



Department of
Revenue

Tax Manual for Bars & Restaurants

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Chapter 1: Introduction

Restaurants, bars, and similar establishments experience unique challenges when complying with Tennessee tax laws, specifically the sales and use tax and liquor-by-the-drink ("LBD") tax. This manual aims to provide the information necessary to successfully comply with these provisions.

Getting Started

1. Get Familiar with Department of Revenue Resources

New Business Workshops

The Department of Revenue (the "Department" or "DOR") hosts webinars for new businesses each quarter. These webinars provide information about state tax obligations for new businesses in Tennessee and other resources that may help businesses comply with their various Tennessee tax obligations. These webinars cover tax registration, sales and use tax, business tax, franchise and excise tax, and how to receive assistance with tax questions from the Department and other state agencies. Please check the Department's [New Business Workshops website](#) for more information on upcoming new business workshops. The Department also maintains recordings of past webinars on its [Tax Webinar website](#).

Tax Manuals, Important Notices, and Revenue Help Articles

The Department publishes several comprehensive tax manuals on its [Tax Manual web page](#) that address other tax types. The Department updates these manuals as needed, once in December and once in June, following the conclusion of the General Assembly's legislative session for the year. It is essential to ensure you are referencing the most recent tax manual in case legislation or a judicial decision has overturned previous guidance.

The Department also has hundreds of revenue help desk articles and important notices that may provide additional information or instructions not included in the manuals, such as instructions on navigating the Department's tax system or information about steps the Department may take to collect delinquent taxes.

Tennessee Taxpayer Access Point (TNTAP)

The Department administers Tennessee taxes through its [Tennessee Taxpayer Access Point](#) website, commonly called TNTAP. This website provides a “one-stop shop” for registering for tax accounts, submitting tax returns, making tax payments, and performing numerous other activities as required by Tennessee law.

2. Register For Tax Accounts with the DOR

Before inviting customers into your bar or restaurant, you must register for all taxes that apply to your establishment. The Department has a simple and convenient process for obtaining all the proper registrations through TNTAP. As stated above, becoming familiar with the Department’s website and TNTAP will help ensure compliance with Tennessee taxes.

To register, navigate to [TNTAP](#) and select the “Register a New Business” link in the Registration section. Please note that if your business has multiple locations, you must hold a Certificate of Registration for each location.

You should have the following information available to complete registration:

- The name, address, and phone number of the business, all owners, officers, or partners, and the person making the application.
- The Social Security Number(s) of all owners, partners, or officers.
- The Federal Employer Identification Number issued by the United States Internal Revenue Service.
- A description of the business, the type of ownership, and a brief explanation of the nature of the business.
- If the business is a corporation, the date of incorporation is needed.
- If the business was purchased, the name and address of the previous owner are needed.
- The signature on the paper application of the sole proprietor, a partner, or an officer of a corporation.

Upon registering, the Department will issue the business a Certificate of Registration and a Tennessee Sales and Use Tax Certificate of Resale.

⚠ Please note – registering for a business tax account with the Department is not the same as applying for a business license.

3. Apply for a Local Business License

In addition to registering with DOR, restaurants and bars in Tennessee must also get a business license. These licenses are issued by the local county or city (if applicable) where the business is located.¹ The Department has a [City and County Business Tax map](#) showing the cities that have enacted a business tax in Tennessee. There are two different types of business licenses; the type your business needs depends on the business's annual gross sales:

- Standard business license: \$100,000 or more in gross sales; or
- Minimal activity license: More than \$3,000 but less than \$100,000 in gross sales.
- Businesses with \$3,000 or less in gross sales do not have to obtain a business license. However, either a minimal activity license or a standard license may be obtained.

Businesses holding a standard business license must file a business tax return annually with the Department and pay taxes for each location. The minimum tax is \$22 per location, increasing to \$44 if located in a city, since both city and state taxes are applicable.

⚠ The Department does not issue business licenses. These licenses are issued by the appropriate county clerk or city official. Businesses must contact their local county clerks and city officials if there are issues in obtaining a business license.

Standard Business License

You must apply for a standard business license if your business has \$100,000 or more in annual gross sales in Tennessee. Each license costs \$15 and is valid for one year, expiring 30 days after the due date of the business tax return. When the taxpayer files the return and pays the tax, the county clerk and/or appropriate city official will automatically renew the license at no extra cost.

Businesses get a standard business license from the county clerk where they are based. If they are in a municipality with a municipal-level business tax, they must also get a license from the relevant city official.

Minimal Activity License

A business must obtain a minimal activity license from the relevant county and/or municipality for each location where its annual gross sales are more than \$3,000 but less than \$100,000. Each time a business applies for this license, it must pay the \$15 fee to each applicable county and city. The \$15 fee is due annually.

⚠ Businesses with gross sales of \$3,000 or less may obtain a minimal activity license but are not required to do so.

Please see Chapter 3 of the Department's [Business Tax Manual](#) for additional information about obtaining a business tax license.

4. File Tax Returns and Pay Taxes

After registering with the Department, obtaining a local business license, and securing all other necessary state and federal licenses and approvals to serve guests, you must begin collecting the applicable Tennessee taxes and remitting them to the Department. Tax returns are filed, and payments are made through TNTAP. Below is a general overview of the most common taxes that bars and restaurants are required to collect and remit or pay to the Department.

- **Chapter 2** provides information on sales and use tax. Sales and use tax returns are due monthly on the 20th day of each month following the end of the reporting period.
- **Chapter 3** provides information on liquor-by-the-drink (“LBD”) tax. LBD tax returns are due monthly on the 15th day of each month following the end of the reporting period.
- **Chapter 4** covers mixing bar tax. Mixing bar tax returns are due monthly on the 20th day of each month following the end of the reporting period.
- **Chapter 5** provides information on franchise and excise tax. Franchise and excise tax returns are due annually on the 15th day of the fourth month following the end of the fiscal year.

- **Chapter 6** covers business tax. Business tax returns are due annually on the 15th day of the fourth month following the end of your fiscal year.

Good Tax Practices

Now that your business is up and running, it is important to follow a few guidelines to ensure ongoing success with Tennessee tax and licensing requirements. This section provides some best practices and tips that, if followed, will help in various situations, such as if the Department selects your business for a tax compliance review (i.e., an audit).

1. Recordkeeping Requirements

Tennessee sales and use tax law requires all restaurants and bars to keep detailed records of all sales and purchases, whether made in cash or credit, and to maintain proper accounting books for the current tax year and the three previous tax years.

- All invoices and other records of goods, wares, merchandise, subject to tax, and
- A complete record of tangible personal property received, used, sold at retail, distributed, stored, leased, or rented within Tennessee, along with invoices, bills of lading, and other relevant records. ²

The Department may use these records to determine the tax amount owed. If an assessment is issued and a taxpayer contests it, either by requesting an informal conference with the Department or taking the matter to court, the taxpayer must keep all records related to the assessment until the issue is resolved. If a business fails to file returns and pay the required tax or does not allow the Department to examine its books and records, the Department may make an assessment based on the best information available.³

2. Inventory Management

For liquor-by-the-drink (LBD) tax, it is essential to keep accurate monthly inventories. Starting and ending monthly inventories are reported on the LBD tax return. Any alcohol disposition is taxable, and records of breakage, theft, or spillage must be maintained. For more details, see Chapter 3 of this manual titled “Liquor-by-the-Drink (LBD) Tax.”

3. Displaying Taxes on Menus and Sales Receipts

Restaurants and bars are not required to include the LBD tax and state and local sales tax on their menus. Tennessee law allows taxpayers to add the LBD tax to the final bill instead of including it in the sales price listed on the menu. State and local sales tax should be listed in the same manner as the LBD, either in the drink price on the menu or on the final bill.

If you include LBD tax and state and local sales tax on the customer's final bill instead of on the menu, the menu must indicate that LBD tax and sales tax will be listed separately on the final bill. Likewise, if you include LBD tax and sales tax in the menu price, you must state that these taxes are included in the listed menu prices.⁴

If you include taxes in the listed menu price, you need to find the taxable base, also called the net sales price. You find the net sales price by removing the LBD tax and state and local sales tax from the list price. This is done by dividing the total sales price by 1.15 plus your state and local sales tax rate.

For example:

- A restaurant menu lists the price of a cocktail at \$12. The local sales tax rate is 2.25%. Of that \$12, the net selling price of the cocktail is \$9.66. $\$12 / 1.2425 (1.15 + .0925) = \9.66 net sales price. You would then apply the LBD tax rate to the net sales price to arrive at the amount of LBD tax due and apply the applicable sales tax rate to the net sales price to arrive at the amount of sales tax due: $\$9.66 \times .15 \times .0925$. The LBD tax is \$1.45, and the state and local sales tax is \$0.89.

Please note that the local sales tax rate varies by jurisdiction. A list of local sales tax rates is available on the Department's [Local Sales Tax web page](#).

4. Ensuring Price Schedule is Accurate

The LBD chapter (Chapter 3) explains the price schedule in detail. But because it is important, it's worth mentioning here too. Establishments that serve alcoholic drinks must keep an accurate and current price schedule on file with the Department.

What to Expect During an Audit

1. Pre-Audit Information Requests and Observation

When the Department starts auditing a business, the auditor first asks questions and observes the business to better understand how it operates.

The information an auditor may request includes, but is not limited to, the following:

- General operational information (e.g., restaurant type, hours of operation, number of seats, other merchandise or services sold, etc.);
- Vendor information (e.g., beverage supplier or types of beer available);
- Products and services (e.g., menu prices);
- Payment information (e.g., number of cash registers or how tips are handled).

Providing auditors with accurate and complete information during this stage of the audit can help the rest of the process proceed more smoothly.

Audit Methods

During an audit, an auditor may use one of three audit methods based on the types of records you provide:

- Using reliable records;
- A purchase mark-up audit; or
- A daily volume procedure.

An auditor may request that you provide the following types of records during a sales and use tax audit:

- | | |
|------------------------|------------------------------------|
| ■ Chart of Accounts | ■ Sales Tax Returns |
| ■ Purchase Journal | ■ Franchise and Excise Tax Returns |
| ■ Bank Statements | ■ Federal Tax Returns |
| ■ Sales Invoices | ■ General Ledger |
| ■ Business Tax Returns | ■ Cash Receipts Journal |

- Financial Statements
- Vendor Invoices
- Sales Journal
- Cash Disbursements Journal
- Cash Register Tapes
- Resale/Exemption Certificates

Without sufficient records, auditors often need to conduct a purchase markup audit. This involves applying a percentage markup to the taxpayer's purchases to determine taxable sales. If this audit method results in a tax assessment, the taxpayer can challenge it by requesting an informal conference with the Department. However, unless a taxpayer can provide documentation that was unavailable during the audit, the Hearing Office will generally have no basis to make an adjustment to the assessment.

The following examples illustrate how records are used in audits and how insufficient taxpayer records could impact the result of an informal conference.⁵

- Credit card payment processors report payment transactions over a certain threshold to the Internal Revenue Service by filing a Form 1099-K. The auditor used a company's 1099-Ks to determine the company's sales, and the Hearing Office upheld the resulting proposed assessment based on those sales figures. The only records provided by the taxpayer were incomplete bank statements and a worksheet prepared by the company; the company did not provide any underlying documentation to verify amounts listed on the worksheet.
- The Hearing Office upheld a proposed assessment against a restaurant that did not produce any sales records. The auditor determined the restaurant's sales by examining menu prices and food purchases, calculating average markup percentages for various categories of food, and marking up the food purchases.
- The Hearing Office upheld a proposed assessment against a restaurant based on the restaurant's financial records, such as bank statements and federal tax returns. The auditor was unable to use records from the restaurant's point-of-sale system because the restaurant had multiple systems and data could not be recovered from some of those systems. In addition, the restaurant had not kept handwritten tickets prepared when servers took customers' orders.

2. Liquor-By-The-Drink Audits

Purchase Mark-up Audit Procedure

The Department uses the purchase mark-up audit procedure to verify a business's sales records. During this audit, the auditor reviews a business's alcoholic beverage purchases to estimate its sales. The Department calculates total sales by taking the amount of alcohol purchased and applying the markup charged per drink, including happy hour and other discounts. It then deducts 15% for spillage and breakage and compares this amount to the business's reported sales.

Example Audit

Business A operated five full-service restaurants during the audited period. At all of Business A's locations, servers wrote guest orders on guest checks, which were sent to the kitchen. The guest checks were then used to enter orders into cash registers. The registers added sales tax to all purchases. Sales from the cash registers were recorded on a spreadsheet, which Business A's owner used to prepare the LBD tax returns.

During the audit, the auditors reviewed Business A's federal returns, monthly summaries, daily summary z tapes, bank statements, and other records. Business A did not provide menus showing drink prices or cash register tapes to support the summary z tapes.

To determine Business A's LBD sales, the auditors conducted a purchase markup audit. They compared the markup percentage based on Business A's sales records (record markup) to the markup percentage derived from Business A's posted price schedules (price schedule markup).

Because the price schedule markup, adjusted for shrinkage (minimum acceptable markup), exceeded the record markup at three locations, the auditors applied the minimum acceptable markup to Business A's cost of goods sold to calculate taxable sales, resulting in underreported taxable sales and liquor by the drink tax liabilities.

In this case, the purchase markup showed that Business A's handling of inventory did not closely match the markup shown on its price schedules. The auditors concluded that Business A owed additional LBD tax.

⚠ In this audit, the additional LBD sale amounts would also become additional sales for both sales and use tax and business tax purposes. This is a common occurrence.

Purchasing a Business

1. Purchasing a Business that Sells Alcoholic Beverages

If you purchase or acquire a business that sells alcoholic beverages for consumption on the premises, you cannot sell alcoholic beverages until you obtain your own license from the Tennessee Alcoholic Beverage Commission ("ABC") and register for sales and alcoholic beverage taxes with the Department. Anyone making sales without doing so is operating illegally and will be held liable for the taxes on those sales.⁶

2. Successor Liability

After purchasing a business, the buyer may find that, in addition to acquiring the business itself, they also inherit outstanding tax liabilities of the business. Under Tennessee law, the buyer is considered the seller's "successor, successors, or assigns." The buyer is required to withhold from the purchase price the amount of unpaid taxes, interest, and penalties unless the seller provides a certificate of tax clearance from the Department indicating that no taxes, penalties, or interest are due. Alternatively, the seller can give the buyer an affidavit stating that it has no past due tax liability. The buyer must submit this affidavit to the Department to be protected from liability by the seller's affidavit. The Department has 15 days to notify the buyer if the affidavit is found to be inaccurate.

Examples:

- The Department upheld a proposed assessment against a taxpayer who operated a restaurant at a location where the lease was transferred from a previous restaurant operator to the taxpayer. The taxpayer claimed they operated a separate, new business at that location. However, the evidence presented during the informal taxpayer conference showed that the taxpayer not only took over the lease but also purchased the previous restaurant's business. Therefore, the Department concluded that the taxpayer was the successor to the previous business, even if the seller failed to disclose outstanding tax liabilities during the sale.
- The Department abated a proposed assessment against a company that operated a restaurant in the same space as a previous establishment. Instead of executing a

purchase agreement with the operator of the first restaurant, the company entered into a lease directly with the third-party lessor and was therefore not a purchaser of the previous business.

- The Department upheld a proposed assessment against a taxpayer who purchased a company's assets. An audit by the Department later resulted in a determination of additional tax liability. Although the assessment was not issued until after the sale date, because the liabilities were incurred before the sale, the hearing officer ruled that the purchasing company remained liable as the successor, having failed to either obtain a tax clearance letter or file with the Department an affidavit from the seller regarding its tax liability.

Closing a Business

1. Selling or Transferring a Business that Sells Alcoholic Beverages

If you sell, transfer, or otherwise end ownership of a business that sells alcoholic beverages for consumption on the premises, you must notify the Department within 15 days of the sale, transfer, or termination date. This notice should be included with your final alcoholic beverage tax return and your final sales tax return.

Any person who fails to give the required notice to the Department, resulting in the new owner continuing to operate under the seller's or transferor's alcoholic beverage license, will be presumed to have permitted illegal operation. You must also surrender your LBD license to the ABC.⁷

Anyone who, during the sale or transfer of a business that sells alcoholic beverages, permits the new owner or operator to remit taxes, make wholesale purchases, or conduct business using the seller's or transferor's alcoholic beverage license or tax registration will be jointly and severally liable with the new owner or operator for any unpaid taxes that accrue during the period of illegal operation.

2. Transfer or Sale of Alcohol Inventory upon Closing or Sale of Business

If you are a retailer licensed under Tenn. Code Ann. §§ 57-3-204, 57-3-803, or 57-4-101 and you sell or close your licensed establishment, you may sell or transfer your alcohol inventory to the purchaser of the establishment or to another licensed establishment. Alcohol inventory can include both opened and unopened containers. The recipient—whether the purchaser or another licensed establishment—must hold the same type of license as the

seller. The following requirements must be met before completing an inventory transfer or sale:

- The seller must provide the Alcoholic Beverage Commission and Department of Revenue with written notice at least 10 days prior to the sale or transfer of the inventory. The written notice must identify the person or entity receiving the inventory, the date of the sale or transfer, and the quantity, types, and brands of alcohol being sold or transferred.
- Invoices and debts relating to the alcoholic beverages or wine sold or transferred must be paid in full prior to the sale or transfer.
- The purchaser or transferee must be licensed prior to the completion of the sale or transfer.

Chapter 2: Sales & Use Tax

Overview

Tennessee imposes a sales tax on the privilege of selling tangible personal property and providing certain services. It also has a complementary use tax that applies when a taxable product is used, consumed, distributed, or stored in the state, if the seller did not collect sales tax at the time of sale.

There are four primary sales and use tax implications for bars and restaurants:

- First, the taxability of the items the bar or restaurant purchases to resell to their customers;
- Second, the taxability of the materials and equipment used in operating the bar or restaurant that do not become so ingrained in the bar or restaurant facility, so as to be considered part of real property;
- Third, the taxability of materials and equipment that become so ingrained or connected to the bar or restaurant facility that they become part of the real property itself once they are installed; and
- Four, the taxability of the retail sale of the food and beverages to the customer.

Generally, all tangible personal property sold at retail is subject to sales and use tax unless it is specifically exempt by law. Additionally, sales of installation, cleaning, and repair of tangible personal property are taxable. However, tangible personal property sold to a customer who intends to resell it is not subject to tax. Moreover, real property is not taxed in the same way as tangible personal property.

The sale, cleaning, or repair of real property or any installation that results in a “fixture” (tangible personal property that becomes permanently attached to real estate) is not subject to sales and use tax. Instead, the person or entity performing the installation, cleaning, or repair is responsible for paying sales or use tax on the property being installed and any materials used in the process.

Please see Chapter 12 of the Department’s Sales and Use Tax Manual for a detailed discussion on the law of “fixtures.”

Items Purchased for Resale to Customers

Before a bar or restaurant can open its doors to new customers, it must have an inventory of food and drinks to serve its patrons, as well as other materials and equipment necessary for operating the business.

When a new bar or restaurant registers for a sales and use tax account with the Department, the Department will issue the business a Tennessee Sales and Use Tax Certificate of Resale (commonly known as a “resale certificate”). This certificate allows the business to purchase goods and materials it plans to resell to customers without paying sales tax. For bars and restaurants, this generally includes the food and beverages they intend to sell to customers.

⚠ Bars and restaurants may purchase the goods listed in this section without paying sales and use tax by providing the seller with a copy of their Tennessee Resale Certificate.

Other common items that bars and restaurants can purchase on a resale certificate are:

- Disposable:
 - foam/paper plates,
 - plastic/foam cups,
 - paper napkins,
 - paper bibs,
 - plastic eating utensils,
 - straws,
 - carry out containers or bags, and
 - other similar disposable products.⁸

These items accompany the sale of food and beverages by restaurants, and either are exempt packaging or are considered part of, or incidental to, the sale of the food and beverages. Therefore, such disposable items may be purchased tax-exempt on a resale certificate. This is true for purchased food and beverages offered by restaurants, whether for dine-in or carry-out.

⚠ Please note, exempt items may be subject to tax if they are purchased at the same time as taxable items.

Materials and Equipment Not Resold to Customers – Items that are Not Fixtures

Bars and restaurants also purchase specific materials and equipment that, instead of being resold to customers, are used in running the business. These materials and equipment fall into two categories: non-fixtures and fixtures. The sale, installation, and repair of restaurant equipment that remains tangible personal property after installation are subject to sales and use tax. Such items are not “fixtures.” These are materials and equipment meant to be removable and capable of being moved and used elsewhere if a restaurant relocates, and they remain tangible personal property after installation. Removing restaurant equipment generally does not destroy the equipment or damage the property.

This section addresses materials and equipment that are not fixtures, and they do not become fixtures if they are installed in the restaurant.⁹

⚠ Bars and restaurants must pay sales tax at the time of purchase, or remit use tax if the seller did not collect sales tax, on the items listed in this section.

Such items include, but are not limited to:

- Cookware
- Non-disposable:
 - stemware
 - glassware
 - plates and bowls
 - napkins (such as cloth or linen)
- table clothes
- Tin foil
- Paper towels
- Dish towels
- Toothpicks
- Toilet tissue
- Restaurant Equipment including:
 - Char Broiler
- Coffee Maker
- Crepe Maker
- Deep Fryer
- Griddle
- Grill
- Hot Dog Rollers
- Microwave
- Oven (freestanding, countertop electric,

- convection, non-built-in pizza oven, conveyor style oven)
- Range (freestanding)
- Steamer
- Toaster
- Vent Hood (removable; see Letter Ruling #99-33)
- Waffle Maker
- Warming and Holding Equipment
- Rice Cooker
- Bar Refrigerators and Coolers
- Beverage Dispenser
- Ice Cream Machine
- Reach-in Freezer
- Reach-in Refrigerator
- Refrigerated Display Cases (freestanding)
- Salad and Sandwich Refrigerated Prep Table
- Soda Fountain Machine
- Under-counter and Countertop Refrigerators
- Walk-in Coolers and Freezers (self-contained)
- Blender
- Booth Seating
- Chairs and Bar Stools
- Cutlery and Knives
- Dining Tables
- Dish Washer
- Food Processor
- Juicer
- Meat Grinder
- Mixer
- Proofer Cabinet
- Slicer

Materials and Equipment Not Resold to Customers – Fixtures

The sale, installation, and repair of restaurant equipment that becomes part of real property upon installation are not subject to sales and use tax for the purchaser. In this case, the party installing or repairing the restaurant equipment must pay sales tax on its purchase of the property being installed or the repair parts. Generally, this type of equipment cannot be removed or relocated without damaging either the building in which it is located or the equipment itself. In other words, it is so integrated with the building that it loses its character as tangible personal property and becomes real property.

⚠ The person selling, installing, or repairing the items listed in this section must pay the sales or use tax on its purchase of the property being installed or repaired.

The sale, installation, and repair of restaurant equipment that becomes part of realty upon installation are not subject to sales and use tax for the end-user (i.e., the restaurant or bar). In this case, the party installing or repairing the restaurant equipment must pay sales or use tax on its purchase of the property being installed or the repair parts (e.g., the contractor). Examples of such property include:

- Built-in Refrigerated Display Cases (e.g., walk-in glass door beer cooler)
- Built-in Walk-in Coolers and Freezers (e.g., beer cave, room in building)
- Custom Built-in Booth Seating
- Built-in Pizza Ovens (e.g., wood-fired brick, gas, electric)
- Built-in Range (e.g., slide-in)
- Built-in Exhaust Fan (e.g., roof-mounted) (does not include filters)¹⁰

Sales to the Customer

The retail sale of prepared meals and drinks is usually subject to sales and use tax, although some exemptions may apply, which are covered in a separate section. Determining the tax base—the total amount subject to tax—can be tricky because the sale might include

discounts or extra fees and services like delivery charges, gratuity, other taxes, and local fees. Therefore, before calculating how much tax to collect from the customer, the bar or restaurant must first determine the “sales price.”

1. Sales Price

“Sales price” is defined as “the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- The seller's cost of the property sold;
- The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- Delivery charges;
- Installation charges; and
- The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.”¹¹

Sales price **does not** include the following:

- Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;
- Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- Credit for any trade-in, as determined by Tenn. Code Ann. § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser.¹²

Delivery Charges

Delivery charges are part of the sales price and are taxable for sales tax purposes when restaurants deliver food.

Example:

- A restaurant caters a party for a customer at the customer's house. The restaurant provides food and party decorations. The invoice from the restaurant indicated a charge of \$2,000 for food and decorations and a delivery charge of \$150. Here, \$2,150 is subject to sales tax.

However, separate taxable charges for delivery by a third party (other than the restaurant) are not included in the sales price. Charges from a delivery network company, for example, are not taxable. A delivery network company is a business that operates an internet website or mobile app to facilitate the delivery of local products. The most common example is a food delivery service, where customers order from a local restaurant via a website or platform that then delivers the food.

Tips/Mandatory Tips or Gratuities

The term "tip" refers to a monetary gift or gratuity given by a customer to a server in a bar, restaurant, or similar establishment. Tips are generally not included in the sales price of food or beverages sold and, therefore, are not subject to tax.

Tips will, however, be included in the sales price of food or beverages and are subject to tax if the tips are either mandatory for the purchaser or if the tips are not given directly to the service workers. A tip when purchasing a meal at a restaurant is considered "mandatory" if the charge is automatically added to the customer's bill by the seller, whether the charge is called a tip, gratuity, or something else.¹³

Discounts and Coupons

Discounts and coupons can be deducted from the sales price of meals if the discount is included in the gross sales and not reimbursed by a third party.

Other Taxes and Fees

It is common to see other types of taxes itemized separately on a sales invoice. Any federal or state taxes imposed on the seller and passed on to the purchaser cannot be deducted from the sales price when calculating the amount of tax due, even if these taxes are listed separately on the invoice. This also applies to federal taxes that may have been passed on to the seller by a manufacturer. A tax imposed on a product before its retail sale is considered a cost or expense of the seller and is included in the price that is subject to tax.

A tax imposed on a retailer for the retail sale of a product is a cost or expense for the retailer that is included in the price subject to tax. For example, Tennessee's business tax is levied on the gross taxable sales of Tennessee retailers and wholesalers. The business tax is a cost or expense for the seller and, if passed on to the purchaser, is included in the sales price when calculating the amount of sales tax due. In contrast, a tax imposed on the consumer or a tax that the seller is required to collect from the consumer, which is separately stated on the sales invoice, is not part of the sales price for calculating the sales tax on a product that is subject to tax.

The sales price subject to sales tax includes all federal and state taxes on the sale of alcoholic beverages, except for the LBD tax, as imposed by Tenn. Code Ann. § 57-4-101 et seq. The LBD statutes require the seller to collect the tax from the purchaser, in line with the definition of sales price. Therefore, the LBD tax is not included in the amount subject to sales tax.

2. Sales Tax Rate

Determining the sales tax rate is usually simple for bars and restaurants. It is the rate that applies in the county or city where your business is located. The rates vary by county and city because Tennessee sales and use tax rates have two parts – a state part and a local part. The state rate is 7%, and applies throughout Tennessee. The local rates, however, are set by the local government.

The Department has a user-friendly dashboard that displays local sales tax rates in Tennessee. It can be accessed by clicking on the following link: [Local Sales Tax Rate Map](#).

3. Taxable Transactions – Use Tax

Free Meals to Customers

If your restaurant or bar offers a free meal to a customer, the meal is subject to use tax at its cost for items taken from inventory. For example:

- If a restaurant offers free lunch to military personnel on Veterans Day without requiring an additional purchase, the meal is subject to use tax, which the restaurant must pay based on the meal's cost.

However, as detailed in the next section, if the example is "buy one entrée at the regular price and receive an entrée of the same or lesser value free," then the second entrée is not subject to use tax. In this case, the customer was required to purchase an item to get the free item. The sales tax to be collected from the customer is based on the amount charged for the first entrée.

Free Drinks to Customers

The cost of free coffee given to customers who visit a restaurant without making a purchase is subject to use tax, which the restaurant has to pay.

If a restaurant advertises a free drink with the purchase of a hamburger, the drink is not subject to use tax. The sales tax base is the amount charged for the hamburger.

Sales of Merchandise

T-shirts, cups/mugs, and other merchandise a restaurant sells are subject to sales tax. If a restaurant removes such items from inventory for promotional purposes or as employee gifts, it should accrue and remit use tax based on the item's cost.

4. Nontaxable Transactions

Gift Certificates

Gift certificates are not taxable when sold because their sale isn't considered the sale of tangible personal property or services. Tax is applied on the sales price of tangible personal property or services when the gift certificate is redeemed.

Free Meals and Drinks to the Public when a Purchase is Required

If the customer must buy an item to get a free item (e.g., "buy one entrée at the regular price, and receive an entrée of the same or lesser value free" or a "free drink with the purchase of a burger"), the "free" item is not subject to use tax. The sales tax base is the amount charged for the paid-for item.

Nontaxable Tips

Most tips are not subject to sales tax and are excluded from the sales price of the item sold. If the tip amount is adjustable, then the tip is not taxable.

However, mandatory tips that are automatically added to the customer's bill or tips that are not returned to the service providers are included in the sales price.

Catering with Separately Stated Charges for Bartenders, Servers, etc.

Charges for servers, setup services, bartenders, valets, etc., are not subject to sales tax and are not included in the sales price of the catered food if they are separately itemized on the invoice.

Separately Stated Corkage Fees

A fee charged by a bar or restaurant when a guest brings their own bottle of wine to be consumed on the premises, often referred to as a corkage fee, is not subject to sales tax if it is separately stated on the receipt.

If the corkage fee and other dining charges are combined into one charge, the corkage fee is included in the sales price and is subject to sales tax.

Exempt Transactions

1. Sales of Food to Nonprofit Entities: Examples

Example 1: A 501(c)(3) organization purchases food from a fast-food restaurant for a staff luncheon.

This is considered an exempt purchase by the nonprofit organization. The nonprofit should use the Tennessee nonprofit exemption certificate titled: Exempt Organizations or Institutions Sales and Use Tax Certificate of Exemption. The exemption applies only to sales made directly to the exempt organization. The exemption certificate cannot be used for sales made to individuals paying with personal checks or personal debit or credit cards, even if the individual is a representative or employee of the organization and will be reimbursed for the purchase. Sellers must refuse to accept the certificate when the sale is made to anyone other than the organization listed on the certificate.

Example 2: A 501(c)(3) organization purchases food (for example, 75 hamburgers) for resale and sells the food at a fundraiser.

The sales and use tax exemption under Tenn. Code Ann. § 67-6-322 for 501(c)(3) organizations does not apply to regular sales made by the exempt organization. If the entity sells merchandise or services during two or fewer temporary selling periods per year, with each period lasting 30 days or less, it is not required to register to collect sales tax on its sales. The nonprofit can use its Certificate of Exemption to make tax-exempt purchases of merchandise it plans to sell during these periods. However, if more than two temporary selling periods occur in a year, or if a sales period exceeds 30 consecutive days, then all

taxable sales by the nonprofit for that year become subject to sales tax. In such cases, taxable goods may be sold to the nonprofit without charging sales tax if the nonprofit presents a resale certificate.

Example 3: An out-of-state 501(c)(3) (such as a church) comes into TN to buy food that it will take back to its location for a staff luncheon.

Here, the purchaser should provide its IRS documentation demonstrating that it is a 501(c)(3) organization. Tenn. Code Ann. § 67-6-322(e) states, in part, that:

In the case of a sale to a person who is not a resident or domiciliary of Tennessee, an exemption certificate issued by the commissioner is not required, if the dealer shall instead receive from such person a copy of a current and valid exemption from federal taxation under 26 U.S.C. § 501(c)(3). The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption.

Example 4: An out-of-state 501(c)(3) comes into TN and buys food for resale that it will take back to its location and sell as part of a fundraiser. (The purchaser should provide its home state resale certificate.)

An out-of-state seller can provide its resale certificate with a sales tax ID number issued by another state or a fully completed Streamlined Sales Tax Exemption Certificate that includes the other state's sales tax ID number and state of issue to make purchases in Tennessee for resale outside Tennessee. Nonprofit exemption certificates and other exemption certificates (such as for agriculture, manufacturing, etc.) issued by different states cannot be used to make tax-exempt purchases in Tennessee. If an out-of-state (non-resident) 501(c)(3) does not have a resale certificate from another state, the 501(c)(3) can present a copy of its federal 501(c)(3) exemption to make tax-free purchases for resale in another state.

2. Sales of Alcoholic Beverages to Nonprofit and Government Entities

Generally, sellers of alcoholic beverages for consumption on the premises must collect and remit both the LBD tax and sales tax on sales of alcoholic beverages for consumption on the premises. However, nonprofit and government entities are exempt from paying sales tax on their purchases of tangible personal property. Therefore, a person who sells alcoholic

beverages directly to a nonprofit or government entity for its own consumption on the premises is not responsible for collecting sales tax on the sale.

For example:

- A restaurant provides a dinner, including cocktails, that a nonprofit purchases for its board of directors. The restaurant must collect the 15 percent LBD tax on the cocktails from the nonprofit. However, it should not collect sales tax on the sale.

Sellers must obtain sales tax exemption certificates from tax-exempt purchasers to make sales without collecting sales tax. The sales tax exemption applies only to sales made directly to nonprofit or government entities.

3. Manufacturing and Industrial Machinery (Not Available to Businesses Preparing Food for Immediate Retail Sale)

Industrial machinery is exempt from sales and use tax.¹⁴ Industrial machinery” is defined, in part, as:

- Machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts, and any necessary repair or taxable installation labor therefor, that is:
- Necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises . . . where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one’s principal business.¹⁵

For purposes of the exemption, a manufacturer is defined as:

- One who engages in the fabrication or processing of tangible personal property for resale and consumption off the premises as one’s principal business.¹⁶

If your business is mainly engaged in the preparation of food for immediate sale, then it is not considered a “manufacturer.”¹⁷

Additionally, “industrial machinery” does not include machinery that is used in the preparation of food for immediate retail sale.¹⁸

For example:

- A retail donut shop’s large mixer, donut fryer, and glazing table would not be considered industrial machinery, as these items are used to prepare donuts for immediate sale to customers.

4. Disposable Materials

Restaurants may purchase disposable items such as foam or paper plates, plastic or foam cups, paper napkins, paper bibs, plastic utensils, straws, carry-out containers or bags, and other similar products exempt from sales and use tax when they accompany the transfer of food and beverages to customers. These items, which come with food and beverages, are either considered exempt packaging or incidental to the sale of the food and drinks. Consequently, such disposable items can be bought tax-exempt using a resale certificate. This applies whether the food and beverages are for dine-in or carry-out.

Food, Food Ingredients, and Prepared Food

1. Tax Rates

Sales tax has two parts: a 7% statewide sales tax on most retail sales and a local sales tax of up to 2.75%. Prepared food is taxed at the 7% state rate, which is the most common rate for restaurants. The state tax rate on food and food ingredients is 4%.

2. Food and Food Ingredients

“Food and food ingredients” and “prepared food” are defined in the Tennessee Code. Food and food ingredients¹⁹ are defined, in part, as:

Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food....

3. Prepared Food

Meals (prepared food) served at any restaurant, eating-house, hotel, drug store, club, resort, or other establishment where meals are offered to the public are subject to sales tax. The seller may prepare the food on-site or at an alternative location.²⁰

What is Prepared Food?

A meal is considered “prepared food”²¹ if it meets any of the following qualifications:

- It is sold in a heated state or heated by the seller;
- Two or more food ingredients are mixed or combined by the seller for sale as a single item; or
- The vendor who sells the food also provides eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws.

The seller may prepare the item where the food is sold or at another location.

Food Sold in a Heated State

Food is considered sold in a heated state if it is offered at a temperature higher than the surrounding air temperature (for example, a rotisserie chicken cooked by the seller and kept in a warmer, or nuts heated and sold warm).

Food is considered heated by the seller if the seller has previously heated the item, even if it is not heated at the time of sale (for example, cookies baked by the seller and sold at room temperature). Food is not considered heated by the seller if it was not previously heated by the seller, but the seller provides a way for customers to heat the food themselves.

For example, a prepackaged muffin that the customer heats in a microwave on the counter provided by the seller for customers is not considered heated or sold in a heated state by the seller.

A Food Item that Contains Two or More Ingredients Mixed Together by the Seller

This requirement is satisfied if the seller mixes ingredients together to create a new food item to sell (e.g., a bakery combines two or more ingredients to make a cake). The requirement is also satisfied if the seller combines multiple items and sells them as one item, even if a new, distinct type of food item is not created.

For example:

- If a deli combines various cheeses, sliced meats, and garnishes into a party tray sold for a single price, then this tray would be considered prepared food.

Food that is Sold by a Seller Who Also Provides Eating Utensils

Eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, napkins, cups, and straws. If the manufacturer, rather than the seller, provides an eating utensil with the food, it is considered food or food ingredients and is taxed at the 4% state tax rate (e.g., a tuna lunch kit that includes a napkin and spoon).

Eating utensils are provided by the seller if the seller:

- physically gives or hands the utensils to the purchaser, or
- makes the utensils available on the premises (self-service), but only if the seller's percentage of food that is otherwise considered prepared food is more than 75% of all food sales.

Examples of Prepared Food

The following items are considered prepared food if prepared by the seller:

- Bakery goods
- Fruit trays
- Coffee or tea
- Ice cream served in cones, as sundaes, or other such preparation

- Party trays
- Ready to eat meats, poultry, or fish (cooked, smoked, or dried), such as summer sausage, beef or venison sticks, rotisserie chicken, and smoked fish
- Salad greens mixed by the seller
- Sandwiches
- Soups, casseroles, or meals sold warm and ready to eat
- Warmed nuts

What is Not Prepared Food?

Prepared food does not include food that the seller only cuts, repackages, or pasteurizes.

For example:

- Deli meats or cheeses that the seller slices and repackages for sale to the customer or potato salad that the seller does not make and only repackages into smaller containers and sells in the deli are not considered prepared food.

Eggs, fish, meat, poultry, and foods containing these raw animal foods that the consumer is required to cook are not prepared food. For example, marinated raw meats or seafood and cookie dough containing raw eggs are not considered prepared food.

Miscellaneous Sales and Use Tax Issues

1. Sales to Employees

Meals sold or provided to employees as part of their employment are subject to sales tax based on either the sales price to the employee or the cost of the meal's ingredients, whichever is higher.²²

2. Food Trucks

Sales Tax Reporting

If a food truck or other mobile vendor makes Tennessee sales at various temporary locations within Tennessee, the vendor should register its primary business location for sales and use tax purposes. The primary business location can be the vendor's residence or central kitchen. The vendor must collect Tennessee sales tax at the applicable state and local rates based on its primary business location and report all sales, including those from temporary sites, on the sales tax return for that location.

If a food truck or other mobile vendor only sells at flea markets in Tennessee, the vendor should follow the guidance in the Department's Sales and Use Tax Manual regarding flea markets.

3. Catering

Restaurants that cater food for parties, weddings, receptions, and other events should collect state sales tax on food items at the 7% prepared food rate, plus the applicable local rate.

If catered food is delivered and a delivery fee is charged to the customer, the delivery charge is considered part of the sales price that is subject to sales or use tax. Service or labor charges made as part of catering events, along with other charges such as fuel surcharges or mileage charges, are also included in the sales price.

However, charges for servers, setup services, bartenders, valets, etc., that are **listed separately** on the invoice are not part of the sales price of the catered food and are not subject to tax.

Restaurants should pay sales tax to vendors on items purchased, rented, or leased by the restaurant for use in providing catering services, such as linens, plates, chairs, and tables.

4. Food Vendors at Special Events

Remitting Sales Tax as a Special Events Vendor

Vendors that have a sales tax account number should email Taxpayer Services at revenue.support@tn.gov prior to the end of the month in which the event is held and ask Taxpayer Services to update their accounts by adding the special event to the registration. Vendors should provide their consolidated sales tax (SLC) account number, the name of the event, the date of the event, and the address of the event.

Vendors that do not have a sales tax account number should submit the special event vendor registration online at <https://revenue.support.tn.gov/hc/en-us/requests/new>. Please include the following:

- Request type: Tax Question
- My question is about: Register Account

5. Guest Checks

Guest checks are subject to sales tax. Guest checks provided by restaurants to their customers are used by the restaurants rather than resold. Although the guest check is given to the customer at the time of purchase, it is not a material used for packaging tangible personal property and does not qualify for the sales and use tax exemption for "[m]aterials, containers, labels, sacks, bags or bottles used for packaging tangible personal property" for resale.²³

Chapter 3: Liquor-by-the-Drink (LBD) Tax

The sale of alcoholic beverages, wine, and high-alcohol-content beer for consumption on the premises at authorized businesses is subject to Tennessee's LBD tax.

Restaurants are among the businesses permitted to sell alcoholic beverages on their premises. However, a restaurant can only do so if it is located in a jurisdiction that allows such sales and if it has obtained the proper license from the ABC.

For more information on LBD tax, please see the Department's [Alcohol Tax Manual](#).

Registering and Paying Tax

1. Registering For Liquor-By-The-Drink Tax

Before engaging in business in the state, you must register with the Department as described in Chapter 1. When registering for LBD tax, you must also submit a price schedule and a bond.²⁴

Price Schedule

A price schedule must include the following information:

- The number of drinks sold for each type of drink or for each category of drinks with the same price and pour size or bottle ounce;
- The ounce pours by drink or bottle ounces of each item sold; and
- The sales price for that sale (including both regular and special prices).

To meet this requirement, you can either submit a report from your point-of-sale system that includes this information (such as a product mix report) or use the [Department's price schedule form](#). Through your TNTAP account, an initial price schedule must be filed with the filing of your first LBD return **and at least annually thereafter, in the same month that you**

began filing for LBD tax. If you make any major change to a price or pour amount listed in the schedule before the annual submission deadline, you need to submit a new schedule.

⚠ Price schedules are relied on as the basis for every LBD tax audit. It is critical that LBD taxpayers maintain current and accurate price schedules.

Bond Requirement

Taxpayers must submit security to the Department to ensure proper payment of this tax. Security can be a corporate surety bond, a cash deposit, or a bond backed by a certificate of deposit. For all LBD taxpayers, including restaurants that sell only wine, the minimum bond amount is \$10,000.

If a taxpayer forfeits or cancels their bond for any reason, their ABC license is automatically revoked. The Department cannot release the posted security unless all liability secured by the bond has been paid, or the statute of limitations for assessing that liability has expired, whichever occurs first.

2. Paying the Tax

If your business sells alcoholic beverages for consumption on the premises, it is liable for the LBD tax. The tax rate is 15% of the sales price of all alcoholic beverages sold for consumption on the premises. The LBD licensee, such as a restaurant or bar, collects the tax from the customer at the point of sale and then remits it to the Department.

Delinquent Returns

If you fail to file a return on time or if you are delinquent in paying the tax three times within any one-year licensing period, the Commissioner may recommend to the ABC that your LBD license be revoked or suspended. It is a misdemeanor for any licensee to continue operating after their license has been revoked or suspended. Each day a business runs without a valid license counts as a separate violation.²⁵

If a licensee is delinquent in paying taxes, the Commissioner may notify, by registered mail, any individual or entity, including the ABC, that possesses or controls any credits or personal

property belonging to the delinquent licensee or owes any debts to the licensee at the time of delinquency. Once notified, that person cannot dispose of those debts or properties without the Commissioner's approval or until 30 days pass from receiving the notice. Anyone receiving such notice must inform the ABC of the property, credits, or debts within five days.²⁶

Gross Sales

For LBD tax, you report gross sales of alcoholic beverages for consumption on the premises. A beverage's gross selling price includes the total sale price, such as the LBD tax, the applicable sales tax, and any mandatory tips.²⁷

Tips that are required should be included in the taxable gross sales for LBD tax.

However, if a tip is mandatory but there are many documented cases of its deletion or reduction, then the tips are nontaxable. If there are only one or two such cases, the tips are taxable, but the business will be credited for those instances.

Also, if a tip is required by the by-laws but can be deleted or reduced by the customer, then the tip is not taxable as part of gross sales. For example:

- Tips should not be included in taxable gross sales if they are voluntarily paid by the customer and then refunded to the service provider(s).

A fee charged by a bar or restaurant when a guest brings their own bottle of wine to be consumed on the premises, often referred to as a corkage fee, is not subject to the LBD and should not be included in taxable gross sales when computing LBD tax due on the return.

Alcohol Inventory Deductions

If your establishment is licensed to serve alcoholic beverages, you cannot dispose of them in any way other than by selling them for consumption on the premises.²⁸ **Therefore, if you dispose of alcoholic beverages in a manner not authorized by law, that disposal is considered a sale and is taxed accordingly.**

Because of this, the LBD tax return requires businesses to report their inventory at the beginning and end of each month.

Nonetheless, you may deduct products from your inventory for certain reasons such as theft, breakage, or acts of nature. When the Department receives proper proof of these types of loss, it will issue a certificate to the licensee documenting the loss. Proof of the loss must be provided to the Department as soon as possible.

To contact the Department, please email the Audit Division at Audit.Communications@tn.gov.

1. Theft

To prove a loss due to theft, a taxpayer must provide the Department proof that the theft was reported to law enforcement.

For example:

- An individual broke into the Taxpayer's premises, dismantled its motion detector, and stole its high-end liquor display and electronics. The Taxpayer reported the theft to the police and obtained a police report. It also filed a claim with its insurer, but the insurer denied the claim. During an informal conference proceeding, the Department determined that if the taxpayer could provide copies of the police report and the insurer's denial, those documents would be enough to prove a theft loss for the Department.

2. Breakage

To prove a loss caused by breakage, you must contact the Department to request a representative to view the damage as soon as possible. You need to show that the bottle was not opened prior to the breakage, such as by demonstrating that the seal or cork remains intact. If a product is unopened but no longer saleable, it must be destroyed in the presence of a Department representative.

3. Acts of Nature

To prove a loss caused by an act of nature, you must contact the Department to request a representative to assess the loss as soon as possible. You must be able to demonstrate that

the bottle was not opened before the breakage, such as showing that the seal or cork remains intact. If a product is unopened but no longer saleable, it must be destroyed by or in the presence of a Department representative.

Exemptions from Tax

1. Alcohol Used for Cooking

Alcoholic beverages used and consumed in food preparation are exempt from a taxpayer's inventory of alcoholic beverages for consumption on the premises. You must maintain an accurate, ongoing inventory of alcoholic beverages used in food preparation, as explained above. If any part of a bottle of wine or distilled spirits is sold by the drink for on-premises consumption, your business will be liable for the LBD tax on the entire sale, as if the whole bottle had been sold by the drink.

Wine or distilled spirits used for cooking in a restaurant should be stored separately from alcoholic beverages served to customers.²⁹

2. Sales of Alcoholic Beverages to Nonprofit Entities

Nonprofit and government organizations are exempt from paying sales tax on their purchases of tangible personal property. However, this exemption does not apply to LBD tax. Therefore, a person who sells liquor directly to a nonprofit or government organization for its own consumption on the premises must collect and remit LBD tax on the sale. For example:

- A restaurant provides a dinner, including cocktails, that a nonprofit buys for its board of directors. The restaurant must collect the 15 percent LBD tax on the cocktails from the nonprofit. However, it should not charge sales tax on the sale.

Beer

Beer is not subject to the LBD tax. Beer is defined as products made from the normal alcoholic fermentation of malt or other cereal grains, sugar, or fruit ingredients used to make cider, and having an alcoholic content of not more than 8% alcohol by weight and that do not contain distilled spirits or wine as defined in Tenn. Code Ann. § 57-3-101.³⁰

Beer products with an alcohol content of more than 8% by weight are classified as alcoholic beverages (i.e., high alcohol content beer). *High alcohol content beer is subject to the alcoholic beverage taxes in Chapter 2 of the Department's [Alcohol Tax Manual](#).*

Products or beverages that contain less than 0.5% alcohol content by weight (e.g., certain non-alcoholic beers) are not considered "beer" for Tennessee tax purposes. Sales of alcoholic products should be tracked and reported separately from non-alcoholic products.

⚠ Although the beer tax statutes refer to alcohol content by weight (ABW), the industry measures alcohol content by volume (ABV). To convert from ABV to ABW use this formula: $ABV \times .8 = ABW$.

Chapter 4: Mixing Bar Tax

Overview

The mixing bar tax is a gross receipts privilege tax on the sale of mixed drink setups. The tax rate is 15% of the gross receipts from all sales of these setups. The following mixed drink setups are subject to the mixing bar tax:

- Sales of beverages containing alcohol content;
- Sales of water, soft drinks, ice, or any item capable of being used to prepare a mixed drink at a place of business; and
- Sales of setups for mixed drinks to be consumed by persons supplying alcoholic beverages in their own container on the premises of any business that holds a license to sell alcoholic beverages for consumption on the premises.

The tax is applicable to any such sales of setups, regardless of whether the drinks made with the setups are consumed on or off the premises.³¹

Bring-Your-Own-Bottle (“BYOB”) Businesses

Because mixing bar tax applies to any sales of beverages containing any alcoholic content, other than beer, including sales of water, soft drinks, ice, or any items capable of being used to prepare a mixed drink (whether or not consumed on the premises), BYOB businesses that sell the aforementioned items should pay the mixing bar tax on these items.³² Please note that this tax applies to both items that are **actually used** to prepare a mixed drink and items that **may be used** as a setup for a mixed drink.

However, a fee charged by a bar or restaurant when a guest brings their own bottle of wine to be consumed on the premises, often referred to as a corkage fee, is not subject to the mixing bar tax.

Sales of alcoholic beverages by wholesalers and off-premises retailers licensed under Tenn. Code Ann. §§ 57-3-203 and 57-3-205 are not subject to the mixing bar tax. Except in specific cases, the Department generally does not intend to assess the tax on sales of setups by restaurants when such sales are only incidental to the main business.

Chapter 5: Franchise and Excise Tax

Overview

Franchise and excise taxes are two separate taxes that are administered together. These taxes only apply to taxable entities such as corporations, S corporations, limited partnerships, limited liability companies, cooperatives, and business trusts,³³ that are chartered or organized in Tennessee or doing business in the state. The franchise tax is based on a taxable entity's net worth. The excise tax is based on a taxable entity's net earnings or loss for the tax year.

1. Registering for Franchise and Excise Tax

A taxable entity (as indicated above) will be subject to franchise and excise tax if it is doing business³⁴ in the state *and* has substantial nexus³⁵ in the state unless the taxable entity qualifies for a tax exemption. An entity that is subject to the tax must register with the Department within 15 days of the date on which it became subject to the tax.

For more information on registering for franchise and excise tax, please see Chapter 5 of the [Department's Franchise and Excise Tax Manual](#).

2. Determining Excise Tax Liability

The excise tax is based on a taxable entity's net earnings or loss for the tax year. The excise tax is computed on Form FAE170, Schedules J1-J4, and J.³⁶ The starting point for computing net earnings or loss for excise tax purposes begins with federal taxable income, as reported on the corresponding federal income tax return; namely, federal Forms 1120, 1120S, 1065, 1040, 990-T, or other variants of these forms.

Income that is generated by a taxable entity that files either Schedule J1 or J2 is not subject to the Tennessee excise tax to the extent that such income is subject to federal self-employment taxes (calculated on federal Schedule SE). For more information regarding the excise tax in general, as well as the excise tax self-employment deduction available to Schedule J1 and J2 filers, please see Chapter 11 of the [Department's Franchise and Excise Tax Manual](#).

3. Determining Franchise Tax Liability

The franchise tax is based on the taxable entity's net worth. The franchise tax is computed on Form FAE170, Schedule F1 (or F2, if applicable). The starting point for computing the franchise tax is the taxpayer's books and records prepared under generally accepted accounting principles (GAAP). However, if the taxpayer does not maintain its books and records in accordance with GAAP, the taxpayer may use its books and records prepared in accordance with the accounting method it uses for federal tax purposes, so long as this method fairly reflects the taxpayer's net worth.

For more information on calculating the franchise tax, please see Chapter 9 of the [Department's Franchise and Excise Tax Manual](#).

4. Franchise and Excise Tax Exemptions

There are several ways a business may be exempt from the franchise and excise tax, including the following:

- Entity type is sole proprietorship or general partnership;³⁷
- Entity status is not-for-profit³⁸ or farmer cooperative;³⁹
- Entity qualifies for the obligated member entity ("OME") exemption;⁴⁰ or
- Entity qualifies for the family-owned noncorporate entity ("FONCE") exemption.⁴¹

An entity claiming exemption as an OME or FONCE must file an [Application for Exemption/Annual Exemption Renewal](#). See Chapter 2 of the Franchise and Excise Tax Manual for more information on exemptions.

Chapter 6: Business Tax

Overview

The Tennessee business tax is a privilege tax on the privilege of doing business by making sales of tangible personal property or services in Tennessee. This tax is distinct from and applies in addition to Tennessee's franchise and excise tax. The business tax applies to a taxpayer's gross sales.

Generally, if you conduct business within any county or incorporated municipality in Tennessee, and your business has \$100,000 or more in annual gross receipts, then you should register for and remit business tax. Business tax consists of two separate taxes: the state business tax and the city business tax. The business tax rate is determined based on the taxpayer's dominant business activity.

All sales of tangible personal property and services made in Tennessee are generally subject to business tax. However, there are limited exemptions and deductions. **Please see the Department's comprehensive [Business Tax Manual](#) for more information on all the issues briefly described below.**

Determining the Tax Rate

An entity's business tax classification determines its tax rate. Businesses select their classification for each location based on the "dominant business activity" of that location. "Dominant business activity" is the activity that generates the most taxable income for the business at that location.

There are five business tax classifications and a separate category for antique malls, flea markets, transient vendors, and the like. Some classifications have subcategories. The business tax classifications are found in Tenn. Code Ann. § 67-4-708. Only one classification is allowed per business location.

Restaurants are generally Classification 2 taxpayers and pay taxes at a rate of .0015 (3/20 of 1%) of all taxable sales. Classification 2 activities include selling prepared food (such as

cooked food meant to be eaten on or off the premises) and selling alcoholic beverages for consumption on or off the premises.⁴²

Classification 1(A) includes sales of food and beer for home preparation and consumption (except for delicatessens and candy at retail) and food brokerage services.⁴³

Industry-Specific Classification Information

1. Malt Beverage Breweries

Generally, malt beverage breweries are classified as manufacturers under Industry Group 2082 of the Standard Industrial Classification (SIC). However, microbreweries often have tap rooms where they sell brewed malt beverages to the public for on-site consumption.

If the primary business activity involves sales made at the tap room to the public for on-site consumption, then the brewery's primary activity at that location is retail trade. Such locations do not qualify for a manufacturer business tax exemption because they do not meet the "more than 50% test."

If the primary business activity involves selling to wholesalers for resale, the brewery mainly engages in manufacturing, and therefore, the location would qualify for a business tax exemption.

Determining Gross Sales

As mentioned earlier, the business tax is based on a business's gross taxable sales or "gross receipts" at each location. A business's gross sales include all sales from that location without deductions, unless Tennessee law states otherwise.⁴⁴

Gross sales are multiplied by a taxpayer's specific tax rate (based on their classification) to determine the tax owed for each location. Generally, all sales of tangible personal property and services made in Tennessee are subject to the business tax. However, there are several specified exemptions and deductions.

For information on business tax exemptions, see Chapter 8 of the [Department's Business Tax Manual](#). For information on deductions, please see Chapter 9 of the Department's Business Tax Manual.

1. Sales to Employees

Sales made to employees are counted as part of gross sales for business tax purposes. If no specific charge was made to the employee, then the gross sales include either the sales price or the cost of the property or service provided.⁴⁵

2. Corkage Fees

A fee charged by a bar or restaurant when a guest brings their own bottle of wine to be consumed on the premises, often referred to as a corkage fee, should be included in gross sales regardless of whether it is separately stated on the receipt.

Filing the Return

Every person making sales in Tennessee by engaging in any vocation, occupation, business, or business activity listed in Tenn. Code Ann. § 67-4-708(1)-(5) is subject to business tax and must file an annual return, Form BUS 428. Tennessee has a consolidated filing requirement for business tax purposes. This means that every location of the taxpayer should be included on the same return.

1. Electronic Filing

Business tax returns must be filed electronically through the Tennessee Taxpayer Access Point ("TNTAP"), and the appropriate taxes must be paid to the Department of Revenue (the "Department").⁴⁶

2. State-Level and Municipal-Level Filings

Taxpayers Subject to State-Level Business Tax

Taxpayers subject to the state business tax must file a return with the Department.

Taxpayers Subject to Both State and Municipal-Level Business Tax

Taxpayers with a location within the limits of a Tennessee municipality that has enacted the municipal-level business tax must file two returns for that location—one return for the municipal-level business tax and one return for the state-level business tax.

Taxpayers with locations outside of the limits of any Tennessee city or inside the limits of a city that has not enacted business tax must file one business tax return for that location for the state-level tax.

3. Consolidated Returns

Taxpayers with multiple business locations file a consolidated business tax return for all locations. The consolidated return is filed under one account, regardless of the number of locations the business has in Tennessee.

When a taxpayer files a consolidated tax return, each location's return information must be complete before the return is submitted. Taxpayers can choose to have one person submit the return on behalf of all locations, or taxpayers can identify different employees or tax professionals to report the information for each individual location in TNTAP.

After all locations are reported, someone must submit the return on behalf of all locations. Otherwise, the return will not be submitted to the Department. Any person authorized to enter location filing details may also complete the final submission step for the business. All locations must be complete without errors to submit the return. Ideally, the last person to complete their location details should also complete the final submission. If the final submission is after the due date, the entire balance (sum of all locations) is subject to penalty and interest.

Filing Period

The filing period for the business tax return is based on the taxpayer's fiscal year. Unlike a calendar year return, a fiscal year return covers 12 consecutive months. The fiscal year begins on the first day of any month other than January and ends on the last day of the 12th month following (e.g., July 1st through June 30th of the next calendar year). A company with a

fiscal year that begins on January 1st and ends on December 31st operates on a calendar year basis.

If a return's due date falls on Saturday, Sunday, or a legal holiday, it is automatically extended until the next business day.⁴⁷ Tennessee law states that whenever the due date for filing the return occurs on a weekend or a legal holiday for federal tax purposes, the Commissioner of Revenue may extend the due date to the next business day.

For example:

- Typically, calendar year tax returns are due on April 15. For the tax period ending December 31, 2017 (calendar year 2017), April 15, 2018, fell on a Sunday. Therefore, the calendar year 2017 returns were considered timely if they were filed on or before Monday, April 16, 2018, which was the next business day following the weekend.

Filing Due Dates

Business tax returns are due on the 15th day of the fourth month following the end of the taxpayer's fiscal year.⁴⁸ For example:

- Businesses whose fiscal year ends on December 31 must file and pay their business taxes on or before April 15th of the following year.

An electronic return is considered timely filed if it was:

- Transmitted on or before the due date;
- Transmitted on or before the due date and subsequently accepted; or
- Rejected by the Department because of a validation rule, corrected by the taxpayer, and retransmitted within a ten-day grace period or "perfection period."

The perfection period is ten calendar days. It begins on the day after the date of the first transmission of an electronic return that is rejected by the Commissioner. Another perfection period occurs after a return is rejected for failing to meet a validation test.⁴⁹

1. Filing Extension

The Department may, upon a showing of good cause, grant one extension of not more than 30 days for a person liable for the business tax to file that person's tax return and pay the tax shown to be due.

Requests for such extensions:

- Must be made in writing;
- Must state why the extension is desired;
- Must be signed; and
- Must be submitted before the delinquent date of the return and tax.

Interest, as provided in Tenn. Code Ann. § 67-1-801 will be added to the amount of tax due, beginning from the statutory due date until the date the tax is paid. No penalty will be assessed if the return is made and the full amount of taxes are paid on or before the extended due date.

Any return and payment made after the extended due date will be subject to penalty and interest from the original statutory due date without regard to the period allowed by the extension.

2. Estimated Assessment

A taxpayer with an open business tax account must file a return even if it had no gross receipts for the tax period. If a taxpayer does not file a return:

- An estimated assessment as a delinquency will be posted to the taxpayer's TNTAP account; and
- The Department will send a notice to the taxpayer.

The estimated tax assessment is based on the best information available to the Department, and the taxpayer bears the burden of showing by clear and cogent evidence that the assessment is incorrect.⁵⁰ This is typically accomplished by filing a completed return for the tax period in question. If unresolved (i.e., the taxpayer continues to fail to file a return), the assessment will go to the Collection Services Division for collection.

⚠ If a taxpayer receives an estimated assessment, they should log into their TNTAP account and file a return and pay the applicable tax, even if they are reporting \$0 sales. This will resolve the estimated assessment.

Final Returns

A true final return is the last return filed by an entity that no longer has business or financial activity in the state. Not all returns marked as final by taxpayers are true final returns.

Taxpayers registered for business tax and holding a standard business license received from a city recorder or county clerk are legally obligated to file a final return and pay business tax to the Tennessee Department within 15 days after closing business. This obligation stands regardless of the amount of income earned during the tax year. **Even if no income was earned, minimum tax amounts must be paid.** Taxpayers that close one or more, but not all, of their business locations, are not required to file a final return.

A taxpayer must file a final return within 15 days of selling or quitting the business. If a taxpayer changes its business location within a municipality more than once in a fiscal year, a final return must also be filed and a new license obtained. Until a final return is filed, the taxpayer must continue to file yearly returns and pay at least the minimum tax for that location.⁵¹

If a taxpayer closes a location but has other locations remaining in business, it must close the location in TNTAP. The taxpayer will report any tax amounts the closed location owes on its regularly filed annual return.

¹ Tenn. Code Ann. § 67-4-723(a).

² Tenn. Code Ann. §§ 67-1-1501 and 67-6-523.

³ Tenn. Code Ann. § 67-1-113(b).

⁴ Tenn. Code Ann. § 57-4-301(c)(2); Public Chapter 338 (2017).

⁵ The Department publishes [Informal Conference Summaries](#), that provide additional examples of how inadequate or missing taxpayer records might affect the outcome of an informal conference proceeding.

⁶ TENN. COMP. R. & REGS. 1320-04-02-.08.

⁷ Tenn. Code Ann. § 57-4-303.

⁸ See Letter Ruling 01-20.

⁹ See Letter Ruling 95-09.

¹⁰ See Revenue Ruling 00-20 and Letter Ruling 99-33.

¹¹ Tenn. Code Ann. § 67-6-102(87)(A).

¹² Tenn. Code Ann. § 67-6-102(87)(B).

¹³ TENN. COMP. R. & REGS. 1320-05-01-.76.

¹⁴ Tenn. Code Ann. § 67-6-206.

¹⁵ Tenn. Code Ann. § 67-6-102(46)(A)(i).

¹⁶ *Id.*

¹⁷ Tenn. Code Ann. § 67-6-206.

¹⁸ Tenn. Code Ann. § 67-6-102(46)(j).

¹⁹ Tenn. Code Ann. § 67-6-102(43).

²⁰ TENN. COMP. R. & REGS. 1320-05-01-.34.

²¹ Tenn. Code Ann. § 67-6-102(74).

²² TENN. COMP. R. & REGS. 1320-05-01-.18.

²³ Tenn. Code Ann. § 67-6-329(a)(13).

²⁴ TENN. COMP. R. & REGS. 1320-04-02-.05.

²⁵ Tenn. Code Ann. § 57-4-304(b).

²⁶ Tenn. Code Ann. § 57-4-305.

²⁷ TENN. COMP. R. & REGS. 1320-04-02-.01(7).

²⁸ TENN. COMP. R. & REGS. 1320-04-02-.04(1).

²⁹ In 1988, the Tennessee Supreme Court held that cooking wine is not subject to liquor-by-the-drink tax. *Copper Cellar v. Jackson*, 762 S.W.2d 560 (Tenn. 1988). The court noted in that case that Copper Cellar had purchased cooking wines solely for use in the preparation of certain foods. *Id.* at 561. The court also noted that Copper Cellar had stored the cooking wines separately from alcoholic beverages served to restaurant patrons and had specifically accounted for the cost of the cooking wines as food costs. *Id.*

³⁰ Tenn. Code Ann. § 57-5-101(b) (2023). Public Chapter 236 (2023).

³¹ Tenn. Code Ann. § 67-4-410.

³² In *Woods v. Holiday Inn of Murfreesboro*, 581 S.W.2d 648 (Tenn. 1979), the Tennessee Supreme Court held that simply knowing a beverage sold may be used as a setup or a mixed drink is sufficient to support imposition of this tax.

³³ For a complete list of the types of entities that are subject to franchise and excise taxes, see Tenn. Code Ann. § 67-4-2004(38).

³⁴ “Doing business in Tennessee” means any activity purposefully engaged in within the state by a person with the object of gain, benefit, or advantage. See Tenn. Code Ann. § 67-4-2004(14).

³⁵ “Substantial nexus in this state” means any direct or indirect connection of the taxpayer to this state that will subject the taxpayer to franchise and excise tax; such connection includes taxpayers who are organized or commercially domiciled in this state, taxpayers who own or use their capital in this state, or taxpayers who have systematic and continuous business activity in this state that produces gross receipts attributable to customers in this state. For a complete definition of “substantial nexus,” see Tenn. Code Ann. § 67-4-2004(49).

³⁶ Note that only one of the sub-J schedules (i.e., Schedule J1, J2, J3, or J4) will be completed by the taxpayer; the correct sub-J schedule to be completed by the taxpayer depends on the taxpayer’s entity classification for federal income tax purposes.

³⁷ A partner in a general partnership may be subject to the tax if it is a type of entity that provides limited liability protection to its owners. For more information, please see Chapter 2 of the [Franchise and Excise Tax Manual](#).

³⁸ Tenn. Code Ann. § 67-4-2004(34). “Not-for-profit” means any person described in § 401, § 408, § 408A, § 409, § 501, § 526, § 527, § 528, § 529 or § 530 of the Internal Revenue Code, codified in 26 U.S.C. § 401, § 408, § 408A, § 409, § 501, § 526, § 527, § 528, § 529 or § 530.

³⁹ Tenn. Code Ann. §§ 43-16-103(b) and 43-16-148.

⁴⁰ Tenn. Code Ann. § 67-4-2008(a)(9). For more information regarding this exemption, please see Chapter 2 of the [Franchise and Excise Tax Manual](#).

⁴¹ Tenn. Code Ann. § 67-4-2008(a)(11).

⁴² Tenn. Code Ann. § 67-4-708(2).

⁴³ Tenn. Code Ann. § 67-4-708(1).

⁴⁴ Tenn. Code Ann. § 67-4-702(a)(7).

⁴⁵ TENN. COMP. R. & REGS. 1320-04-05-.49.

⁴⁶ Tenn. Code Ann. § 67-4-715. TENN. COMP. R. & REGS. 1320-04-05-.53.

⁴⁷ Tenn. Code Ann. § 67-1-107.

⁴⁸ Tenn. Code Ann. § 67-4-715(g). TENN. COMP. R. & REGS. 1320-04-05-.30.

⁴⁹ Tenn. Code Ann. § 67-2-107(f)(1)(A).

⁵⁰ Tenn. Code Ann. § 67-1-114(b).

⁵¹ Tenn. Code Ann. §§ 67-4-721 and 67-4-714(b).