

**PUBLIC CHAPTER NO. 1106**

**SENATE BILL NO. 4173**

**By Kyle**

**Substituted for: House Bill No. 4129**

**By Odom**

AN ACT to amend Tennessee Code Annotated, Title 67 and Chapter 602 of the Public Acts of 2007, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-1-107, is amended by adding the language "appeal," after the language "claim," wherever it appears in subsection (a), by substituting the language "as provided in subdivision (a)(1)" for the words "through the United States mail" wherever they appear in subdivision (a)(3), by adding the words "or delivered" after the word "postmarked" wherever it appears in subdivision (a)(3), and by adding the words "and shall preserve any rights otherwise dependent on timely filing" after the word "delinquent" in subdivision (a)(3).

SECTION 2. Tennessee Code Annotated, Section 67-6-330(a), is amended by deleting subdivision (3) in its entirety.

SECTION 3. Chapter 602 of the Public Acts of 2007 is amended by repealing Section 152 in its entirety.

SECTION 4. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the first sentence of subsection (a) and substituting instead the following:

It is declared to be the intention of this chapter to impose a tax on the sales price of all leases and rentals of tangible personal property and computer software in this state where the lease or rental is a part of the regularly established business, or the lease or rental is incidental or germane thereto.

SECTION 5. Tennessee Code Annotated, Section 67-6-205(c), is amended by deleting subdivision (4) in its entirety and substituting instead the following:

(4) The performing, for a consideration, of any repair services with respect to any kind of tangible personal property or computer software;

SECTION 6. Tennessee Code Annotated, Section 67-6-205(c), is amended by deleting subdivision (6) in its entirety and substituting instead the following:

(6) The installing of tangible personal property that remains tangible personal property after installation and the installing of computer software, where a charge is made for such installation, whether or not such installation is made as an incident to the sale of tangible personal property or computer software, and

whether or not any tangible personal property or computer software is transferred in conjunction with the installation service;

SECTION 7. Tennessee Code Annotated, Section 67-6-314, is amended by deleting subdivisions (1) through (6) in their entirety and by substituting instead the following:

(1) Prosthetic devices for human use and repair services for the repair and maintenance of such prosthetic devices;

(2) Durable medical equipment for home use sold pursuant to a prescription for human use and repair services for the repair and maintenance of durable medical equipment qualifying for exemption under this subdivision;

(3) Oxygen delivery equipment, including:

(A) Repair services and repair or replacement parts for such equipment;

(B) Components or attachments for such equipment that are items for single patient use; and

(C) Disposable medical supplies necessary to administer or deliver medical oxygen for human use;

(4) Kidney dialysis equipment, including repair services and repair or replacement parts for such equipment, and including components or attachments for such equipment that are items for single patient use;

(5) Enteral feeding systems, including repair services and repair or replacement parts for such systems, and including components or attachments for such systems that are items for single patient use;

(6) Mobility enhancing equipment sold pursuant to a prescription for human use and repair service for the repair and maintenance of mobility enhancing equipment qualifying for exemption under this subdivision;

SECTION 8. Tennessee Code Annotated, Section 67-6-352, is amended by designating the current language as subsection (a) and by adding the following as subsection (b):

(b) For purposes of this section, such tangible personal property subject to tax when purchased for use in rendering outpatient health care services in the home or residence of a patient shall include, but not be limited to, mobility enhancing equipment and all durable medical equipment other than oxygen delivery equipment, kidney dialysis equipment, and enteral feeding systems.

SECTION 9. Tennessee Code Annotated, Section 67-6-102(29), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(29) "Durable medical equipment" means equipment that:

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Generally is not useful to a person in the absence of illness or injury; and
- (D) Is not worn in or on the body.

"Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that such repair and replacement parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include mobility enhancing equipment;

SECTION 10. Tennessee Code Annotated, Section 67-6-322, is amended by inserting the following language between the first and second sentences of subsection (e):

Persons who have obtained such exemption certificate issued by the commissioner shall provide their vendors with a copy of the certificate or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the exemption account number included on the certificate issued by the commissioner.

SECTION 11. Tennessee Code Annotated, Section 67-6-102(6)(B), is amended by deleting the language "four (4) times per calendar year;" and by substituting instead the following language:

four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county, or metropolitan library system, "business" does not include sales that the charitable entity elects to make in lieu of two semiannual temporary sales periods, provided that such sales do not exceed one hundred thousand dollars (\$100,000) per calendar year and provided further that such election by the charitable entity shall remain in effect for not less than four (4) years;

SECTION 12. Tennessee Code Annotated, Section 67-6-334(b), is amended by deleting subdivision (4) in its entirety and by substituting instead the following:

(4) The exemption provided in this section shall not apply to energy fuels sold over the counter at the location of the seller except as follows:

- (A) Propane sold over the counter in cylinders with a capacity of one hundred pounds (100 lbs.) or more directly to the consumer for residential use shall be exempt from the tax levied by this chapter; and
- (B) Kerosene sold at retail through dispensers that have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank shall be exempt from the tax levied by this chapter.

SECTION 13. Tennessee Code Annotated, Section 67-6-329(a), is amended by adding the following as a new, appropriately designated subdivision:

( ) Copies of hospital records, as defined in § 68-11-302, sold or otherwise provided to an attorney, agent, or other authorized representative acting in a lawsuit on behalf of any hospital that has received a determination of exemption as provided in § 67-6-322(e).

SECTION 14. Tennessee Code Annotated, Section 67-6-103(d)(1)(A), is amended by inserting the following language between the first and second sentences:

In addition, if an indoor sports facility in which a professional sports team is a tenant exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to other events occurring at such indoor sports facility and from the sale of food and drink and other authorized goods or products sold on the premises of the sports facility in conjunction with such other events, parking charges, and related services for such events.

SECTION 15. Tennessee Code Annotated, Section 67-6-712(c)(1), is amended by inserting the following language between the second and third sentences:

In addition, if an indoor sports facility in which a professional sports team is a tenant exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to two-thirds (2/3) of the amount of the allocation of local tax revenue under subdivision (a)(2) derived from the sale of admissions to other events occurring at such indoor sports facility and from the sale of food and drink and other authorized goods or products sold on the premises of the sports facility in conjunction with such other events, parking charges, and related services for such events, and such amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with the provisions of Title 7, Chapter 67.

SECTION 16. Tennessee Code Annotated, Section 67-6-103(d)(1)(D), is amended by deleting the language "nineteen (19)" and by substituting instead the language "seventeen (17)" and is further amended by deleting the language "derived from the sale of food and drink sold on the premises of the baseball and softball complex" and by substituting instead the following language:

derived from the sale of admissions to events at such baseball and softball complex and from the sale of food and drink and other authorized goods or products sold on the premises of such baseball and softball complex in conjunction with those events

and is further amended by deleting the following language:

, or until thirty (30) years from the date the complex begins operations, whichever is sooner

SECTION 17. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (i) in its entirety and by substituting instead the following new subsection (i):

(i)(1) Notwithstanding the provisions of this section to the contrary, revenue derived from state taxes imposed by this chapter shall be earmarked and allocated in accordance with the provisions of the Courthouse Square Revitalization Pilot Project Act of 2005, compiled in Title 6, Chapter 59.

(2) Notwithstanding a repeal of Title 6, Chapter 59, any municipality receiving an allocation of state sales tax revenue on June 1, 2015 pursuant to Title 6, Chapter 59, shall continue to receive the allocation of such revenue until June 30, 2023. Such allocation shall equal the amount of revenue derived from the state tax imposed by this chapter on the sale or use of goods, products, and services within the courthouse square revitalization zone. For purposes of this subdivision (i)(2), "courthouse square revitalization zone" has the same meaning as provided in § 6-59-102 and shall consist of the area that is included within the revitalization zone on June 1, 2015.

(3) No portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to Acts 1992, Ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to Acts 2002, Ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (i). All such revenue shall continue to be allocated as provided in Acts 1992, Ch. 529, and Acts 2002, Ch. 856.

SECTION 18. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as new, appropriately designated subdivisions:

( ) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

( ) "Digital audio works" means 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 recording. For purposes of this definition, "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" shall not include audio greeting cards sent by electronic mail;

( ) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including

works of fiction and nonfiction and short stories. "Digital books" shall not include newspapers, magazines, periodicals, chat room discussions, or weblogs;

( ) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works, and digital books. For purposes of this definition, "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following as a new, appropriately designated section:

67-6-2\_\_\_\_.

(a) The retail sale, lease, licensing, or use of specified digital products transferred to or accessed by subscribers or consumers in this state shall be subject to the tax levied by this chapter on the sales price or purchase price thereof at a rate equal to the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

(b) Retail sales, leases, licensing, or use subject to tax under this section shall include:

(1) specified digital products sold with rights of permanent use and specified digital products sold with rights of less than permanent use;

(2) specified digital products sold with rights of use conditioned upon continued payment by the subscriber or purchaser; and

(3) subscriptions to, access to, or the purchase of a "digital code" for, receiving or accessing specified digital products.

(c) For purposes of this section, "digital code" means a code that may be obtained in a tangible form, such as a card, or through email, which provides a purchaser with a right to obtain one or more "specified digital products". A "digital code" does not include gift certificates or gift cards that represent a monetary value that is redeemable for specified digital goods. No additional tax imposed by this chapter shall be due when the user of the "digital code" receives or accesses the "specified digital product".

(d) Subscriptions to satellite radio services are excluded from specified digital products subject to tax under this section. Also, subscriptions to data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information, are excluded from specified digital products subject to tax under this section.

(e) Retail sales subject to tax under this section shall not include retail sales that are subject to tax in accordance with any other provision of this chapter.

(f) Retail sales subject to tax under this section shall not include any sale, lease, licensing, or use of a specified digital product if the sale, lease, license, or use of the equivalent in a tangible form would be exempt as a sale for resale, sublease, or subrent, including any further broadcast, distribution, license, or retransmission of the digital product by a provider of video programming services, who shall not be deemed a subscriber or consumer for purposes of this section. For purposes of this section, "video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to Title 7, Chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology.

(g) The tax imposed by this section shall apply to retail sales in this state, indicated by the residential street address or the primary business street address of the subscriber or consumer.

SECTION 20. Tennessee Code Annotated, Section 67-6-329, is amended by adding the following as a new, appropriately designated subsection:

( ) The sale at retail, use, consumption, distribution, and storage for use or consumption in this state of the following specified digital goods is specifically exempted from the tax imposed by this chapter:

(1) Any specified digital good, if the sale, lease, licensing, and use of the equivalent in a tangible form is exempt from taxation under this chapter; and

(2) Specified digital goods provided without charge for less than permanent use.

SECTION 21. Tennessee Code Annotated, Section 67-6-702(g), is amended by adding the following as a new, appropriately designated subdivision:

( ) Notwithstanding any other provisions of this chapter, local tax with respect to specified digital products that are subject to state tax shall be imposed at the rate of two and one-half percent (2.5%).

SECTION 22. Tennessee Code Annotated, Section 67-6-102(39), is amended by adding the following as a new, appropriately designated subdivision:

( ) "Industrial machinery" includes machinery, apparatus, and equipment with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus, or equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair

or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion.

SECTION 23. Tennessee Code Annotated, Section 67-6-207(e)(1), is amended by deleting the language "produced or sold" and by substituting instead the language "produced and sold".

SECTION 24. Tennessee Code Annotated, Section 67-6-207, is amended by adding the following as a new subsection immediately following subsection (e):

(f) Notwithstanding subsection (e) to the contrary, a person that qualifies as a manufacturer under § 67-6-206 shall not qualify as a farmer or nurseryman under this section.

SECTION 25. Tennessee Code Annotated, Section 67-6-102(39)(K), is amended by deleting the current language in its entirety and by substituting instead the following:

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (39)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center;

SECTION 26. Tennessee Code Annotated, Section 67-6-102(65), is amended by deleting the language "part 22;" and by substituting instead the following language:

part 22. The three-year period for making the required capital investment provided for herein may be extended by the Commissioner of Economic and Community Development for a reasonable period, not to exceed two (2) years, for good cause shown. For purposes of this subdivision, "good cause" includes, but is not limited to, a determination by the Commissioner of Economic and Community Development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

SECTION 27. Tennessee Code Annotated, Section 67-6-224, is amended by adding the following as a new, appropriately designated subsection:

( ) (1) The commissioner may, in the commissioner's sole discretion, enter into a managed compliance agreement with a taxpayer that is entitled to the credit provided in this section. Such agreement may provide for:

(A) One (1) or more effective rates to be applied to a predetermined base of purchases subject to the credit provided in this section for a defined period;

(B) A procedure under which the eligible taxpayer can use a direct pay permit issued by the commissioner to purchase tangible personal property without paying to its supplier the tax

imposed by this chapter and to remit the tax due thereon directly to the department;

(C) A term not to exceed the investment period, provided that nothing shall preclude the commissioner from entering into a subsequent agreement with the same taxpayer;

(D) The conditions under which the agreement may require modification or termination;

(E) A procedure to resolve disputes concerning the agreement; and

(F) Any such other provisions as the commissioner and the eligible taxpayer mutually agree upon to carry out the purposes of this section.

(2) The commissioner may, in the commissioner's sole discretion, terminate a managed compliance agreement and conduct an audit of an eligible taxpayer if the taxpayer fails to fulfill any of the terms of the agreement and such failure is materially adverse to the commissioner and the taxpayer fails to cure such failure not later than thirty (30) days after the mailing of written notice of such failure by the commissioner; provided, however, that no such notice need be given in the event such failure is not capable of being cured or the commissioner believes that the collection of any tax required to be collected and paid to the state or of any assessment will be jeopardized by delay.

(3) Other than as authorized by this section and expressly agreed in the managed compliance agreement, nothing in this section shall abridge or alter any requirements, rights, or obligations of an eligible taxpayer or the commissioner granted or imposed by statute or regulation.

(4) For purposes of this subsection:

(A) "Eligible taxpayer" means any person that has qualified to receive the credit provided in this section and who, in the opinion of the commissioner, meets the following criteria:

(i) Demonstrates a willingness and ability to comply with the tax laws of this state;

(ii) Maintains an acceptable system of internal controls and business records; and

(iii) Cooperates with Tennessee's efforts to collect tax; and

(B) "Managed compliance agreement" means an agreement between the commissioner and an eligible taxpayer

that provides for an agreed upon method for calculating the credit due under this section.

SECTION 28. Tennessee Code Annotated, Section 67-6-232, is amended by adding the following as a new, appropriately designated subsection:

( ) (1) The commissioner may, in the commissioner's sole discretion, enter into a managed compliance agreement with a taxpayer that is entitled to the credit provided in this section. Such agreement may provide for:

(A) One (1) or more effective rates to be applied to a predetermined base of purchases subject to the credit provided in this section for a defined period;

(B) A procedure under which the eligible taxpayer can use a direct pay permit issued by the commissioner to purchase tangible personal property without paying to its supplier the tax imposed by this chapter and to remit the tax due thereon directly to the department;

(C) A term not to exceed the investment period, provided that nothing shall preclude the commissioner from entering into a subsequent agreement with the same taxpayer;

(D) The conditions under which the agreement may require modification or termination;

(E) A procedure to resolve disputes concerning the agreement; and

(F) Any such other provisions as the commissioner and the eligible taxpayer mutually agree upon to carry out the purposes of this section.

(2) The commissioner may, in the commissioner's sole discretion, terminate a managed compliance agreement and conduct an audit of an eligible taxpayer if the taxpayer fails to fulfill any of the terms of the agreement and such failure is materially adverse to the commissioner and the taxpayer fails to cure such failure not later than thirty (30) days after the mailing of written notice of such failure by the commissioner; provided, however, that no such notice need be given in the event such failure is not capable of being cured or the commissioner believes that the collection of any tax required to be collected and paid to the state or of any assessment will be jeopardized by delay.

(3) Other than as authorized by this section and expressly agreed in the managed compliance agreement, nothing in this section shall abridge or alter any requirements, rights, or obligations of an eligible taxpayer or the commissioner granted or imposed by statute or regulation.

(4) For purposes of this subsection:

(A) "Eligible taxpayer" means any person that has qualified to receive the credit provided in this section and who, in the opinion of the commissioner, meets the following criteria:

(i) Demonstrates a willingness and ability to comply with the tax laws of this state;

(ii) Maintains an acceptable system of internal controls and business records; and

(iii) Cooperates with Tennessee's efforts to collect tax; and

(B) "Managed compliance agreement" means an agreement between the commissioner and an eligible taxpayer that provides for an agreed upon method for calculating the credit due under this section.

SECTION 29. Tennessee Code Annotated, Section 67-6-389, is amended by deleting the language "This exemption" from subsection (d) and by substituting instead the language "The exemption provided in subsection (a)" and is further amended by adding the following as a new, appropriately designated subsection:

( ) Any taxpayer that moves tangible personal property into Tennessee in conjunction with establishing a qualified headquarters facility, as defined in § 67-6-224, and qualifying for the headquarters facility tax credit provided in § 67-6-224, shall be exempt from any sales and use tax liability that arises solely as a result of moving such property into the state, provided that such tangible personal property was previously used by the taxpayer in the operation of its business.

SECTION 30. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following as a new, appropriately designated section:

67-6-2\_\_.

Notwithstanding other provisions of this chapter to the contrary, use tax applicable to the transfer of a motor vehicle from inventory by an automobile manufacturer for its own use shall be computed as provided in this section. The tax shall be levied at the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 and shall be computed for each month during the term of use by multiplying the tax rate by an amount equal to one forty-eighth (1/48) of the wholesale price of the motor vehicle. For purposes of this section, "wholesale price" means the price at which motor vehicles of the same make and model were regularly sold to automobile dealers at the time the vehicle was removed from inventory.

SECTION 31. Tennessee Code Annotated, Sections 67-6-375 through 67-6-383, are repealed in their entirety.

SECTION 32. Tennessee Code Annotated, Section 67-6-504(f), is amended by inserting the following language between the first and second sentences:

When any taxpayer is required to file returns and remit payments electronically for any one (1) outlet, location, or other place of business, the commissioner may require the taxpayer to file returns and remit payments electronically for each place of business of such taxpayer.

SECTION 33. Tennessee Code Annotated, Section 67-1-1501(b)(4), is amended by deleting the language "owing the state additional estate tax" and by substituting instead the language "owing the state additional estate or inheritance tax" and is further amended by deleting the language "assessment of additional estate tax" and by substituting instead the language "assessment of additional estate or inheritance tax".

SECTION 34. Tennessee Code Annotated, Section 67-1-1802(a)(4), is amended by deleting the language "refund estate taxes" and by substituting instead the language "refund estate or inheritance taxes".

SECTION 35. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

( ) "Captive real estate investment trust" or "captive REIT" means an entity with an election in effect under § 856(c)(1) of the Internal Revenue Code in which the taxpayer, directly or indirectly, has at least ninety percent (90%) ownership interest by value determined in accordance with generally accepted accounting principles and whose shares are not traded on a national stock exchange;

SECTION 36. Tennessee Code Annotated, Section 67-4-2006, is amended by deleting subsection (e) and by substituting instead the following two subsections:

(e) Any financial institution that receives dividends, directly or indirectly, from one (1) or more captive REITs must disclose such dividends on a form prescribed by the commissioner. If a financial institution fails to make the required disclosure, the deduction allowed under § 67-4-2006(b)(2)(A) with respect to any direct or indirect dividends from such captive REIT or REITs shall be disallowed, the taxpayer's net earnings under this section shall be adjusted accordingly, and the taxpayer shall be subject to a fifty percent (50%) penalty on the amount of any underpayment arising from the adjustment. If the taxpayer wishes to contest the adjustment, the taxpayer shall have the remedies set forth in Chapter 1, Part 18, of this title.

(f) The amount computed under subsections (a)-(e) shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in § 67-4-2007.

SECTION 37. Tennessee Code Annotated, Section 67-4-2007(f)(1), is amended by deleting the word "or" at the end of subdivision (B) and is further amended by deleting the period at the end of subdivision (C) and substituting instead the language "; or" and is further amended by adding the following as subdivision (D):

(D) The asset was owned, during the twelve-month period immediately prior to the sale, by an affiliate subject to the tax imposed by this part.

SECTION 38. Tennessee Code Annotated, Section 67-4-2008(a)(10), is amended by deleting the current language in its entirety and by substituting instead the following:

(10) An entity that satisfies both of the following requirements:

(A) It (i) is classified as a partnership or trust in accordance with the provisions of 26 U.S.C. § 7701, and the federal regulations and rulings promulgated thereunder, or (ii) has elected to be treated as a real estate mortgage investment conduit (REMIC) under 26 U.S.C. § 860D, or (iii) has elected to be treated as a financial asset securitization investment trust (FASIT) under 26 U.S.C. § 860L, or (iv) is a business trust, as defined in § 48-101-202(a), or is classified as a trust under the laws of the state in which it is created and is disregarded for federal income tax under the provisions of 26 U.S.C. § 7701, and the federal regulations and rulings promulgated thereunder, when the commercial domicile of the trustee is not in the State of Tennessee; and

(B) The sole purpose of the entity, except for foreclosures and dispositions of the assets of foreclosures, is the asset-backed securitization of debt obligations, such as first or second mortgages, including home equity loans, trade receivables, whether an open account or evidenced by a note or installment or conditional sales contract, obligations substituted for trade receivables, credit card receivables, personal property leases treated as debt for purposes of the Internal Revenue Code of 1986, home equity loans, automobile loans or similar debt obligations. "Trade receivables" as used in this subdivision (a)(10)(B) means obligations arising from the sale of inventory in the ordinary course of business;

SECTION 39. Tennessee Code Annotated, Section 67-2-104(e)(16), is amended by deleting the current language in its entirety and by substituting instead the following:

(16) The tax imposed by this chapter does not apply to an entity that satisfies both of the following requirements:

(A) It (i) is classified as a partnership or trust in accordance with the provisions of 26 U.S.C. § 7701, and the federal regulations and rulings promulgated thereunder, or (ii) has elected to be treated as a real estate mortgage investment conduit (REMIC) under 26 U.S.C. § 860D, or (iii) has elected to be treated as a financial asset securitization investment trust (FASIT) under 26 U.S.C. § 860L, or (iv) is a business trust, as defined in § 48-101-202(a), or is classified as a trust under the laws of the state in which it is created and is disregarded for federal income tax under the provisions of 26 U.S.C. § 7701, and the federal regulations and rulings promulgated thereunder, when the commercial domicile of the trustee is not in the State of Tennessee; and

(B) The sole purpose of the entity, except for foreclosures and dispositions of the assets of foreclosures, is the asset-backed securitization of debt obligations, such as first or second mortgages, including home equity loans, trade receivables, whether an open account or evidenced by a note or installment or conditional sales contract, obligations substituted for trade receivables, credit card receivables, personal property leases treated as debt for purposes of the Internal Revenue Code of 1986, home equity loans, automobile loans or similar debt obligations. "Trade receivables" as used in this subdivision (e)(16)(B) means obligations arising from the sale of inventory in the ordinary course of business.

SECTION 40. Tennessee Code Annotated, Section 67-3-206(b), is amended by deleting the language "July 1, 2008" and by substituting instead the language "July 1, 2009".

SECTION 41. Tennessee Code Annotated, Section 67-4-2008(a)(12)(B), is amended by deleting subdivision (i) and by substituting instead the following:

(i) "Affiliated" means entities that are affiliates or part of an affiliated group. As applied to individuals, "affiliates" means any natural person who, directly or indirectly, has more than fifty percent (50%) ownership interest in the fund. For purposes of this subdivision, indirect ownership by an individual includes ownership by any family member of the individual, which means, with respect to the individual:

(a) An ancestor of such individual;

(b) The spouse or former spouse of such individual;

(c) A lineal descendant of such individual, of such individual's spouse or former spouse, or of a parent of such individual;

(d) The spouse or former spouse of any lineal descendant described in subdivision (a)(12)(B)(i)(c); or

(e) The estate or trust of a deceased individual who, while living, was as described in any of the subdivisions (a)(12)(B)(i)(a)-(d);

SECTION 42. Tennessee Code Annotated, Section 67-4-2109(c)(2)(A)(v), is amended by deleting the language "January 1, 2011" and by substituting instead the language "January 1, 2016".

SECTION 43. Tennessee Code Annotated, Section 67-4-2006(c), is amended by adding the following as a new, appropriately designated subdivision:

(7) Notwithstanding subdivision (c)(1) to the contrary, a taxpayer that qualifies for the job tax credit provided in § 67-4-2109(c)(2)(I)(i), (ii), or (iii) in connection with a required capital investment in excess of one hundred million (\$100,000,000) shall be allowed to carry net operating losses forward beyond the initial fifteen (15) year period authorized under subdivision (c)(1), if the

Commissioner of Revenue and the Commissioner of Economic and Community Development determine that extending the period during which the loss may be carried forward is in the best interest of the state. For purposes of this subdivision (c)(7), "best interests of the state" includes, but is not limited to, a determination that the taxpayer made the required capital investment as a result of such action. The Commissioner of Revenue and the Commissioner of Economic and Community Development shall determine the period during which net operating loss carryforward shall be allowed beyond the initial fifteen (15) year period.

SECTION 44. Tennessee Code Annotated, Section 67-4-2109(c)(2)(H), is amended by deleting the language "not to exceed two (2) years, for good cause shown" and by substituting instead the language "not to exceed four (4) years, for good cause shown".

SECTION 45. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

( ) "Integrated supplier" means a supplier located within the footprint of a project site, as determined by the Commissioner of Economic and Community Development and the Commissioner of Revenue, which provides goods and services on the project site solely for a manufacturer that is qualified for the credit provided in § 67-4-2109(c)(2)(H) in connection with a required capital investment in excess of one billion dollars (\$1,000,000,000);

SECTION 46. Tennessee Code Annotated, Section 67-4-2109(c)(2)(I)(ii), is amended by adding the following language at the end of the subdivision:

An integrated supplier, as defined in § 67-4-2004, shall qualify for the credit provided in this subdivision (c)(2)(I)(ii) regardless of the level of its capital investment or the number of jobs created.

SECTION 47. Tennessee Code Annotated, Section 67-4-2109(c)(2)(K), is amended by adding the following as a new, appropriately designated subdivision:

(iii) If the qualified business enterprise is located in a tier two (2) economically distressed county, the taxpayer shall have three (3) years in order to create the minimum number of qualifying jobs necessary to receive the credit provided in this subsection (c). If the qualified business enterprise is located in a tier three (3) economically distressed county, the taxpayer shall have five (5) years to create the minimum number of qualifying jobs necessary to receive the credit provided in this subsection (c).

SECTION 48. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by adding the following as a new subdivision immediately following subdivision (K):

(L) Notwithstanding subdivision (c)(2)(A)(i) to the contrary, the Commissioner of Revenue, with the approval of the Commissioner of Economic and Community Development, is authorized to approve job tax credit in cases where the newly created position existed in Tennessee as a job position of the taxpayer or of another business entity less than ninety (90) days prior to being filled by the taxpayer, provided that all other requirements to obtain the credit

have been satisfied by the taxpayer and provided further that the Commissioner of Revenue and the Commissioner of Economic and Community Development have determined that allowance of such credit is in the best interests of the state. For purposes of this subdivision (c)(2)(L), "best interests of the state" includes, but is not limited to, a determination that the taxpayer made the required capital investment as a result of the credit.

SECTION 49. Tennessee Code Annotated, Section 67-4-2109(c)(3), is amended by adding the following language between the first and second sentences:

The job tax credit provided in this subsection (c) also may be computed by a general partnership that has established an international, national, or regional headquarters in this state that meets the definition of a "qualified headquarters facility" under § 67-6-224 and would otherwise qualify for the job tax credit provided in this section.

SECTION 50. Tennessee Code Annotated, Section 67-4-2109(h), is amended by adding the following as a new, appropriately designated subdivision:

( ) The credit provided for by this subsection (h) may be computed by a general partnership that has established an international, national, or regional headquarters in this state that meets the definition of a "qualified headquarters facility" under § 67-6-224 and has qualified for the job tax credit provided for in subsection (c). The amount of the credit shall be allowed under the provisions of this section as if the general partnership were subject to franchise and excise tax under Parts 20 and 21 of this chapter. With respect to the general partnership tax year during which a credit is so computed, a partner in such general partnership that is subject to Tennessee franchise and excise tax and that directly holds a first tier ownership interest in such general partnership may take a percentage of such credit that equals the total amount of such credit for the general partnership multiplied by such partner's percentage interest in the general partnership on the last day of such general partnership tax year against such partner's franchise and excise tax liability for such partner's tax year that includes such last day. The relocation expense credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section. In no case shall the credit be taken by a business entity unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership.

SECTION 51. Tennessee Code Annotated, Section 67-6-224(c), is amended by deleting the first sentence and by substituting instead the following:

A taxpayer qualifying for this credit must be subject to the taxes imposed by Chapter 4, Parts 20 and 21 of this title or be an insurance company as defined in § 56-1-102(2) or be a general partnership that is entitled to compute a job tax credit pursuant to § 67-4-2109(c)(3).

SECTION 52. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new, appropriately designated subsection:

(n)(1) As used in this subsection (n):

(A) "Certified green energy supply chain manufacturer" means any manufacturer that has made, during the investment period, a required capital investment in excess of two hundred and fifty million dollars (\$250,000,000) in constructing, expanding, or remodeling a facility that is certified by the Commissioner of Revenue, the Commissioner of Economic and Community Development, and the Commissioner of Environment and Conservation, in their sole discretion, to be a facility engaged in manufacturing a product that is necessary for the production of green energy;

(B) "Investment period" means a period not to exceed three (3) years from the filing of the business plan related to qualification as a certified green energy supply chain manufacturer, during which the required capital investment must be made;

(C) "Maximum certified rate" means a rate expressed as a price per kilowatt hour for calculating the green energy tax credit allowed in subdivision (3) and shall be established through the issuance of a private letter ruling by the Commissioner of Revenue, which shall be subject to approval by the Commissioner of Economic and Community Development and the Commissioner of Finance and Administration;

(D) "Carbon charge" means a tax or fee imposed or levied by the federal or state government, the purpose of which is to reduce the emission of greenhouse gases. Such carbon charge may include, but is not limited to, a tax, emission fee or charge, or required purchase of carbon or emission off-sets or credits, whether incurred by or imposed directly on the certified green energy supply chain manufacturer or imposed on the Tennessee Valley Authority or other applicable energy provider and billed to the certified green energy supply chain manufacturer; and

(E) "Charge for electricity sold" means the total delivered cost of electricity sold to the certified green energy supply chain manufacturer at the point of delivery to the facility. The charge for electricity sold shall be the total amount due as shown on the customer's electricity bills over the applicable tax year. Any carbon charge shall be excluded from the charge for electricity sold to the extent such carbon charge is included in the credit allowed in subdivision (n)(4).

(2) The credits provided in this subsection (n) and any other applicable credits, net operating losses, or carryforwards thereof provided in this part and in Part 20 of this chapter shall be applied in the following order. Any credits, net operating losses, or carryforwards thereof available to the certified green energy supply chain manufacturer

pursuant to this part or Part 20 of this chapter, except for those contained in this subsection (n), shall be applied to the taxpayer's tax liability first. Any green energy tax credit available pursuant to subdivision (n)(3) shall be applied to the taxpayer's liability second and shall be refundable as provided in subdivision (n)(3) if such credit exceeds the taxpayer's remaining liability. Any carbon tax credit available pursuant to subdivision (n)(4) shall be applied to the taxpayer's liability third and shall be refundable as provided in subdivision (n)(4) if such credit exceeds the taxpayer's remaining liability.

(3) A certified green energy supply chain manufacturer shall be allowed a green energy tax credit, against the sum total of the taxes imposed by the Franchise Tax Law compiled in this part and the Excise Tax Law compiled in Part 20 of this chapter, equal to the amount by which the charge for electricity sold to the certified green energy supply chain manufacturer exceeds the charge that would have been made for such total delivered electricity if the maximum certified rate had been applied during the applicable tax year. The Tennessee Valley Authority, or the applicable energy provider, shall supply such information as deemed necessary by the Commissioner of Revenue to verify the amount of such credit. Consistent with subdivision (n)(2), to the extent that any amount allowed as a credit under this subdivision (n)(3), for any tax year, exceeds the combined tax imposed by this part and by Part 20 of this chapter after the application of all available credits other than the credit provided in subdivision (n)(4), the amount of such excess shall be considered an overpayment and shall be refunded to the taxpayer; provided, however, that such overpayment and such refund shall not exceed, for any one tax year, an amount equal to one million five hundred thousand dollars (\$1,500,000) for each two hundred and fifty million dollars (\$250,000,000) in cumulative capital investments made by the certified green energy supply chain manufacturer. Such refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, a claim for refund must be filed with the commissioner within three (3) years from December 31 of the year in which the credit provided by this subdivision (n)(3) was incurred. To the extent any amount allowed as a credit under this subdivision (n)(3) is not applied to the taxpayer's liability and is not received by the taxpayer as a refund, such credit may be carried forward in perpetuity until it is claimed as a refund or utilized as a credit by the certified green energy supply chain manufacturer pursuant to the provisions of this subdivision (n)(3). Except for the purpose of receiving a refund or otherwise utilizing credits that have been carried forward, the credit provided for in this subdivision (n)(3) shall cease to be effective on January 1, 2029 and no new credit shall be allowed for tax years ending on or after such date.

(4) A certified green energy supply chain manufacturer shall be allowed a carbon charge credit, against the sum total of the taxes imposed by the Franchise Tax Law compiled in this part and the Excise Tax Law compiled in Part 20 of this chapter, equal to any carbon charges incurred by or imposed directly on the certified green energy supply chain

manufacturer or imposed on the Tennessee Valley Authority or other applicable energy provider and billed to the certified green energy supply chain manufacturer during the applicable tax year. The Tennessee Valley Authority, or the applicable energy provider, shall supply such information as deemed necessary by the Commissioner of Revenue to verify the amount of such carbon charge credit. Consistent with subdivision (n)(2), to the extent any amount allowed as a carbon charge credit under this subdivision (n)(4) exceeds the combined tax imposed by this part and by Part 20 of this chapter after the application of all other available credits, the amount of such excess shall be considered an overpayment and shall be refunded to the taxpayer. Such refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, a claim for refund must be filed with the commissioner within three (3) years from December 31 of the year in which the credit provided by this subdivision (n)(4) was incurred.

(5) The investment period for making the required capital investment may be extended by the Commissioner of Economic and Community Development for a reasonable period, not to exceed two (2) years, for good cause shown. For purposes of this subdivision (n)(5), "good cause" includes, but is not limited to, a determination by the Commissioner of Economic and Community Development that the capital investment is a result of the credit provided in this subsection (n).

SECTION 53. Tennessee Code Annotated, Section 67-4-2118(d)(2), is amended such that:

(1) For tax years beginning on or after January 1, 2008, "twenty percent (20%)" shall be substituted for "twenty-five percent (25%)" in subdivision (d)(2); and

(2) For tax years beginning on or after January 1, 2009, "twelve and one-half percent (12.5%)" shall be substituted for "twenty percent (20%)" in subdivision (d)(2); and

(3) For tax years beginning on or after January 1, 2010, "five percent (5%)" shall be substituted for "twelve and one-half percent (12.5%)" in subdivision (d)(2); and

(4) For tax years beginning on or after January 1, 2011, Section 67-4-2118(d)(2) shall be deleted in its entirety and the following inserted in lieu thereof:

(2) The consolidated net worth of the financial institution affiliated group shall be the difference between total assets, less the sum of total liabilities shown on the consolidated balance sheet prepared pursuant to subdivision (d)(1);

SECTION 54. Tennessee Code Annotated, Section 56-4-217, is amended by deleting subsection (b) in its entirety.

SECTION 55. Tennessee Code Annotated, Section 67-4-2008(a), is amended by adding the following as a new, appropriately designated subdivision:

( ) Insurance companies, as defined in § 56-1-102(2).

SECTION 56. Tennessee Code Annotated, Section 67-4-2009(1), is amended by deleting the language in its entirety and by substituting instead the following:

(1) In accordance with § 56-4-217, there shall be credited upon the tax imposed by this part the net amount of gross premiums tax paid that is measured by a period that corresponds to the excise tax period on which the return is based, plus any amount used to offset payment to the Tennessee guaranty association that has not otherwise been recovered, but not including the gross premiums receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law.

SECTION 57. Tennessee Code Annotated, Section 67-4-2009, is amended by deleting subdivision (9) in its entirety.

SECTION 58. Tennessee Code Annotated, Section 67-4-2109, is amended by deleting subsection (f) in its entirety.

SECTION 59. Tennessee Code Annotated, Title 67, Chapter 5, Part 12, is amended by adding the following as a new, appropriately designated section:

67-5-12\_\_.

The tax levied by this part shall not apply to the balance of the corporate property and capital stock, otherwise subject to valuation and assessment under §§ 67-5-1202(2) and 67-5-1203(b), of any "pure captive insurance company" as defined in § 56-13-102(14) or of any entity operating in a similar manner to a pure captive insurance company such that fifty-one percent (51%) or more of its direct written premium revenue is from an "affiliated company" as defined in § 56-13-102(1) or an "associated company" as defined in § 56-13-102(2).

SECTION 60. Tennessee Code Annotated, Section 67-1-1803, is amended by adding the following new sentence at the end of the subsection (d):

For purposes of this subsection (d), any party found by the court to have committed fraud or to be the transferee of assets conveyed in violation of the provisions of Title 66, Chapter 3, shall not be deemed a prevailing party.

SECTION 61. Tennessee Code Annotated, Section 67-4-2006(d)(3), is amended by deleting the language "subdivision (b)(1)(L)" and by substituting instead the language "subdivision (b)(1)(K)".

SECTION 62. Tennessee Code Annotated, Section 67-4-2109(c)(2)(C), is amended by deleting the language "subdivision (c)(1)(C)(iii)" and by substituting instead the language "subdivision (c)(1)(F)(iii)".

SECTION 63. Tennessee Code Annotated, Section 67-6-232(b)(1), is amended by deleting the language "subdivision (b)(4)" and by substituting instead the language "subdivision (b)(5)".

SECTION 64. Tennessee Code Annotated, Section 67-4-409, is amended by deleting the language in subsection (g) in its entirety and by substituting instead the following:

(g) Three and one-fourth cents (3.25¢) of the tax levied by subsection (a) shall, subject to the annual appropriations act, be credited to a special agency account in the state general fund known as the "1986 wetland acquisition fund". If such an appropriation is not made in the appropriations act, then such amount shall be credited to the general fund. Such funds shall not be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain. Expenditures from such fund shall only be made to implement and effectuate the purposes of Title 11, Chapter 14, Part 4. The fund may be expended to maintain property purchased pursuant to such part. Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 65. Tennessee Code Annotated, Section 67-4-409(i), is amended by deleting the language in subdivision (1) in its entirety and by substituting instead the following:

(1) One and three-fourths cents (1.75¢) of the tax levied by subsection (a) shall, subject to the General Appropriations Act, be credited to a special agency account in the state general fund known as the "local parks land acquisition fund". If such an appropriation is not made in the appropriations act, then the amount shall be credited to the general fund. The moneys in this fund shall be used only for grants to county and municipal governments to implement and carry out the purposes set forth in this subsection (i); provided, that the Commissioner of Environment and Conservation may allocate not more than three and one-half percent (3.5%) of the moneys in this fund for the administration of the fund. Funds deposited in the fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 66. Tennessee Code Annotated, Section 67-4-409(j), is amended by deleting the language in subdivision (1) in its entirety and by substituting instead the following:

(1) One and one-half cents (1.5¢) of the tax levied by subsection (a) shall, subject to the annual appropriations act, be credited to a special agency account in the state general fund known as the "state land acquisition fund". If such an appropriation is not made in the appropriations act, then such amount shall be credited to the general fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in this subsection (j). Funds deposited in the fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 67. Tennessee Code Annotated, Section 67-4-409(*l*), is amended by deleting the language in subdivision (1) in its entirety and by substituting instead the following:

(1) One and one-half cents (1.5¢) of the tax levied by subsection (a) shall, subject to the annual appropriations act, be credited to a special agency account in the state general fund known as the "agricultural resource conservation fund". If such an appropriation is not made in the appropriations act, then such amount shall be credited to the general fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in this subsection (*l*). Funds deposited in the fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 68. Tennessee Code Annotated, Section 67-4-2008, is amended by adding the following language as a new, appropriately designated subsection:

(e) Each person who, pursuant to § 67-4-2008(a)(11), enjoys exempt status from franchise and excise taxes shall periodically file such forms and report such information as the Commissioner of Revenue shall reasonably prescribe regarding the family-owned non-corporate entity and the family members participating therein. No later than January 20, 2009, the commissioner shall submit to the Finance, Ways and Means Committees of the Senate and the House of Representatives a summary report of the information so compiled. The report shall include analyses of the utilization, costs and benefits of the exemption as well as findings and recommendations pertaining to continuation of such exemption.

SECTION 69. Section 1 of this act shall take effect upon becoming a law and shall apply to matters under appeal on the effective date, the public welfare requiring it. Section 2 of this act shall take effect on July 1, 2008, and shall apply to dues and fees billed on or after the effective date for membership periods occurring on or after the effective date, the public welfare requiring it. Sections 16 and 30 of this act shall take effect on July 1, 2008, the public welfare requiring it. Sections 11, 18, 19, 20, 21, and 22 of this act shall take effect on January 1, 2009, the public welfare requiring it. Sections 14 and 15 of this act shall take effect on January 1, 2009, and shall apply to events occurring on or after the effective date, the public welfare requiring it. Sections 35 and 36 of this act shall apply to all tax periods ending on or after July 1, 2008, the public welfare requiring it. Section 37 of this act shall take effect July 1, 2008, and shall apply to transactions occurring on or after the effective date, the public welfare requiring it. Section 41 of this act shall take effect on January 1, 2009, and shall apply to any tax period beginning on or after the effective date, the public welfare requiring it. Sections 49, 50, and 51 of this act shall apply to any business plan filed with the Department of Revenue on or after January 1, 2008, the public welfare requiring it. Sections 64, 65, 66, and 67 of this act shall take effect on June 30, 2008, and shall be repealed on June 30, 2010, at which time the provisions of Tennessee Code Annotated, Section 67-4-409, subsection (g) and subdivisions (i)(1), (j)(1), and (*l*)(1), that existed immediately prior to enactment of Public Acts of 2003, Chapter 355, Sections 33 through 36, shall be revived and shall be in effect as they existed immediately prior to August 1, 2003, the public welfare requiring it. All remaining sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 15, 2008



RON RAMSEY  
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2008



PHIL BREDESEN, GOVERNOR