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Chapter 11: Industry-Specific Guidance

Contractors

1. Overview

For business tax purposes, a contractor is defined as a person engaged in the business of contracting, performing a contract, or engaging in any of the activities, or activities like the following:

- Receiving compensation from rendering exterminating services, installing personal property, constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing, or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, air conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, or any other improvement, structure, or part of thereof.

Contractors are Classification 4 taxpayers. Contractors are liable for business tax regardless of whether their contracts are lump sum or cost-plus basis.

2. Progress Payments

Progress payment charges billed pursuant to a contract and received by a contractor and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the equipment is operated by the lessor are subject to business tax.

3. Deemed Location

For business tax purposes, a “deemed location” is a county and/or municipality where a contractor is not domiciled or located but where the contractor earns taxable receipts of more than \$50,000 for work performed in the jurisdiction.¹

Taxable receipts from contracts performed in each deemed location must be reported on the return for the county and/or municipality where the work was performed. The taxable

receipts for a deemed location are not reported on the return for the county and/or municipality of domicile or location.

When the charges billed exceed \$50,000 for work performed in a deemed location, the contractor is required to register for business tax and pay the one-time standard business license fee of \$15 for that location. Taxable receipts of more than \$50,000 received during the tax period will be reported on the return for the deemed location.

Taxable receipts of \$50,000 or less for compensation from contracts in a county and/or municipality other than the contractor's place of domicile or location must be reported on the return for the county and/or municipality of domicile or location.

Therefore, all taxable receipts for work done in any county will be subject to the state tax. However, where those receipts are sourced, and which county is apportioned the tax still depend on whether work is done in a deemed location.

4. In-State Contractors

State-Level Tax

In-state contractors with less than \$10,000 in taxable sales during a tax period are exempt from business tax. However, if a contractor has more than \$3,000 in sales in the county of domicile, a contractor is required to obtain a minimal activity license in that county.

In-state contractors with less than \$10,000 in taxable sales in their county of domicile or taxable sales sourced to their county of domicile, but with more than \$50,000 in taxable sales in another county are exempt from business tax in their county of domicile. However, these contractors are taxable in the county where they generated more than \$50,000 in taxable revenue. This other county is considered a "deemed location." As such, the contractor should acquire a standard business license in the county where over \$50,000 in sales was generated and a minimal activity license in the county of domicile (if more than \$3,000 in sales in the domicile county).

Contractors with more than \$10,000 in taxable sales in their domicile county and more than \$50,000 in taxable sales in another county in the state are taxable in their domicile county and in the other counties where they had more than \$50,000 in taxable sales ("deemed

locations”). These taxpayers should obtain standard business licenses in the domicile county and counties where they have established deemed locations.

Municipal-Level Tax

In-state contractors with less than \$10,000 in taxable sales within a municipality are exempt from business tax in that jurisdiction. Contractors with less than \$10,000 but more than \$3,000 in taxable sales within their domicile municipality should obtain a minimal activity license for their domicile municipality.

In-state contractors with less than \$10,000 in taxable sales in a domicile municipality but with more than \$50,000 in another municipality are exempt from business tax within their domicile municipality and subject to business tax in the other municipality where they generated more than \$50,000 in taxable sales. These taxpayers should obtain a standard business license in the municipalities where they have established deemed locations and a minimal activity license in their domicile municipality (if more than \$3,000 in sales in the domicile municipality).

In-state contractors with more than \$10,000 in taxable sales within their domicile municipality or sourced to their domicile municipality and more than \$50,000 in taxable sales in another municipality are subject to business tax in both jurisdictions. These contractors should obtain standard business licenses in their domicile municipality and municipalities where they have established a deemed location.

Example 1

Johnson Erectors (“Johnson”) is domiciled in City of Clarksville in Montgomery County, Tennessee. For the period beginning October 1, 2018, and ending September 30, 2019, Johnson performed \$3,500,000 in total contracts. Johnson performed contracts totaling \$1,505,000 within its domicile jurisdiction.

The following contracts were performed outside of Johnson’s domicile:

- City of Jackson/Madison County – \$ 60,000
- Montgomery County (outside City limits) – \$35,000
- Shelby County (outside City limits) – \$1,500,000

- Lexington, Kentucky – \$300,000
- City of Oliver Springs/Morgan County – \$100,000

The following amounts must be reported for contracts performed outside the domicile jurisdiction:

Cities	Clarksville (domicile)	Jackson (deemed location)	Memphis (no filing)	Oliver Springs (deemed location)
Gross Taxable Receipts	\$1,540,000	\$60,000	\$0	\$100,000
Allowable Deductions	\$0	\$0	\$0	\$0
Taxable	\$1,540,000	\$60,000	\$0	\$100,000

Counties	Montgomery (domicile)	Madison (deemed location)	Shelby (deemed location)	Morgan (deemed location)
Gross Taxable Receipts	\$1,540,000	\$60,000	\$1,500,000	\$100,000
Allowable Deductions	\$0	\$0	\$0	\$0
Taxable	\$1,540,000	\$60,000	\$1,500,000	\$100,000

Example 2

Foundation Builders, (“Foundation”) is domiciled in the City of Lebanon in Wilson County, Tennessee. From the period beginning October 1, 2018, and ending September 30, 2019, Foundation performed contracts totaling \$2,000,000. Foundation performed contracts totaling \$1,930,000 in contracts within its domicile jurisdiction. Foundation has taxable receipts that are less than \$50,000 in each of two municipalities located in the same county all of which are outside of Foundation’s place of domicile. The total taxable receipts for the county are more than \$50,000.

The following contracts were performed outside domicile:

- City of Smyrna/Rutherford County – \$40,000
- City of Murfreesboro/Rutherford County – \$30,000

Foundation must file the following reports:

Cities	Lebanon (domicile)	Smyrna (no filing)	Murfreesboro (no filing)
Gross Taxable Receipts	\$2,000,000	\$0	\$0
Allowable Deductions	\$0	\$0	\$0
Taxable	\$2,000,000	\$0	\$0

Counties	Wilson (domicile)	Rutherford (deemed location)
Gross Taxable Receipts	\$1,930,000	\$70,000
Allowable Deductions	\$0	\$0
Taxable	\$1,930,000	\$70,000

Example 3

Armstrong Home Improvements, (“Armstrong”), is domiciled in the city of Nashville/Davidson County. For the period beginning October 1, 2018, and ending September 30, 2019, Armstrong performed contracts totaling \$ 2,000,000. A portion of the contracts, totaling \$75,000, were performed in the city of Murfreesboro in Rutherford County, Tennessee.

Armstrong must report the following amounts:

Cities	Nashville (domicile)	Murfreesboro (deemed location)
Gross Taxable Receipts	\$1,925,000	\$75,000
Allowable Deduction	\$0	\$0
Taxable	\$1,925,000	\$75,000

Counties	Davidson (domicile)	Rutherford (deemed location)
Gross Taxable Receipts	\$1,925,000	\$75,000
Allowable Deduction	\$0	\$0
Taxable	\$1,925,000	\$75,000

5. Out-of-State Contractors

A contractor that does not have a location or domicile in Tennessee and has taxable gross receipts in the state of less than \$10,000 per county is exempt from the business tax and does not need to register for business tax or obtain a business license.

A contractor that does not have a location or domicile in Tennessee and has taxable gross receipts in any county between \$10,000 and \$50,000 is subject to the state business tax and should register and file a return with the Department.

The contractor should total all its receipts for each county in which it has taxable sales between \$10,000 and \$50,000 and pay the state tax on all such receipts, or at least the \$22 minimum tax. The contractor is not required to pay the minimum tax for each county in which it receives compensation. For example:

- Contractor A is domiciled in Kentucky but receives compensation of \$10,000 in Davidson County, \$21,000 in Williamson County, and \$5,000 in Sumner County during a tax period. Because he has receipts of \$10,000 or more in at least one Tennessee county, Contractor A should register and file one return with the Department. His total taxable receipts are \$31,000 (only the receipts from counties where he earns at least \$10,000).

Deemed Location

If a contractor receives taxable compensation of more than \$50,000 during a tax period in any county and/or municipality, the contractor will be deemed to have a location in that county and/or municipality for business tax purposes.² Therefore, the contractor must register for and obtain a standard license in that county and/or municipality for that tax period.

The contractor should file a separate return for that county and/or municipality, and the compensation the contractor received in that county and/or municipality will be sourced to that county and/or municipality. The contractor should subtract this compensation from the remainder of the compensation it receives in the state which is filed on a separate return. For example:

- Contractor B is domiciled in Georgia but receives compensation of \$62,000 in Hamilton County and Chattanooga, \$12,000 in Bradley County, and \$23,000 in Polk County. Because he performed a service in Tennessee has receipts of \$10,000 or more in at least one Tennessee County, Contractor B should register with the Department. Because he received more than \$50,000 in Hamilton County and Chattanooga, he should also obtain standard business licenses from the Hamilton County Clerk and the Chattanooga city official. Contractor B should file a return for Hamilton County reporting his receipts in that county of \$62,000 and should file a return for Chattanooga reporting his receipts in that municipality of \$62,000. He should also file a separate return reporting total receipts of \$35,000 for services provided Bradley and Polk counties.

Tenn. Code Ann. § 67-4-717(c)(3) provides that if a contractor does not have a domicile or location in the state and receives less than \$50,000 of compensation in a municipality during a taxable period (therefore does not have a deemed location), such compensation is not subject to the municipal-level business tax.

Example

Hammer Construction (“Hammer”) is domiciled in Davidson County. During the period beginning on October 1, 2018 and ending September 30, 2019, Hammer’s fiscal year, Hammer performed a total of \$1,200,000 in contracts. Hammer performed \$10,000 in contracts outside of Tennessee.

Hammer performed the following contracts outside of its domicile:

- City of Knoxville/Knox County – \$ 20,000
- City of Clarksville/Montgomery County – \$60,000
- City of Cookeville/Putnam County – \$30,000

Cities	Knoxville (no filing)	Clarksville (deemed location)	Cookeville (no filing)
Gross Taxable Receipts	\$0	\$60,000	\$0
Allowable Deductions	\$0	\$0	\$0
Taxable	\$0	\$60,000	\$0

Counties	Davidson (domicile)	Knox (no filing)	Montgomery (deemed location)	Putnam (no filing)
Gross Taxable Receipts	\$1,140,000	\$0	\$60,000	\$0
Allowable Deductions	\$0	\$0	\$0	\$0
Taxable	\$1,140,000	\$0	\$60,000	\$0

6. Subcontractors

Contractors may deduct payments made to subcontractors if:

- The contractor completes Schedule C of the business tax return listing the subcontractor's name, address, business license, and amount paid;
- It keeps a copy of the subcontractor's business license or license issued by the board for licensing contractors; and
- The deductible amounts were made during the business tax period to subcontractors, or other persons holding a business license or who is licensed by a state board for licensing contractors for performing activities described in Tenn. Code Ann. § 67-4-708(4)(A), the classifications section of the business tax statute.³

Contractors may not reduce their own gross receipts by deducting payments to subcontractors if the subcontractor is not licensed for business tax. Contractors are not required to determine whether their subcontractors have paid business tax. The contractor

is only required to obtain a copy of a subcontractor's business license and report the required information on Schedule C of the business tax return (Payment to Subcontractor Worksheet).

Services

Payments to subcontractors are deductible if:

- The payments are for Classification 4(A) services (see Chapter 2 for more information on services); and
- The taxpayer claiming the deduction actually sold those subcontracted services.

Contractors and subcontractors do not need to be primarily in the business of providing Classification 4(A) services to be eligible for the subcontractor payment deduction.

Subcontractor Not Licensed in Deemed Location

A contractor that receives more than \$50,000 from a contract outside of the county or city where they are registered for business tax is required to register in the county and/or city where the work is performed. If a taxpayer's subcontractors did not have at least a \$50,000 contract in a particular county or city, the Department will allow the taxpayer to deduct payments to that subcontractor if the subcontractor held a business license or was licensed by the state board for licensing contractors for work described in Tenn. Code Ann. § 67-4-708(4)(A).

Agriculture

1. Agricultural Commodity Brokers

When sales of livestock, horses, poultry, or other farm products are made by any person other than the producer, breeder, or trainer, they will be classed and taxed as Classification 4 sales under Tenn. Code Ann. § 67-4-708(4). The business tax shall also include the commissions, fees, margins, or other charges received from sales of livestock, poultry, or other farm products.⁴

2. Agricultural Exemptions

Farmers Providing Services to Other Farmers

Farmers providing services to other farmers for planting or harvesting agriculture products, or for the preparation, improvement, or maintenance of land used in the production of agricultural products are exempt from business tax.⁵

Sales Directly from the Farm

Receipts of the producer from sales of livestock, poultry, and other farm products directly from the farm, including receipts from catfish farmers, are excluded from gross sales on business tax returns.⁶

When sales of livestock, horses, poultry, or other farm products are made by any person other than the producer, breeder, or trainer, they will be classed and taxed as Classification 4 sales under Tenn. Code Ann. § 67-4-708(4).⁷

Lessors of Agricultural Properties

Persons leasing agricultural, airport, forest, mining, oil, and public utility properties are excluded from business tax for the provision of these services.

Mobile Telecommunications Providers

Mobile telecommunications services sold to customers in Tennessee are subject to business tax. The federal Mobile Telecommunications Sourcing Act (“MTSA”) requires mobile telecommunications services providers (“providers”) to source gross receipts from the sale of mobile telecommunications services to the customer’s place of primary use. The customer’s place of primary use is the street address where the customer primarily uses the service (i.e., the customer’s residential or business address). Providers should obtain a business license, register for business tax, and report sales of mobile telecommunications services made in each city and county (i.e. jurisdiction) where they make more than \$10,000 in taxable sales during the tax year.

1. Registration and Reporting

Mobile telecommunications services and tangible personal property sold by a provider within a jurisdiction are reported separately. In accordance with the MTSA, providers must register under Classification 3 and report sales of mobile telecommunications services under Location IDs established for the sole purpose of reporting such sales to customers with a place of primary use within a city or county jurisdiction.

Tennessee Taxpayer Access Point (“TNTAP”) registration allows providers to select the city or county where they meet the \$10,000 threshold instead of registering using a business location address. Providers should first obtain a Location ID to report the sales of mobile telecommunications services at the Classification 3 rate for each city where they meet the \$10,000 threshold. When a provider registers in a city, the Department’s registration system will automatically create a separate county Location ID to report tax at the Classification 3 rate for the county.

A provider making sales of mobile telecommunications services in multiple cities within a county as well as the unincorporated area of the county will have a separate Location ID under Classification 3 for each city where it meets the \$10,000 threshold. The provider will also have a single separate county Location ID under Classification 3 to report all sales of mobile telecommunication services into the county (i.e., all cities and unincorporated areas in the county) if the total sales into the county are more than \$10,000. A provider with a store location in that jurisdiction should continue to report sales of tangible personal property made from the store under the Classification 2 rate using the store Location ID to report sales made from the store for both the city and county.

Example

Company X sells mobile telecommunications services, cellphones, and accessories. During the 2019 tax year, Company X sold \$15,000 of cellphones and accessories from its Chattanooga store location. Company X also generated \$240,000 in sales of mobile telecommunications services to customers with places of primary use in the following cities in Hamilton County: \$85,000 in Chattanooga, \$50,000 in East Ridge, \$25,000 in Red Bank, \$5,000 in Soddy-Daisy, and \$75,000 in the unincorporated area of Hamilton County.

The \$15,000 in sales of cellphone and accessories made from the Chattanooga store are reported for both the city and county under the Classification 2 store Location ID.

The mobile telecommunications services are reported using the Classification 3 rate as follows:

- \$85,000 under the Chattanooga Location ID;
- \$50,000 under the East Ridge Location ID;
- \$25,000 under the Red Bank Location ID; and
- \$240,000 under the Hamilton County Location ID.

Because the mobile telecommunications services sold to customers with a place of primary use in the city of Soddy-Daisy are less than \$10,000, no business tax is reported to Soddy-Daisy. However, the \$5,000 is included in sales reported to Hamilton County. The provider is still required to have a minimal business activity license for the city of Soddy-Daisy.

2. Sales of Phones and Accessories from Outside the State

Providers making sales of tangible personal property to customers in Tennessee from locations outside of Tennessee are only subject to the state-level business tax on those sales. Providers should report such sales under a separate out-of-state Location ID on their consolidated business tax return.

3. Personal Property Tax Credit

A provider may take a credit on its business tax return for the personal property taxes paid to the same jurisdiction during the tax period covered by the return or prior to the due date of the return. The credit shall be taken first against the business tax due for a store location and then may be taken against the business tax due for the wireless telecommunications services for the same jurisdiction up to 50% of the provider's business tax liability in that jurisdiction.

4. Sales of Internet Access

Taxable mobile telecommunications services do not include charges for internet access. Sales of internet access are not taxable because of the federal Internet Tax Freedom Act.

Persons providing wireless telecommunications services must register and pay business tax as a Classification 3 service provider in every county and city jurisdiction where those sales of services are received by their customers.

Performance Entities

Performance artists or their business entities (collectively “performance entities”) who perform in Tennessee are subject to business tax, and they must pay tax on merchandise sales, as well as ticket sales and commissions.

Performance entities, when performing at any given location, often receive a commission on ticket sales or a portion of the admission receipts to the event from the ticket promoter. The amounts received are receipts for the sale of services. The performance entities may also sell merchandise, such as souvenirs and t-shirts. There are no exemptions from business tax under the law for either of these types of sales.

1. In-state Performance Entities

In-state and out-of-state performance entities have different licensing requirements. While all ticket and merchandise sales/commissions are subject to business tax if they total \$10,000 or more per jurisdiction, there are different reporting and licensing requirements for in-state performance entities versus out-of-state performance entities.

Licensing with the County and City

Performance entities with a Tennessee location (e.g., an office or other place of business) must obtain a county business license from the county of that location if the entity's total state taxable receipts are \$10,000 or more.

In-state performance entities must also obtain a city business license from the city of that location if the city has a business tax and the entity's total city taxable receipts are \$10,000 or more.

Minimal Activity Licensing

If a performance entity's total state taxable receipts are at least \$3,000 but less than \$10,000, the entity must get a minimal activity license from the county of its location. If the entity's

total city taxable receipts, if applicable, are at least \$3,000 but less than \$10,000, the entity must get a minimal activity license from the city of its location. If the performance entity's taxable receipts are less than \$3,000, it does not have to obtain a license or file a return.

Filing

Performance entities with locations in Tennessee must file tax returns for both the county and the city with the Department. Entities should report all sales in the state subject to the state tax on its county return and all sales in the state subject to the city tax on its city return.

2. Out-of-State Performance Entities

Performance entities that perform in Tennessee, but do not set up an established location in the state must register and file a return with the Department, reporting all sales made in each county that are \$10,000 or more. Out-of-state performance entities are not subject to the city business tax. Additionally, these entities are not required to obtain any type of business tax license.

Traveling Photographers

A "traveling photographer" is a photographer who makes studio-type photographs or portraits and sells them, but does not have an established studio or place of business in the trade area in which such photographs are taken.⁸ A traveling photographer is not a photographer who makes photographs to be placed upon articles of identification.⁹

Before a traveling photographer may do any business in a community, the photographer must register with the sheriff or chief of police where the photographer proposes to conduct temporary business.¹⁰ The photographer must provide:

- The photographer's full name and address;
- The name and address of any other person working with the photographer;
- The name and address of the employer of the photographer; and
- Proof that a deposit of \$100 has been made with the county clerk and a like amount with the proper municipal tax collector, against whatever amount or amounts of

business taxes the photographer may owe on account of business done in the county or municipality, or both, depending on the case.¹¹

Any deposits made will be a credit on the amount of business tax for which such photographer may be liable to any county or municipality.¹² When the taxes are paid, any balance remaining to the photographer's credit with the respective taxing jurisdictions will be refunded.¹³

Lottery Commissions

The 6.5% commission earned on lottery ticket sales is included in gross receipts and subject to the business tax. However, receipts from lottery tickets are not subject to business tax nor are they subject to sales and use tax.

Commissions earned from the sales of lottery tickets are considered Classification 3 sales. Because the applicable business tax rate is determined by an entity's dominant business activity, lottery ticket vendors must determine their appropriate business tax classification based on gross receipts.

Funeral Directors

Funeral directors are liable for business tax depending on how they bill customers.

1. Unit Price

When a funeral director sells goods and services for a "unit price" the transaction is regarded as a sale of tangible personal property and taxed as a Classification 2 sale.¹⁴

- For example, if a funeral director sells a casket, burial vault, and all services furnished for one stated price, this sale would be considered a Classification 2 sale of tangible personal property.

2. Itemization

If a funeral director sells goods and services but itemizes the bill (e.g., the price for the casket, burial vault, and other tangible personal property sold and services rendered), the tax rate is determined by the classification that comprises the dominant business activity, either Classification 2 or Classification 3.¹⁵

- For example, Funeral Home J (“J”) sells funeral goods and services to a client. J itemizes the charges on the invoice sent to the client.
 - The charges are as follows:
 - Basic Funeral Service Fee: \$ 2,000
 - Vault: \$ 1,400
 - Embalming Services: \$ 800
 - Casket: \$ 2,400
 - Transportation Services: \$ 400
 - Because J itemized these sales on the invoice to the client, the items are taxed as Classification 2 sales. J’s dominant business activity in this transaction is the provision of tangible personal property (i.e., vault and casket) because the vault and casket totaled \$3,800 of the transaction while services totaled \$3,200.

3. Cash Advances

When a funeral director makes cash advances for services and furnishes items such as flowers and clothing to a customer, acts as an agent for the customer, and charges for reimbursement on the advances without adding profit to the charges for himself, the charges are included in the funeral director’s gross sales but may be deducted on the business tax return in computing business tax owed.¹⁶

Services include:

- Opening graves
- Transportation
- Newspaper notices
- Telephone calls
- Other similar services

Cemeteries and Memorial Gardens

Income derived from interment charges made by cemeteries, memorial gardens, etc., is taxable under the Business Tax Act.¹⁷ In cases where no deed or certificate of ownership is

given, charges for burial in lots, crypts, etc., will be deemed to be charges made for the right of sepulcher and the entire gross income therefrom is taxable without any deduction for amounts set aside for perpetual care.¹⁸ The sale of boxes, urns, markers, vases, plants, shrubs and other tangible personal property are also taxable under the Business Tax Act.¹⁹

Municipal Airports

Certain airports or other navigation facilities located outside the territorial limit of the municipality that created or controls the facility may be taxed under the Business Tax Act by the creating or controlling municipality as though the facility were located within the municipality's territorial limit. Any vocation, occupation, business, or business activity located on the grounds of the facility may also be taxed as though it were located within the territorial limit of the municipality.

Limitations to this authority to tax are defined in Tenn. Code Ann. § 67-4-727(b).

Leased Departments

A person ("lessee") operating a leased department is liable for the business tax and must file business tax returns and pay the minimum tax for that location.²⁰ A lessee is not permitted to include their tax liability on the returns of the lessor of the department.²¹ For example:

- An individual who leases a booth at a hair salon that has his or her own clients and cash drawer must file business tax returns and pay the minimum tax for the location.

Commission Agents

A commission agent or factor, such as an oil company bulk station or any other type of business that does billing in the name of the supplier they represent while using their own employees or agents and their own equipment and supplies in operating their business, is taxable under Classification 3 on its gross commissions.²² Such persons shall obtain a separate license in their own name even though the principal they represent may have obtained a license for reporting sales made by the commission agent or factor.

Vending Machines

All persons making sales of tangible personal property through coin-operated vending machines must register with their city and county and pay business tax.²³ However, vending machine taxpayers may elect to pay the gross receipts tax imposed in Item 65(c)(1), T.C.A. § 67-4-503, in lieu of the business tax.²⁴

If a vending machine operator sells tangible personal property by any means other than through vending machines or makes charges for servicing coin-operated machines other than those he owns, he is subject to, and must pay, the appropriate business tax applicable to such other activities.²⁵

A person engaged in a non-coin-operated vending business that incidentally sells merchandise through a vending machine must pay business tax on such sales, unless the person elects to pay the Gross Receipts Tax under Tenn. Code Ann. § 67-4-503.

Antique Malls, Flea Markets, Craft Shows, Antique Shows, Gun Shows, and Auto Shows

Antique malls, flea markets, craft shows, antique shows, gun shows, and auto shows that are operated as public facilities where two or more retailers of tangible personal property carry on business are subject to business tax at a rate of \$1 per booth per day from each exhibitor at the promotion location.²⁶ A “flea market booth” is any contiguous space leased by a single vendor to sell tangible personal property.²⁷

For information on casual and isolated antique sales, see Chapter 4 of this manual.

1. Fee in Lieu of Business Tax

Exhibitors registered for Tennessee sales and use tax purposes and those who register annually pursuant to Tenn. Code Ann. § 67-6-220 (dealers who make retail sales at flea markets) have the option of either:

- Obtaining a business tax license and remitting the business tax in accordance with the provisions of Tenn. Code Ann. § 67-4-709; or

- Remitting a \$1 fee per day per booth for each jurisdiction to the flea market operator. For example, if the flea market is location in a city within a county, the operator would collect \$2 per day per booth.

The \$1 per day per booth fee is in lieu of any business tax. The owner, manager, operator, or promoter of an antique mall, flea market, craft show, antique show, gun show, or auto show at a location that is not a continuing business, must obtain a business license and collect and submit fees to local tax officials with the supporting documents required by those officials, within 72 hours after the closing of the event.

The preceding provision does not apply to exhibitors properly licensed at the promotion location prior to July 1, 1983, until such time as that license expires. The provision also does not apply to promotions conducted by nonprofit associations, corporations, or organizations, nor to casual and isolated activities by persons who do not hold themselves out as engaged in business.

Individual Exhibitors

Exhibitors electing to obtain a business tax license must present evidence of the license to the operator before conducting business. Exhibitors who are not registered annually should pay the \$1 fee per booth per day to the flea market operators.

Submitting Forms and Payments

Fees collected by the owner, manager, operator, or promoter of an antique mall, flea market, craft show, antique show, gun show, or auto show location that is a continuing business are due and payable monthly, on the first day of each month.

All owners, managers, operators, or promoters must transmit completed forms and tax collected during the preceding month to collecting officials, (both city and county, if applicable), on or before the 10th day of each month. Failure to remit the tax by the 10th day of each month will cause the tax to become delinquent.

2. Businesses Selling Antiques at Least 5 Days Per Week

The above information does not apply to any business that is primarily engaged in selling antiques at least 5 days each week in a permanent location. For antique malls selling

antiques at least 5 days a week with a common cash register for all sales, only the mall operator will be required to obtain a business tax license and pay on all receipts derived from that location. Individual booths rented at such malls will not be deemed to be separate places, locations, or outlets in the state from which business is conducted.

Transient Vendors

A transient vendor is defined as “any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering the merchandise to the public.”²⁸ “Merchandise” is any consumer item that is or is represented to be new or not previously owned by a consumer.

A transient vendor does not include:

- Any person selling goods by sample, brochure or sales catalog for future delivery to the seller by the owner or occupant of a residence; or
- Any person making sales resulting from the prior invitation to the seller by the owner or occupant of a residence; or
- Any person making sales of services.

1. Temporary Premises

A “temporary premises” is any public or quasi-public place, including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car or motor vehicle that is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public.

Premises are not temporary if the same person has conducted business at those premises for more than 6 consecutive months or has occupied the premises as the person's permanent residence for more than 6 consecutive months.

A taxpayer that has an established business location (i.e. a location that is more than a temporary premises) in Tennessee is not a transient vendor. If a taxpayer moves to another

municipality, that taxpayer is not considered transient. Please see Chapter 2 for additional information on what constitutes a location for business tax.

2. Transient Vendor License Fee

In lieu of paying the business tax on gross receipts, transient vendors pay a fifty dollar business tax license fee for each two week period the vendors are engaged in business in each county or municipality where they sell or offer to sell merchandise or where they are issued a license.²⁹

Transient vendors should pay a fee of **\$50** for each fourteen-day period in each county or municipality, or both:

- Where the vendors sell or offer to sell merchandise; or
- Where they are issued a license.

The fee must be paid prior to the first day of engaging in business. Transient vendors are not liable for the tax levied under Tenn. Code Ann. § 67-4-709.

3. Transient Vendors and Business Tax

A taxpayer that meets the definition of a transient vendor and does not have an established location in Tennessee is not subject to state and local business tax regardless of whether the taxpayer has substantial nexus in Tennessee. Accordingly, a transient vendor has no receipts to source using the sourcing provisions under Tenn. Code Ann. § 67-4-717(b)(1) because it is paying the transient vendor fee and not liable for state-level or municipal-level business tax. For example:

- Hotel in Nashville, Tennessee hosted a 4-month modern art exhibition where professional artists displayed and sold art.
- Artist 1 came from Kentucky, brought \$40,000 worth of art to display and sell at the exhibition, and paid the Nashville clerk \$400 (roughly \$100/mo. transient vendor fee).
- Artist 1 sold \$20,000 in art and returned to Kentucky once the exhibition ended.

- Artist 1 is not subject to Tennessee business tax because it did not establish a location in Tennessee and otherwise met all the requirements as a transient vendor.

Food Trucks

Food trucks must be licensed for business tax in the jurisdiction where the food truck is based (domiciled). Food trucks must display their license when selling in other jurisdictions.

Food truck operators that pay a fee to utilize commercial kitchen space or a commissary to prepare food are based (domiciled) in the jurisdiction where the commercial kitchen or commissary is located. If the food truck operator continues managing the business from its domicile (such as keeping and managing its books and records, scheduling events, etc.) it must be registered in both its domicile and the jurisdiction where the commercial kitchen or commissary is located.

¹ Tenn. Code Ann. § 67-4-709(4)(A)(i).

² Tenn. Code Ann. § 67-4-709(4)(A)(i).

³ Tenn. Code Ann. § 67-4-711(a)(5)(A).

⁴ Tenn. Code Ann. § 67-4-708(4)(B).

⁵ Tenn. Code Ann. § 67-4-708(3)(C)(xvi).

⁶ TENN. COMP. R. & REGS. 1320-04-05-.16(d).

⁷ Tenn. Code Ann. § 67-4-712(c)(1).

⁸ Tenn. Code Ann. § 67-4-729(a).

⁹ *Id.*

¹⁰ Tenn. Code Ann. § 67-4-729(b)(1).

¹¹ Tenn. Code Ann. § 67-4-729(b)(2).

¹² Tenn. Code Ann. § 67-4-729(b)(3).

¹³ *Id.*

¹⁴ TENN. COMP. R. & REGS. 1320-04-05-.19(1)(a).

¹⁵ TENN. COMP. R. & REGS. 1320-04-05-.19(1)(b).

¹⁶ TENN. COMP. R. & REGS. 1320-04-05-.19(2).

¹⁷ TENN. COMP. R. & REGS. 1320-04-05-.06.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ TENN. COMP. R. & REGS. 1320-04-05-.25.

²¹ *Id.*

²² TENN. COMP. R. & REGS. 1320-04-05-.07.

²³ TENN. COMP. R. & REGS. 1320-04-05-.59(1).

²⁴ *Id.*

²⁵ TENN. COMP. R. & REGS. 1320-04-05-.59.

²⁶ Tenn. Code Ann. § 67-4-710(a)(1)(A).

²⁷ Tenn. Code Ann. § 67-4-710(a)(1)(B).

²⁸ Tenn. Code Ann. § 67-4-702(a)(17).

²⁹ Tenn. Code Ann. § 67-4-710(a)(2).