

# Revenue Review

Tennessee Department of Revenue

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REVENUE ...  
Working For You



October 2009

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## Statement from Revenue Commissioner



This Revenue Review is the annual legislative issue providing brief legislative updates as well as a summary of major administrative initiatives.

One of our newest initiatives is the shifting of the business tax collections from the local governments to the state.

This undertaking will be a true partnership between the state, local governments and business owners. While increasing revenue through improved tax compliance, the department also plans on simplifying the tax filing process for business owners. We have a section on the details of this initiative on page four of this issue.

The following is a selection of 2009 legislative changes to statutes administered by or affecting the Tennessee Department of Revenue. For a complete copy of a particular public chapter, please visit the Secretary of State's Web site at [www.state.tn.us/sos/acts](http://www.state.tn.us/sos/acts).

View a list of legislative changes, including motor vehicle title and registration information, at the department's Web site, [www.TN.gov/revenue](http://www.TN.gov/revenue). Notices and other information about these changes are also posted online.

## 2009 Legislative Summaries

### I. Sales and Use Tax

#### ➤ Computer Software Maintenance

Public Chapter 530, Sections 50-52, provides that the existing tax on computer software maintenance contracts applies to any contract covering software located in this state. "Computer software maintenance contract" is defined as a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, it does not include telephone or other support services that are optional and are sold and invoiced separately and does not include any transfer, repair, or maintenance of computer software on the part of the seller. *Effective date: July 1, 2009.*

#### ➤ Streamlined Sales Tax Legislation: Effective Date Delayed

Public Chapter 530, Sections 35-49, delays implementation of the remaining Streamlined Sales Tax legislation from July 1, 2009, to July 1, 2011.

Delayed provisions include destination sourcing, single article cap, special user taxes, and single return. *Effective date: June 25, 2009.*

#### ➤ In-House Software Exemption

Public Chapter 530, Sections 53-54, provides that the "in-house" computer software exemption applies only if the software is created by the taxpayer or its direct employees and does not apply when the software is created by an employee of another company. A "direct employee" is an employee to whom the taxpayer (or with the Commissioner's approval, another entity or affiliate) is obligated to issue a federal Form W-2 and with respect to whom the taxpayer has responsibility for withholding federal employment taxes. *Effective date: July 1, 2009.*

#### ➤ Advertising Materials

Public Chapter 530, Sections 55-56, clarifies the application of the sales and use tax to advertising materials by providing that the tax apply to final artwork and advertising materials but does not apply to preliminary artwork used by the advertising agency solely for conveying concepts or ideas. *Effective date: July 1, 2009.*

#### ➤ Sales of Services between Affiliates

Public Chapter 530, Sections 67-68, updates the existing sales and use tax exemption for services provided by one company to an affiliated company by allowing the exemption to apply to any form of entity rather than being restricted only to corporations. *Effective date: Applies to any applicable transactions occurring on or after January 1, 2009.*

#### ➤ Emerging Industry Credit

Public Chapter 530, Section 25, adds clean energy technology to the definition of "emerging industry," including clean energy technology research and development and installation of clean energy technology. *Effective date: Applies to all business plans filed on or after July 1, 2009.*

#### ➤ Data Center Investment Period

Public Chapter 530, Section 24, extends the maximum period for making the required capital investment to qualify as a "qualified data center" from five years to seven years. *Effective date: Applies to all business plans filed on or after July 1, 2009.*

#### ➤ Tennessee Clean Energy Future Act of 2009

Public Chapter 529, Sections 15-17, adds clean energy technology to the definition of "emerging industry," including clean energy technology research and development and installation of clean energy technology. It also amends the emerging industry credit by allowing the credit to those primarily engaged in manufacturing clean energy technology. *Effective date: June 25, 2009 for rulemaking; July 1, 2009 all other purposes.*

#### ➤ Required Capital Investment

Public Chapter 530, Sections 18-22, adds computer software

to the definitions of “required capital investment” and “qualified tangible personal property” for qualified data center, qualified headquarters facility, and qualified emerging industry purposes.

## ➤ **Original Equipment Manufacturer Exemption**

Public Chapter 530, Sections 114-115, provides that sales of OEM headquarters company vehicles shall be exempt from the sales and use tax. “OEM headquarters company vehicle” is any motor vehicle subject to registration in accordance with Title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation, or other uses approved by the Commissioner, and including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members. “OEM headquarters company” is defined as an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in Tenn. Code Ann. § 67-6-224, or any affiliate thereof. *Effective date: June 25, 2009.*

## **II. Franchise and Excise Tax**

### ➤ **Family Owned Noncorporate Entity (FONCE) Exemption: Rents**

Public Chapter 530, Section 28, removes the term “rents” from the definition of “passive investment income” for purposes of the FONCE exemption and replaces it with the term “rents from residential property or farm property.” “Residential property” includes any property leased or rented for residential purposes that includes not more than four residential units. *Effective date: July 1, 2009.*

### ➤ **Family Owned Noncorporate Entity (FONCE): Trusts**

Public Chapter 530, Section 28, clarifies that ownership units that are held in trust shall not be treated as owned by members of the family for purposes of the FONCE exemption, unless such units are property of a trust of a deceased individual who, while living, was a member of the family. *Effective date: July 1, 2009.*

### ➤ **Reasonable Rental Rate and Computation of Net Earnings**

Public Chapter 530, Section 30, requires the addition to net earnings any amount in excess of reasonable rent that is paid, accrued, or incurred for the rental, leasing, or comparable use of industrial and commercial property owned by an affiliate. “Reasonable rent” means rent that does not exceed two percent per month of the appraised value of the property. *Effective date: July 1, 2009.*

### ➤ **Obligated Member Entity Exemption**

Public Chapter 530, Section 29, amends the date by which a taxpayer must file the required documentation to become an obligated member entity, for tax years beginning on or after July 1, 2008, but before October 1, 2009. Such documentation must be filed with the Secretary of State on or before October 1, 2009. For all other tax years, the required documentation shall be filed on or before the first day of the taxable year for which a return is filed. *Effective date: July 1, 2009.*

### ➤ **Annual Exemption Application**

Public Chapter 530, Section 33, requires that taxpayers claiming specific statutory exemptions file an annual exemption application. The initial application must be filed within 60 days of the beginning of the first tax year for which the exemption is claimed. An annual application for renewal of exemption must be filed on or before the fifteenth day of the fourth month following the close of the tax year. A \$1,000 penalty is imposed for failure to file the application timely. The Commissioner is authorized to waive the penalty for good and reasonable cause. *Effective date: June 25, 2009.*

### ➤ **Definition of “Publicly Traded REIT”**

Public Chapter 530, Section 34, clarifies that, to come within the definition of a “publicly traded REIT,” the entity must be traded on a regulated national securities exchange of the United States or a foreign country. *Effective date: June 25, 2009.*

### ➤ **Negligence Penalty / Intangible Expense Deductions and Dividend Received Deductions**

Public Chapter 530, Sections 31-32, sets a minimum penalty of \$10,000 for failing to disclose transactions involving an intangible expense deduction or a captive REIT dividend received deduction. The Commissioner is authorized to waive the penalty in certain circumstances. *Effective date: Applies to any tax period beginning on or after January 1, 2009.*

### ➤ **Job Tax Credit**

Public Chapter 530, Sections 1-14, amends and simplifies the job tax credit provisions. The credit remains substantially unchanged except that the amount of the credit is set at \$4,500 per job, regardless of the county in which the job is created, and the credit can offset up to 50 percent of total liability. Also, the minimum job requirement in connection with an investment of at least \$1 billion has been decreased from 1,000 to 500 industrial wage jobs. *Effective date: Applies to all business plans filed on or after July 1, 2009.*

### ➤ **Child Day Care Facility Credit**

Public Chapter 530, Sections 1-2, repeals the child day care facility credit. No taxpayers utilize the credit. *Effective date: June 25, 2009.*

### ➤ **Industrial Machinery Credit: Carryforward Period**

Public Chapter 530, Section 15, allows the industrial machinery credit earned by a taxpayer investing at least \$1 billion in the state to be carried forward until completely utilized. *Effective date: Applies to all business plans filed on or after July 1, 2009.*

### ➤ **Relocation Expense Credit**

Public Chapter 530, Sections 16-17, increases the amount of relocation expense credit available to a headquarters facility that has created at least 500 net new full-time jobs and invested at least \$1 billion in the state. The credit is increased from \$50,000 to \$100,000 per job. *Effective date: Applies to all business plans filed on or after July 1, 2009.*

### ➤ **Industrial Machinery Credit: Required Capital Investment Period**

Public Chapter 530, Section 23, extends the \$1 billion investment period for purposes of the industrial machinery credit from a maximum of five years to a maximum of seven years and adds computer software to the definition of “required capital investment.” *Effective date: Applies to all business plans filed on or after July 1, 2009.*

### ➤ **Relocation Expense Credit Recapture**

Public Chapter 530, Section 132, applies a prorated recapture provision to the headquarters relocation expense credit, if the facility is not utilized as a qualified headquarters facility for a period of at least 10 years. *Effective date: June 25, 2009.*

## **III. Business Tax**

### ➤ **Business Tax**

Public Chapter 530, Sections 69-93, amends the business tax statute to shift primary administration of the tax from local governments to the Department of Revenue. Key provisions of these sections include:

- Businesses will continue to obtain a new business tax license from local officials for a \$15 license fee.

- Annual business tax returns and payments will be filed with the Department of Revenue, instead of the local governments.
- Businesses will continue to renew their business tax license annually with local officials for no additional fee after the tax return has been filed with the Department of Revenue.
- Minimum business tax will be \$22 (\$450 for Classification 5 businesses).
- Classification 1, 2 and 3 businesses will be classified as either a wholesaler or a retailer.
- Retailer is a business in which 50 percent or more of taxable gross sales are retail sales.
- Wholesaler is a business in which more than 50 percent of taxable gross sales are wholesale sales.
- Contractors must obtain information from subcontractors in order to deduct payments made to the subcontractors. Information to be obtained and maintained includes name, address, business tax license number or contractor's license number, and amount paid to the subcontractor.
- The personal property tax credit can offset up to 50 percent of the total business tax liability and is no longer limited to the local portion of the business tax.
- Local governments will continue to receive revenue from business tax collections.
- The Commissioner of Revenue is given flexibility in implementing these changes. *Effective date: July 1, 2009.*

#### IV. Other Taxes

##### ➤ **Tennessee Small Business Investment Company (TNInvestco) Credit Act**

Public Chapter 610 offers \$120 million in gross premiums tax credits to insurance companies that invest in companies certified by the State of Tennessee as "TNInvestcos." A total of six TNInvestcos will be authorized to invest funds in qualifying Tennessee small and start-up businesses. Qualified investments by TNInvestcos can take the form of debt, equity, or a hybrid of the two. The tax credits will be allocated among the six TNInvestcos, each of which must apply for an allocation of tax credits. Utilizing standardized criteria, Tennessee Department of Economic and Community Development ("ECD") and the Tennessee Department of Revenue, in conjunction with the Tennessee Technology Department Corporation, will award the credits to eligible companies in \$20 million credit allocations no later than December 31, 2009. No more than two credit allocations may be issued to a single TNInvestco. Interested parties must apply to ECD for certification as a TNInvestco no later than the close of business on October 1, 2009. A nonrefundable application fee of \$7,500 must be submitted at the time of application. Irrevocable commitments equal to the requested tax credit allocation must be submitted to ECD from participating insurance companies and investors no later than November 30, 2009. *Effective date: July 9, 2009.* Please see additional TNInvestco information on ECD's Web site at [www.TN.gov/ecd](http://www.TN.gov/ecd).

##### ➤ **Inheritance Tax: Automatic Extension**

Public Chapter 530, Section 97, provides an automatic 12-month extension for the filing of the inheritance tax return. The request for extension must be made in writing, either on a form prescribed by the Commissioner or by providing a copy of the request for an automatic extension of time to file the federal estate tax return. The extension request is not filed on the original due date of the return; rather, it must be attached to the return when it is filed on or before the extended due date. *Effective date: June 25, 2009.*

##### ➤ **Professional Privilege Tax: NBA and NHL Players**

Public Chapter 530, Sections 64-66, imposes the professional privilege

tax on National Basketball Association and National Hockey League players who play games in the state and allocates the proceeds of the tax to the municipality. The total tax is equal to \$2,500 per game with a three game annual cap. *Effective date: July 1, 2009.*

##### ➤ **Coal Severance Tax: Increased Tax on Coal Products**

Public Chapter 138 increases the coal severance tax to the following rates: (1) On or after July 1, 2009, through June 30, 2011, 50 cents per ton; (2) On or after July 1, 2011, through June 30, 2013, 75 cents per ton; and (3) On or after July 1, 2013, \$1.00 per ton. Further, the amount of the tax that is allocated to the Department of Revenue is reduced from 3 percent of the tax plus all of the interest and penalty collected to 1.125 percent of the tax. Finally, during the fiscal years 2009-2010 and 2010-2011 only, the Department of Revenue is required to retain an amount sufficient to recover necessary administrative expenses associated with computer programming or software changes and decreased revenue as a result of this Act from the amount of the tax on coal products otherwise remitted to counties pursuant to Tenn. Code Ann. § 67-7-110. *Effective Date: July 1, 2009.*

##### ➤ **Qualified Commercial Financing Entities**

Public Chapter 530, Sections 105-106, provides that the provisions of the property tax relating to the assessment of a stockholder on shares of stock in lieu of assessing the company on its capital stock shall not apply to qualified commercial financing entities. "Qualified commercial financing entity" is defined as a person that qualified for the credit in Tenn. Code Ann. § 67-6-224 that primarily finances wholesale and retail transactions related to the purchase or lease of industrial equipment, machinery, vehicles, or goods manufactured by its affiliates and is certified for such designation by the Commissioner of Revenue and the Commissioner of Economic and Community Development. It also provides that a qualified commercial financing entity shall be allowed to charge a rate of interest not to exceed 24 percent per annum. *Effective date: June 25, 2009, and shall apply to tax years beginning on or after January 1, 2009.*

##### ➤ **Litigation Tax: "Statewide Automated Victim Information and Notification System Fund"**

Public Chapter 488, Section 1, imposes an additional litigation tax of \$1.00 on criminal cases to fund grants for a 24-hour a day victim information and notification system to be operated by the Tennessee sheriff's association. *Effective date: July 1, 2009.*

##### ➤ **Property Tax: Prosthetic Surgical Kits**

Public Chapter 530, Section 131, provides that, for property tax purposes, prosthetic surgical kits shall be considered "inventories of merchandise held by merchants and businesses for sale and exchange" as to the typical stock on hand at the premises of the merchant, or when held for 30 days or less by a customer for use in surgeries, provided that the proceeds of the transaction are subject to business tax. Prosthetic surgical kits leased or consigned to the same customer/user for longer than 30 days shall be considered leased tangible personal property assessable to the customer/user. *Effective date: January 1, 2010.*

#### V. Tax Administration

##### ➤ **Electronic Payments**

Public Chapter 530, Section 94, lowers the threshold for required electronic filing and payment for sales and use tax purposes from \$2,500 to \$1,000. The return must be filed electronically and payment must be made electronically if the taxpayer's average monthly sales and use tax liability exceeds \$1,000. The average liability is determined by dividing the amount of tax due during the past consecutive 12 months by the number of returns actually filed. This

section also clarifies that franchise and excise tax quarterly estimated payments must be remitted electronically if the payment exceeds \$2,500. The threshold for required electronic payment of the franchise and excise tax return is \$10,000. *Effective date: June 25, 2009.*

#### ➤ Attorney's Fees

Public Chapter 530, Section 102, provides that the state shall be deemed the prevailing party for purposes of awarding attorneys' fees in any case in which the taxpayer has been found by a court to have committed fraud. *Effective date: June 25, 2009.*

#### ➤ Multi-State Tax Commission Joint Audit Program

Public Chapter 530, Sections 95-96, authorizes the Department of Revenue to participate in the Multistate Tax Commission Joint Audit Program. *Effective date: June 25, 2009.*

#### ➤ Sunset Date for the Department of Revenue

Public Chapter 443 extends the sunset date for the Department of Revenue to June 30, 2014. *Effective date: June 23, 2009*

### VI. Miscellaneous

#### ➤ Direct Shipper License for Wine

Public Chapter 348 creates a direct shipper's license to be issued by the Alcoholic Beverage Commission that would allow an in-state or out-of-state entity to ship wine directly to consumers age 21 years or older in Tennessee for personal use. A direct shipper cannot ship more than nine liters to any person in a single calendar month and no more than 27 liters in a calendar year. Among other requirements, to hold a license the direct shipper must pay all sales and gallonage taxes related to the sale of wine. *Effective date: July 1, 2009.*

### Revenue and Local Governments Work Together to Transition Business Tax Administration to the State

Governor Bredesen signed Public Chapter 530 on June 25, 2009, shifting the administration and collection of business tax from local municipalities and counties to the Department of Revenue. With this change, the Department of Revenue will use its expertise in tax administration and business compliance to appropriately collect and distribute the business tax funds, creating simplicity for taxpayers, efficiency in the collection process and increased revenue for local governments.

Annual business tax returns will now be filed with and taxes paid to the Tennessee Department of Revenue, and the department will collect all delinquent taxes and handle all necessary audit functions. Businesses will continue to obtain business licenses from the county clerks and/or municipal officials, and clerks and municipal officials will continue to administer transient vendor licenses.

The Department of Revenue is currently gathering registration data from the counties and cities so that we can begin to register the business tax taxpayers and mail out tax returns by the end of 2009. The first returns filed with the department will be for classification 1 and 5, due February 28, 2010. These returns have been revised to make them easier to understand and complete. They will be available online at [www.TN.gov/revenue](http://www.TN.gov/revenue) by December 1, 2009.

In addition to the online tax returns, the department will be adding electronic business tax filing to its suite of available online services. The Department of Revenue's e-filing and credit card payment services are quick, convenient and confidential.

### New Program Offers \$120 Million in Tax Credits to Firms Investing in Small Business

Revenue Commissioner Reagan Farr and Economic and Community Development Commissioner Matt Kisber made public the application process for companies seeking to take advantage of the Tennessee

Small Business Investment Company Credit Act which was signed into law by Governor Phil Bredesen on July 9, 2009.

The act authorizes the state of Tennessee to issue up to \$120 million in tax credits to insurance companies who invest in one of six venture capital funds certified as "TNInvestcos" by the Tennessee Department of Economic and Community Development and the Tennessee Department of Revenue. The TNInvestcos are required to invest in small and start-up companies in Tennessee.

"This program marks a strong commitment to growing small business in Tennessee," said Commissioner Kisber. "More than two thirds of companies in our state are small businesses and they are a significant driver of new job creation."

"We've looked at models for similar programs in other states and developed a program uniquely focused on the needs of small business in Tennessee and the venture capital community," said Commissioner Farr. "We're fortunate in Tennessee that our governor is an entrepreneur who has started many successful businesses. Governor Bredesen's leadership allowed us to create a program I believe will have real traction in creating jobs."

ECD will begin accepting applications for TNInvestco certification on August 1, 2009 and the application period will close October 1, 2009.

The application document, FAQ's and instructions are available on the ECD Web site at [www.tnecd.gov](http://www.tnecd.gov). Certifications will be issued by the commissioners of ECD and Revenue.

### Contact Us

- Taxpayer Services hot line: Statewide toll-free (800) 342-1003; Nashville-area and out-of-state callers, dial (615) 253-0600
- Online tax help by e-mail: [TN.Revenue@state.tn.us](mailto:TN.Revenue@state.tn.us)
- Streamlined Sales Tax hot line: Statewide toll-free (877) 250-2299; Nashville-area and out-of-state callers, dial (615) 253-0752
- Tax practitioner hot line: Statewide toll-free (800) 387-8395; Nashville-area and out-of-state callers, dial (615) 253-0700
- E-mail updates: Visit our Web site, [www.TN.gov/revenue](http://www.TN.gov/revenue), to subscribe
- Electronic commerce hot line: Statewide toll-free (866) 368-6374; Nashville-area and out-of-state callers, dial (615) 253-0704
- Tax fraud hot line: Report tax fraud by calling (800) FRAUDTX (372-8389)



Authorization number 347193: 159,000 copies: December 2008. This public document was promulgated at a cost of \$0.05 per copy, Tennessee Department of Revenue