

Classifications 1, 2, & 3

Notice #09-11

Business Tax

October 2009

**Highlights**

- *Business tax returns are to be filed with the Department of Revenue beginning with Classification 1 due February 28, 2010.*
- *The method for determining whether a taxpayer falls within Classification 1, 2, 3, 4, or 5 remains unchanged.*
- *Businesses located within a city that has enacted the business tax must file two returns for that location, one for the city and one for the county.*
- *Each taxpayer in Classifications 1, 2, and 3 will be further classified as either a wholesaler or a retailer.*

INTRODUCTION

Chapter 530 of the Public Acts of 2009 amends various provisions of the Business Tax Act for purposes of simplifying the tax and shifting its primary administration from the local level to the state level.

Classification 1 taxpayers will file business tax returns for the tax period January 1, 2009 to December 31, 2009, with the Department of Revenue, instead of the county clerk and/or city official. The return is due February 28, 2010. Classification 2 taxpayers will file with the Department of Revenue on May 31, 2010, and Classification 3 taxpayers will file with the Department on August 31, 2010. Additional amendments to the Business Tax Act are also discussed in this notice. Information regarding Classification 4 and 5 taxpayers can be found in separate notices on the Department's website.

DISCUSSION

Each taxpayer subject to the Business Tax Act falls into a specific classification based on the taxpayer's dominant taxable business activity. Businesses principally engaged in making taxable sales of tangible personal property or services will fall into Classification 1, 2, or 3 based on the specific goods or services sold. The classification of a business determines its tax period and the applicable tax rate.

State Administration of Business Tax Returns

Under the 2009 amendments to the Business Tax Act, the annual business tax return(s) will be filed and taxes paid with the Tennessee Department of Revenue.

A business with a location within the limits of a Tennessee city that has enacted the business tax must file two business tax returns for that location – one return for the city and one return for the county. A business with a location outside the limits of any Tennessee city, or inside the limits of a city that has not enacted the business tax, must file one business tax return for that location for the county. These returns must be filed with the Tennessee Department of Revenue.

The tax rates remain unchanged. The appropriate business tax return will be sent to the taxpayer prior to the filing due date. However, please note that failure of any person to receive a return from the Department does not relieve such person from the payment of the tax. Forms will be made available on the Department of Revenue's website at www.tn.gov/revenue/forms.

Businesses required to file sales and use tax returns and make tax payments electronically under Tenn. Code Ann. § 67-6-504 are also required to file the business tax return electronically and remit business tax payments electronically, using a method approved by the Commissioner of Revenue. Information regarding electronic filing as well as updated tax forms will be available on the Department's website at www.TN.gov/revenue.

Wholesaler or Retailer

Additionally, under these recent changes to the Business Tax Act, each taxpayer in Classifications 1, 2, and 3 will be further classified as either a wholesaler or a retailer based on the taxpayer's primary taxable sales activity. If more than fifty percent (50%) of the taxpayer's taxable sales consist of wholesale sales, the taxpayer is classified as a

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wholesaler. If fifty percent (50%) or more of the taxpayer's taxable sales consist of retail sales, the taxpayer is classified as a retailer. Thus, for example, if a taxpayer falls within Classification 2 and makes seventy-five percent (75%) of its taxable sales at retail, the taxpayer is a Classification 2 retailer.

All sales by a wholesaler will be subject to tax at the wholesale rate for its classification, and all sales by a retailer will be subject to tax at the retail rate for its classification.

The following table shows the tax rate for each classification:

CLASSIFICATION	RETAIL	WHOLESALE	TAX PERIOD	DUE DATE
Class 1A	0.001	0.00025	January 1 – December 31	February 28
Class 1B & 1C	0.001	0.000375	January 1 – December 31	February 28
Class 1D – Fuel	0.0005		January 1 – December 31	February 28
Class 2	0.0015	0.000375	April 1 – March 31	May 31
Class 3	0.001875	0.000375	July 1 – June 30	August 31
Class 4	0.001		October 1 – September 30	November 30
Class 5	0.003		January 1 – December 31	February 28

Personal Property Tax Credit

Tenn. Code Ann. § 67-4-713 allows certain personal property tax credits for persons who pay the business tax. Tenn. Code Ann. § 67-4-713(b) has been amended to allow the credit for personal property tax paid to offset both the state and local portion of the business tax, but the amount of the credit may not exceed an amount equal to fifty percent (50%) of the total business tax liability.

The personal property tax credit can be taken only for personal property tax paid during the tax period covered by the return or paid before the due date of the return and can be taken only for personal property tax paid in the jurisdiction for which the return is being filed. Real property taxes are not allowed as a credit for business tax purposes.

Minimum tax

The minimum tax that must be paid by all entities registered to do business in Tennessee, including all entities that are inactive in Tennessee but have not been properly terminated, is twenty-two dollars (\$22) per year. After calculating the tax liability, including all allowable deductions and credits, the taxpayer will pay the calculated tax or twenty-two dollars (\$22), whichever is greater.

Business Tax License

Businesses will continue to obtain a business tax license from the county clerk of the county in which the business is located and/or the designated city official of the municipality in which the business is located. There will be a one-time licensing fee of fifteen dollars (\$15) that will be paid both to the county clerk and, if the business is located within the municipality, to the designated city official. The fee(s) will be paid and the license(s) granted at the time of registration. The county clerk and/or designated city official will renew the business license for no additional fee each year that the business files a return with the Department and remits the amount due. The business license must be displayed by the taxpayer.

County clerks and designated city officials also will continue to collect the appropriate fees from and issue licenses to transient vendors and owners, managers, operators, or promoters of antique malls, flea markets, craft shows, antique shows, gun shows, and auto shows. The fees remain unchanged.

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.

➤ All sales by a wholesaler will be subject to tax at the wholesale rate, and all sales by a retailer will be subject to tax at the retail rate.

➤ The personal property tax credit can offset up to 50% of the total business tax liability.

➤ The new minimum business tax will be \$22 per year and the one-time licensing fee will be \$15.

➤ County clerks and designated city officials will continue to issue business licenses for a one-time fee of \$15.

References:

PC 530 §§ 69–93
(2009)