

Tennessee Sales and Use Tax Guide



October 2020

SALES AND USE TAX

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 sales and use tax requirements. It is not an all-inclusive document or a substitute for Tennessee sales or use 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, the Department of Revenue mails informational letters with updates on tax laws and policies to registered taxpayers. Be sure to read any letter you receive carefully; this information may save you time and money. Informational publications are also available for specific industries. Contact the Taxpayer Services Division to obtain these publications.

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

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

Sincerely,

Taxpayer Services Division

Tennessee Department of Revenue
Taxpayer Services Division
Andrew Jackson Building
500 Deaderick Street
Nashville, TN 37242

Toll-Free: (800) 342-1003
Out-of-State: (615) 253-0600
TDD: (615) 741-7398

Regional Offices

Memphis:
3150 Appling Road
Bartlett, TN 38133
(901) 213-1400

Chattanooga:
1301 Riverfront Parkway
Suite 203
Chattanooga, TN 37402
(423) 634-6266

Jackson:
Lowell Thomas State Office Bldg
225 Dr. Martin L. King Jr. Drive
Suite 340
Jackson, TN 38301
(731) 423-5747

Johnson City:
204 High Point Drive
Johnson City, TN 37601
(423) 854-5321

Knoxville
7175 Strawberry Plains Pike Suite 209
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SALES AND USE TAX

Table of Contents

Sales or Use Tax	9
Sales or Use Tax	9
Sales Price	9
Local Option Sales or Use Tax	10
Sales Tax Application to the Lease or Rental of Tangible Personal Property	12
Who Must Register for Sales or Use Tax?	13
Who is Liable for Sales Tax?	14
Who is Liable for Use Tax?	14
How to Register	15
Tennessee Retailers	15
Revocation of Certificate of Registration	17
Changes in Ownership, Address, or Business	17
Additional References	17
Definitions	18
Business and Occasional and Isolated Sales	18
Computer Software	18
Customized and Prewritten Computer Software	18
Computer Software Maintenance Contract	19
Utility Water, Electricity, Natural Gas, and Propane Sales	19
Single Article	19
Motor Vehicles	20
Boats	20
Manufactured Homes	20
State Tax on Purchases of Single Articles	20
Computing Sales Tax Due on Single Articles	20
Specified Digital Products	21
Digital Audio-Visual Works	21
Digital Audio Works	21
Digital Books	21
Tangible Personal Property	21
Third Party Drop Shipment	22
Video Game Digital Products	22
Marketplace Facilitators and Sellers	23
Drop shipments by Marketplace Sellers	23
Purchases for Resale made by Marketplace Sellers	23
Peer-to-Peer Car Sharing	24
Food and Food Ingredients	25
What are "Food and Food Ingredients?"	25
Examples of "Food and Food Ingredients"	25
Meal Substitutes	25
Items Not Taxable at the 4.00% Food Rate	25

SALES AND USE TAX

Candy	26
Dietary Supplements	26
Prepared Food	26
Tax Credits	29
Returned Merchandise	29
Repossession	29
Pollution Control	29
Certified Green Energy Production Facility	29
Bad Debt	30
Fire Protection Sprinkler Contractors	30
Sales or Use Tax Paid in Another State	30
Fuel or Petroleum Products Sold to Air Common Carriers	30
Headquarters Facility Tax Credit	31
Taxable and Non-Taxable Property and Services	32
Taxable Tangible Personal Property	32
Computer Software	32
Modifications to Computer Software	33
Services to Computer Software	33
Remotely Accessed Computer Software	34
Video Game Digital Products	35
Application of Single Article Taxation to Software	36
Websites and Computer Software	36
In-House Computer Software	37
Affiliate Computer Software	37
Computer Software Maintenance Contract	37
Support Services to Software	38
Specified Digital Products	38
Services	38
Taxable Services	39
Taxable Amusements	40
Warranty or Service Contracts	40
Nontaxable Services	41
Exemptions Requiring Certificates	42
Documenting Exemptions	42
Blanket Certificate of Resale	43
Direct Pay Permits	44
Government Certificate of Exemption	45
Nonprofit Organizations and Institutions	46
Qualified Call Center Exemptions	46
Dyed Diesel Tax Payments for Commercial Carriers	47
Common Carrier Permit to Pay Reduced Sales Tax Rates	47
Agricultural Exemption Certificate	47
Exemptions Requiring Documentation	48

SALES AND USE TAX

Removal from Tennessee by Buyer	48
Exemption for Railroad Track Materials and Locomotive Radiators	48
Exemption for Rural Electric Cooperatives, Community Service Cooperatives, and Governmental Utility Districts	48
Exemption for Electric Generating and Distribution Systems, Resource Recovery Facilities, or Coal Gasification Plants	48
Agricultural Exemptions	
Agricultural Exemption Certificate	49
Agricultural Exemptions	49
Sales by Farmers and Nursery Operators	51
Purchases of Livestock Drugs by Veterinarians	52
Community Gardens	52
Industrial Machinery Exemptions and Reduced Rates	53
Industrial Machinery	53
Pollution Control Facilities	53
Industrial Machinery Authorization	54
Industrial Energy Fuel and Water	54
Industrial Materials	54
Qualified Data Center	55
Warehouse and Distribution Facility	55
County or Municipality Water Pollution Control and Sewage Systems	56
Research and Development Machinery	56
Spallation Neutron Source Facilities	56
Exempt Products and Services	57
Authorized Large Aircraft Service Facility	57
Aircraft Parts and Supplies	57
Amusements	57
Automobiles	58
Design Professionals	59
Display Property	59
Energy	59
Exemptions for Tennessee Sales for Out-of-State Consumer Use	60
Films	61
Food	61
Fuel	61
Leased Vehicles	62
Medical Equipment and Supplies	62
Miscellaneous Nonprofit Sales	63
Motor Vehicles Used by Common Carriers	64
Natural Disasters	64
Packaging	65
Pollution Control	65

SALES AND USE TAX

Preservation of Historic Property	65
Publications	65
Public Safety & Public Works-Related Goods	66
Railroad Tank Cars	66
Sales in Interstate Commerce	66
Sales Tax Holiday	66
Specified Digital Products	66
Telephone Cooperatives	67
Telecommunications	67
Transactions between Parent Companies and Wholly Owned Subsidiaries	67
Time-Share Accommodations	67
Used Property	67
Utility Poles	67
Vending Items	67
Warranty Parts and Services	67
Waste Removal	68
Watershed Districts	68
Flea Markets	68
Flea Market Registration	68
Sales on Less than Permanent Basis	68
Submission of Flea Market Returns	68
Dealers Registering Annually	68
Dealers Registering Quarterly or Monthly	69
Penalty for Late Filing	69
Contractors	70
Contractors as Consumers	70
Liability for the Sales or Use Tax	70
Exemptions	70
Tax on Fabricated Materials	71
Asphalt Fabricators	71
Installation of Industrial Machinery	72
Lump Sum or Unit Price Construction Contracts on Realty in Effect on July 15, 2002	72
Property Owned by the United States Government	73
Qualified Disaster Restoration	73
Returns and Payments	75
Returns and Payments	75
Electronic Filing	76
Online Filing through TNTAP	77
Online Filing through a Software Vendor	77
Electronic Funds Transfer (EFT)	77
Filing Date	77

SALES AND USE TAX

Table of Contents

Penalty and Interest	77
Audits and Assessments	78
Taxpayer's Right to an Informal Conference	78
Keeping Records	78
Tennessee Taxpayer Bill of Rights	79

SALES AND USE TAX

Changes to the Sales and Use Tax Guide for 2020

- (1) Marketplace facilitators that make or facilitate more than \$100,000 in sales to Tennessee customers in the previous 12-month period are required to collect and remit Tennessee sales tax. Effective October 1, 2020 (Page 23)

 - (2) Remote sellers with more than \$100,000 in sales to Tennessee customers during the previous 12-month period must register and collect Tennessee sales and use tax. Effective October 1, 2020 (Page 16)

 - (3) Peer-to-peer car sharing programs are marketplace facilitators for sales tax purposes and should begin collecting sales tax on behalf of their marketplace sellers beginning October 1, 2020. (Page 23)
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SALES AND USE TAX

Sales or Use Tax

[Tenn. Code Ann. §§ 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 1.50% to 2.75%) imposed by city and/or county governments. This tax is generally applied to the retail sales of any business, organization, or person engaged in making retail sales, including the selling, leasing, or renting of tangible personal property and the selling of certain taxable services, amusements, and digital products 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, taxable services, amusements, and digital products specifically intended for resale are not subject to tax. Retail sales to the federal government or its agencies and the State of Tennessee or a county or municipality within Tennessee are not subject to tax. In addition, there are exemptions for retail sales to certain entities that have qualified for tax exemption.

Sales Price

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 sales, leases, and rentals of tangible personal property and the sales price for taxable services, amusements, and certain digital products. It is the total amount of consideration for which products that are subject to tax are sold. 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 purchased. 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. § 67-6-510]

SALES AND USE TAX

Sales or Use Tax (continued)

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 4.00% effective July 1, 2017. What constitutes food and food ingredients is addressed later in this text. [Tenn. Code Ann. § 67-6-228]
- + Aviation fuel actually used in the operation of aircraft motors is taxed at 4.5%. The 4.5% sales and use tax imposed and remitted on any one person's purchase, use, consumption, or storage of aviation fuel is limited to - \$10,500,000 for any year occurring on or after July 2018. [Tenn. Code Ann. § 67-6-217]
- + Sales of property to common carriers for use outside Tennessee are taxed at the rate of 3.75%. [Tenn. Code Ann. § 67-6-219]
- + When sold to or used by manufacturers, water is taxed at 1%, and gas, electricity, fuel oil, and other energy fuels are taxed at a rate of 1.5%. [Tenn. Code Ann. § 67-6-206]
- + Interstate or international telecommunications services sold to businesses are taxed at a rate of 7.5%. [Tenn. Code Ann. § 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. § 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. § 67-6-223]

- + Video programming services including cable television, wireless cable television, and video services provided through wireline facilities that are offered for public consumption 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 tax rates. Charges of \$15 or less are exempt from tax. [Tenn. Code Ann. §§ 67-6-103(f), 67-6-226]
- + Sales of direct-to-home satellite television programming or television services are taxed at a state rate of 8.25% only. [Tenn. Code Ann. § 67-6-227]
- + Electricity sold to or used by a qualified data center is taxed at a state rate of 1.5%. [Tenn. Code Ann. § 67-6-206(c)]

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 manner that is assured to make the customer aware of that fact. [Tenn. Code Ann. § 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%.

SALES AND USE TAX

Sales or Use Tax (continued)

The tax is imposed in the locality of the seller's location in Tennessee from which the sale is made. If a sale is made from an out-of-state location by a seller with locations in Tennessee, the local tax is imposed based on the purchaser's location of receipt. Effective October 1, 2019, out-of-state dealers who collect and remit Tennessee sales and use tax must report their sales based on the shipped to or delivered to address of the customer. Out-of-state dealers will no longer be able to use the uniform local rate option of 2.25%. Instead, out-of-state dealers must apply the specific local sales tax rate in effect for the city or county jurisdiction into which the sale was shipped or delivered.

The sale of water services is subject to the local tax rate for the locality where water services are delivered to the consumer. [Tenn. Code Ann. §§ 67-6-702(a-f)]

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. [Tenn. Code Ann. § 67-6-704]

The local tax rate for water sold to manufacturers is 0.5%. [Tenn. Code Ann. § 67-6-702(b)]

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

Intrastate telecommunications 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. § 67-6-702(g)(2)]

Interstate or international telecommunications services sold to businesses are subject to the state tax rate of 7.5% and exempt from local tax. [Tenn. Code Ann. § 67-6-702(g)(1)]

Interstate and international telecommunications 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. § 67-6-702(g)(1)]

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. § 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. [Tenn. Code Ann. § 67-6-702(h)]

Specified digital products (digital audio-visual works, digital audio works, and digital books) are subject to a standard local tax rate of 2.50% regardless of the local tax rate levied by the local jurisdiction. [Tenn. Code Ann. § 67-6-702(g)(4)]

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

For leases under which the lessee will make periodic (e.g., weekly or monthly) payments, sales tax is to be collected on each lease payment at the time the

SALES AND USE TAX

Sales or Use Tax *(continued)*

payment is due. For leases under which the lessee will make a lump sum payment up front, tax is due with that payment.

A lease does not include finance agreements for the transfer of possession or control of property. A contract that requires 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 applies to 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.

Extended warranties or repair and maintenance agreements covering

tangible personal property in this state are subject to sales and use tax.

The state general sales tax rate of 7% is collected for the entire length of the lease contract. Tenn. Code Ann. § 67-6-702 defines a "single article" for purpose 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 means the local tax applies to the first \$1,600 of lease or rental income on each single article, then the state tax rate of 2.75% begins and continues up to, and including, \$3,200 on the single article lease price. Tenn. Code Ann. § 67-6-204(b)(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. § 67-6-204 and Sales and Use Tax Rule 1320-05-01-.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

SALES AND USE TAX

Sales or Use Tax *(continued)*

credit against the Tennessee use tax liability.

Who Must Register for Sales or Use Tax [Tenn. Code Ann. §§ 67-6-102, 67-6-201, 67-6-210, 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 tax
- + Charging admission, dues, or fees that are subject to the sales tax
- + Using tangible personal property, computer software, specified digital products, or warranty or maintenance contracts 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.

This requirement applies whether your business is a sole proprietorship, partnership, LLC, corporation, or any other type of 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 of tangible personal property 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.

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

In Tennessee, the responsibility for sales tax rests on the dealer that provides the taxable product 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 purchases during the preceding month. The tax 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.

SALES AND USE TAX

Sales or Use Tax *(continued)*

Who is Liable for Use Tax?

[Tenn. Code Ann. §§ 67-6-203, 67-6-210, 67-6-208, 67-6-231]

When a user of tangible personal property, computer software, computer software maintenance contracts, warranty or maintenance contracts covering tangible personal property located in this state, and specified digital property does not pay sales tax to a dealer, the user becomes personally liable for the tax. This generally occurs when a user purchases articles from an out-of-state dealer not registered in Tennessee. 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 and 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 resident 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. § 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 in the state [Tenn. Code Ann. § 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. § 67-6-210]

- + Purchasing a product from a transient business that does not collect sales or use tax [Tenn. Code Ann. § 67-6-210]
- + Consuming or using a product that was purchased without paying sales or use tax [Tenn. Code Ann. § 67-6-203]
- + Consuming, as a service provider, tangible products in the performance of a service [Tenn. Code Ann. § 67-6-102(75)]

How to Register

[Tenn. Code Ann. §§ 67-6-601, 67-6-602]

Tennessee Retailers

You may apply for the Certificate of Registration online. Select the link to “Register a New Business” in the Additional Services section of our TNTAP website <https://tntap.tn.gov/eservices/>.

You may also visit one of the Department of Revenue offices listed on the inside front cover of this publication. Trained personnel are available to explain Tennessee’s tax system and answer any of your questions.

When registering, you will need 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

SALES AND USE TAX

Sales or Use Tax *(continued)*

- + 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 paper 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 "nexus" with Tennessee. Nexus is essentially having enough contact with Tennessee so that the state can place tax requirements on the business. Retailers are considered to have nexus if they:

- + Have an office, distribution point, sales room, warehouse, or any other temporary or permanent place of business in Tennessee.
- + Have an employee, agent, or independent contractor to solicit sales in Tennessee.
- + Furnish any taxable services in Tennessee or use an agent or independent contractor to perform those services in Tennessee.
- + Are the lessors of tangible personal property located in Tennessee.
- + Are construction contractors performing jobs in Tennessee.

- + Have company personnel participate in promotional activity in Tennessee, including trade shows.
- + Use company-owned trucks or use carriers acting as an agent to deliver sales in Tennessee.
- + Provide telecommunications to subscribers located in Tennessee.
- + Have a subsidiary with physical presence in Tennessee act as an agent to conduct in-state activities on behalf of the out-of-state retailer.
- + 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.

Effective July 1, 2015, sales or use tax law creates a rebuttable presumption that out-of-state dealers have nexus and must collect Tennessee sales and use tax from Tennessee customers if the dealer pays an in-state party a fee or commission to route customers to the dealer, and such dealer derives more than \$10,000 over the past 12 months from the referred customers. [Tenn. Code Ann. § 67-6-520]

Out-of-state retailers can voluntarily register to collect the tax for their customers. Out-of-state sellers who are

SALES AND USE TAX

Sales or Use Tax *(continued)*

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 use or consumption of tangible personal property, computer software, computer software maintenance contracts, warranty or maintenance contracts covering tangible personal property in this state, and certain digital products purchased from companies not registered to collect the Tennessee tax.

Public Chapter 157 delays the effective date of certain streamlined sales tax provisions until July 1, 2021.

Public Chapter 429 allows the Department of Revenue to begin enforcing Sales and Use Tax Rule 1320-05-01-.129, effective July 1, 2019, which requires out-of-state dealers who engage in the regular or systematic solicitation of consumers in this state through any means and who make sales that exceed \$500,000 to consumers in this state during the previous twelve-month period, to register for a sales and use tax account by the first day of the third calendar month following the month in which the dealer met the threshold.

Effective October 1, 2020, the sales threshold is decreased from \$500,000 to \$100,000. [Tenn. Code Ann. §§ 67-6-543]

Revocation of Certificate of Registration
[Tenn. Code Ann. §§ 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 the taxpayer. 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. § 67-6-606]

Changes in Ownership, Address, or Business [Tenn. Code Ann. § 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, transferring or changing the ownership of the business, adding or changing partners, 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 above should occur, answer the questions on the back of the business' 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.

Taxpayers may make changes to their mailing address through the Department's website.

SALES AND USE TAX

Sales or Use Tax *(continued)*

If you sell your business or go out of business, you must file a final sales and 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. § 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 Annotated*, 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://tn.gov/revenue>.

Sales and use tax rules and regulations are available on the Secretary of State's web site at
<https://publications.tnsosfiles.com/rules/1320/1320-05/1320-05.html>.

SALES AND USE TAX

Definitions

Business and Occasional and Isolated Sales

Business is defined as “any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect.”

Business is defined in the law to exclude occasional and isolated sales, also known as casual and isolated sales. Occasional and isolated sales are sales made by persons not engaged in business or that do not regularly sell the type of property being sold. These sales are not subject to sales tax.

Occasional and isolated sales are also sales of tangible personal 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 yard sale and the sale of Girl Scout cookies are both considered occasional and isolated sales. If more than two temporary selling periods take place during a year, or if a sales period extends beyond 30 consecutive days, then all sales for the year are subject to sales tax.

Charitable organizations whose primary purpose is fundraising in support of a county, municipal, or metropolitan library system may 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 \$300,000 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 website. [Tenn. Code Ann. § 67-6-102]

Effective July 1, 2015, community foundations, as defined in 26 US Code § 170(c)(2), may elect to make sales during biannual auctions in lieu of the two semi-annual sales periods. Such sales must take place in no more than two auctions, lasting up to 24 hours, in any calendar year in each county designated to receive charitable support from a fund or trust that comprises a component part of the community foundation. [Tenn. Code Ann. § 67-6-102(8)(B)]

Churches or similar organizations that regularly sell 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.

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. Tennessee imposes state and local sales and use tax on the retail sale, lease, licensing, or use of computer software in this state.

Customized and Prewritten Computer Software

Computer software developed by the author to the specifications of a specific purchaser is considered to be customized computer software.

Prewritten computer software is computer software, including prewritten

SALES AND USE TAX

Definitions *(continued)*

upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

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.

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."

Computer Software Maintenance Contract

A computer software maintenance contract is defined to mean a contract that obligates a person to provide a computer 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.

Utility Water, Electricity, Natural Gas, and Propane Sales

Sales and use tax on sales of water by public utilities only applies to the following types of charges: customer's monthly bill for metered usage, monthly minimum bill, monthly customer charge, and monthly demand charge. This also applies to the sales and use tax on sales of natural gas, propane, and electricity sold directly to consumers for non-residential uses.

Single Article

[Tenn. Code Ann. § 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., and 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, computer software maintenance contracts, and warranty or maintenance contracts are subject to the full local option tax.

Applications of "single article" taxation include:

SALES AND USE TAX

Definitions (continued)

Motor Vehicles

Parts and accessories for motor vehicles installed at the factory and delivered as original equipment will be treated as part of the unit. 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 are also 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 .
- (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

SALES AND USE TAX

Definitions *(continued)*

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.

Specified Digital Products

Specified digital products are products that are electronically transferred to the purchaser or accessed electronically by the purchaser. 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 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.

Tangible Personal Property

"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.

Effective July 1, 2019, the definition of tangible personal property does not include fiber-optic cable after it has become attached to a utility pole, building,

SALES AND USE TAX

Definitions *(continued)*

or other structure or installed underground. Such fiber-optic cable will be deemed realty upon installation.

Third Party Drop Shipments

[Sales and Use Tax Rule 1320-05-01-.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, Dealer B may provide its home state resale certificate in conjunction with Customer C's Tennessee exemption 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.

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 an

instate sale for purposes of determining sales tax liability.

Video Game Digital Products

[Tenn. Code Ann. § 67-6-102]

A video game digital product is the permanent or temporary right to access and use computer software that facilitates human interaction with a user interface to generate visual feedback for amusement purposes. The video game software remains in the possession of the seller or a third party. In other words, a video game digital product cannot be loaded onto the user's own computer. However, the sale of video game software that is loaded onto or downloaded onto the purchaser's computer in Tennessee is subject to state and local sales and use tax as the sale of computer software.

SALES AND USE TAX

Marketplace Facilitators and Marketplace Sellers [Tenn. Code Ann. §§ 67-6-501; 67-6-102]

Effective October 1, 2020, Public Chapter 646 requires marketplace facilitators that make or facilitate more than \$500,000 in sales to Tennessee customers during the previous 12-month period to collect and remit Tennessee sales tax. This collection requirement applies to both sales a marketplace facilitator makes on its own behalf as well as sales it facilitates on behalf of its marketplace sellers.

Public Chapter 759 decreased the threshold from \$500,000 to \$100,000 effective October 1, 2020.

Marketplace facilitators are required to collect and remit sales and use tax by the first day of the third calendar month following the month in which the threshold is met.

A marketplace facilitator may request a waiver from the requirement to collect and remit sales tax if substantially all the marketplace sellers on its marketplace are registered in Tennessee for sales tax purposes. If the Department grants the waiver, the marketplace sellers are required to collect and remit sales tax on their own sales as well as sales made on the marketplace.

Marketplace facilitators may also request a waiver from the requirement to collect and remit sales tax if the marketplace facilitator has a contractual agreement with a marketplace seller that the marketplace seller will collect and remit sales tax. To qualify, the marketplace seller must also:

- + Have annual gross sales in the United States of over \$1 billion, including the gross sales of any related entities and

franchises;

- + Provide evidence to the marketplace facilitator that it is registered in Tennessee for sales and use tax purposes; and

- + Notify the Department that it will collect and remit sales and use tax on its sales through the marketplace facilitator and is liable for failure to collect or remit applicable taxes on its sales.

Drop Shipments by Marketplace Sellers

A marketplace seller that is not located or registered in Tennessee may purchase tangible personal property tax-exempt from a Tennessee drop shipper to fulfill a Tennessee sale made through a marketplace facilitator.

The marketplace seller must issue a Streamlined Certificate of Exemption and note on the certificate that the sale is being facilitated by a marketplace facilitator. A Tennessee Certificate for Resale is not required.

Marketplace Seller Registration Requirements

Beginning October 1, 2020, a marketplace seller is not required to be registered in Tennessee for sales and use tax purposes if all its taxable sales are facilitated by marketplace facilitators that are registered in Tennessee. The marketplace facilitator is the retailer for sales and use tax purposes on all sales made or facilitated through its marketplace.

If a marketplace seller makes any sales other than those facilitated by a marketplace facilitator, it may be required to register for sales and use tax if it otherwise has nexus in Tennessee.

If the marketplace facilitator does not meet

SALES AND USE TAX

the threshold and is not required to collect and remit sales and use tax, the marketplace seller is required to collect and remit sales and use tax if:

- + The seller meets the threshold for all its own sales and sales made through different unregistered facilitators; or
- + Has a physical presence in TN.

Peer-to-Peer Car Sharing [Tenn. Code Ann. §§ 67-6-102; 67-4-1901]

Public Chapter 796 provides that peer-to-peer car sharing programs are marketplace facilitators for sales tax purposes and should begin collecting sales tax on behalf of their marketplace sellers beginning October 1, 2020.

Public Chapter 796 also states that the auto rental surcharge is not imposed on entities or individual vehicle owners engaged in peer-to-peer car sharing.

"Peer-to-peer car sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program

SALES AND USE TAX

Food and Food Ingredients

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

Effective July 1, 2017, Tennessee sales or use tax law provides that sales of food and food ingredients are subject to a state rate of 4.00% plus the applicable local tax rate.

What Are “Food or Food Ingredients?”

In specifying that food and food ingredients are taxed at the 4.00% 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.”

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 4.00% state rate, if not prepared by the seller. This list is not all-inclusive.

Baby food, baking powder, baking soda, beverage powders (other than dietary supplements), biscuit mix, bottled water (carbonated, flavored, sweetened, or unsweetened), bouillon cubes, bread, butter, cake mixes, cakes, canned foods, cereal, cheese, chip dip, chips (potato, corn, etc.), chocolate (unsweetened) and cocoa (powdered), coffee, condiments (ketchup, mustard, mayonnaise, etc.), cookies, cooking oil, dairy products, eggs, fish and meats, flavoring extracts, flour, food colorings, frostings, frozen meals, fruit (fresh or unsweetened dried), fruit juices, gelatin, granola and breakfast bars containing flour, gravies and sauces,

herbs and spices, honey, ice (e.g., cubes, crushed), ice cream, jams and jellies, luncheon meats, margarine, meat extracts, meat tenderizers, nuts (unsweetened or salted), olives, pasta, pastries, peanut butter, pepper, pickles, pies, popcorn, popsicles, poultry, pretzels, pumpkins, raisins, relishes, salad dressing and mixes, salad oil, salt (granular), seasonings, sherbet, shortening, soft drinks, sugar and sugar substitutes, sweeteners, tea (bags, leaves, bottled), trail mix, vegetable juices, vegetables (fresh, frozen, dried, etc.), vinegar, yeast, yogurt.

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.

Alcoholic beverages, baking chips and baking bars (sweet and semi-sweet), beer, breath mints, breath sprays, breath strips, cake decorations, candy-coated items, 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.

Meal Substitutes

Meal substitutes are taxable at the 4.00% 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.

SALES AND USE TAX

Food and Food Ingredients

(continued)

Items Not Taxable at the 4.00% Food Rate

The law specifies that the 7.00% state rate and not the 4.00% rate applies to candy, dietary supplements, prepared food, alcoholic beverages, and tobacco products.

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 baking bars (sweet or semi-sweet), beer nuts, breath mints, candy bars (no flour listed), candy-coated items, caramel or candy-coated apples, caramel or candy-coated popcorn, cereal bars (no flour listed), chewing gum, chocolate chips and other sweet or semi-sweet baking chips, chocolate covered nuts or seeds, chocolate covered potato chips, chocolate or carob-covered raisins, dried fruit with sweeteners, fruit roll-ups with sweeteners, honey-roasted or sweetened nuts, marshmallows, peanut brittle, sugarless candy (no flour listed), yogurt-covered raisins or nuts.

Dietary Supplements

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

1. “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.
2. Dietary supplements are also intended for ingestion as a tablet, capsule, powder, softgel, gelcap, or liquid form. Dietary supplements are not represented as conventional food and are not represented to be the sole item of a meal or diet.
3. 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; herbal supplements; immune supports; lecithin; metabolic supplements; vitamins and minerals; and zinc lozenges. This list is 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

SALES AND USE TAX

Food and Food Ingredients

(continued)

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.

On 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 (e.g., eggs, fish, meat, poultry) 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 4.00% 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 if prepared by the seller are any food item sold in a

heated state, bakery goods made by the seller; cold or frozen meals and soups prepared by the seller 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; or warmed 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 4.00% 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 4.00% 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

SALES AND USE TAX

Food and Food Ingredients

(continued)

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

Tax Credits

Returned Merchandise

[Tenn. Code Ann. § 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.

Repossession

[Tenn. Code Ann. § 67-6-507]

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.

Pollution Control

[Tenn. Code Ann. § 67-6-346]

An exemption, credit, or refund of sales or use tax is available for any system, method, improvement, structure, device, or appliance that is required and primarily used to bring the purchaser into compliance with federal, state, or local pollution control laws or regulations. The exemption also applies to repairs and

installation of the required pollution control equipment. The exemption is not available to entities that process, treat or control pollution created by others.

In addition, auto body paint shops may claim exemption or take a credit of 100% of the sales and use tax paid on purchases of equipment to comply with emission control standards. Dry cleaners may also claim exemption or take a credit of 50% the sales and use tax paid on replacement equipment purchased to comply with emissions control standards.

Application must be made to, and approval received from, the Department of Revenue for the pollution control exemption, credit, or refund. Those businesses taking either credit must provide documentation that the equipment was necessary for compliance with federal, state, or local laws and regulations.

Certified Green Energy Production Facility

[Tenn. Code Ann. § 67-6-346]

An exemption, credit, or refund for sales and use tax paid on purchases of machinery and equipment used to produce electricity in a certified green energy production facility is available. The facility must be certified by the Tennessee Department of Environment and Conservation (TDEC) as producing electricity for use and consumption off the premises using clean energy technology.

A copy of the Certification issued by the TDEC must be furnished to the Department of Revenue along with a completed supplemental application for the green energy production facility sales and use tax exemption, credit, or refund.

SALES AND USE TAX

Tax Credits *(continued)*

Bad Debt

[Tenn. Code Ann. § 67-6-507]

A dealer who has paid the sales or use tax on a sale to an account that later becomes a bad debt and the debt qualifies as a bad debt that may be charged off for federal income tax purposes may take that sale amount as a credit on the current return for the tax period the debt is written off as uncollectable and eligible to be deducted for federal purposes. 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.

Fire Protection Sprinkler Contractors

[Tenn. Code Ann. § 67-6-355]

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.

Sales or Use Tax Paid in Another State

[Tenn. Code Ann. § 67-6-507]

Persons having paid a legally imposed sales or use tax to another state on tangible personal property, computer software, computer software maintenance contracts, warranty or maintenance contracts covering tangible personal property, and taxable digital products used or consumed in 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.

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 or to aircraft. However, effective July 1, 2014, for boats imported solely for personal use by persons moving to Tennessee, if the boat has a fair market value of \$10,000 or less and the boat was properly registered in the previous state, the boat is not subject to use tax.

[Tenn. Code Ann. § 67-6-210]

Fuel or Petroleum Products Sold to Air Common Carriers

[Tenn. Code Ann. § 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 flights destined for or continuing from a location outside the United States under Tenn. Code Ann. § 67-6-349(a), may, upon meeting certain criteria, take a credit equal to the amount of tax previously remitted to the Department.

The dealer must provide a credit/refund to the common carrier, obtain documentation sufficient to establish that the fuel was used in flights destined for or continuing from a location outside the United States, 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

Tax Credits *(continued)*

Headquarters Facility Tax Credit

Eligibility exists for a credit for all Tennessee state sales and use tax paid, except tax at the rate of .5% on qualified tangible personal property for construction of a new, expanded, or remodeled headquarters facility. To be eligible for this credit, the taxpayer and, if applicable, the lessor must submit an application with a business plan and receive an authorization letter from the Department of Revenue.

Taxpayers eligible for the headquarters sales and use tax credit are those taxpayers who are subject to the Tennessee franchise and excise taxes or insurance companies as defined in Tenn. Code Ann. § 56-1-102(2). [Tenn. Code Ann. § 67-6-224]

A headquarters facility is a facility in this state that houses the international or national headquarters of a taxpayer where headquarters executive, administrative, or professional workers perform administrative, planning, research and development, marketing, personnel, legal, computer, or telecommunications services.

Qualified tangible personal property includes: building materials, machinery and equipment, furniture and fixtures, and computer software used in the qualifying facility and such property must be directly related to the creation of 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 state average occupational wage.

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

To receive the credit, the taxpayer must submit a claim for credit along with documentation as required. The Department will notify the taxpayer of the approved amount of the tax credit along with instructions for taking the credit.

A taxpayer that has qualified for the headquarters tax credit or an affiliate of such taxpayer can enjoy a sales tax exemption for "private communication services" used for communication with a computer or telecommunications center located in Tennessee. To make purchases of private communication services without the payment of sales tax, the taxpayer must provide sellers a copy of an exemption certificate issued by the Department of Revenue. [Tenn. Code Ann. § 67-6-389]

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 property into Tennessee as long as that property was previously used in the operation of the taxpayer's business. [Tenn. Code Ann. § 67-6-389(e)]

SALES AND USE TAX

Taxable and Non-Taxable Property and Services

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

The sale, lease, or rental of tangible personal property is 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 physicians, dentists and veterinarians.
- + Furniture, appliances, and home furnishings.
- + Electronic equipment and supplies.
- + Computer hardware 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.

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.

Computer Software

Computer software subject to tax includes both custom and prewritten computer software.

The sale, lease, license, or use of computer software is subject to tax when:

- + Provided to the customer in this state on tapes, discs, cards or other tangible materials;
- + Provided to the customer by loading and leaving on the customer's (or the customer's designee's) computer in Tennessee;
- + Provided to the customer by electronic delivery (e.g., download) to the customer's (or the customer's designee's) computer in Tennessee;
- + Provided to the customer by programming in the customer's (or the customer's designee's) computer in Tennessee; or
- + As of July 1, 2015, remotely accessed by the customer from a location(s) in Tennessee. [Tenn. Code Ann. § 67-6-231]

Computer software provided to a customer that is installed, downloaded or

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

programmed into the customer's (or the customer's designee's) computer located outside Tennessee is not subject to Tennessee sales or use tax.

Modifications to Computer Software

Modifications, enhancements, updates, upgrades and customizations of both customized and prewritten computer software are subject to sales and use tax. It is the sale of computer software.

Modifications, enhancements, updates, upgrades and customizations downloaded or programmed into the customer's (or the customer's designee's) computer located inside Tennessee are subject to tax. Software programmed, downloaded, or installed on computers outside Tennessee is not subject to Tennessee sales or use tax.

Services to Computer Software

Services to computer software enumerated in the law that are subject to tax include installation, and repair/maintenance of computer software.

Installing or loading computer software on a computer located in this state is subject to sales tax. When provided by the software seller, the installation is part of the sales price of the computer software, even if separately itemized or invoiced. In addition, stand-alone installation of computer software furnished by a third party to install or load computer software on a computer located in this state is also subject to sales tax.

[Tenn. Code Ann. § 67-6-205(c)(6)]

Maintenance and repair to computer software installed on computers located in this state is subject to sales tax. Repair or maintenance services performed on computer software installed on computers located outside Tennessee is not subject to sales tax. [Tenn. Code Ann. § 67-6-205(c)(4)]

Other services that are not enumerated in the law may be subject to tax where the charges for the services are considered a part of the sales price of computer software. The sales price of computer software includes labor and service costs and expenses of the seller as well as services necessary to complete the sale. [Tenn. Code Ann. § 67-6-102]

Reimbursable travel expenses (e.g., hotel, per diem) are costs or expenses of the seller and are a part of the sales price of the computer software, even if separately itemized or invoiced.

Consulting or professional services that include creating, designing, developing, fabricating, programming, altering, or modifying software furnished in conjunction with the sale of the computer software are part of the sales price of the computer software even if separately itemized or invoiced as consulting or professional services. If the computer software is subject to tax then these services are also subject to tax.

Activating features already coded within existing software to optimize its functionality, including setting pre-defined software toggles or switches or building tables that give direction within the standard delivered application software without development, modification, or creation of software code is not subject to sales tax when optional and sold

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

independently from sales of software (or customization of software) or sales of software installation or repair

However, if these services are sold as part of the sale of the software (i.e., are not optional), or are sold with software, installation, and/or repair for one lump price (i.e. not separately itemized), then they are subject to the sales tax as part of the sale price for the taxable software, installation and/or repair services.

Unlike installation or repair services which are enumerated in the law as taxable services; training services are not enumerated as a taxable service. Computer software training services included in the price and not separately itemized are subject to tax as part of the sales price of the computer software. Even if separately itemized from the price of the computer software, training services may be taxable as a part of the sales price of the software if the purchase of the training services is not optional and sold independently from the software.

Remotely Accessed Computer Software [Tenn. Code Ann. § 67-6-231]

The taxable use of computer software in Tennessee includes the access and use of software that remains in possession of the seller and is remotely accessed by a customer for use in this state. This provision ensures that software remains subject to sales and use tax regardless of a customer's method of use.

The seller must collect tax at the 7% state tax rate, plus the applicable local tax rate, on the sales price for the use of remotely

accessed software during billing periods that begin on or after July 1, 2015. For example: A license of remotely accessed software requires payment of an annual license fee due each April 1st. Tax must be paid on the fee for the license period beginning April 1, 2016.

The tax applies to access and use of the software from a location in Tennessee, and it applies whether the charge for the software is on a per use, per user, per license, subscription, or any other basis. The software is accessed from a location in Tennessee if a customer's residential or primary business address is in this state.

If the seller does not have nexus in Tennessee or otherwise does not collect the tax, purchasers in this state who remotely access and use software must report and pay use tax to the Department on the purchase price for the use in this state of the remotely accessed software.

If the purchaser pays for access to software that will be used by individuals who are located in this state, and other individuals who are located outside this state (for example, the purchaser's employees), then the price paid by the purchaser may be allocated based on the percentage of users located in Tennessee to determine the amount subject to Tennessee tax. This may be done using one of the following ways.

If the purchaser is not registered for Tennessee sales or use tax, the seller must obtain a fully completed Streamlined certificate (available on the Department's website) from the purchaser to document

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

the exemption claimed for the portion of the price that corresponds to the percentage of users located outside Tennessee. The seller must collect tax from the Tennessee customer on the percentage of the price that is allocated to Tennessee.

The Streamlined certificate must include the nonregistered customer's Federal Employer's Identification Number (FEIN). In addition, on Line 5, "Reason for Exemption," the customer should circle "Other" with an explanation such as, "remotely accessed software used by employees located in multiple states" and specify the percentage of users located outside of Tennessee.

If the purchaser is registered for Tennessee sales and use tax, then the purchaser may: 1) use the Streamlined certificate to claim exemption for the portion of the price that corresponds to users located outside Tennessee, or 2) use the Remotely Accessed Software Direct Pay Permit form (available on the Department's website) to purchase the remotely accessed software without paying tax to the seller.

The purchaser then must directly pay the tax to the Department on the portion of the price that corresponds to the percentage of users located in Tennessee. The form must include the purchaser's Tennessee sales and use tax registration number.

A dealer that purchases software exclusively for the purpose of providing remote access and use of that software to its customers may purchase the software without tax using a resale certificate.

Remote access and use of software by the purchaser exclusively for fabricating other software that is owned and used only by that person is exempt from sales and use tax. [Tenn. Code Ann. § 67-6-387(b)]

Services that are not subject to tax under state law but may be remotely accessed and utilized or received by a purchaser are not considered remotely accessed software and continue to be nontaxable services. Some examples include but are not limited to:

- + Information services or data processing services (including the capability of the customer to analyze such information or data provided by the dealer);
- + Payment or transaction processing services;
- + Payroll processing services;
- + Billing and collection services;
- + Internet access;
- + Storage of data, digital codes, or software; or
- + The service of converting, managing, and distributing digital products.

Video Game Digital Products

Effective July 1, 2015, sales and use tax also applies to charges for remotely accessed software that is for the permanent or temporary right to access video game digital products, whether the

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

charge is on a per use, per user, per license, subscription, or any other basis.

The right to access a video game digital product may be through use of a digital code. Sales of digital codes to obtain access to video game digital products are subject to tax at the time of the sale of the digital code, and no additional tax is due when the purchaser or subscriber enters the code and accesses the video game digital product.

The state rate of 7% plus the applicable local tax rate (up to 2.75%) applies to sales of digital video game products.

The sales or use of video game digital products is taxable in Tennessee if the residential or primary business address of the purchaser who accesses the digital video game product is in Tennessee.

Application of Single Article Taxation to Software

The single article tax laws do apply to prewritten computer software. A separate prewritten computer software application or module that is sold without any other software applications or modules bundled with it for one price will qualify as a single article of prewritten computer software. This applies regardless of how the software is delivered, whether downloaded or remotely accessed.

Single articles of prewritten computer software are taxed 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 of the sales price of each single

article. Beyond \$3,200, no local tax or additional state single article tax is due on a single article of prewritten computer software.

Single article taxation does not apply to custom computer software or separate itemized charges for customization of prewritten computer software.

Customized computer software does not qualify as a "single article" as defined in Tenn. Code Ann. § 67-6-702 and the full sales price is subject to the local sales tax, but not the 2.75% additional state tax on a single article.

Websites and Computer Software

Additionally, a web site is considered computer software, so the sale of web site development and design is 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.

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

In-House Computer Software

When a seller does not collect tax on the sale of computer software, Tennessee purchasers must report and pay use tax to the Department on the purchase price of the software. A use tax exemption is available for computer software fabricated by a person or its direct employees (W-2 employees) for such person's own use, referred to as in-house computer software. The use tax exemption does not apply to computer software fabricated or programmed by independent contractors or employees of an entity that is not the user and consumer of the computer software.

Affiliate Computer Software

Tenn. Code Ann. § 67-6-395 exempts, from the sales and use tax, the use of computer software that is developed and fabricated by an affiliated company, or the repair of computer software if the repair is performed by an affiliated company. This exemption applies regardless of whether such software is remotely accessed and used or delivered by other means. For these purposes the term affiliated company requires 100% ownership between the two companies or a 100% ownership by a common parent.

Computer Software Maintenance Contract

Sales of, use of, or subscription to computer software maintenance contracts are subject to sales and use tax at the time of the sale. If tax is paid on the computer software maintenance contract,

then no additional tax will be owed on any updates or upgrades to the software covered by the software maintenance contract. The total sales price of the software maintenance contract is subject to the state and local tax rate. The local single article tax limitation and the additional state single article tax do not apply to computer software maintenance contracts.

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.

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

Support Services to Software

In general, support services agreements provide help desk and customer service support, basic usability of the software and Q&A assistance with software functionality. Sales of support service agreements that meet all three of the following conditions would not be taxable as part of the software maintenance contract.

- + The support services are sold separately from the sale of the computer software maintenance contract;
- + The purchaser is not required to purchase the support services in order to purchase software or the software maintenance contract;
- + The support services do not include transfer of, installation of, or repair or maintenance of computer software.

Specified Digital Products

The retail sale, licensing, lease, or use of specified digital products to purchasers with a residential or business address in Tennessee are subject to sales and use tax. The combined state and local sales and use tax rate for specified digital products is 9.50% (7% state plus 2.50% local) state-wide.

Specified digital products are electronically transferred (e.g., downloaded or accessed on-line) to purchasers or subscribers and are not provided on tangible storage media such as tapes, CDs, or DVDs. Specified digital

products include digital audio-visual works (e.g., movie and music videos), digital audio works (e.g., music, ringtones), and digital books, as defined in the law.

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.

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.

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

Taxable Services

[Tenn. Code Ann. §§ 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 are subject to tax. The tax does not apply to accommodations or rooms furnished to the same person for 90 or more continuous days.

Charges for short term rental of vacation lodging by owners and property management companies including cabins, cottages, chalets, condominiums, houses or individual rooms for overnight lodging between one and 89 days are subject to Sales Tax.

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 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 are subject to tax. 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, and charges for repairs to computer software are subject to tax.

Charges for installation of items of tangible personal property that remain tangible personal property after installation and installation of computer software are subject to tax. 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 of tangible personal property except for coin-operated facilities are subject to tax.

Charges for bathing animals are taxable. If both bathing and pet grooming are sold together for a single charge, sales tax is due on the total sales price. 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. If a veterinarian provides non-medical animal bathing and pet grooming that are each separately itemized, sales tax is only due on the charge for bathing. There is no tax on pet grooming services billed separately.

Furnishing intrastate, interstate, or international telecommunications services or ancillary services for a consideration are subject to tax.

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

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. § 67-6-230(a)]

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 or subscriptions for access to or use of television programming that is provided by a video programming services provider; and charges or subscriptions to access or use direct-to-home satellite services are subject to tax.

Taxable Amusements

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

- + Charges for country clubs, tennis clubs, golf courses, and other substantially similar recreational facilities.
- + 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.

Warranty or Service Contracts

[Tenn. Code Ann. § 67-6-208]

Charges for warranty or service contracts, warranting the repair or maintenance of tangible personal property are subject to Tennessee sales tax when:

- + The warranty or service contract is sold as part of, or in connection with, the sale of tangible personal property that is subject to sales tax, or
- + The warranty or service contract applies to tangible personal property located in Tennessee.
- + The warranty or service contract is for tangible personal property where the location of the property is unknown and the purchaser has a Tennessee address.

If the warranty or service contract applies to tangible personal property located both inside and outside Tennessee, dealers or users may allocate to Tennessee a percentage of the sales price or purchase price of the warranty or service contract that equals the percentage of tangible personal property located inside the state.

SALES AND USE TAX

Taxable and Non-Taxable Property and Services *(continued)*

Repairs performed under such contracts are not also subject to tax.

Nontaxable Services

Examples of non-taxable services are:

- + Furniture moving.
- + Barber and beauty shop services.
- + Hospital, physician, and dental services.
- + Carpet cleaning and 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. Tennessee laws are also amended from time to time. Any questions concerning the taxability of tangible personal property or services should be directed to the Taxpayer Services Division.

SALES AND USE TAX

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 Tennessee 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. §§ 67-6-102, 602; Sales and Use Tax Rule 1320-05-01-.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 valid until revoked in writing by the issuer.

Except in the case of a third party drop shipment to a consumer located in this state, an out-of-state dealer that makes purchases in this state that are for resale to consumers may provide its Tennessee suppliers with a resale certificate from its home state to document that the out-of-state dealer is entitled to make such purchases for resale. See section on third party drop shipment.

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

SALES AND USE TAX

Exemptions Requiring Certificates (continued)

- 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 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. § 67-6-102]

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; 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.

SALES AND USE TAX

Exemptions Requiring Certificates *(continued)*

However, it would be improper for an automobile dealer to issue a resale certificate for its purchase of office furniture from 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

[Tenn. Code Ann. § 67-6-102; Sales and Use Tax Rule 1320-05-01-.68(4)]

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. A direct pay permit may be issued 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 direct pay permit 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 exemption number appearing on the direct pay permit issued to the purchaser by the Department of Revenue.

Government Certificate of Exemption [Tenn. Code Ann. §§ 67-6-308, 329]

This exemption is valid for sales directly to 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 certificate form 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 organizations and on Line 5, circle Item B, and include the name of the government entity claiming the government exemption.

SALES AND USE TAX

Exemptions Requiring Certificates (continued)

Nonprofit Organizations and Institutions [Tenn. Code Ann. §§ 67-6-322 and 56-25-504]

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 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 that will be reimbursed by the exempt organization or that is 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 at the time of the sale 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 § 501(c)(3) organizations, (c)(5) labor organizations, (c)(8) fraternal benefit organizations (exempt pursuant to Tenn. Code Ann. § 56-25-504), (c)(13) nonprofit cemeteries, and (c)(19) wartime veterans' organizations.

Out-of-state organizations that hold a federal tax exemption under 26 USC § 501(c)(3) may submit a copy of their federal exemption letter in lieu of a certificate of exemption from the Commissioner of Revenue. Instate § 501(c)(3) entities require a certificate of exemption issued by the Commissioner of

SALES AND USE TAX

Exemptions Requiring Certificates *(continued)*

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.

Qualified Call Center Exemptions [Tenn. Code Ann. § 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.

Dyed Diesel Tax Payments for Commercial Carriers [Tenn. Code Ann. § 67-3-1401]

Commercial carriers are required to report and pay the Tennessee diesel tax quarterly on each gallon of dyed diesel fuel it uses to produce power for a means

of transportation in Tennessee, as defined in the Transportation Fuel Equity Act.

Such commercial carriers are granted authority by the Department of Revenue to make purchases of dyed diesel fuel without payment of sales or use tax or diesel tax to suppliers at the time of purchase. A commercial carrier is responsible for payment of the sales or use tax on purchases of dyed diesel that is not used to produce power for a means of transportation in this state.

Commercial carriers must apply for and receive a certificate to present to their suppliers at time of purchase.

Common Carrier Permit to Pay Reduced Sales Tax Rates

Tenn. Code Ann. §§ 676-219 and 67-6-702(e) grant common carriers the authority to pay sales tax at a reduced state rate of 3.75% and a reduced local rate of 1.5% on purchases of tangible personal property made in the State of Tennessee but that will be used outside the State of Tennessee.

Common carriers must apply for and receive the permit from the Department of Revenue that can be presented to Tennessee suppliers when making such purchases. The permit will allow common carriers to make qualifying purchases without payment of the sales tax to the supplier at time of purchase.

Common carriers will be responsible for payment of the Tennessee state and local sales tax on qualifying purchases directly to the Tennessee Department of Revenue.

SALES AND USE TAX

Exemptions Requiring Certificates *(continued)*

This authorization to pay a reduced rate of sales tax does not apply to purchases of food or fuel.

If a common carrier pays the reduced rate of state and local sales tax on qualifying purchases of property but subsequently uses the property inside Tennessee, the common carrier will be liable for Tennessee state and local sales tax at the full rates provided by statute. A common carrier will also be required to pay the full rates of state and local taxes if the common carrier fails to maintain records to document that the purchases were not used inside the State of Tennessee but was removed from and used outside of Tennessee.

Agricultural Exemption Certificate [Tenn. Code Ann. § 67-6-207]

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

SALES AND USE TAX

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

[Tenn. Code Ann. §§ 67-6-313, 343, 345]

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. § 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, Trailers, and Boats Sold For Removal from Tennessee within Three Days indicating the city and state to which the item will be delivered. This form is available on the website.

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. § 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. § 67-6-529]

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

[Tenn. Code Ann. § 67-6-207]

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.

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.

Agricultural Exemptions

[Tenn. Code Ann. §§ 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 including all-terrain vehicles and agricultural unmanned aircraft systems used directly and principally for producing agricultural and nursery products for sale.
- + Hay wagons, silage wagons, and trailers used directly and principally in producing agricultural and nursery products for sale.
- + Grain bins and attachments thereto.
- + Aircraft designed and used for crop dusting.
- + Equipment used solely for harvesting timber.
- + Trailers used for transporting livestock, farm products, nursery stock, or equipment, supplies, or products used in agriculture, or for other agricultural purposes relating to the operation and maintenance of a farm.
- + Self-propelled fertilizer or chemical spreading equipment used to spread fertilizer or chemicals to aid in production of food and fiber for human consumption.
- + Tender beds and spreader beds, even if mounted on a truck.

SALES AND USE TAX

Agricultural Exemptions *(continued)*

- + 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. § 67-6-102, including 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.
- + Livestock and poultry feeds, drugs used for livestock, and instruments used for the administration of such drugs.
- + 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.
- + Any substance used in the reproduction of livestock, including embryos and semen.
- + Agri-sawdust – sawdust, wood shavings, chips, and slabs.
- + Electricity, natural and liquefied 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
- + Water used directly in growing or nursery or greenhouse crops. and producing of food or fiber for human or animal consumption, as

well as nursery and green house crops for sale. The water must be separately metered.

These items are only exempt when purchased by persons that have qualified for and have received the Agricultural Certificate of Exemption issued by the Department of Revenue. While not an all-inclusive list, items that do not qualify for the agricultural exemption include but are not limited to:

- + Clothing items
- + Automobiles and trucks and repair parts and repair services for automobiles and trucks.
- + Water for any use or purpose.
- + Materials that become real property when installed, including gravel, concrete, building materials (excluding temporary fencing such as corral panels and gates).
- + Trucks, flat-bed trailers, and semi-trailers that are used to transport farm products over the road to market, to transport machinery over the road between farms, or to pick up and carry supplies over the road to the farm.
- + Lawn mowers designed for residential use that is used 50% or more of the time for non-agricultural purposes such as mowing lawns and landscaped areas.

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.

SALES AND USE TAX

Agricultural Exemptions *(continued)*

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. § 67-6-301(c)(2).

Persons qualifying as manufacturers cannot also qualify for the agricultural exemption certificate. [Tenn. Code Ann. § 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 [Tenn. Code Ann. § 67-6-301]

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 from agricultural or horticultural products 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.

Sales made directly by 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

SALES AND USE TAX

Agricultural Exemptions (*continued*)

- + 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. § 67-6-301(a)]

Purchase of Livestock Drugs by Veterinarians

Veterinarians are the users and consumers of all drugs purchased for use in their veterinary practice. Veterinarians may not purchase drugs without tax using a resale certificate. 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.

The Streamlined Certificate of Exemption is a multi-purpose exemption form and is found on the Department's website.

On Line 4 of the Streamlined Exemption form, the veterinarian should circle "Other" with the explanation "veterinarian." On Line 5 of the form, the veterinarian should circle "Other" with the explanation "purchasing livestock drugs and/or administration instruments."

Veterinarian services are not subject to sales tax.

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 sales and use tax account numbers.

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 on the Streamlined exemption form to claim exemption for purchase of livestock drugs and instruments for the administration of livestock drugs.

Community Gardens

The sale of products that are grown or produced in a community garden in any calendar year are exempt from sales tax when sold by a representative of the community garden.

A "community garden" is defined in Tenn. Code Ann. § 43-24-102 as a piece of real property, either on vacant public land or private land, cultivated by residents of a neighborhood or community, or members of a homeowners or condominium owners association, for purposes of providing vegetables, nuts, herbs, fruit, or flowers, whether by means of cultivating annual, biennial, or perennial plants or trees, for use of the residents of the neighborhood or community or members of the homeowners or condominium owners association.

SALES AND USE TAX

Industrial Machinery Exemptions and Reduced Rates

[Tenn. Code Ann. § 67-6-206]

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.

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. § 67-4-2109(b). Dealers meeting these requirements may qualify for sales and use tax manufacturing exemptions. [Tenn. Code Ann. § 67-6-102]

The term “manufacturer” does not include any entity whose principal business is the preparation of food for immediate retail sale.

Industrial Machinery

[Tenn. Code Ann. §§ 67-6-102, 67-6-206]

Industrial machinery is machinery necessary to, and primarily for, fabricating or processing tangible personal property for resale and consumption off the premises. The purchase, lease, or rental of qualified machinery and accessories and

attachments, and repair and replacement parts, are exempt from the sales or use tax. The oils and lubricants used in the machinery are also tax exempt.

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.

Machinery used to package manufactured items that is used at the qualified manufacturing facility may qualify as tax-exempt industrial machinery.

Any computer, including software, which is primarily used to control the manufacturing process or perform quality control or testing of the product during the manufacturing process may qualify as tax-exempt industrial machinery.

The definition of industrial machinery also includes machinery and equipment necessary to 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.

Pollution Control Facilities

Pollution control facilities used by a qualified manufacturer that are needed to control or eliminate air and water pollutants resulting from manufacturing are considered industrial machinery. As

SALES AND USE TAX

Industrial Machinery Exemptions and Reduced Rates *(continued)*

such, they are tax-exempt to the qualified manufacturer.

Industrial Machinery Authorization [Tenn. Code Ann. § 67-6-206(b)]

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.

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 tax rates or tax-exempt purchases of electricity and water as provided under the law.

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.

Industrial Energy Fuel and Water [Tenn. Code Ann. §§ 67-6-206, 67-6-702]

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, is

expended in the course of the contact, and is metered separately is tax-exempt.

There is also available a tax exemption for the natural gas used to generate heat for the production of aluminum sheet foil.

There is also a tax exemption for electricity used to generate radiant heat for production of heat-treated glass.

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.

Industrial Materials [Tenn. Code Ann. § 67-6-206(b)(3), Sales and Use Tax Rule 1320-05-01-.40(2)]

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 to qualify for exemption.

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. § 67-6-329(12)]

SALES AND USE TAX

Industrial Machinery Exemptions and Reduced Rates *(continued)*

Qualified Data Center

[Tenn. Code Ann. §§ 67-6-206(a)(c), 67-6-102]

A qualified data center is defined as a data center that has made a required capital investment in excess of \$100 million and that creates at least 15 net new full-time employee jobs paying at 150% of the state's average occupational wage as defined in Tenn. Code Ann. § 67-4-2004 during an investment period of three years.

Taxpayers must apply to the Department to receive the Qualified Data Center Sales and Use Tax Exemption Certificate to make qualifying purchases for use in the operation of a qualified data center exempt from sales and use tax. An application for the exemption certificate is available on the Department's website.

Any qualified data center that applies for franchise and excise job tax credits must certify on its business plan that it has not, in the last 12 months, been in violation of the WARN Act, FLSA, or federal immigration law. [Tenn. Code Ann. § 67-6-102]

Any computer, computer network, computer software, or computer system, as defined in Tenn. Code Ann. § 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, computer software maintenance contracts, and any

necessary repair or taxable installation labor, when the equipment is used in the operation of a qualified data center is tax exempt.

There is also an exemption from sales or use tax for backup power infrastructure (i.e., backup power generation, battery systems, and related infrastructure) and cooling equipment (i.e., cooling systems, cooling towers, and other temperature control infrastructure) used primarily for and necessary to the operation of the qualified data center.

Electricity sold to and used by a qualified data center is subject to a reduced state tax rate of 1.50%.

Warehouse and Distribution Facility

[Tenn. Code Ann. Section 67-6-102]

Material handling and racking systems equipment used directly and primarily for the storage or handling and movement of finished tangible personal property in a qualified 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 tax exemption.

Such qualifying facility must be used for the storage or distribution of finished tangible personal property and shall not include a building where tangible personal property is fabricated, processed, or assembled. An investment of more than \$10 million is required. A taxpayer must submit an application with a business plan describing the investment to be made, to the Department of Revenue. If approved, the taxpayer will receive a Warehouse and Distribution Facility Material Handling and Racking System Sales and Use Tax

SALES AND USE TAX

Industrial Machinery Exemptions and Reduced Rates *(continued)*

Exemption Certificate, which includes an exemption number and expiration date for the exemption.

County or Municipality Water Pollution Control and Sewage Systems

Machinery used by counties or municipalities or their contractors for water pollution control or sewage systems is exempt from sales and use tax. The exemption also applies to use of such machinery by a water or wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act.

Research and Development Machinery [Tenn. Code Ann. § 67-6-102]

A sales and use tax exemption is available for machinery and equipment, all associated parts and appurtenances to the machinery and equipment, and repair parts and labor and installation labor for the machinery and equipment that is necessary to and primarily for research and development.

Sales and Use Tax Rule 1320-05-01-.128 defines research and development. In order to qualify as research and development, the taxpayer's activities

must have one of the following as its ultimate goal:

- + Basic research in a scientific field of endeavor,
- + Advancing knowledge or technology in a scientific or technical field of endeavor,

- + Development of a new product,
- + Improvement of an existing product,
- + Development of new uses of an existing product, or
- + Design and development of prototypes.

Taxpayers are not required to be engaged in any business of fabricating or processing tangible personal property for resale to qualify for the research and development machinery and equipment tax exemption. Taxpayers that have received an industrial machinery authorization will be required submit a separate application for authorization to make tax-exempt purchases for research and development machinery and equipment.

A taxpayer must apply to the Department to receive the Research and Development Sales and Use Tax Exemption Certificate to make qualifying purchases that are necessary to and primarily for research and development exempt from sales and use tax. An application for the exemption certificate is available on the Department's website.

Spallation Neutron Source Facilities [Tenn. Code Ann. § 67-6-384]

Any entity qualifying for the sales and use tax exemption for spallation neutron source facilities is not eligible for an exemption for industrial machinery used in the operation of a qualified data center or for industrial machinery used primarily for research and development. This does not apply to a U.S. government funded leadership computing facility located at a national laboratory.

SALES AND USE TAX

Exempt Products and Services

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 the Taxpayer Services Division.

Authorized Large Aircraft Service Facility

[Tenn. Code Ann. § 67-6-302]

The sale, use, storage, or consumption of parts, components, software, systems, accessories, materials, equipment and supplies that are sold to or sold by an authorized large aircraft service facility or affiliate. Also exempted are certain repair and refurbishment service labor performed by an authorized large aircraft service facility. These exemptions do not apply to fuel and other petroleum products or to shop equipment and tools.

An "authorized large aircraft service facility" means a repair station located in Tennessee that is engaged in repair and refurbishment services of large aircraft mainframes, large aircraft engine equipment, and large aircraft accessories under a valid air agency certificate issued by the Federal Aviation Administration in

accordance with 14 CFR Part 145 of the federal aviation regulations, with an authorized class rating of Air Frame Class IV, and organization designation authority, or similar, or successor certificate, rating, and authority as the Federal Aviation Administration may provide for from time to time.

Aircraft, Parts, and Supplies

[Tenn. Code Ann. §§ 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. § 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.

SALES AND USE TAX

Exempt Products and Services (continued)

- + 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.
- + Entry fees for any contest, tournament, or charity horse show. Fishing tournament registration fees.
- + Admission, dues, fees, or other charges paid to any person principally engaged in offering services or facilities for the development or preservation of physical fitness through exercise or other active physical fitness conditioning. This exemption applies to services and facilities such as gyms, fitness centers, fitness studios, high intensity interval training, cross training, ballet barre, pilates, yoga, spin classes, aerobics classes, and other substantially similar services and facilities that principally provide for exercise or other active physical fitness conditioning.

Automobiles

- + Motor vehicles registered in Tennessee to active full-time duty

members of the armed forces stationed anywhere in Tennessee or

at Ft. Campbell military installation. [Tenn. Code Ann. § 67-6-303]

- + Transfer of automobiles between spouses as the result of a divorce. [Tenn. Code Ann. § 67-6-306]
- + Motor vehicles sold in Tennessee but removed from the state within 3 days and registered outside the state. [Tenn. Code Ann. § 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. § 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. [Tenn. Code Ann. § 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. § 67-6-303]

New or used vehicles sold, given or donated to a disabled veteran or active-duty service member who is

SALES AND USE TAX

Exempt Products and Services

(continued)

- + eligible for a grant from the U.S. Department of Veterans Affairs, are exempt from sales tax, local motor vehicle privilege tax and the registration fee. The sales tax exemption is limited to the portion of the purchase price that is in excess of the amount of the grant.
- + Any services rendered by a car wash facility, coin-operated or otherwise, where the customer remains in custody of the vehicle and the preponderance of the vehicle's wash is completed by the customer or automated equipment. [Tenn. Code Ann. § 67-6-205]

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. § 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. [Tenn. Code Ann. §§ 67-6-102 and 67-6-312]

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. § 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. § 67-6-332]
- + Charges for gas, electricity, or other energy fuels sold directly to consumers for residential use. [Tenn. Code Ann. § 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. § 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. § 67-6-334(b)(4)]

SALES AND USE TAX

Exempt Products and Services (continued)

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. § 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 30 days of purchase. [Tenn. Code Ann. § 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 30 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 30 days. [Tenn. Code Ann. § 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, to aircraft qualifying as "Transport Category Aircraft," or performed by a facility designated to perform such services to aircraft qualifying as "Transport Category Aircraft," where the airplane is situated outside of Tennessee and is removed from Tennessee within 30 days from the completion of the repair. [Tenn. Code Ann. § 67-6-313]
- + Sales of fuel and petroleum products to air common carriers for flights destined for, or continuing from, outside the United States. [Tenn. Code Ann. § 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. § 67-6-313]
- + 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. § 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. § 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

SALES AND USE TAX

Exempt Products and Services (continued)

- mainframes" are defined by statute and limited to aircraft used by a commercial interstate or international air carrier. [Tenn. Code Ann. § 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. § 67-6-313(d)]
- + Repair parts and labor for firefighting equipment owned by an out-of-state fire Department. [Tenn. Code Ann. § 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. § 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. § 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. § 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. §§ 67-6-321, 327]

Films

[Tenn. Code Ann. § 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. §§ 67-6-337, 67-6-338]

Food paid for by Supplemental Nutrition Assistance Program (SNAP) benefits, also referred to as food stamps, and 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. § 67-6-329]

- + Motor vehicle fuels, including compressed natural gas, taxed per gallon under the petroleum products statutes of Tennessee law. [Amended by Public Chapter 1070, Acts of 2016]
- + 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.

SALES AND USE TAX

Exempt Products and Services

(continued)

Leased Vehicles

[Tenn. Code Ann. § 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. §§ 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 in the patient's home are exempt. Durable medical equipment sold to or for use by a facility such as a for-profit hospital, nursing home, clinic, or dental office is not for home use and is subject to sales tax. 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.
- + 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 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.
- + 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.

SALES AND USE TAX

Exempt Products and Services

(continued)

- + 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. § 67-6-347]
- + Prescription drugs distributed at no charge by the manufacturer. [Tenn. Code Ann. § 67-6-319]
- + Drugs or medicines, including over-the-counter drugs, for human use dispensed on a prescription. [Tenn. Code Ann. § 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. § 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.
- + Effective July 1, 2015, diabetic testing supplies, including lancets, test strips for blood glucose monitors, visual read test strips, and urine test strips. [Tenn. Code Ann. § 67-6-314(7)]

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. § 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 make sales of guns for later delivery are not tax exempt. [Tenn. Code Ann. § 67-6-310]
- + Sales of school textbooks and workbooks, including electronically accessed or transmitted digital textbooks and digital workbooks. [Tenn. Code Ann. § 67-6-329]
- + Sales of school meals in grades K-12. [Tenn. Code Ann. § 67-6-329]
- + Sales of parking privileges sold by colleges, universities, technical institutes, or technology centers to students. [Tenn. Code Ann. § 67-6-329]
- + Sales of United States or Tennessee flags by nonprofit organizations. [Tenn. Code Ann. § 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. § 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

Exempt Products and Services

(continued)

Motor Vehicles Used by Common Carriers

[Tenn. Code Ann. § 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. § 55-4-113] and above, and trailers, semi-trailers, and pole-trailers [Tenn. Code Ann. §§ 55-1-105, 55-4-113] which will be used in the transport of passengers or cargo, 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. § 67-6-331 are met.

A motor vehicle is used in the transport of cargo or passengers 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.

Natural Disasters

Refunds of state and local sales tax paid to retailers are available as a result of purchases of major appliances, residential furniture, or residential building supplies used in the claimant's primary residence to replace, repair, or restore such items that were damaged or destroyed in a federally-declared natural disaster in Tennessee. To qualify, the claimant must receive natural disaster assistance through the Federal Emergency Management Agency (FEMA) as a result of the natural disaster.

The sales price of the appliance or piece of residential furniture cannot exceed \$3,200 per item. The sales price of an item of residential building supplies cannot exceed \$500. The total amount of refund connected to any one residence cannot exceed \$2,500. To receive a refund, a claimant must file one natural disaster claim for refund within one year from the date shown on the FEMA decision letter received by the claimant. Claimants must retain records of purchases for which the refund is claimed for three years from December 31 in the year in which the natural disaster claim for refund was filed. Persons knowingly filing a false or fraudulent refund claim are subject to a civil penalty of up to \$25,000.

For individuals whose primary or secondary residence was damaged or destroyed because of the Sevier County wildfires November 28 through December 9, 2016, the maximum amount of Tennessee sales tax that can be refunded from \$2,500 to \$3,500. The refund is for sales tax paid on eligible items purchased to replace or repair items used in the

SALES AND USE TAX

Exempt Products and Services

(continued)

individual's primary and/or secondary residence that was damaged or destroyed by the wildfires. The claim for a primary residence must be filed within one year of the FEMA decision letter and the claim for a secondary residence must be filed on or before April 1, 2018.

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.

Pollution Control

[Tenn. Code Ann. § 67-6-329]

Sales of chemicals and supplies used in air and water pollution control.

Preservation of Historic Property

[Tenn. Code Ann. § 67-6-322]

- + 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.

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. § 67-6-329]

- + Periodicals printed entirely on newsprint or bond paper, and advertising supplements or other printed matter distributed with the periodicals, which are distributed no less frequently than monthly. [Tenn. Code Ann. § 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 by a person engaged solely and exclusively in the business of cooperative direct mail advertising. [Tenn. Code Ann. § 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. § 67-6-102]
- + Hospital records, as defined in Tenn. Code Ann. § 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. § 67-6-329(a)]

SALES AND USE TAX

Exempt Products and Services *(continued)*

Public Safety & Public Works-Related Goods

[Tenn. Code Ann. § 67-6-317]

A sales and use tax exemption is available for the sale of public safety and public-works related goods to certain large nonprofit property owners associations.

Railroad Tank Cars

[Tenn. Code Ann. § 67-6-329]

Materials used for the lining or protective coating of railroad tank cars and charges made for installing or repairing such linings or protective coatings.

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 Tax Holiday

Effective April 28, 2016, Tennessee holds an annual sales tax holiday from 12:01 a.m. on the last Friday of July 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 supplies 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. § 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. § 67-6-329]
- + Specified digital products provided to the customer without charge on a trial basis.
[Tenn. Code Ann. § 67-6-329]

Telephone Cooperatives

[Tenn. Code Ann. § 67-6-325]

Sales of tangible personal property to telephone cooperatives organized under Tennessee law, for their own use or consumption.

SALES AND USE TAX

Exempt Products and Services *(continued)*

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. § 67-6-342]
- + Charges for internet access or information services are exempt from sales and use tax.
[Tenn. Code Ann. § 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. § 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. § 67-6-395(b)]

Time-Share Accommodations [Tenn. Code Ann. § 67-6-102]

- + Charges for the use of, or the value of any time-share estate and 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. § 67-6-102 and is consistent with the Tennessee Time Share Act of 1981.

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. § 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. § 67-6-348]

Utility Poles

[Tenn. Code Ann. § 67-6-329]

Utility poles, anchors, guys, and conduits are exempt from sales or use tax.

Vending Items

[Tenn. Code Ann. § 67-4-506]

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.

Warranty Parts and Services

[Tenn. Code Ann. § 67-6-324]

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.

SALES AND USE TAX

Exempt Products and Services (continued)

Waste Removal

[Tenn. Code Ann. §§ 67-6-102]

The provision of dumpsters or other containers for waste or debris removal for a fixed or indeterminate period of time, including the delivery and pickup of the dumpster, is exempt from sales tax so long as the provider of the dumpster is exclusively responsible for delivery and pickup of the dumpster.

Watershed Districts

[Tenn. Code Ann. § 67-6-328]

Sales of tangible personal property for use by watershed districts.

Flea Markets

Flea Market Registration

[Tenn. Code Ann. §§ 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. §§ 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

SALES AND USE TAX

Flea Markets *(continued)*

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 20th 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 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 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

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.

Contractors as Consumers

[Tenn. Code Ann. § 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 sales tax is not paid when the materials are purchased, the contractor or subcontractor owes 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 such 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 performed by the contractor-dealer, must collect the applicable sales tax on those sales, even if the contractor-dealer presents a certificate for resale. [Sales and Use Tax Rule 1320-05-01-.08]

Exemptions

[Tenn. Code Ann. §§ 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

SALES AND USE TAX

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.

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 funded by the federal government or an instrumentality thereof.

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.

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 arm's 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. § 67-6-209 and Sales and Use Tax Rule 1320-05-01-1.03(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.

SALES AND USE TAX

Contractors (continued)

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 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 and applies to equipment or other property used to conduct the test. [Tenn. Code Ann. §§ 67-6-209; 67-6-541]

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. § 67-6-209]

SALES AND USE TAX

Contractors (continued)

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. § 67-6 209]

Qualified Disaster Restoration

[Tenn. Code Ann. Section 67-6-235]

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 restoration project" is a project undertaken in connection with the restoration of real or tangible personal property located within a declared federal disaster area that suffered damages 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.

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 AND USE TAX

Contractors *(continued)*

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

Returns and Payments

Returns and Payments

[Tenn. Code Ann. §§ 67-6-504, 505, and 506]

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

After completing the registration process, you will receive reporting information. You must file a timely return, beginning with the date entered in Item 8 of the application, even if no sales were made and no tax is due.

Sales or use taxes are due on the 20th day of the month for the preceding month. The last day for electronic returns to be timely filed with the Department of Revenue is the 20th of each month. The amount of tax due will be paid with the return. Failure to do so will make the return delinquent.

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 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. [Tenn. Code Ann. § 67-6-407]

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. § 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. § 67-6-517]

Electronic Filing

Tennessee sales or use tax taxpayers are required to make their tax payments by Electronic Funds Transfer and are required to file their returns electronically. Taxpayers who file electronically must pay electronically.

Online Filing through TNTAP

Taxpayers can submit their returns through the Tennessee Taxpayer Access Point (TNTAP). Online filers can file all periodic returns and make payments

SALES AND USE TAX

Returns and Payments *(continued)*

directly from checking accounts or credit cards. They can 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 11:59 pm on 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 website.

Online Filing through Software Vendor

The Electronic Data Interchange program is a method of filing tax returns electronically from one computer to another. An EDI software vendor can be selected from the list on the Department's website. Software vendors usually offer both "Filing Only" and "Filing and Payment" options. If the "Filing Only" option is selected, the software will only initiate a transaction for filing the return. The associated EFT payment will need to be initiated via the Department's EFT program, ACH Credit, or TNTAP.

To avoid late delivery of the return and payment, 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.

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.

Penalty and interest charges may be incurred if the taxpayer fails to remit electronically. If the ACH Credit method is selected, the taxpayer must complete the Electronic Funds Transfer Agreement with the Department of Revenue.

The Consolidated Sales Tax System allows a taxpayer to file one return for multiple locations and make one payment. Each location is required to report their numbers on the consolidated return. [Tenn. Code Ann. § 67-6-504(f)] The Department of Revenue offers payment warehousing for sales and use tax payments. Taxpayers are 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.

SALES AND USE TAX

Returns and Payments *(continued)*

Filing Date

[Tenn. Code Ann. § 67-1-107]

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.

Penalty and Interest

[Tenn. Code Ann. § 67-1-804]

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 the first day of July.

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.

Audits and Assessments

[Tenn. Code Ann. § 67-1-1301]

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.

Taxpayer's Right to an Informal Conference

[Tenn. Code Ann. § 67-1-1801]

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

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

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

SALES AND USE TAX

Returns and Payments *(continued)*

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

Keeping Records

[Tenn. Code Ann. §§ 67-6-523, 67-1-113]

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 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. § 67-6-523]

If the taxpayer maintains any such records in an electronic format, the taxpayer shall comply with reasonable requests by the Commissioner, or the Commissioner's authorized agents, to provide those electronic records in a standard record format.

SALES AND USE TAX

TAXPAYER BILL OF RIGHTS

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

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

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

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

TAXPAYER'S RIGHT TO AN INFORMAL CONFERENCE [Tenn. Code Ann. § 67-1-1801]

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

Requests for conferences may be sent to:

Administrative Hearing Office
Tennessee Department of Revenue
500 Deaderick Street, Suite 11.451
Nashville, TN 37242
Phone (615) 741-3810
Fax (615) 741-6463
DORconference.request@tn.gov

SALES AND USE TAX

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

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

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

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