



OUT-OF-STATE BUSINESSES AND NEXUS IN TN

September 2022 Tax Webinar

Nexus with TN Taxes

Nexus is the requisite contact between a taxpayer and a state before the state has jurisdiction to tax the taxpayer.

- TN Sales Tax
- TN Business Tax
- TN Franchise/Excise Tax



TN Sales Tax Basics

The tax applies to dealers engaged in the business of making sales of taxable products/services in TN.

Retailers are responsible for the tax and are to collect the tax from consumers.



TAXABLE
UNLESS SPECIFICALLY EXEMPT BY LAW

Sales are exempt if:

- **purchase** is made by exempt entity (i.e. reseller, non-profit)
- **product** is exempt (i.e. healthcare products)
- **usage** is exempt (i.e. manufacturing)



NOT TAXABLE
UNLESS SPECIFICALLY LISTED BY LAW or ARE PART OF THE SALES PRICE OF TPP

Taxable services include:

repair/installation/cleaning of TPP (incl. computer software), lodging services and rooms, short-term space rental for making sales, parking/storage of vehicles, etc.

$$\begin{aligned} &\text{State Tax Rate} \\ &+ \text{Local Tax Rate} \\ &= \text{\$ TOTAL SALES TAX} \end{aligned}$$



Special rates...
Food
Digital products
Single articles
And more...

Sales Tax Nexus Overview

Does the business have physical presence in TN?

➤ YES

- If **in-state TPP sales threshold of \$4800+** annually is met:
 - ✓ Register/file TN sales tax if in-state threshold met
- If **in-state service sales threshold of \$1200+** annually is met:
 - ✓ Register/file TN sales tax if in-state threshold met
- If sales of TPP/services threshold(s) not met
 - TN sales tax registration /filing not required

➤ NO

- If **Economic Nexus** met:
 - ✓ register/file TN sales tax
- If **Substantial Nexus** met,
 - ✓ register/file TN sales tax
- If economic/substantial nexus not met
 - TN sales tax registration/filing not required

Sales Tax – Economic Nexus

Remote sellers with no physical presence in TN must collect and remit sales tax on sales delivered into TN.

- Remote sellers who meet the economic nexus threshold in TN must register and remit sales and use tax.
 - Economic nexus sales threshold: **\$100,000 within 12-month period**, after July 31,2020.
- Local tax is collected at the local jurisdictional rate* where the sale is shipped or delivered.
- **PC 491** Repeals uniform 2.25% Local Rate for out-of-state dealers

* boundary database to determine local tax rate for each of jurisdiction in TN:
<https://www.tn.gov/revenue/taxes/sales-and-use-tax/local-sales-tax-and-single-article.html>

Sales Tax - Substantial Nexus

The following contains activities that would require out-of-state businesses to register and collect sales tax in Tennessee:

- **Selling**
 - ***taxable services*** in TN
 - ***telecommunication*** services to subscribers located in TN
 - ***leasing/renting/repairing/installing/assembling*** of TPP in TN (or using agent or independent contractor to perform)

Sales Tax - Substantial Nexus, cont.

- **Using**

- employees/agents/independent contractors to ***solicit sales*** in TN
- third parties to ***conduct substantial business activities*** in TN
- ***company-owned trucks/contract-carriers*** acting as an agent for the seller
- TN party to ***route customers to the out-of-state dealer*** (aka “click-through nexus”)

- **Maintaining**

- ***store/office/warehouse/showroom***/etc. in TN
- ***inventory*** in TN/using in-state independent contractors to fulfill TN sales of inventory

Sales Tax - Substantial Nexus, cont.

- TN ***promotional activity*** by personnel
 - e.g. participation in trade shows
- Physical TN presence ***subsidiary acting as an agent*** of non-TN dealer/conducting activities in on behalf dealer
 - e.g., retail store accepting returns made online

Sales Tax Nexus - Marketplace Facilitators

Marketplace facilitator: businesses that owns or operates a website or other platform where sales are made on behalf of marketplace sellers (i.e. third parties).

- Marketplace facilitators that make/facilitate \$100,000+ in sales to TN customers in the previous 12-month period are required to collect and remit Tennessee sales tax.
 - The sales tax is collected on sales made by marketplace sellers to Tennessee customers. Marketplace facilitators that do not have at least \$100,000 in total sales in this state do not have a collection responsibility.
- For more information, please read:
 - [How a marketplace facilitator with an active Tennessee registration should report its sales and facilitated sales.](#)
 - [How an unregistered marketplace facilitator should register with the Department and report the sales it facilitates.](#)

Sales Tax Nexus - Marketplace Sellers

Marketplace seller: a person who sells goods or services through a marketplace operated, owned, or controlled by a marketplace facilitator.

- Marketplace sellers that make any sales outside of a marketplace facilitator website/platform (such as through their own website or storefront), may be required to register for sales and use tax if they have a physical presence in the state or if they have made \$100,000 or more in sales in TN during the previous 12-month period.
 - An out-of-state marketplace seller is not required to register in TN if all its taxable sales are made through a marketplace facilitator that is collecting and remitting Tennessee sales tax on the seller's behalf.
- For more information:
 - additional tax guidance for marketplace sellers.

Helpful Sales Tax Resources

- Tax Manual:
 - https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/august-2022/Sales-Use-Tax.pdf
- Important Notices
 - [Important notice #20-14: New Filing Threshold for Out-of-State Dealers](#)
 - [Important notice #20-15: Marketplace Facilitators](#)
- Webinar Video Archive
 - <https://www.tn.gov/revenue/taxpayer-education/tax-webinars.html>
- Revenue Help Articles
 - **Sales Tax Collection by Out-of-State Dealers:**
<https://revenue.support.tn.gov/hc/en-us/sections/360004678431-Sales-Tax-Collection-by-Out-of-State-Dealers>
 - **Sales Tax Collection by Marketplace Facilitators:**
<https://revenue.support.tn.gov/hc/en-us/sections/360009672231-Sales-Tax-Collection-by-Marketplace-Facilitators>

TN Business Tax Basics

- Based on **gross receipts of sales/services**
 - Rate depends on classification & retailer/wholesaler
 - Some deductions and credits are available to offset tax liability
- Required for all entities with a **Business License** (standard) & **out-of-state businesses with nexus** in TN
 - Some entities and services are exempt



Business Tax for Out-of-State Entities

A business entity that is located outside of TN will be subject to the state-level business tax if it has:

1. Substantial Nexus, and
2. Engaged in Activities, and
3. \$10k+ in TN gross sales

Business Tax –Substantial Nexus

Substantial Nexus for TN Business Tax includes the following:

- ***organized or commercially*** domiciled in TN, or
- ***owns or uses its capital*** in TN, or
- ***systematic and continuous business activity*** in TN that has produced gross receipts *attributable to customers in TN*, or
- ***“bright-line presence”*** in TN

Business Tax – Bright-line Presence

- ❑ total TN **business receipts exceed** the lesser of \$500k or 25% of the business's total receipts everywhere during the tax period, ***or***
- ❑ average **value of real and tangible personal property owned/rented and used** in TN exceeds the lesser of \$50k or 25% of the average value of all the business's total real and tangible personal property ***or***
- total amount of **compensation paid** by the business in TN exceeds \$50k or 25% of the business's total compensation

Business Tax –Activities Engaged

In addition to having substantial nexus, a business must also be engaged in one of the activities in TCA § 67-4-717(a) before being subject to the business tax, including....

- sale of **TPP shipped or delivered to TN** location, or
- sale of a **service that is delivered to TN** location, or
- **leasing/renting of TPP located in TN**



Business Tax – Gross Sales Threshold

If an out-of-state business has

- ✓ met substantial nexus +
- ✓ is engaged in an activity listed per TCA +
- ✓ has over **\$10k in gross sales** attributed to any county in TN

= register and file for TN Business Tax



Business Tax – Out-of-State Contractors

Gross Sales in TN (annually)	City/County Business License Required?	State-level Business Tax	Municipal-level Business Tax
Under \$10,000	no	no	no
\$10,000 - \$50,000	City - no County - no	yes	no
\$50,000+	City - yes County - yes	yes	yes

Business Tax – Out-of-State Contractors

An out-of-state 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.)

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

➤ Because they have receipts of \$10,000 or more in at least one TN county, they should register and file one return with TDOR. The total taxable receipts are \$31,000 (only the receipts from counties where he earns at least \$10,000).

Who is Exempt from Business Tax?

- Manufacturers
- Common carriers
- Any person operating vending machines who exercises the option of paying the gross receipts tax provided for in TCA § 67-4-506.
- Newspaper route carriers and newspaper peddlers
- Any institution operated for religious or charitable purposes, with respect to any profits that are earned from the sale of items contributed items
- Any 501(c)(3) or (4) entity whose only taxable business activity during the tax period is conducted at the Tennessee state fair or at only one county fair and their affiliates
- Persons making sales or rental of real property that belongs to them
- Radio/TV stations
- Publishers/printers of newspapers and other periodicals
- Services listed in TCA § 67-4-708(3)(c)(i-xvi)

Entities with Both In-State & Out-of-State Locations

A company sells products from three different physical locations in TN: Nashville (within the urban services district of Davidson County), Spring Hill, and Franklin. It also has a Kentucky location and a Virginia location that make sales of items to Tennessee customers.

- They must **register each of its TN locations with and obtain a business license** from the Nashville, Franklin, and Spring Hill city officials and the Davidson, Williamson, and Maury county clerks. It must also file returns for each location and pay the appropriate *city and state* taxes.
- They must **register its KY and VA locations directly with the TDOR** (it will have one state account for all its out-of-state locations) and file a state tax return and pay the appropriate state tax based on its total TN sales made from the KY and VA locations. They will *not get business licenses* for these locations.

Helpful Business Tax Resources

- Tax Manual
 - https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/august-2022/Business-Tax.pdf
- Webinar Video Archive
 - <https://www.tn.gov/revenue/taxpayer-education/tax-webinars.html>

TN Franchise/Excise Tax (F&E) Basics

Franchise Tax

- **greater of net worth or the book value of real or tangible personal property owned or used in Tennessee**



**F&E
Tax**

Excise Tax

- **net earnings or income for the tax year**

- Entities are subject to F&E tax from date of formation in TN.
- Entities not registered with the TN Secretary of State will be liable from the date they begin operations with substantial nexus in the state.

F&E Tax – Substantial Nexus

A taxpayer without a physical presence in TN may have substantial nexus in the state for F&E Tax purposes if it meets this **bright-line presence definition**

- ✓ At least \$50,000 of property or payroll in TN, or
- ✓ At least \$500,000 of receipts in TN, or
- ✓ At least 25% of its total property, payroll, or receipts in TN

NOTE: A business engaged in systematic and continuous business activity in the state that has produced receipts attributable to TN customers will have substantial nexus with the state even if they do not have bright-line presence.

Helpful F&E Tax Resources

- Tax Manual
 - https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/august-2022/Franchise-Excise-Tax.pdf
- Webinar Video Archive
 - <https://www.tn.gov/revenue/taxpayer-education/tax-webinars.html>

Registering/Filing/Paying

The screenshot shows the top navigation bar of the TNTAP website. On the left is the TN Department of Revenue logo. On the right is the TNTAP logo. Below the navigation bar is a home button and a help icon. The main content area features a background image of a lake with a boat and trees. A red-bordered box with the text "Create TNTAP logon to file/pay" has a red arrow pointing to the "Create a Logon" link in the login form.

Create TNTAP logon to file/pay

Username
Password
Log In
Forgot username or password?
New to TNTAP?
Create a Logon



Payments

Make an online payment towards an existing balance or account.

> [Make a Payment](#)



Returns

File a return.

> [View Return Links](#)

Register



Registration / Exemption

Register with the Department or complete an exemption application/renewal.

> [View Registration Links](#)

Tax Due Dates

Tax Type	Due Date	Note
Sales Tax	Monthly on the 20th	<ul style="list-style-type: none">• No extension
Business Tax	15 day of fourth month following FYE	<ul style="list-style-type: none">• No extension• Minimum of \$22
F&E Tax	15 day of fourth month following FYE	<ul style="list-style-type: none">• Option for 7 month filing extension• Estimated payments may be applicable• Minimum of \$100

Resources – www.TN.gov/Revenue

The screenshot shows the TN Department of Revenue website. At the top left is the TN logo and the text "Department of Revenue". To the right is a search bar labeled "Search Revenue". Below the header is a navigation menu with items: "How Do I...?", "E-filing Information", "Taxes", "Tax Resources", "Title and Registration", "Motor Carrier", and "Revenue News".

Three red boxes with arrows point to specific resources in the navigation menu:

- Tax Manuals and Important Notices** (points to "Tax Resources")
- Register/File/Pay/etc** (points to "Taxes")
- Help Articles** (points to "Revenue News")

The main content area features several promotional tiles:

- A large tile on the left for a "Next Quarterly Webinar for New Businesses is October 5" with a "Click here for more information." link.
- A tile for "TNTAP E-File & Pay" showing a document with the TNTAP logo.
- A tile for "Questions? Revenue Help" with a hand writing on a chalkboard.
- A tile for "Taxes" showing several Tennessee state flags.
- A tile for "HOT TOPICS News and Publications" with the words "HOT TOPICS" in large, stylized letters.

TN

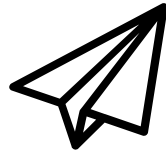
General Tax Info

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