



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 6 December 2016

SUBJECT: The Privilege Tax in Tennessee: Taxing Professionals Fairly—Final Report for Approval

The attached commission report is submitted for your approval. The report responds to Public Chapter 1024, Acts of 2016, which directs the Commission to study and make recommendations relative to the professional privilege tax, considering the application of the tax—or its non-application as the case may be—to various occupations, businesses, and professions, including those not listed in Tennessee Code Annotated, Section 67-4-1702 and to both residents and nonresidents. It also requires the Commission to examine the history and intent of the professional privilege tax, other states' laws imposing a professional privilege tax or similar tax, and alternatives for eliminating or phasing it out. In addition, the Commission is directed to study Senate Bill 1919 by Senator Bowling and its companion, House Bill 1951 by Representative Hazelwood, which would have exempted nonresident licensees from the professional privilege tax, Senate Bill 167 by Bowling and its companion, House Bill 601 by Durham, which would have exempted audiologists and speech pathologists from the tax, and the original language of Senate Bill 556 by Bowling and its companion House Bill 678 by Van Huss, which became Public Chapter 1024.

As introduced, Senate Bill 556 and House Bill 678 would have decreased the privilege tax annually by 20% over the next five years, eliminating it in 2019 and thereafter, and would have prohibited the tax from being applied more than once for a single person having multiple professions affected by the tax. It also would have prohibited any new tax upon the privilege of engaging in certain professions, businesses, and occupations. The phase-out would have decreased state revenue by \$17.6 million in the first year and by \$264 million over five years. This is \$176 million less over the five years than the total decrease from eliminating the tax all at once; extending the phase-out period over a longer time would reduce the cumulative loss in revenue further. Of the \$264 million in reduced revenue, only about a third (\$95 million) would be to the benefit of Tennessee professionals.

Rather than eliminating the entire tax, the two additional bills referred by Public Chapter 1024 would have exempted certain individuals or professions. According to its fiscal note, Senate Bill 1919, House Bill 1951, would have exempted just 705 of the 141,048 out-of-state professionals, specifically those who are licensed or otherwise allowed to practice in another state but who do not maintain a residence or place of business in the state and who do not work in Tennessee in one of the taxed professions. This would cost the state \$282,000 per year. Senate Bill 167, House Bill 601, by exempting the 350 audiologists and 1,954 speech pathologists subject to the tax, would have cost the state an estimated \$930,000 in lost revenue per year.

The report also discusses the concern by some professionals that organize their businesses as limited liability corporations, limited partnerships, or limited liability partnerships and also pay the professional privilege tax argued that they have been double-taxed since the General Assembly passed legislation in 2000 extending franchise and excise taxes to limited liability entities. Although no legislation has been introduced to specifically address this concern, a common approach in such instances with other taxes is to provide a credit for one of the taxes against the other.