



Tax Manual Updates

August 2021

Please find below, a brief overview of updates the Tennessee Department of Revenue (the “Department”) made to its tax manuals. These updates are predominately based on changes in Tennessee law pursuant to the 2021 legislative session, as well as opportunities for improved clarity or expanded guidance. Changes were not made to every manual, only those outlined below.

Agricultural Tax Manual

Agricultural Land

- Page 55 of the Tennessee Agricultural Tax Manual was edited to include information from [Public Chapter 436 \(2020\)](#) that expanded the definition of “agricultural land” for purposes of the greenbelt designation to include two noncontiguous tracts of land within the same county totaling at least 15 acres and separated only by a road, a body of water or public or private easement. This information is found in footnote 8.

Alcohol Tax Manual

Bulk Sale or Transfer of Alcohol upon Business Sale or Closure

- [Public Chapter 76 \(2021\)](#) allows persons with a retail package store license, liquor-by-the-drink license, or retail food store license to sell or transfer alcohol in bulk upon the sale or closure of a business. Chapter 5 of the Alcohol Tax Manual was revised on Page 48 to include a brief overview of the requirements businesses must meet when selling or transferring alcohol upon the sale or closure of a business.

Retail Consumer Tastings

- Chapter 3 of the Alcohol Tax Manual was amended on page 18 and 19 to incorporate information on retail consumer tastings due to a law change in [Public Chapter 437 \(2021\)](#). Public Chapter 437 (2021) allows a distiller who provides its product to a retail licensee for consumer tastings to have a licensed wholesaler deliver the product to the retailer using a zero-dollar invoice.

Winery Direct Shippers

- [Public Chapter 425 \(2021\)](#) authorizes winery direct shippers that manufacture less than 270,000 liters of wine in a calendar year to ship up to 54 liters of wine to an individual per year. The Alcohol Tax Manual was revised on page 20 consistent with this public chapter.

Beer Manufacturer Self-Distribution

- Pages 29-30 of the Alcohol Tax Manual were edited to include information from [Public Chapter 432 \(2021\)](#). This public chapter authorizes beer manufacturers that brew up to 25,000 barrels of beer per year to self-distribute up to 1,800 barrels of beer directly to retailers in the county where the manufacturer is located and to retailers in other counties each year.

To-go Alcohol

- [Public Chapter 451 \(2021\)](#) states that persons or entities licensed to sell beer and alcoholic beverages for consumption on the person's or entity's premises may offer drive-through, pickup, carryout, and delivery orders of alcoholic beverages and beer for consumption off the premises. Page 49 of the Alcohol Tax Manual was updated to include the information in this public chapter.

Alcohol Delivery Fee

- Page 45 of the Alcohol Tax Manual was edited to incorporate the alcohol delivery fee information contained in [Public Chapter 185 \(2021\)](#). This public chapter authorizes licensed alcoholic beverage delivery services to charge a fee of not more than 10% on the price of the alcohol being delivered.

Direct Shippers – Fulfillment Centers

- [Public Chapter 331 \(2021\)](#) allows winery direct shippers to ship only wine sold under a brand name owned or licensed to the winery, produced by the winery, produced exclusively for the winery under an existing contract, or produced and bottled exclusively for the winery. This public chapter also requires fulfillment centers to obtain a license from the Tennessee Alcoholic Beverage Commission (ABC) to assist wineries in making direct shipments of wine to consumers and requires fulfillment centers to report quarterly to the ABC about their shipments. This information can be found on page 21 of the Alcohol Tax Manual.

- Public Chapter 331 (2021) also explains that common carriers are required to include all shipments on behalf of winery direct shippers and fulfillment centers in their monthly reports submitted to the Department. Page 27 of the Alcohol Tax Manual was modified to include this information.

Direct Shippers – Wine Gallonage Tax

- Page 22 in the Alcohol Tax Manual was updated consistent with Important Notice #21-04, which clarifies that the Tennessee wholesale wine gallonage tax does not apply to non-Tennessee sales.

Brand Registration Database

- [Public Chapter 324 \(2021\)](#) requires the Department to include the following information in the alcoholic beverage brand registration database: manufacturer or importer name, wholesaler name, addresses for both entities, brand names, and distribution territories. This public chapter also requires the Department to notify the applicable manufacturer and wholesaler(s) when a new brand registration contract is processed. This information was added to the Alcohol Tax Manual in endnote 10 on page 60.

No Residency Requirement

- Page 50 of the Alcohol Tax Manual was modified to state that there is no Tennessee residency requirement to obtain a retailer’s liquor license, as provided in [Public Chapter 59 \(2021\)](#).

Business Tax Manual

Speculative Builders

- Pages 143 and 144 of the Business Tax Manual were updated to include business tax guidance for speculative builders per TENN. COMP. R. & REGS. 1320-04-05-.51. This update originated from inquiries regarding the business tax treatment of certain building projects completed by contractors.

Reporting Methods

- Pages 42 and 135 of the Business Tax Manual were revised to incorporate guidance on the appropriate tax reporting methods for business tax. Wholesalers and retailers generally report business tax due on sales for the period in which the sale is made (accrual) while contractors report sales on a cash basis.

Sales and Use Tax Guidance for County Clerks Manual

Boat Sales by a Dealer to an Individual

- Page 18 of the Sales and Use Tax Guidance for County Clerks – Automobiles and Boats was modified to clarify that the section titled “Boats” that details transactions involving purchases of boats, motors, accessories, and trailers in one transaction pertains to sales from a dealer to an individual. The “Boats” section was both edited and retitled “Boats Sold by a Dealer to an Individual.”

Transfers of Automobiles to an LLC

- The manual was updated on page 23 to clarify that transfers of automobiles between members of an LLC and the LLC itself are subject to sales and use tax, unless the LLC is a single-member LLC and is disregarded as a separate entity for federal tax purposes.

Franchise and Excise Tax Manual

CARES Act Payments

- Chapter 11, pages 290-291 of the Franchise and Excise Tax Manual were updated to add information regarding [Public Chapter 154 \(2021\)](#), which provides a deduction for certain COVID relief payments made from federal CARES Act funds.

Obligated Member Entity Exemption

- Chapter 2, Pages 25-31 of the Franchise and Excise Tax Manual were modified to better explain the requirements and administration of the obligated member entity exemption. Specifically, these pages in the manual were updated to clarify the following:

- All direct owners of an obligated member entity (OME) must make the election to be obligated members of the OME for the OME to qualify for the franchise and excise tax OME exemption.
- The way a partially exempt obligated member entity is to calculate its franchise and excise tax liability is clarified.
- Suggested audit procedures for determining if an obligated member entity (OME) qualifies for the franchise and excise tax OME exemption, or if an otherwise qualified OME is only partially-exempt from the tax, are clarified.

Qualified Production Credit

- Chapter 15, pages 450-452 was revised to include an overview of the new franchise and excise tax qualified production credit. [Public Chapter 70 \(2021\)](#) created a credit for qualified payroll expenses incurred during film, TV, video game, digital media, and esports productions.

Industrial Machinery Credit

- Chapter 15 was modified on pages 443-449 to make corrections and improvements to the Industrial Machinery Credit section. Notable updates are as follows:
 - Updated the industrial machinery credit (IMC) summary table on page 449; changed the content of the last column of this table from “Best Interest of the State Provision” to “F&E Liability Offset Limit;” added symbols and a corresponding legend to the table to denote the IMC provisions that are “best interests of the state” provisions.
 - Removed information from the previous version of the table on page 449, which indicated that taxpayers who qualify for the 10% enhanced industrial machinery credit may take an unlimited carryforward of such credit, if determined to be in the best interest of the state. This provision expired as of January 1, 2011 and is no longer applicable.

Extension Period

- [Public Chapter 559 \(2021\)](#) creates a seven-month franchise and excise tax extension for tax years beginning on or after January 1, 2021. Page 23 of Chapter 2 and page 87 of Chapter 5

in the Franchise and Excise Tax Manual were updated to reflect the change in the length of the franchise and excise tax extension period from six months to seven months.

- The Filing Extension section of Chapter 5 (pages 87-88) was edited to clarify the existing statutory requirements and Department procedures for obtaining an extension.

Pass-Through Entity Reversal Adjustments

- Chapter 11 of the manual was updated to clarify that if an entity who is subject to franchise and excise tax has an ownership interest in a pass-through entity that claims a statutory exemption from the tax, under Tenn. Code Ann. § 67-4-2008, the owner *should not* reverse any income, gain, expense, or loss received from the exempt pass-through entity from the owner's excise tax base. This update can be found on pages 278-279 of the manual.

Nonbusiness Property, Payroll, and Receipts

- Nonbusiness property, nonbusiness payroll, and nonbusiness receipts are excluded from all apportionment ratios. Pages 352, 365, and 420 in Chapter 14 of this manual were edited for clarification.

Dispositions of Section 179 Property

- Pages 240 and 250 in Chapter 11 of the manual were updated to provide additional guidance on the excise tax reporting requirements of Section 179 property dispositions by partnerships and S corporations.

Unrelated Business Taxable Income ("UBTI")

- Chapter 11 of the manual was updated on pages 255-256 to clarify that the excise tax UBTI reporting requirements for nonprofits conforms to the federal Tax Cuts and Jobs Act "silo" provisions.

Hall Income Tax Credit

- Pages 440-441 in Chapter 15 in the manual were revised to clarify the applicability of the Hall income tax credit to SMLLCs owned by individuals. Guidance on this issue was added to the manual as a result of recent cases of taxpayers erroneously claiming this credit.

Consolidated Net Worth and Captive Real Estate Investment Trust Net Worth

- Chapter 18 of the manual was modified on pages 535-537 to make minor improvements to the guidance provided on the consolidated net worth and captive real estate investment trust net worth provisions, as applicable to Schedule F2 and Schedule F1 of Form FAE 174.

IRC §163(j) Conformity

- Pages 281-282, 291-293, and 295-296 in Chapter 11 of the manual were updated to make improvements to the guidance regarding Tennessee's conformity to IRC §163(j) for the 2018 and 2019 tax years and guidance relating to Tennessee's decoupling from this federal provision for tax years 2020 going forward.

Intangible Income Received from Affiliate

- Page 289 in Chapter 11 and page 374 of Chapter 14 were revised to clarify the Department's position that the excise tax deduction for intangible income received from an affiliate is permissible *only* if the Department disallows the affiliate's corresponding intangible expense deduction. Therefore, the paying affiliate may not voluntarily choose *not* to deduct a valid, properly disclosed intangible expense to shift the deduction to the receiving affiliate.

Single Sales Factor Election

- Page 342 in Chapter 14 was updated to clarify when a manufacturer must elect single sales factor apportionment.

Hall Income Tax Manual

Who Must File Return

- Hall Tax Manual page 8 was updated to clarify that Tennessee trusts, associations, and corporations are subject to Hall income tax on taxable dividend and interest income.

Hall Income Tax – Franchise and Excise Tax Credit

- Hall Tax Manual pages 12 and 13 were updated to provide information regarding the interplay between the Hall income tax and the franchise and excise tax.