tennessee sales or use tax was paid on the property at its initial purchase. [Tenn. Code Ann. Section 67-6-311]
- + Services, which would otherwise be taxable, are not subject to the sales tax if the corporations involved meet certain ownership and control requirements. The services must not be performed for profit. [Tenn. Code Ann. Section 67-6-350]

#### Time-share Accommodations

- + Charges for the use of, or the value of any time-share estate and any charges for the use of or the value of the use of a perpetual interest in specified entities whose substantial purpose is the ownership or control of real property, are not included in the definition of "retail sale," "sale at retail," and "retail sales price." A definition of "time-share estate" was added to Tenn. Code Ann. Section 67-6-102 and is consistent with the Tennessee Time Share Act of 1981. [Tenn. Code Ann. Section 67-6-102]

#### Used Property

- + Sales of used factory-manufactured structures to the extent the Tennessee sales or use tax was paid on the initial purchase of the structure in Tennessee. [Tenn. Code Ann. Section 67-6-336]
- + Retail sales of used clothing by 501(c)(3) nonprofit organizations that have been issued an exemption certificate by the Commissioner of Revenue. [Tenn. Code Ann. Section 67-6-348]

#### Utility Poles

- + Utility poles, anchors, guys, and conduits are exempt from sales or use tax. [Tenn. Code Ann. Section 67-6-329]

## **SALES AND USE TAX**

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### **OTHER EXEMPTIONS FROM SALES OR USE TAX (cont'd)**

#### **Vending Items**

- + The proceeds of vending machines operated for the benefit of a charitable nonprofit organization by which merchandise of the market value of not more than 25 cents is sold or delivered to customers are subject to a gross receipts tax of 1.5% rather than the sales or use tax. [Tenn. Code Ann. Section 67-4-506]

#### **Warranty Services**

- + Parts supplied to consumers for replacement, under warranty, of faulty parts are not taxable if the sales or use tax was originally paid on the item under warranty. [Tenn. Code Ann. Section 67-6-324]

#### **Watershed Districts**

- + Sales of tangible personal property for use by watershed districts. [Tenn. Code Ann. Section 67-6-328]

## SALES AND USE TAX

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### FLEA MARKETS

#### **Flea Market Registration** [Tenn. Code Ann. Sections 67-6-102, 220]

Dealers who sell at flea markets will register and pay an annual registration fee of \$45. This registration fee shall be credited against that person's actual annual sales tax liability. This registration shall be valid at any location in the state during the period for which it is issued.

#### **Sales on Less than Permanent Basis**

Dealers engaging in retail sales at flea markets on less than a permanent basis may register, at their option, as follows:

(A) On a quarterly basis for a fee of \$15. This registration fee is to be paid per location at which retail sales are made. A person may register a maximum of three times per year at each location. A dealer, needing to register more than three times per year at any one location, must purchase an annual registration certificate. No refund is payable from the registration fee. This registration fee shall, however, be credited against any such person's actual sales tax liability.

(B) On a monthly basis for a fee of \$5. This registration fee is to be paid per location at which retail sales are made. A person may register a maximum of three times per year at each location. A person needing to register in excess of three times must purchase either a quarterly or an annual registration certificate. No refund is payable from the registration fee. This registration fee shall, however, be credited against any such person's actual sales tax liability.

The flea market operator is responsible for ensuring that all dealers operating at the flea market are properly registered with the department. The flea market operator is empowered to accept applications for registration with all required fees. The operator will supply the dealer with a copy of the application for registration, together with evidence of the amount of fee submitted. This copy shall be

displayed by the dealer and shall serve as evidence of proper registration

The provisions of this section do not apply to dealers who sell prepared foods at flea markets for consumption.

#### **Submission of Flea Market Returns** [Tenn. Code Ann. Sections 67-6-102, 220]

#### **Dealers Registering Annually**

If the annual sales tax liability is less than \$45 for a dealer registering annually, that person is not required to file an annual sales tax return. In no case will any person receive a refund of any portion of the registration fee. Should any dealer's tax liability exceed \$45, then that dealer will file an annual return. The return will be due by January 20 and reflect the gross sales during the preceding calendar year. A dealer beginning business after January 1 will be responsible for transmitting an annual return on or before January 20 of the subsequent calendar year for all months in which the dealer made taxable sales or purchases through December 31 of the preceding year.

#### **Dealers Registering Quarterly or Monthly**

Dealers registering on a quarterly or monthly basis shall file quarterly returns if their tax liability exceeds the amount of the registration fees paid during that quarter. The quarterly returns will be due by the 20<sup>th</sup> day of the month next following the end of each quarter and will show the gross sales from all taxable sales or purchases during the preceding quarter.

At the time of transmitting any of the returns, the dealer shall remit the amount of tax due. Failure to so remit the tax or to file the return will make the tax delinquent. Failure to remit the tax or to file the return will subject the dealer to penalties and interest and the possibility of further actions.

#### **Penalty for Late Filing**

The flea market operator will submit the registration fees collected on the operator's monthly return to the commissioner, together

## **SALES AND USE TAX**

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### **FLEA MARKETS (cont'd)**

with the registration applications received by the operator. Failure to comply will subject the flea market operator to the penalty provided by law for delinquent tax payments.

The penalty to the dealer will be \$10 per booth per day for violations of tax remittance requirements. The department may also impose a penalty upon the flea market operator of \$10 per booth per day, up to a maximum fine of \$100 per day at any location where it is determined by the commissioner that the flea market operator has been negligent in allowing dealers to operate at the flea market without proper registration.

The term “negligent” includes, but is not limited to, any failure of the flea market operator to make a reasonable attempt to ensure that every dealer renting space from the operator is properly registered for tax purposes. A determination by the commissioner that a flea market operator has been negligent shall be deemed presumptively correct. Such determination may be rebutted only if the flea market operator makes a showing of due care. As used, “due care” means that the flea market operator has made every reasonable effort to ensure that every dealer renting space from the operator is properly registered for tax purposes.

## SALES AND USE TAX

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### CONTRACTORS

Generally, 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 as well.

#### **Contractors as Consumers [Tenn. Code Ann. Section 67-6-209]**

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. If the sales tax is not paid when the materials are purchased, the contractor or subcontractor owes the use tax on the cost of their materials. The 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 contractee.

#### **Liability for the Sales or Use Tax**

Generally speaking, the contractor or subcontractor remains liable for the sales or use tax on materials used in providing the contracted service even when the contractee 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-dealer is one who improves realty and is also engaged in selling building materials and supplies to other contractors, consumers, or users. 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.

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 their materials and supplies. 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.

Suppliers making sales to contractor-dealers and delivering the materials to a job site for use, or tagging particular supplies for a particular job, must collect the applicable sales tax on those sales, even if the contractor/dealer presents a certificate for resale. [Sales Tax Rule 1320-5-1-.08]

#### **Exemptions [Tenn. Code Ann. Sections 67-6-102, 209, 384]**

Under specific circumstances outlined in the law, contractors or subcontractors are not liable for the sales or use tax on construction materials. 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.
- + 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.

Specific exemptions from sales or use tax are available to contractors for specific types of contracts. Examples are:

- + Electrical generating facilities and distribution systems owned by a government entity.
- + Wastewater and sewage systems, and sanitary sewer pipes owned by a county or city.
- + Coal gasification plants and distribution systems owned by government entities.
- + A neutron spallation facility owned by the federal government.

#### **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. On the other hand, contractors fabricating materials for use in non-building projects, such as bridge steel, are liable for tax on the fabricated value of the materials.

## SALES AND USE TAX

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### CONTRACTORS (cont'd)

#### Asphalt Fabricators

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 arms length transaction. The Department of Revenue 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 contractor 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. [Tenn. Code Ann. Section 67-6-209 and Tenn Comp R. & Regs 1320-1-1.03(1)(a)]

#### Installation of Industrial Machinery

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

#### Lump Sum or Unit Price Construction Contracts on Realty in Effect on July 15, 2002

All construction contractors and subcontractors will pay to their vendors the increased state tax of 7% on materials purchased on or after July

15, 2002. Vendors of materials who have a lump sum or fixed price contract to provide materials are required to collect and remit the new rate of tax.

General or prime construction contractors making improvements to real property under a lump sum or unit price construction contract entered into prior to July 15, 2002, or contracts awarded by the state or a political subdivision pursuant to a bid opening which occurred prior to July 15, 2002, if the provisions of such provide that the amount payable remains fixed without regard to costs, may file a claim for refund with the Department of Revenue for tax paid to any of the contractor's vendors at a rate in **excess** of the 6% state rate and the applicable local option sales tax in effect July 1, 2002. A claim for refund must be supported by a copy of the contract that was signed prior to July 15, 2002, and documentation in the form of schedules and invoices to support the payment of sales tax in excess of the 6% state rate. A separate claim form will be required for each contract.

Subcontractors entering into lump sum or unit price contracts to make improvements to realty prior to September 1, 2002, with general or prime contractors that have entered into contracts described in the preceding paragraph prior to July 15, 2002, may file a claim for refund with the Department of Revenue for tax paid in excess of the 6% state rate and the applicable local option sales tax in effect July 1, 2002. A claim for refund must be supported by a copy of the subcontractor's contract that was signed prior to September 1, 2002, a copy of the contractor's contract entered into prior to July 15, 2002, and documentation in the form of schedules and invoices to support the payment of sales tax in excess of the 6% state rate. A separate claim form will be required for each contract.

Contractors and subcontractors who have made purchases without the payment of tax on tangible personal property that will be used in the performance of qualifying lump sum or unit price construction contracts that became binding prior to July 15, 2002, should report

## SALES AND USE TAX

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### CONTRACTORS (cont'd)

and remit the use tax at the 6% state rate and the applicable local option tax rate. Dealers are required to keep records to demonstrate the tangible personal property was subject to the 6% state rate. Such records include a copy of the contract with the dates that the contract was entered into, records indicating the materials used in the performance of the qualifying lump sum contract, and records demonstrating that the state rate of 6% and the applicable local tax rate was reported and paid to the department

“Lump sum or unit price construction contract” is defined as a written contract for the construction of, or improvements to, real property under which the amount payable to the contractor, subcontractor, or material vendor is fixed without regard to costs incurred in the performance of the contract. apply to equipment or other property used to conduct the test. [Tenn. Code Ann. Section 67-6-209]

#### **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. [Tenn. Code Ann. Section 67-6-209]

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. [Tenn. Code Ann. Section 67-6 209]

### **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.

A “qualified disaster relief 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 as a result 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” means building materials, machinery, equipment, computer software, furniture, and fixtures used exclusively to replace or restore real or tangible personal property that suffered damages as a result 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.

Persons seeking the credit must submit an application to the Commissioner of Revenue 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 submit an application and plan if any taxes paid by the lessor are to be claimed as part of the credit.

## **SALES AND USE TAX**

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### **CONTRACTORS (cont'd)**

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, and 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. Such notification must be given before the taxpayer can take the credit.

If any of the qualifying 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.

## SALES AND USE TAX

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### RETURNS AND PAYMENTS

#### **Returns and Payment** [Tenn. Code Ann. Sections 67-6-504, 505, and 506]

After completing the registration process, you will receive reporting information. A computer-generated sales or use tax return will be mailed to you monthly unless otherwise instructed. You must file a timely return, beginning with the date entered in Item 4 of the application, even if no sales were made and no tax is due.

Sales or use taxes are due on the first day of each month for the preceding month. The last day for returns to be timely filed with the Department of Revenue, on forms provided by the department, is the 20<sup>th</sup> of each month. The amount of tax due will be sent with the return. Failure to do so will make the return delinquent. The postmark date on the envelope in which the return is mailed is considered the filing date.

The commissioner may decide, when it is in the best interest of the state, that specific taxpayers may file returns on other than a monthly basis. The commissioner may also, under emergency or extraordinary reasons, extend a taxpayer's time for filing a return for up to 30 days. In the latter case, any interest payment will be added to the amount of payment due.

The Commissioner of Revenue can require aviation fuel dealers to file sales reports monthly rather than quarterly for purposes of distributing revenue to the transportation equity trust fund and impose a \$500 penalty if such report is not filed as required. [Public Chapter 194, Acts of 2011]

If a taxpayer has paid a legally imposed sales or use tax to another state for property imported into this state, that payment may be claimed as a credit against the tax on the Tennessee return. The taxpayer must be able to furnish the name of the vendor from whom the property or service was purchased and an affidavit or bill of sale showing the tax has been paid. [Tenn. Code Ann. Section 67-6-507]

If a taxpayer fails to report and pay the sales or use tax as required or files a grossly incorrect or fraudulent report, the commissioner will estimate the amount of tax due plus interest and penalties, if applicable, and the taxpayer will be assessed accordingly. [Tenn. Code Ann. Section 67-6-517]

#### **Electronic Data Interchange (EDI)**

The Electronic Data Interchange program is a method of filing tax returns electronically from one computer to another. Tennessee sales or use tax taxpayers that are required to make their tax payments by Electronic Funds Transfer are required to file their returns through EDI. Taxpayers that choose to voluntarily file their returns via EDI must remit their tax payments electronically. All other Tennessee sales or use tax taxpayers have the option of filing their returns through EDI.

The EDI setup involves several steps including selecting a certified software vendor or Internet tax service provider, completing the registration process, establishing communications, and performing a test of the chosen software. It is the taxpayer's responsibility to choose a software vendor. Internet tax services provide or develop its own software.

Each taxpayer that files sales tax returns electronically must have a Registration for Sales Tax Electronic Filing Application on file with the Department of Revenue. If using a software vendor, the taxpayer must also complete a Transmission Specification Questionnaire for the department. Additionally, each taxpayer that pays sales taxes electronically must have an Electronic Funds Transfer (EFT) agreement on file with the department. Taxpayers who file electronically must pay electronically.

Software vendors and Internet tax services usually offer both "Filing Only" and "Filing and Payment" options. If the "Filing Only" option is selected, the software or tax service will only initiate a transaction for filing the return. The associated EFT payment will need to be initiated via the department's EFT program.

To avoid late delivery of the return and payment, taxpayers using a tax service must contact their provider for cutoff deadlines. Taxpayers using software must transmit to the department's filing service by 4:15 p.m. Eastern Time on the business day prior to the due date for "Filing and Payment" transactions, and by 11:59 p.m. Eastern Time on the due date for "Filing Only" transactions.

## SALES AND USE TAX

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### RETURNS AND PAYMENTS (cont'd)

#### Electronic Funds Transfer (EFT)

The Tennessee General Assembly has authorized the Commissioner of Revenue to require certain tax payments to be made by funds readily available to the state. Electronic Funds Transfer is a method approved by the Commissioner for accomplishing this. Rules for the administration of this legislation went into effect on January 1, 1992.

Two payment options are available that use the Automated Clearing House (ACH) system to electronically transfer tax payments. The ACH system is a nationwide network designed for this purpose and is the preferred transaction method for many financial institutions and corporations. A third payment option, federal wire transfer, should be used only as an emergency option.

Penalty and interest charges may be incurred if the taxpayer fails to remit by the chosen method. No matter which method is chosen, the taxpayer must complete the Electronic Funds Transfer Agreement with the Department of Revenue.

The department will notify taxpayers that they are required to file electronically if the taxpayer's average payment is **\$1,000** or more. A taxpayer may also choose to participate voluntarily when not required to do so. Voluntary participants are subject to the same rules and regulations as persons required to participate. [Tenn. Code Ann. Section 67-1-703(b)]

A taxpayer filing returns for multiple locations and required to file returns electronically from one location, outlet, or place of business must with multiple locations may be required to file electronic returns and make electronic payments from each of the taxpayer's locations. [Tenn. Code Ann. Section 67-6-504(f)]

Beginning August 1, 2007, the Department of Revenue will offer payment warehousing for sales and use tax payments. Taxpayers will be able to file a return upon its completion and delay the accompanying payment until it is due. Additional information on EDI and EFT, and the required forms, may be obtained by contacting the Department of Revenue's Electronic Commerce Unit at (866) 368-6374.

#### Online Filing

Another option for filing returns is online filing through the state's Web portal. Online filers can file all periodic returns and make payments directly from checking accounts. They can also update business information, such as location and mailing addresses. They can also file past due and amended returns. Returns can be filed right up to midnight of the return due date to ensure timely filing. Online filing will also calculate the return and provide an immediate confirmation of receipt by the Department of Revenue. Online filing is free without purchasing additional software. Information about initiating online filing is available on the department's Web site.

#### Mailing Date

If the due date for a return falls on Saturday, Sunday, or a holiday, the due date is automatically extended until the next business day. Returns mailed through the United States mail or transmitted by an alternate delivery service will be considered filed and received on the date shown by the post office cancellation mark on the envelope or other appropriate wrapper containing it. If the cancellation mark is not legible or is missing, then the return will be considered filed on the date the envelope or wrapper is stamped as "Received" by the Department of Revenue. [Tenn. Code Ann. Section 67-1-107]

#### Penalty and Interest

A penalty is imposed for the late filing of a tax return and for late payment of taxes owed the state. The penalty is computed at a rate of 5% per month, or any portion of a month, from the due date until the date the taxes are paid. The maximum penalty is 25% of the tax amount due; the minimum penalty is \$15.

Interest is imposed on any taxes not paid by the date required by law even though a filing date extension has been granted. The interest rate on deficient tax payments is established each year on July 1<sup>st</sup>.

## SALES AND USE TAX

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### RETURNS AND PAYMENTS (cont'd)

When a taxpayer fails to submit a timely return and penalties and/or interest are applied, the penalties and interest become a part of the tax due. The Department of Revenue has no discretion to refund or waive any interest charges. [Tenn. Code Ann. Section 67-1-804]

#### Audits and Assessments

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

Taxpayers selected for field audits will be contacted by the department to set up a convenient time for the audit. Taxpayers will receive advance notice of which records will be needed for the audit. A field audit generally involves examination of documentation and records used to file returns for three previous years.

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

#### Right to a Conference [Tenn. Code Ann. Section 67-1-1801]

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

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

not levy on the taxpayer's property to satisfy the assessment.

If the taxpayer timely requests an informal conference, the 90-day period for filing suit stops running until a conference decision is issued in writing. After the decision is issued, the 90-day period recommences. The 90-day stay for most collection activity is likewise extended. The taxpayer is not required to request an informal conference before contesting an assessment in court.

If the taxpayer does not file suit within the 90-day period to contest the assessment, the taxpayer may pay the assessment, request a refund, and then file suit in chancery court within 6 months from the date the request is denied or deemed denied by operation of law. Procedures outlined in Tenn. Code Ann. Section 67-1-1802 must be followed.

#### Keeping Records

Taxpayers are required to establish and maintain records that are adequate for auditors to use in determining the correct amount of a business's tax liability. This responsibility includes not only those liable for sales tax but also businesses or individuals subject to use tax – persons importing untaxed tangible personal property for storage, use, or other consumption in the state. Records of business transactions must be kept for a minimum of three years from December 31 of the year in which the associated sales and use tax return was filed. [Tenn. Code Ann. Section 67-6-523] and must include:

- + A daily record of all cash and credit sales including those under a finance or installment plan.
- + A record of the amount of all merchandise purchased including bills of lading, invoices, and purchase orders.
- + A record of all deductions and exemptions allowed or claimed including exemption and resale certificates.
- + A record of all property used or consumed in the conduct of the business.
- + A true and complete yearly inventory of the value of stock on hand.

All such records shall be open for inspection, at all reasonable hours, to the Commissioner of Revenue or authorized representatives of the commissioner. [Tenn. Code Ann. Section 67-6-523]

## **SALES AND USE TAX**

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### **RETURNS AND PAYMENTS (cont'd)**

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. [Tenn. Code Ann. Section 67-1-113]

# SALES AND USE TAX

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## TENNESSEE TAXPAYER BILL OF RIGHTS

You, as a taxpayer, have certain rights. Your rights are so important that, in 1992, the Tennessee General Assembly enacted legislation to spell them out. The Tennessee Taxpayer Bill of Rights summarizes state tax laws and revenue rules with which the Department of Revenue must comply while serving you.

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

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

- Fair and courteous treatment from all employees of the Department of Revenue.
- Tax forms and information written in plain language.
- Prompt and accurate responses to all inquiries and requests for tax assistance.
- Access public records not confidential or otherwise protected by law, and to review such records at an appropriate time and location.
- Obtain all tax information relating to your account, including financial information, which is kept confidential, except to the extent required by law.
- Tax notices that clearly explain the amount being billed.
- Clear rules and procedures to resolve tax problems.
- An informal conference, as provided by law, with the Commissioner of Revenue or her delegate to dispute any tax assessment. (Taxpayers have the right to be represented by an attorney, certified public accountant, or other representative at such conference).
- Assurance that employees of the Department of Revenue are not paid, promoted, or in any way rewarded on the basis of assessments or collections.
- Suggest ways the Department of Revenue may better serve the public.
- Prompt notification of any refund to which you are entitled.
- Assistance through statewide meetings held by the Department of Revenue in convenient locations in which taxpayers are allowed to ask questions and voice opinions.
- Notice and demand for payment 10 days before the Department of Revenue makes any collection effort, except as otherwise provided by law.
- 30 days notice before seized assets are liquidated, except as otherwise provided by law.

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

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

Requests for conferences may be sent by mail or fax transmittal to:

Administrative Hearing Office  
Tennessee Department of Revenue  
500 Deaderick Street, Room 1240  
Nashville, TN 37242  
Phone (615) 741-3810  
Fax (615) 741-6463

Taxpayers who wish to contest an assessment without making payment have 90 days to file suit in chancery court, as provided by statute. Interest will continue to accrue at the prevailing rate until payment is received. A lien may be filed against the taxpayer's property during this 90-day period, but the department generally may not levy on the taxpayer's property to satisfy the assessment.

If the taxpayer timely requests an informal conference, the 90-day period for filing suit stops running until a conference decision is issued in writing. After the decision is issued, the 90-day period resumes running. The 90-day stay for most collection activity is likewise extended. The taxpayer is not required to request an **informal conference** before contesting an assessment in court.

If the taxpayer does not timely file suit to contest the assessment, the taxpayer may pay the assessment, request a refund, and then file suit in chancery court for a refund in accordance with the procedures set forth in Tenn. Code Ann. Section 67-1-1802.