



**The Professional Privilege Tax in Tennessee:  
Taxing Professionals Fairly**

December 2016



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## **The Professional Privilege Tax in Tennessee: Taxing Professionals Fairly**

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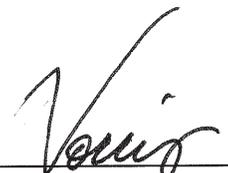
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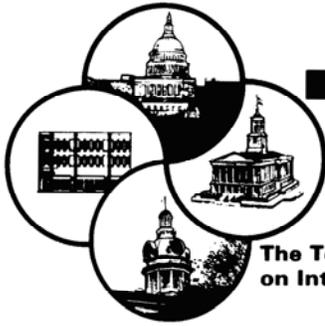
Transmitted herewith is the Commission's report on Public Chapter 1024, Acts of 2016, which directed the Commission to study the history of the professional privilege tax in this state, the intent of the professional privilege tax, other states' laws imposing a professional privilege tax or similar tax, and alternatives for eliminating or phasing out the professional privilege tax. The Act also directed the Commission to study the original language of Senate Bill 556 and House Bill 678, which would have phased out the tax over five years, Senate Bill 1919 by Bowling, House Bill 1951 by Hazlewood, which would have exempted some out-of-state professionals from the tax, and Senate Bill 167 by Bowling, House Bill 601 by Durham, which would have exempted audiologists and speech pathologists from the tax. The report was approved by the Commission on December 6, 2016, and is hereby submitted for your consideration.

Respectfully yours,

  
\_\_\_\_\_  
Senator Mark Norris  
Chairman

  
Cliff Lippard  
Executive Director





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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

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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.

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## Eliminating the Professional Privilege Tax in Tennessee Would Address Some Inequities but Would Primarily Benefit Out-of-State Professionals

Tennessee's professional privilege tax, enacted in 1992 as a part of a \$276 million tax increase, taxes individuals in 22 professions at a rate of \$400 per year. The tax was passed to help provide revenue to restore spending that was cut in the wake of the 1990-91 recession and to begin the phase-in of the Basic Education Program, the state's education funding formula. The administration initially tried to raise this revenue by asking the legislature to pass an income tax, and when that failed the legislature tried to instead broaden the sales tax to include more services. When that also failed, a compromise measure was passed that included an increase to the sales tax rate and enactment of the professional privilege tax. At the time, the professional privilege tax was only \$200 per year per professional, but it was doubled to \$400 per year as part of a \$933 million tax increase in 2002.

It is difficult to objectively determine where to draw the line on which professions should be taxed and which shouldn't; the original decision on which professions to tax was driven largely by the amount of revenue each would raise and on whether the profession had large average salaries. The decision was also driven by the fact that the professions chosen were required to be licensed in Tennessee (making them easily identifiable), the knowledge that a large percentage of the tax would be paid by nonresidents, and most importantly the need for the tax to generate approximately \$20 million in additional revenue. When passed in 1992, the professional privilege tax was applied to 21 professions:

accountants, architects, attorneys, audiologists,  
chiropractors, dentists, engineers, investment advisers,  
landscape architects, lobbyists, optometrists, osteopathic  
physicians, pharmacists, physicians, podiatrists,  
psychologists, real estate principal brokers, speech  
pathologists, stockbroker agents, stock broker-dealers  
(stockbrokers), and veterinarians.

Athlete agents were added in 1996, bringing the total number of professions taxed to 22. Major league professional basketball and hockey players were added to the list of professions taxed in 2009 but at a rate of \$2,500 per game, up to three games per year. But legislation was passed in 2014 exempting these players. Certain individuals within the 22 taxed professions are exempted, including inactive or retired professionals, those in active military service, non-professional lobbyists, and medical practitioners licensed to volunteer at free health clinics. Of the 220,050 professionals who pay the tax, two-thirds (141,048) live outside the state.

The original decision on which professions to tax was driven largely by the amount of revenue each would raise and on whether the profession had large average salaries.

“The proposed tax on lawyers, doctors, and others has been the subject of some debate because the bill excludes 57 licensed professions.”

*Knoxville News Sentinel,*  
“Several Fees, Taxes on the  
House Table,”  
February 24, 1992

Over the years, legislators and representatives of various professions have argued that Tennessee’s professional privilege tax is not equitable, saying that some professions that are not taxed have greater incomes than those that are taxed, that incomes of professionals vary significantly within the taxed professions, and that those in professions earning lower salaries have to pay the same amount as those earning more. Salary data supports these arguments. For example, the lowest 10% of stockbroker agents by salary earn less than \$29,110 per year, and the highest 10% earn more than \$179,810, but all pay the same \$400 tax. And nurse anesthetists, the highest earning profession that is not taxed, average \$153,690 per year in salary in Tennessee, which is greater than that of 20 of the 22 professions that are taxed.

Further, after the General Assembly passed legislation in 2000 extending franchise and excise taxes to limited liability entities, 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 were being double-taxed. **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.**

The concerns with the professional privilege tax prompted legislation in 2015, Senate Bill 556 by Bowling, House Bill 678 by Van Huss, which would have phased out the tax over five years. The bill was amended in 2016 and became Public Chapter 1024, which instead directed the Commission to study

- the history of the professional privilege tax in this state,
- the intent of the professional privilege tax,
- other states’ laws imposing a professional privilege tax or similar tax, and
- alternatives for eliminating or phasing out the professional privilege tax.

The Act also directed the Commission to study the original language of Senate Bill 556 and House Bill 678, as well as Senate Bill 1919 by Bowling, House Bill 1951 by Hazlewood, which would have exempted some out-of-state professionals, and Senate Bill 167 by Bowling, House Bill 601 by Durham, which would have exempted audiologists and speech pathologists from the tax.

Only five other states—Alabama, Connecticut, Delaware, Montana, and North Carolina—have a professional privilege tax. Alabama’s and Delaware’s privilege tax rates vary by profession, while the other three states have a flat rate like Tennessee. Montana’s and North Carolina’s rates are lower, \$25 and \$50, while Connecticut’s is much higher at \$565. The list

of professions taxed varies across the six states, but most of them tax real estate brokers and attorneys. Connecticut’s and Montana’s professional privilege taxes apply only to attorneys.

Texas used to levy a privilege tax but eliminated it in 2015, in part in response to similar concerns to those in Tennessee about double taxation. **If Tennessee were to eliminate its tax all at once as Texas did, it would cost the state an estimated \$88 million a year in revenue. If instead the tax were phased out over five years as it would have been by the original version of Senate Bill 556, House Bill 678, state revenue would decrease 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. The other \$169 million would be from revenue raised by the tax on professionals who live outside Tennessee.

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. A similar bill, Senate Bill 372 by Crutchfield, House Bill 286 by McDonald, was introduced in 2004 but failed. The legislature has tried to exempt other specific groups of professionals over the years, but these efforts have also failed. These include legislation that would have removed those who practice professionally only on a volunteer basis, health care providers serving in a residency or in graduate studies, certain military medical officers, medical practitioners who exclusively provide pro bono services, dentists older than 75, disabled persons, and those who are not actively employed. Also, the legislature considered a bill that would have exempted individuals with incomes of less than \$5,000 per year derived from their profession. Other states exempt, or partially exempt, blind people, disabled veterans, World War II veterans, and people aged 75 years or older.

Since 1995, the General Assembly has considered 49 bills to change which professionals are taxed—39 that proposed to exempt certain professionals, nine that proposed to add certain professionals, and one that proposed to do both.

## Tennessee is One of Just a Few States with a Professional Privilege Tax

Tennessee is one of only six states that levies a professional privilege tax, the others being Alabama, Connecticut, Delaware, Montana, and North Carolina. The privilege tax in each of these states is levied in addition to license fees and is levied only on certain licensed professionals, not all professionals. For example, architects pay \$140 every two years to renew their Tennessee licenses.<sup>1</sup> All of these states except Tennessee also tax personal income. Tennessee’s professional privilege tax is the newest and collects the most revenue.<sup>2</sup> See table 1.

**Table 1. States with Professional Privilege Taxes**

State	Amount of Annual Tax	Annual Revenue	Date Enacted
Alabama	Varies by profession	\$5 million (FY 2013-2014)	1935
Connecticut	\$565 (attorneys only)	\$9 million (FY 2014-2015)	1972
Delaware	Varies by profession	\$7 million (FY 2014-15)	1915
Montana	\$25 (attorneys only)	\$100,000 (FY 2011-2012)	1917
North Carolina	\$50	\$41 million (FY 2014-2015)	1939
Tennessee	\$400	\$102 million (FY 2014-2015)	1992

Sources: *A Legislator’s Guide to Alabama’s Taxes 2015*. Connecticut Department of Revenue Services Fiscal Year 2015-16 Annual Report. Email from Delaware Revenue Division. Supreme Court of Montana Report on Annual License Tax on Attorneys 2012. The Governor’s Recommended Budget North Carolina 2016. Tennessee Department of Revenue.

Tennessee is one of only six states that levies a professional privilege tax.

Tennessee and three of the other five states have a single rate that does not vary by profession. The rate in Tennessee is \$400 per year for each filer.<sup>3</sup> Connecticut’s is higher at \$565,<sup>4</sup> but the other two’s are much less; Montana’s tax is \$25,<sup>5</sup> and North Carolina’s is \$50.<sup>6</sup> The taxes in the other two states, Alabama<sup>7</sup> and Delaware,<sup>8</sup> both vary by profession, and Alabama’s also varies by location and other factors. Delaware’s varies from \$10 per plot for a person operating a trailer park to \$5,000 per year for one member of a headquarters management corporation. In Alabama, the tax can be more if the work is performed in a city rather than in an unincorporated area, and in some cases, can be more in larger cities than in

<sup>1</sup> “Fees Tennessee Board of Architectural and Engineering Examiners,” Tennessee Department of Commerce and Insurance, accessed September 14, 2016. <https://tn.gov/commerce/article/arch-fees>.

<sup>2</sup> Tennessee Code Annotated, Section 67-4-1702.

<sup>3</sup> Tennessee Code Annotated, Section 67-4-1703.

<sup>4</sup> Connecticut Annotated Statutes, Section 51-81b.

<sup>5</sup> Montana Code Annotated, Section 37-61-211.

<sup>6</sup> General Statutes of North Carolina, Section 105-41.

<sup>7</sup> Code of Alabama, Sections 40-12-41 et seq.

<sup>8</sup> 30 Delaware Code Annotated, Section 2301 (a) and (b).

smaller ones. Alabama’s tax amount can also vary based on other factors; for example, the tax paid by a barbershop operator can vary based on the number of chairs in his shop. Alabama’s tax amount ranges from three cents per ton of iron mined for a mining ore operator to \$500 per year for a beverage bottler. According to an official in the Alabama Legislative Fiscal Office, there’s been discussion about replacing their privilege tax rate structure with a flat rate of \$300 or \$400 per filer, but no action has been taken.<sup>9</sup> See appendix A for a complete list of privilege tax amounts per profession for each of the five states, as well as the amount for the tax that was just repealed by Texas in 2015.<sup>10</sup>

Beginning in 1991, the year before Tennessee enacted its professional privilege tax, Texas imposed what amounted to a privilege tax of \$200 per year on licensed professionals. The Texas tax was enacted as a fee increase on professional fees, but 75% of the revenue was earmarked for the general fund, and 25% was earmarked for a specific school fund.<sup>11</sup> The Texas Supreme Court has held that if the primary purpose of a fee is to raise revenue then the fee is a tax.<sup>12</sup>

Texas eliminated their tax completely in 2015 in response to arguments by various groups representing professionals that the tax amounted to double taxation because professional businesses were also subject to the franchise tax.<sup>13</sup> Although the name is the same, the franchise tax in Texas is not the same as Tennessee’s franchise tax. The Texas franchise tax taxes total revenue less the greater of (1) the cost of goods sold, (2) total compensation, (3) 30% of total revenues, or (4) \$1 million. The tax rate on wholesalers/retailers is .5% and is 1.0% on others. Tennessee’s franchise tax is applied to the greater of net worth or the book value of real or tangible personal property owned or used in Tennessee; net business earnings and income are taxed via the excise tax in Tennessee.<sup>14</sup> Also, Texas now requires combined reporting by businesses with subsidiaries and affiliates while Tennessee does not.<sup>15</sup>

Tennessee’s franchise tax is applied to the greater of net worth or the book value of real or tangible personal property owned or used in Tennessee; net business earnings and income are taxed via the excise tax in Tennessee.

<sup>9</sup> Kirk Fulford, House Fiscal Officer for the Alabama Legislative Fiscal Office, telephone interview, June 29, 2016.

<sup>10</sup> 2015 Texas House Bill 7.

<sup>11</sup> According to the 2015 Texas Comptroller *Sources of Revenue Report*, 25% of the tax on real estate professionals was earmarked for the Texas A&M University Real Estate Research Center Local Fund.

<sup>12</sup> In *Texas Boll Weevil Eradication Foundation v Lewellen*, 952 S.W. 2d 454 (1997), the Texas Supreme Court held that if “the primary purpose of the fees provided therein is the raising of revenue, then such fees are in fact occupation taxes, and this regardless of the name by which they are designated. On the other hand, if its primary purpose appears to be that of regulation, then the fees levied are license fees and not taxes.”

<sup>13</sup> Batheja 2015.

<sup>14</sup> Tennessee Code Annotated, Section 67-4-2106.

<sup>15</sup> Texas Administrative Code Title 34, Part 1, Chapter 3, Subchapter V, Rule 3.590(c). Tennessee Code Annotated, Section 67-4-2015.

Lobbyists, representing professional groups in Texas said that most professionals weren't subject to the franchise tax when the privilege tax was passed in 1991, but that they became subject to it when the franchise tax was expanded in 2006.<sup>16</sup> However, franchise tax returns show that 90% of filers in Texas have no tax liability.<sup>17</sup> Businesses with less than \$1 million in receipts or that owe less than \$1,000 in taxes are exempt.<sup>18</sup> Similar concerns have been raised in Tennessee.

If Tennessee, like Texas, were to eliminate its tax all at once, annual state revenue would decrease by an estimated \$88 million.<sup>19</sup> Rather than eliminating the tax in one fell swoop, the original version of Senate Bill 556, House Bill 678, would have phased it out over five years. See appendix B. With 220,050 professionals subject to the tax, this would decrease state revenue by \$17.6 million in the first year of the phase-out, and over five years, would decrease state revenue by \$264.1 million, which is \$175.9 million less than eliminating the tax all at once. Of the \$264 million in reduced revenue, only about a third (\$95 million) would be to the benefit of Tennessee professionals, and the other \$169 million would be from revenue raised by the tax on professionals who live outside Tennessee. Phasing it out over ten years would decrease state revenue by \$484.1 million over ten years, which is \$220.1 million less than with a five-year phase out and \$396.1 million less than eliminating the tax all at once. See table 2. Of the \$484.1 million in reduced revenue, \$310.3 million would be from lost tax revenue on professionals who live outside Tennessee and only \$173.8 million would be from reduced taxes on Tennessee professionals.

In addition to the double-taxation argument, legislators and representatives of various groups of professionals have over the years expressed concerns that Tennessee's professional privilege tax is not equitable. They say this is because

- some professions that are not taxed have higher incomes than those that are taxed;
- incomes of professionals vary significantly within a profession, and those earning less pay the same tax as those earning more; and
- the tax burden falls mostly on out-of-state professionals.

<sup>16</sup> Letter from 18 Texas professional groups to Senator Jane Nelson, May 7, 2015.

<sup>17</sup> Ed Warren, Texas Comptroller's Office, telephone interview, July 19, 2016.

<sup>18</sup> Texas Tax Code 171.002.

<sup>19</sup> The fiscal note of Senate Bill 556, House Bill 678, estimated state revenue decreasing by \$77.3 million in the fifth year of the phase out; however, that number was based on a 2015 estimate from the Department of Revenue of 200,000 professionals paying the tax. In 2016, the Department of Revenue estimated that the number of professionals paying the tax was 220,050, which results in an \$88 million decrease. Tax collections of \$102 million in fiscal year 2015 were greater than normal because of increased enforcement called for in Chapter 763, Public Acts of 2014. This legislation required taxpayers to be notified in writing that failure to pay professional privilege tax could result in license or registration suspensions.

If Tennessee were to eliminate its tax all at once, annual state revenue would decrease by an estimated \$88 million.

**Table 2. Phasing Out or Eliminating the Professional Privilege Tax  
Decrease in State Revenue [in millions]**

Year	5-Year Phase-Out		10-Year Phase-Out		Eliminate All at Once	
	Decrease in State Tax Revenue	Cumulative Decrease in State Tax Revenue	Decrease in State Tax Revenue	Cumulative Decrease in State Tax Revenue	Decrease in State Tax Revenue	Cumulative Decrease in State Tax Revenue
Year 1	\$17.6	\$17.6	\$8.8	\$8.8	\$88.0	\$88.0
Year 2	\$35.2	\$52.8	\$17.6	\$26.4	\$88.0	\$176.0
Year 3	\$52.8	\$105.6	\$26.4	\$52.8	\$88.0	\$264.1
Year 4	\$70.4	\$176.0	\$35.2	\$88.0	\$88.0	\$352.1
Year 5	\$88.0	\$264.1	\$44.0	\$132.0	\$88.0	\$440.1
Year 6	\$88.0	\$352.1	\$52.8	\$184.8	\$88.0	\$528.1
Year 7	\$88.0	\$440.1	\$61.6	\$246.5	\$88.0	\$616.1
Year 8	\$88.0	\$528.1	\$70.4	\$316.9	\$88.0	\$704.2
Year 9	\$88.0	\$616.1	\$79.2	\$396.1	\$88.0	\$792.2
Year 10	\$88.0	\$704.2	\$88.0	\$484.1	\$88.0	\$880.2

Source: TACIR Staff calculations based on 220,050 professionals and a \$400 per year tax.

Because some professions are taxed but others are not, another concern sometimes raised is that the tax violates the equal protection clauses of the state and federal constitutions. The clauses require the state to have laws that treat an individual in the same manner as other people in similar circumstances. However, in two opinions, Tennessee’s Attorney General has written that the tax is not a violation of the equal protection clauses of the state and federal constitutions.<sup>20</sup> Moreover, the US Supreme Court has held that states “may impose different specific taxes upon different trades and professions” and if a tax “is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.”<sup>21</sup>

### The Professional Privilege Tax—A Response to State Revenue Needs

The professional privilege tax was enacted at a time when the state needed several hundred million dollars in revenue to fund the fiscal year 1992-93 budget. Spending was cut from the 1991-92 budget in the wake of the 1990-91 recession,<sup>22</sup> and tax collections in fiscal year 1990-91 were \$233 million less than was estimated.<sup>23</sup> Not only did legislators want funds to allow them to return spending to 1990-91 levels, but they also anticipated

“Three years of state budget cuts induced by tax revenue shortfalls and the threat of a possible judicial takeover of Tennessee’s public school systems because of funding inequities, combined to put tax reform at the top of the state government’s agenda.”

John J. Harrington, *Tennessee Law Review*, “A Review of the Struggle for Tennessee Tax Reform,” 1993

<sup>20</sup> Office of the Attorney General of the State of Tennessee, 1992 Opinion No. 92-48 and 2004 Opinion No. 04-154.

<sup>21</sup> *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 79 S. Ct. 437 (1959).

<sup>22</sup> Lyons 2001.

<sup>23</sup> January 1990 Tennessee Department of Finance and Administration budget document estimate of \$4,423,500,000 versus actual collections of \$4,190,136,000.

One alternative to the personal income tax that was discussed at the time was broadening the sales tax base to include more services, but legislators were reluctant to extend the sales tax to do that following problems experienced in other states.

they would need funds to meet the requirements of a pending lawsuit that had been filed in 1988. The state was being sued over inequity in education funding by a consortium of small, mostly rural school systems. The state would go on to lose the case in 1993. The consortium argued that the old funding formula violated the Tennessee Constitution and that the state should be required to establish a new funding system that met constitutional standards.<sup>24</sup> The funding formula for the state's K-12 system that was developed, the Basic Education Program (BEP), would have cost more than \$500 million to fully fund in fiscal year 1992-93.<sup>25</sup> In fact, the BEP was phased-in over six years.

To address these funding challenges, Governor McWherter called a special session of the General Assembly in January 1992 to consider education and tax reform. Although the education package received broad support, the tax reform legislation, which included a personal income tax, did not.<sup>26</sup> One alternative to the personal income tax that was discussed at the time was broadening the sales tax base to include more services. As services' share of the economy continued to increase, it was feared that the sales tax, which did not apply to many services, would not keep up. But legislators were reluctant to extend the sales tax to more services following problems experienced in other states. Florida, for instance, repealed its sales tax on services soon after it was enacted when national advertisers boycotted the state and newspapers editorialized against the tax.<sup>27</sup> In Tennessee, legislation introduced in 1991, Senate Bill 777 and House Bill 868, would have broadened the sales tax base to include services provided by professionals. The legislation listed the services to be taxed:

The furnishing for consideration of *health, legal, social, computer, engineering, architectural, surveying, accounting, research, management, public relations, motion picture production, general contractor, collection, credit reporting, tax return preparation, funeral, hair styling, secretarial, pest control, personnel supply, auctioneering, detective, security system, appraisal, dance instruction, sports instruction services, real estate broker services, insurance services, stock broker and commission dealer services, and other similar professional services.*<sup>28</sup> [Professions now subject to the professional privilege tax are in bold.]

<sup>24</sup> Tennessee Advisory Commission on Intergovernmental Relations 2016.

<sup>25</sup> Tennessee State Board of Education 1991.

<sup>26</sup> Stair 2011.

<sup>27</sup> Nordheimer 1987.

<sup>28</sup> Original version of Senate Bill 777 and House Bill 868.

After passage of both the income tax and the sales tax on services failed, a compromise was reached. Senate Bill 777 and House Bill 868 were amended and passed, becoming Public Chapter 529, Acts of 1992. The compromise included an increase in the sales tax, from 5.5% to 6% (expected to raise \$230 million), a professional privilege tax (expected to raise \$21 million), and other tax changes (expected to raise \$25 million). See table 3. The professional privilege tax was a \$200 tax that individuals in 21 professions would have to pay annually.

**Table 3. Tax Increases of Public Chapter 529, Acts of 1992  
Estimated Revenue for Fiscal Year 1992-93**

Tax	Estimated Revenue	Percent of Total
Sales Tax (5.5% to 6%)	\$ 230,000,000	83.3%
<b>Professional Privilege Tax</b>	<b>21,470,200</b>	<b>7.8%</b>
Compensation	20,500,000	7.4%
Litigation Tax	2,378,000	0.9%
Secretary of State Filing Taxes	1,771,800	0.6%
<b>TOTAL</b>	<b>\$ 276,120,000</b>	<b>100%</b>

Source: Fiscal note for Senate Bill 777, House Bill 868.

Tax proponents argued that a professional privilege tax would not harm the economy and would be easy to administer.<sup>29</sup> Lower earning non-professionals would not have to pay the tax but would, like other consumers, pay more in taxes. Although many professionals opposed the tax, they preferred it to a sales tax on their services because the latter would likely cost them even more.<sup>30</sup> During discussions about the privilege tax, several legislators argued that professionals make higher than average incomes, so they should bear some of the burden of raising the required revenue. The legislators also knew that most of the tax burden would fall on out-of-state professionals.<sup>31</sup>

### The Choice of Which Professions to Tax was Partly Pragmatic, Partly Philosophical

It is difficult to objectively determine where to draw the line on which professions should be taxed and which shouldn't. In 1992, when the professional privilege tax was enacted in Tennessee, the choice of licensed professionals to be taxed was largely dollar driven—the state needed \$20 million to help fund the BEP. Using data supplied by the Department of Commerce and Insurance and the Department of Health, professions

After passage of both the income tax and the sales tax on services failed, a compromise was reached that included an increase in the sales tax, a professional privilege tax, and other tax changes.

<sup>29</sup> John Lyell, lobbyist, telephone interview, June 1, 2016.

<sup>30</sup> Billy Stair, former senior policy advisor for Governor McWherter, telephone interview, July 14, 2016.

<sup>31</sup> Joe Huddleston, former Commissioner of Revenue, telephone interview, June 10, 2016.

“The original intent was to deal with free standing professions, basically a person who could make a living with that license or that certificate, and not someone who generally works for someone else.”

Senator Riley Darnell,  
Tennessee General Assembly,  
February 27, 1992

were added until the total number of professionals exceeded 100,000, the number needed to collect \$20 million from a \$200 tax.<sup>32</sup> But, according to comments by the senate and house sponsors of the professional privilege tax legislation, the professionals they wanted to tax were the “big boys”<sup>33</sup> and higher earning “free standing professionals,”<sup>34</sup> not “workers.”<sup>35</sup> For instance, real estate principal brokers were included, but real estate affiliate brokers were excluded.<sup>36</sup> Physicians were included but not physician assistants. Dentists were included but not dental hygienists. The 21 professions they decided to tax included

- accountants,
- architects,
- attorneys,
- audiologists,
- chiropractors,
- dentists,
- engineers,
- investment advisers,
- landscape architects,
- lobbyists,
- optometrists,
- osteopathic physicians,
- pharmacists,
- physicians,
- podiatrists,
- psychologists,
- real estate principal brokers,
- speech pathologists,
- stockbroker agents,<sup>37</sup>
- stockbroker-dealers (stockbrokers), and
- veterinarians.

Although it had been estimated that privilege tax collections would equal \$21.5 million in 1992, actual collections were only \$13.0 million. The shortfall was in part because real estate broker affiliates were exempted after the \$21.5 million estimate was made. It also took a few years to

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<sup>32</sup> Ibid.

<sup>33</sup> Representative Shelby Rhinehart, House floor discussion, February 26, 1992.

<sup>34</sup> Senator Riley Darnell, Senate floor discussion, February 27, 1992.

<sup>35</sup> Representative Shelby Rhinehart, House floor discussion, February 26, 1992.

<sup>36</sup> Tennessee Code Annotated, Section 67-4-1708.

<sup>37</sup> For additional information on the difference between stockbroker agents and stockbroker-dealers, see <https://www.tn.gov/commerce/article/securities-choosing-broker-dealers-agents>.

properly administer the tax, which was enacted less than four months before it was first collected.

Athlete agents were added to the list of taxed professions in 1996,<sup>38</sup> bringing the total number of professions to its current 22. National Hockey League (NHL) and National Basketball Association (NBA) players were added in 2009,<sup>39</sup> but legislation was passed in 2014 exempting them from the tax.<sup>40</sup>

While professionals like physicians and dentists are more obvious candidates for the tax, others are less so. Some professions that are not taxed earn higher incomes, on average, than some that are taxed. See table 4. For instance, nurse anesthetists are the highest earning licensed or registered profession that is not taxed, averaging \$153,690 in Tennessee, which is greater than that of 20 of the 22 professions that are taxed. Real estate brokers, accountants, and architects, who average \$49,530,<sup>41</sup> \$66,270, \$66,690, respectively, earn the least of the professions that are taxed.

Some professions that are not taxed earn higher incomes, on average, than some that are taxed.

**Table 4. Average Annual Income of Professions in Tennessee, Including Those Subject to and Those Not Subject to the Professional Privilege Tax Highest to Lowest Average Annual Income in 2015**

Profession	Taxed?	Average Annual Income
Physicians	Yes	\$218,190*
Dentists	Yes	\$180,998*
Nurse Anesthetists	No	\$153,690
Podiatrists	Yes	\$139,970
Attorneys	Yes	\$125,530
Pharmacists	Yes	\$118,310
Optometrists	Yes	\$111,510
Investment Advisors	Yes	\$108,480
Nurse Practitioners	No	\$93,520
Physician Assistants	No	\$86,920
Physical Therapists	No	\$85,790
Engineers	Yes	\$85,549*
Veterinarians	Yes	\$84,500
Landscape Architects	Yes	\$80,460
Occupational Therapists	No	\$80,040
Chiropractors	Yes	\$78,560
School Administrators	No	\$75,650

<sup>38</sup> Public Chapter 999, Acts of 1996.

<sup>39</sup> Public Chapter 530, Acts of 2009.

<sup>40</sup> Public Chapter 760, Acts of 2014. NHL players were exempted from the tax in 2014 and the exemption for the NBA players went into effect in 2016.

<sup>41</sup> This is the average for all real estate brokers in Tennessee; however, the professional privilege tax applies to principal brokers but not affiliates.

The Professional Privilege Tax in Tennessee: Taxing Professionals Fairly

Profession	Taxed?	Average Annual Income
Psychologists	Yes	\$75,479*
Genetic Counselors (US)	No	\$74,570
Nurse Midwives	No	\$74,390
Speech Pathologists	Yes	\$69,710
Audiologists	Yes	\$67,570
Architects	Yes	\$66,690
Accountants	Yes	\$66,270
Dental Hygienists	No	\$66,160
Court Reporters	No	\$65,650
Soil Scientists	No	\$63,400
Athlete Agents	Yes	\$62,120
Insurance Agents	No	\$58,290
Registered Nurses	No	\$57,560
Dietitians/Nutritionists	No	\$53,950
Real Estate Appraisers	No	\$51,830
Private Investigators	No	\$50,430
Respiratory Therapists	No	\$49,700
Real Estate Brokers	Yes**	\$49,530
Funeral Directors	No	\$48,910
Professional Counselors (US)	No	\$48,790
Tax Return Preparers	No	\$48,050
Plumbers	No	\$47,930
Home Inspectors	No	\$46,750
Land Surveyors	No	\$44,400
Social Workers	No	\$43,994*
Athletic Trainers	No	\$43,460
Interior Designers	No	\$41,560
Hearing Instrument Specialists	No	\$40,180
Embalmers	No	\$39,880
Marital and Family Therapists	No	\$36,360
Massage Therapists	No	\$35,650
Locksmiths	No	\$33,780
Roofers	No	\$33,720
Dispensing Opticians	No	\$33,230
Pest Control Operators	No	\$32,560
Cosmetologists	No	\$28,420
Transitory Vendors	No	\$28,030
Barbers	No	\$26,130
Private Guards	No	\$26,020
Acupuncturists	No	unknown
Alarm Contractors	No	unknown

Profession	Taxed?	Average Annual Income
Asbestos Contractors	No	unknown
Auctioneers	No	unknown
Body Piercers	No	unknown
Clinical Pastoral Therapists	No	unknown
Clinical Perfusionists	No	unknown
Collections Servicers	No	unknown
Contractors (Construction)	No	unknown
Electrologists	No	unknown
Employment Service Operators	No	unknown
Fire Extinguisher Specialists	No	unknown
Geologists	No	unknown
Ginseng Dealers	No	unknown
Home Improvement Specialists	No	unknown
Lobbyists	Yes	unknown
Nursing Home Administrators	No	unknown
Orthopedic Physician Assistants	No	unknown
Osteopathic Physicians	Yes	unknown
Pesticide Solicitors	No	unknown
Polygraph Examiners	No	unknown
Polysomnographers	No	unknown
Reflexologists	No	unknown
Rental Location Agents	No	unknown
Scrap Dealers	No	unknown
Sprinkler Installers	No	unknown
Stockbroker Agents	Yes	unknown
Stockbrokers	Yes	unknown
Tattoo Artists	No	unknown
Time-Share Acquisition Agents	No	unknown
Time-Share Salespeople	No	unknown

\*TACIR staff calculation based on weighted (by number of professionals) average of available data.

\*\*Principal real estate brokers are taxed but not affiliates.

Sources: Selected professions are from Tennessee Code Annotated. Occupational Employment Statistics, US Bureau of Labor Statistics, 2015.

Note: Only US data was available for professional counselors and genetic counselors. No data was available for those professions with unknown listed for their average annual incomes. Estimates do not include self-employed workers.

“Many health care professions are not required to pay this tax at all. For example, speech pathologists work very closely with nurses, physical therapists, and occupational therapists on a daily bases. Yet those professions—and many others—are not included in the list of professions required to pay this tax.”

Tennessee Association of Audiologists and Speech-Language Pathologists, 2003

Professions with low incomes like cosmetologists and barbers, which average \$28,420 and \$26,130, respectively, aren’t taxed. Speech pathologist and audiologists, who average \$69,710 and \$67,570 in annual income, respectively, are taxed, but physical and occupational therapists, who average \$85,790 and \$80,040, are not taxed. In fact, legislation was introduced to exempt audiologists and speech pathologists in 2003 (Senate Bill 372 by Crutchfield and House Bill 286 by McDonald) and again in 2015

(Senate Bill 167 by Bowling and House Bill 601 by Durham). The fiscal note for the 2003 legislation estimated that state revenues would have decreased by \$530,000 per year if it had passed. By 2015, the fiscal note for legislation doing the same thing estimated a decrease of \$930,000 per year if it had passed, the difference being the increased number of audiologists and speech pathologists.

The list of professions taxed varies across the other five states that levy a professional privilege tax, but three of them, Alabama, Delaware, and North Carolina, also tax real estate brokers, and four, Alabama, Connecticut, Montana, and North Carolina, also tax attorneys. In fact, two, Connecticut and Montana, tax only attorneys. Alabama and North Carolina are the only two besides Tennessee that tax accountants, architects, chiropractors, dentists, engineers, optometrists, physicians, podiatrists, and veterinarians. Alabama and Delaware are the only other two that tax stockbrokers. And Tennessee is the only state that taxes athlete agents, audiologists, investment advisers, lobbyists, pharmacists, psychologists, and speech pathologists. See appendix A for a complete list of the professions taxed by the states.

### Most of the Professional Privilege Tax's Burden Falls on Non-Tennesseans

Most of the tax burden in Tennessee falls on professionals that are not state residents. Of the 220,050 professionals who pay the tax, two-thirds (141,048) live outside the state, and four-fifths (82%) of those are stockbroker agents.<sup>42</sup> Besides stockbroker agents, most stockbrokers (95%), athlete agents (84%), architects (56%), and engineers (51%) that pay Tennessee's professional privilege tax live outside the state. See table 5. Senate Bill 1919 by Bowling, House Bill 1951 by Hazlewood, would have exempted 705 out-of-state professionals, specifically those who are licensed or otherwise allowed to practice in another state, who do not maintain a residence or place of business in the state, and who do

**Table 5. Number of Professionals Subject to the Professional Privilege Tax Residing in or out of Tennessee Fiscal Year 2014-15**

Profession	In-State		Out-of-State		Total
	Number	Percent	Number	Percent	
Accountants	8,501	84%	1,629	16%	10,130
Architects	1,333	44%	1,708	56%	3,041
Athlete Agents	16	16%	86	84%	102
Attorneys	17,818	82%	3,850	18%	21,668
Audiologists	331	85%	60	15%	391
Chiropractors	1,005	91%	95	9%	1,100
Dentists	3,136	87%	462	13%	3,598
Engineers	5,595	49%	5,914	51%	11,509
Investment Advisors	294	54%	251	46%	545
Landscape Architects	162	53%	141	47%	303
Lobbyists	332	78%	92	22%	424
Optometrists	972	83%	206	17%	1,178
Osteopathic Physicians	738	65%	401	35%	1,139
Pharmacists	7,595	71%	3,101	29%	10,696
Physician	15,678	76%	5,042	24%	20,720
Podiatrists	212	86%	35	14%	247
Psychologists	1,204	89%	149	11%	1,353
Real Estate Broker-Principals	2,817	84%	547	16%	3,364
Speech Pathologists	2,073	90%	229	10%	2,302
Stockbroker Agents	7,376	6%	115,133	94%	122,509
Stockbrokers	73	5%	1,538	95%	1,611
Veterinarians	1,741	82%	379	18%	2,120
<b>Total</b>	<b>79,002</b>	<b>36%</b>	<b>141,048</b>	<b>64%</b>	<b>220,050</b>

Source: Tennessee Department of Revenue.

<sup>42</sup> Stockbroker agents are typically registered in all 50 states. It would be administratively difficult for them to avoid the tax by not registering in Tennessee; they would have to check the residence of all of their clients to ensure that none of them reside in Tennessee.

not work in Tennessee in one of the taxed professions. The bill’s fiscal note estimated a decrease in state revenue in excess of \$282,000. It would be difficult to administer this change because it would be hard to determine or prove that a person was not working in the state. Exempting all out-of-state professionals would be administratively easier, but there would be a much larger loss of state revenue (\$56 million).

### The Tax Rate was Increased to \$400 in 2002

The state was again in an economic recession in early 2001 when an increase in the privilege tax was enacted to help raise revenue.<sup>43</sup> Tax collections for fiscal year 2001-02 were \$477 million less than what had been estimated in January 2001.<sup>44</sup> Non-recurring tobacco settlement money had been used to balance the previous year’s budget, and a more permanent solution was needed to raise revenue going forward. Once again an income tax was proposed, but amid protests, it failed.<sup>45</sup> Following a partial government shutdown, the professional privilege tax was doubled from \$200 to \$400 in 2002 to raise \$24.9 million of a \$933.2 million tax increase. The total increase also included an increase in the sales tax rate from 6% to 7% and increases in several other taxes.<sup>46</sup> See table 6.

The state was again in an economic recession in early 2001 when an increase in the privilege tax was enacted to help raise revenue.

**Table 6. Estimated Revenue from 2002 Tax Increase  
Fiscal Year 2002-03**

Tax	Estimated Revenue	Percent of Total
Sales Tax (6% to 7%, except food)	\$ 600,395,833	64.3%
Excise Tax (6% to 6.5%)	77,400,000	8.3%
Business Tax (State Retains Increase)	73,333,000	7.9%
Excise Tax (No Accelerated Depreciation)	50,000,000	5.4%
Single Article Sales Tax	38,613,167	4.1%
Cigarettes (13 to 20 cents/pack)	32,818,000	3.5%
<b>Professional Privilege Tax</b>	<b>24,946,200</b>	<b>2.7%</b>
Vending Machine Sales Tax	16,675,000	1.8%
Commercial Vehicle Registration	8,101,000	0.9%
Coin-operated Amusement	3,375,000	0.4%
Including Sales Tax in Retail Price	2,643,000	0.3%
Spirits (10%; \$4.00 to \$4.40/gallon)	2,172,542	0.2%
Beer tax (10%; \$3.90 to \$4.29 per bbl.)	1,487,333	0.2%
Wholesale tobacco (10%; 6% to 6.6%)	678,500	0.1%
Wine (10%; \$1.10 to \$1.21/gallon)	596,083	0.1%
<b>TOTAL</b>	<b>\$ 933,234,658</b>	<b>100%</b>

Source: Tennessee Fiscal Review Committee, Fiscal Note on Senate Bill 3110, House Bill 3046 (Public Chapter 856).

<sup>43</sup> Public Chapter 856, Acts of 2002.

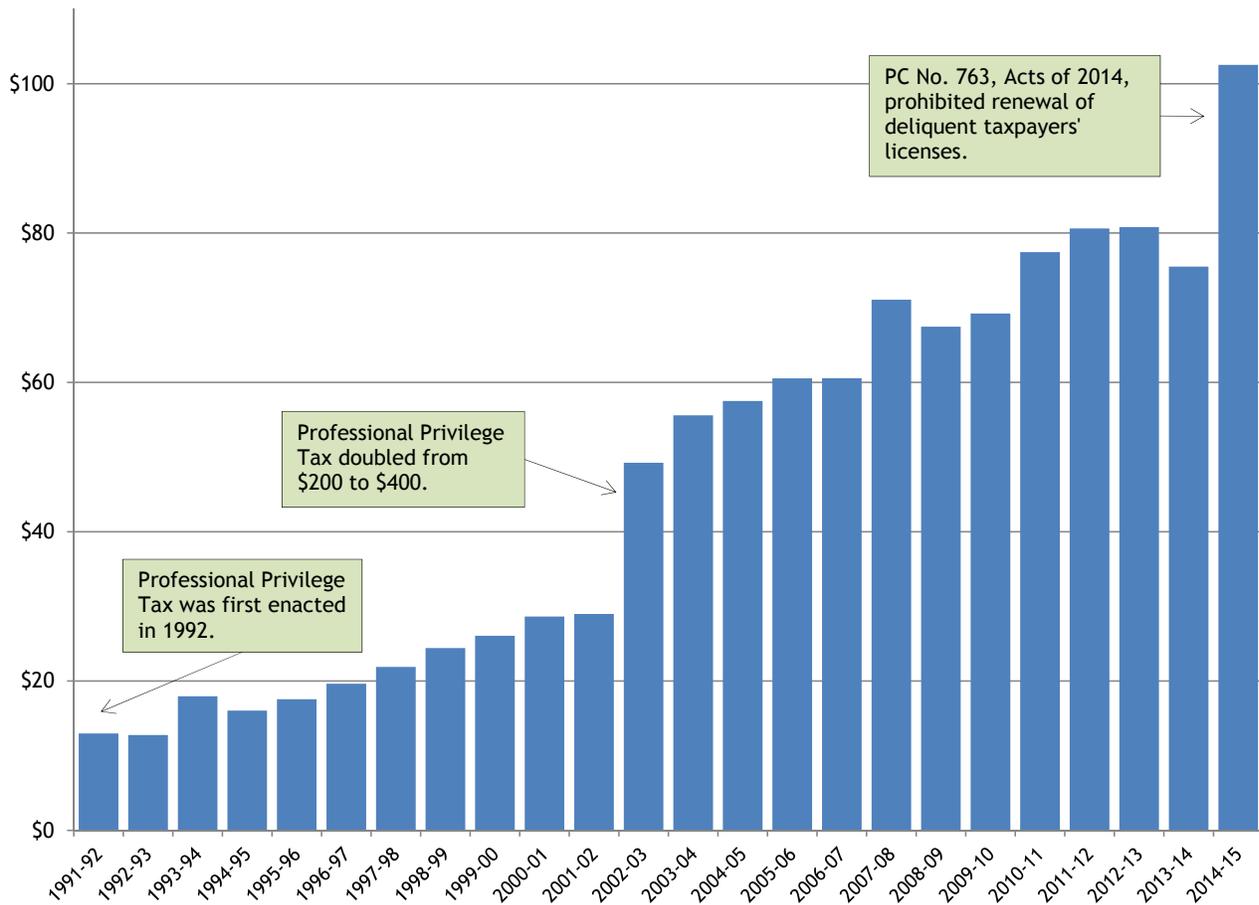
<sup>44</sup> January 2001 Tennessee Department of Finance and Administration budget document estimate of \$7,946,000,000 versus actual accrual collections of \$7,468,977,400.

<sup>45</sup> Senate Bill 2646 by Cooper, House Bill 2957 by Head (2002).

<sup>46</sup> Public Chapter 856, Acts of 2002.

Collections increased by 70%, from \$29.0 million to \$49.2 million, when the tax rate was doubled. In an effort to improve collections, a bill was passed requiring the Commissioner of Revenue to send a list of delinquent taxpayers to licensing boards who were to suspend any license or registration renewal of any professionals who fail to pay their professional privilege taxes.<sup>47</sup> Collections subsequently increased 36%, from \$75.5 million in fiscal year 2013-14 to \$102.5 million in fiscal year 2014-15. See figure 1.

**Figure 1. Professional Privilege Tax Collections in Tennessee**  
*Fiscal Years 1991-92 to 2014-15 (in millions)*



Source: Tennessee Department of Revenue.

<sup>47</sup> Public Chapter 763, Acts of 2014.

Currently, the tax raises \$88 million per year, but it's levied on only 220,050 of the more than 700,000 licensed or registered professionals in the state.<sup>48</sup> If it were applied to all the professions registered and licensed by the Department of Commerce and Insurance and the Department of Health, the tax would raise \$280 million per year. By expanding the tax to all professionals registered and licensed by these departments, the tax could be lowered to \$126 and raise the same \$88 million. But this would subject lower-earning professions like barbers and cosmetologists to the tax.

Exempting professions that are currently taxed would result in the loss of revenue each year, with the amount depending on which professions were exempted. For example, because there are many more stockbroker agents (122,509) than there are athlete agents (102), exempting stockbroker agents would decrease state tax revenue by \$49 million, more than half the revenue, but exempting athlete agents by only \$40,800. Table 7 shows how much state tax revenue would decrease per year, if other professions were exempted from the tax.

### Inequities within Professions Exist

Not only do average incomes vary across professions, incomes of individual professionals vary within professions. For instance, psychologists average \$83,170, but 10% make less than \$23,980. Architects average \$66,690, but 10% make less than \$32,880. See table 8.

**Table 7. Estimated Annual Revenue Lost if Professions Currently Taxed were Exempted**  
*Fiscal Year 2015-16*

Profession	Estimated Tax Revenue Decrease
Accountants	\$ 4,052,000
Architects	1,216,400
Athlete Agents	40,800
Attorneys	8,667,200
Audiologists	156,400
Chiropractors	440,000
Dentists	1,439,200
Engineers	4,603,600
Investment Advisors	218,000
Landscape Architects	121,200
Lobbyists	169,600
Optometrists	471,200
Osteopathic Physicians	455,600
Pharmacists	4,278,400
Physicians	8,288,000
Podiatrists	98,800
Psychologists	541,200
Real Estate Broker- Principals	1,345,600
Speech Pathologists	920,800
Stockbroker Agents	49,003,600
Stockbrokers	644,400
Veterinarians	848,000
<b>Total</b>	<b>\$ 88,020,000</b>

Source: TACIR staff calculation based on Tennessee Department of Revenue counts of professionals.

<sup>48</sup> Multiplying \$400 by 220,050 professionals subject to the tax equals \$88 million. The estimated 700,763 licensed or registered professionals in Tennessee is the sum of 410,090 (Email from Kevin Walters, Tennessee Department of Commerce and Insurance on July 28, 2016), 268,479 (Department of Health 2015), 21,668 attorneys, 424 lobbyists, and 102 athlete agents.

**Table 8. Incomes of Professionals at Various Percentiles, 2015.**

Profession	Annual Income of Professionals at Various Percentiles				
	10%	25%	50%	75%	90%
Accountants	\$37,550	\$47,040	\$58,760	\$75,310	\$99,510
Architects	\$32,880	\$48,100	\$63,410	\$81,370	\$103,750
Athlete Agents	\$32,240	\$36,500	\$55,340	\$79,980	\$107,320
Attorneys	\$50,520	\$70,360	\$105,890	\$153,180	unknown
Audiologists	\$52,280	\$57,790	\$66,290	\$75,010	\$81,710
Chiropractors	\$37,010	\$43,230	\$54,370	\$105,720	\$140,700
Dentists	\$94,400	\$112,560	\$150,070	unknown	unknown
Engineers (US)	\$55,110	\$69,680	\$90,060	\$115,620	\$145,320
Investment Advisors	\$36,480	\$51,490	\$75,760	\$152,900	unknown
Landscape Architects	\$36,240	\$64,150	\$80,620	\$104,760	\$121,410
Lobbyists	unknown	unknown	unknown	unknown	unknown
Optometrists	\$54,220	\$82,280	\$106,850	\$140,840	\$162,770
Osteopathic Physicians	unknown	unknown	unknown	unknown	unknown
Pharmacists	\$84,410	\$108,360	\$120,920	\$135,210	\$152,460
Physicians (US)	\$60,940	\$132,070	unknown	unknown	unknown
Podiatrists	\$64,830	\$90,820	\$120,670	\$153,530	unknown
Psychologists	\$23,980	\$70,190	\$94,580	\$102,960	\$108,510
Real Estate Brokers	\$19,400	\$32,090	\$40,910	\$65,780	\$77,880
Speech Pathologists	\$41,490	\$51,570	\$66,650	\$87,940	\$103,740
Stockbroker Agents	\$29,110	\$36,710	\$58,110	\$102,750	\$179,810
Stockbrokers	unknown	unknown	unknown	unknown	unknown
Veterinarians	\$44,600	\$64,670	\$78,580	\$96,130	\$119,350

Source: Occupational Employment Statistics, US Bureau of Labor Statistics, 2015.

Note: Only US data was available for engineers and physicians.

Just as it is difficult to objectively determine which professions should be taxed, it's also difficult to decide which if any individuals should be exempted.

Just as it is difficult to objectively determine which professions should be taxed, it's also difficult to decide which if any individuals should be exempted. Tennessee exempts inactive or retired professionals,<sup>49</sup> those in active military service,<sup>50</sup> non-professional lobbyists,<sup>51</sup> and medical practitioners licensed to volunteer at free health clinics.<sup>52</sup> In addition to already exempted individuals, one bill in 1996 would have addressed the concern that incomes of professionals can vary significantly by exempting individuals with incomes of less than \$5,000 per year derived from their

<sup>49</sup> Tennessee Code Annotated, Section 67-4-1708(a).

<sup>50</sup> Tennessee Code Annotated, Section 67-4-1708(c).

<sup>51</sup> Tennessee Code Annotated, Section 3-6-307.

<sup>52</sup> Tennessee Code Annotated, Section 67-4-1710.

profession.<sup>53</sup> The General Assembly has also considered bills that did not pass that would have exempted

- persons who practice professionally only on a volunteer basis for 501(c)(3) organizations,<sup>54</sup>
- health care providers serving in a residency or in graduate school,<sup>55</sup>
- persons licensed in this state to practice a healing art or any branch thereof who are officers in the commissioned medical corps of the armed forces who are exempt from registration with the division of health related boards,<sup>56</sup>
- a medical practitioner who exclusively provides pro bono services for those persons receiving services from tax-exempt charitable organizations,<sup>57</sup>
- dentists over age 75,<sup>58</sup> and
- the disabled and not actively employed.<sup>59</sup>

Although state employees were exempted from the tax in 2002,<sup>60</sup> they were subjected to the tax once again in 2003, and state agencies were authorized to pay the tax for their employees.<sup>61</sup>

Other states also exempt certain individuals from the professional privilege tax. In Alabama, blind people are exempt up to \$75,<sup>62</sup> disabled veterans and World War II veterans are exempt from license taxes in excess of \$25 and \$35, respectively.<sup>63</sup> North Carolina exempts people aged 75 years or older, blind people, and people practicing the art of healing if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.<sup>64</sup>

The General Assembly has also considered bills that did not pass, which would have exempted numerous groups.

<sup>53</sup> Senate Bill 1654 by Gilbert, House Bill 1559 by Armstrong (1996).

<sup>54</sup> Senate Bill 26 by McNally (2003).

<sup>55</sup> Senate Bill 2851 by Person and Curtis, House Bill 3359 by Odom (2004).

<sup>56</sup> Senate Bill 2782 by Burchett, House Bill 3013 by Dunn (2010).

<sup>57</sup> Senate Bill 2491 by Barnes, House Bill 2572 by Johnson C. (2010).

<sup>58</sup> Senate Bill 243 by Haynes, House Bill 1314 by West (2007).

<sup>59</sup> Senate Bill 1258 by Cohen, House Bill 1202 by Fowlkes (1995).

<sup>60</sup> Public Chapter 856, Acts of 2002

<sup>61</sup> Public Chapter 418, Acts of 2003. The Tennessee Attorney General wrote in Opinion Number 03-002 that the exemption for state employees “violates the doctrine of intergovernmental tax immunity by impermissibly favoring state employees over federal employees, and thus it cannot be implemented as written.” According to the fiscal note for Public Chapter 592, Acts of 2004, the state recognized that it could not exempt state employees without exempting federal employees, and exempting federal employees would have decreased state tax revenue by more than \$1,150,000 per year.

<sup>62</sup> Code of Alabama, Section 40-12-330.

<sup>63</sup> Code of Alabama, Sections 40-12-341 and 371.

<sup>64</sup> General Statutes of North Carolina, Section 105-41(b).

## Depending on How Their Businesses are Organized, Professionals May Have to Pay Franchise and Excise Taxes as Well as Professional Privilege Taxes

Professionals can work in a variety of business organizations as salaried employees or as owners of sole proprietorships, general partnerships, corporations, limited liability corporations (LLCs), limited partnerships (LPs), or limited liability partnerships (LLPs). Salaried employees can deduct the professional privilege tax on schedule A of their federal income tax return if their itemized deductions exceed the standard deduction.<sup>65</sup> Professionals who own sole proprietorships or general partnerships are not responsible for franchise and excise taxes, but the professional privilege tax can be a deductible expense against business income on their federal tax return or if not used as a business deduction they can deduct the tax as a state-taxes-paid deduction (line 8).

Although professionals that own corporations, LLCs, LPs, or LLPs can deduct professional privilege taxes against business income, they may owe not only the professional privilege tax, but also franchise and excise taxes. The franchise tax rate in Tennessee is 25 cents per \$100 of the greater of net worth or the book value of real or tangible personal property owned or used in Tennessee. The excise tax rate is 6.5% of net earnings or income for the tax year.<sup>66</sup> When the professional privilege tax was first passed in 1992, few professionals that paid the tax organized as LLCs, LPs, and LLPs, which were not liable for franchise and excise taxes at that time. However, in 2000, the General Assembly passed legislation extending franchise and excise taxes to limited liability entities.<sup>67</sup> This raises concerns that professionals who own corporations, LLCs, LPs, or LLPs are double-taxed because they pay both professional privilege taxes as individuals and franchise and excise taxes as business owners.<sup>68</sup> See table 9. In other instances where double-taxation is a concern, a common approach is to provide a credit for one of the taxes against the others. For instance, in Tennessee, the amount paid in personal property taxes can be taken as a credit against the business tax, which is a tax on the gross receipts of businesses.<sup>69</sup>

**Table 9. Tax Treatment of Professionals by How Business is Organized**

Impact of Tax on all Taxed Professionals By Type of Situation			
	Salaried Employee	Owner of Sole Proprietorship or General Partnership	Owner of Corporation, LLC, LP, or LLP
Subject to franchise and excise tax	No	No	Yes
Professional privilege tax can be a deductible expense against business income on federal tax return.	No	Yes	Yes
Professional privilege tax can be deducted on schedule A of federal income tax return.	Yes	Yes but not if used as a business deduction	No

Sources: Tennessee Code Annotated, Section 67-4-2007. 26 US Code, Section 164.

<sup>65</sup> "Itemized Deductions," Internal Revenue Service, accessed October 10, 2016, <https://www.irs.gov/instructions/i1040sca/ar01.html>.

<sup>66</sup> "Franchise and Excise Tax: Due Dates and Tax Rates," Tennessee Department of Revenue, accessed September 14, 2016, <https://www.tn.gov/revenue/article/franchise-excise-tax-due-dates-and-tax-rates>.

<sup>67</sup> Public Chapter 982, Acts of 2000.

<sup>68</sup> Most small businesses have no excise tax liability and pay only the minimum franchise tax of \$100.

<sup>69</sup> Tennessee Code Annotated, Section 67-4-713.

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## Persons Contacted

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## Appendix A: Professions Taxed by States with Amount of Tax

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
accountant	\$400	\$25 (public accountants only)				\$50 for principal or manager and pay \$12.50 per person engaged in the work of auditing, devising or installing systems of accounts	\$200
acetylene gas and carbide manufacturer		\$25-\$50 (varies depending on city population or whether in unincorporated area)					
actuary		\$25					
air conditioning equipment seller or installer		\$5-\$100 (varies depending on where principal office is, where they are doing business and whether equipment uses water connections)					
amusement conductor				\$75			
architect	\$400	\$25				\$50	\$200
athlete agent	\$400						
athletic field or racetrack owner or lessee		\$10-\$100 (varies depending on city population or whether in unincorporated area)					
attorney	\$400	\$300	\$565		\$25	\$50	\$200
auctioneer							
audiologist	\$400			\$75			
auditor		\$25					
automobile accessories seller		\$5-\$40 (varies depending on city population or whether in unincorporated area)					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
automobile dealer		\$30-\$140 (varies depending on population of city and whether in unincorporated area)					
barbershop operator		\$2.50 per chair					
baseball park owner or leasee		\$10-\$100 (varies depending on city population)					
beauty shop operator		\$10 plus a tax of \$4-\$6 for each operator (varies depending on city population or whether in unincorporated area)					
beverage bottler		\$40-\$500 (varies depending on how many bottles are bottled per minute)					
blueprint maker		\$15					
bond maker		\$100					
broom or brush plant operator		\$10					
building and road contractors		\$10-\$250 (varies depending on gross amount of all orders in a year)					
business machines seller		\$25-\$100 (varies depending on county population)					
canvasser or agent for photographer						\$50	
carnival or street fair operator		\$50-\$150 (depending on number of exhibits or concessions)					
chiropractor	\$400	\$20				\$50	\$200

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
cigarette or tobacco wholesaler		\$100					
circus exhibitor		\$50-\$200		\$750			
coffin seller (retail)		\$10-\$100 (varies depending on city population or whether in an unincorporated area)					
commercial lessor				\$75			
commission merchant		\$25					
creosote plant operator		\$20-\$100 (varies depending on capital invested)					
dentist	\$400	\$5-\$25 (varies depending on city population or whether in an unincorporated area)				\$50	\$200
direct care worker				\$75			
door to door salesperson of medicine		\$250					
door to door salesperson of spices, toiletry articles, insecticides, or stock and poultry supplies		\$7.50 to \$20 (varies depending on vehicle use)					
drayperson or mover				\$75			
dry cleaner		\$5-\$25 (varies depending on city population or whether in an unincorporated area)					
embalmer		\$10				\$50	
engineer	\$400	\$20				\$50	\$200

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
equine livestock seller		\$20 per county seller is doing business in					
eyeglass seller		\$5-\$25 (varies depending on city population or whether in an unincorporated area)					
facialist		\$5					
fertilizer factory owner or operator		\$50-\$250 plus \$15 per mixing plant (varies depending on capital invested)					
film developer		\$5					
fireworks dealer		\$10-\$50 (varies depending on city population or whether in unincorporated area)					
fortune teller		\$40					
fruit seller		\$5-\$10 (varies depending on city population or whether in unincorporated area)					
fur dealer		\$15-\$25 (varies depending on county population)					
gas station operator		\$2.50-\$28 for first pump and \$2.50-\$21 for each additional pump (varies depending on city population or whether in unincorporated area)					
glass seller		\$10-\$50 (varies depending on city population or whether in unincorporated area)					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
golf course operator		\$5-\$40 per golf course \$2.50-\$15 per mini golf course (varies depending on population and whether in an incorporated city)					
hairdresser		\$5					
home inspector						\$50	
ice cream manufacturer		\$5-\$50 (varies depending on city population or whether in an unincorporated area)					
inkeeper		50 cents to \$2 per room (depending on number of rooms in the hotel)		\$25 for each room and \$30 for each suite in a hotel			
interior designer							\$200
investment adviser	\$400						
iron, railway, furnace, and mining supplies broker		\$25					
junk dealer		\$10-\$150 (varies depending city population or whether in an unincorporated area)					
land surveyor						\$50	\$200
landscape architect	\$400					\$50	\$200
lobbyist	\$400						
machine shop operator		\$5-\$40 (varies depending on city population or whether in unincorporated area)					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
manager of business of public accountant						\$50 plus \$12.50 for each person employed in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts	
manicurist		\$5					
manufacturer's agent or representative				\$75			
mattress, pillow, or rug manufacturer		\$5-\$15 (varies depending on city population)					
member of a headquarters management corporation				\$5,000			
mill operator		\$10-\$200 (varies depending on amount of investment for mill)					
monument or tombstone seller		\$5 per county seller is doing business in					
mortgage broker						\$50	
mortician						\$50	
motel operator				\$25 for each room			
movie theater operator		\$15-\$200 (varies depending on city population or whether in unincorporated area)					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
musical instrument seller		\$5-\$50 per county seller is doing business in (varies depending on county population and whether they sell pianos and organs)					
newsstand operator		\$5					
operator of cotton storage warehouse or yard		\$20-\$200 (varies depending on number of bales stored in past year)					
operator of syrup or sugar refinery		\$5-\$100 (varies depending on amount of capital invested)					
optician		\$5-\$25 (varies depending on city population or whether in unincorporated area)				\$50	
optometrist	\$400	\$5-\$25 (varies depending on city population or whether in unincorporated area)				\$50	\$200
osteopathic physician	\$400	\$20				\$50	
outdoor musical festival promoter				\$750			
parking lot or garage operator				\$75 for first facility; \$35 for each additional facility			
pawnbroker		\$250					
person operating a collection agency				\$75			

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
person engaged in advertising business		\$15-\$150 (varies depending on county population)		\$75			
person engaged in discounting or buying conditional sales contracts, drafts, acceptances, notes, or mortgages on personal property		\$5-\$300 (varies depending on amount of capital)					
person engaged in professional art of healing						\$50	
person engaged in the management of business matters occurring between the owners of vessels, railroads, airplanes, motor vehicles, and express companies and the shippers and consignors of freight passengers		\$50					
person inquiring into and reporting on the credit and standing of persons, firms, or corporations		\$25-\$200 (varies depending on county population)					
person lending money on salaries or making industrial or personal loans		100 per county where lender is doing business					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
person mining ore or operating an iron ore mine		0.03 cents per ton					
person operating a circus		\$50-\$200 (varies depending on seating capacity)					
person operating a factory where wood is sawed other than a sawmill or made into a finished or semi-finished product		\$5-\$120 (varies depending on the number of men employed)					
person operating a laundry or diaper service		\$10-\$50 (varies depending on city population or whether in unincorporated area)					
person operating a lumberyard		\$5-\$75 (varies depending on city population or whether in unincorporated area)					
person operating a power or steam laundry		\$2.50-\$60 (varies depending on city population or whether in unincorporated area)					
person operating a tourist home				\$15 for each room			
person operating a trailer park				\$10 for each space on a plot plan			
person operating a travel agency				\$225			
person operating a vending machine business		\$10-\$1,000 (varies based on total sales of company in preceding year)					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
person operating a warehouse or yard for storage		\$25 plus \$100 per distributing agent					
person renting bicycles or motorcycles		\$5-\$15 (varies depending on city population or whether in unincorporated area)					
person transferring freight using more than one vehicle for hire		\$10 per vehicle in excess of one					
person working in a finance or small loan agency				\$450			
pharmacist	\$400						
photographer		\$5-\$25 plus \$5 per additional county seller is doing business in (varies depending on city population or whether in unincorporated area)		\$75 or \$25 per day if photographer is transient		\$50	
physician	\$400	\$5-\$25 (varies depending on city population or whether in unincorporated area)				\$50	\$200
playing card seller		\$2					
plumber		\$5-\$25 (varies depending on city population or whether in unincorporated area)					
podiatrist	\$400	\$10				\$50	
private detective		\$100 (person who receives accounts for collection pays \$200)					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
property tax consultant							\$200
psychologist	\$400						\$200
radio seller		\$3-\$25(varies depending on city population or whether in unincorporated area)					
real estate appraiser					\$50		
real estate broker (in state property)	\$400 (principal only)	\$5-\$15 (varies depending on city population or whether in unincorporated part of county)		\$75		\$50	\$200
real estate broker (out of-state property)	\$400 (principal only)	\$500		\$75		\$50	\$200
roofer		\$5-\$25 (varies depending on city population or whether in unincorporated area)					
sales representative who sells door to door				\$75			
sawmill operator		\$10-\$500 (varies based on sawmill capacity)					
scientist, naturopath, chiropracist		\$10					
securities sales agent							\$200
security business operator				\$115			

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
seller of carbonated beverages dispensed by taps		\$10-\$25 (varies depending on city population)					
seller of cereal or carbonated beverages in sealed containers		\$2.50					
seller of duplicating devices		\$10-\$30 (varies depending on county population)					
seller or compiler of sale directories		\$15-\$150 (varies depending on city population)					
sewing machine seller		\$25 per county seller is doing business in plus \$10 per delivery vehicle used					
shooting gallery operator		\$20					
shotgun seller		\$3-\$25 (varies depending on city population or whether in unincorporated area)					
showperson				\$375			
skating rink operator		\$25					
speech pathologists	\$400						
steamfitter		\$5-\$25 (varies depending on city population or whether in unincorporated area)					
stockbroker agent	\$400	\$50		\$75			
tax examiner (private)		\$25					

Profession	Tennessee	Alabama	Connecticut	Delaware	Montana	North Carolina	Texas (repealed)
taxicab or bus operator				\$45 for the first vehicle and \$30 for each additional vehicle			
third party sellers		\$100					
ticket scalper		\$100					
title abstractor		\$10-\$70 (varies depending on city population or whether in unincorporated area)					
tractor-trailer dealer		\$10-\$50 (varies depending on city population or whether in unincorporated area)					
transient dealer (sales representative)		\$30		\$75			
transportation agent				\$75			
veterinarian	\$400	\$5				\$50	
weapons dealer		\$100-\$150 (varies depending on city population)					\$200

Sources: Alabama Code, Sections 40-12-40 et seq., Connecticut Annotated Statutes, Section 51-81b, 30 Delaware Code, Section 2301 (a) and (b), Montana Code Annotated, Section 37-61-211, General Statute of North Carolina, Section 105-41, Tennessee Code Annotated, Sections 67-4-1701 et seq., Texas House Bill 7 (2015).



## Appendix B: Original Language of Public Chapter 1024 (Senate Bill 556 by Bowling, House Bill 678 by Van Huss)

### SENATE BILL 556

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 17, relative to the privilege tax imposed on persons engaged in certain occupations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-1703, is amended by deleting subsections (a) and (b) and substituting instead the following:

(a)

(1) For purposes of this part, the tax year begins on June 1 of each year and ends on May 31 of the following year. The privilege tax established by this part is due and payable on June 1 following the end of the tax year. Taxes paid after June 1 are delinquent.

(2) The privilege tax imposed by this part shall be:

For the tax year ending on or before May 31, 2015	\$400
For the tax year ending on May 31, 2016	\$320
For the tax year ending on May 31, 2017	\$240
For the tax year ending on May 31, 2018	\$160
For the tax year ending on May 31, 2019	\$80
For the tax year ending on or after May 31, 2020	\$0

(b) Any person who is licensed or registered for two (2) or more professions taxed pursuant to this part shall not be required to pay more than one (1) tax in an amount set by subsection (a).

SECTION 2. Tennessee Code Annotated, Section 67-4-1703, is further amended by adding the following new subsection:

SB0556  
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-1-

(g) No tax shall be levied upon the privilege of engaging in a vocation, profession, business, or occupation listed in § 67-4-1702(a) on or after June 1, 2019; provided, however, this subsection shall not be construed to absolve any taxpayer of liability for any tax duly levied by this part, during any tax year ending before June 1, 2019.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, Part 17, is amended by adding the following as a new section:

This part does not apply to any person who engages in a vocation, profession, business, or occupation listed in § 67-4-1702(a) on or after June 1, 2019.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to privilege taxes due and payable after May 31, 2015.

## Appendix C: Public Chapter 1024, Acts of 2016



### *State of Tennessee*

#### **PUBLIC CHAPTER NO. 1024**

**SENATE BILL NO. 556**

**By Bowling, Roberts**

Substituted for: House Bill No. 678

By Van Huss, Matheny, Butt, Matthew Hill, Keisling, Holt, Womick, Terry, Zachary, Travis,  
Cameron Sexton, Byrd

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 17, relative to the privilege tax imposed on persons engaged in certain occupations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to study and make recommendations relative to the professional privilege tax. TACIR shall study the application of this tax, or its nonapplication as the case may be, to various occupations, businesses, and professions, whether or not listed in Tennessee Code Annotated, Section 67-4-1702, and the application of this tax on both residents of this state and nonresidents. TACIR shall also study this bill as introduced (Senate Bill 556 / House Bill 678) and the following two (2) additional bills, as introduced and as amended, if applicable: Senate Bill 1919 / House Bill 1951 and Senate Bill 167 / House Bill 601.

(b) The department of revenue and all other appropriate state agencies shall provide assistance to TACIR upon the request of the executive director of TACIR.

(c) The study shall examine:

- (1) The history of the professional privilege tax in this state;
- (2) The intent of the professional privilege tax;
- (3) Other states' laws imposing a professional privilege tax or similar tax; and
- (4) Alternatives for eliminating or phasing out the professional privilege tax.

(d) On or before January 1, 2017, TACIR shall provide its recommendations and report regarding the professional privilege tax to the speakers of the senate and the house of representatives and the chairs of the finance, ways and means committees of the senate and the house of representatives.

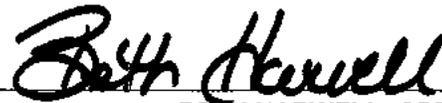
(e) It is the legislative intent that this study be conducted within TACIR's existing resources.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

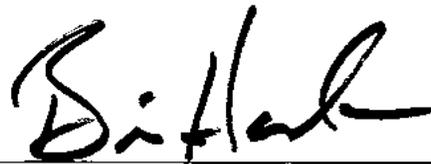
SENATE BILL NO. 556

PASSED: April 20, 2016

  
\_\_\_\_\_  
RON RAMSEY  
SPEAKER OF THE SENATE

  
\_\_\_\_\_  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 28<sup>th</sup> day of April 2016

  
\_\_\_\_\_  
BILL HASLAM, GOVERNOR

## Appendix D: Senate Bill 167 by Bowling, House Bill 601 by Durham

SENATE BILL 167

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 17, relative to the privilege tax imposed on persons engaged in certain occupations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-1702(a), is amended by deleting subdivisions (4)(A) and (J).

SECTION 2. This act shall take effect January 1, 2016, the public welfare requiring it.



## Appendix E: Senate Bill 1919 by Bowling, House Bill 1951 by Hazlewood

HOUSE BILL 1951  
By Hazlewood

SENATE BILL 1919

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 67,  
Chapter 4, Part 17, relative to exemption from  
professional privilege tax for nonresidents.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 17, is amended by adding the following as a new section:

**67-4-1712.**

(a) As used in this section, "nonresident" means a person who does not maintain a residence or place of business in this state and who does not engage in a vocation, profession, business, or occupation listed in § 67-4-1702(a) in this state.

(b) A nonresident who is licensed or registered pursuant to the laws of this state to engage in a vocation, profession, business, or occupation listed in § 67-4-1702(a) shall be exempt from the tax imposed by this part if the nonresident:

(1) Has been determined by another state to have qualifications to engage in the vocation, profession, business, or occupation that are in substantial equivalence with the licensure or registration requirements of the other state's laws; and

(2) Has been granted by the other state the privilege to engage in the vocation, profession, business, or occupation, with or without the need to obtain a license or registration from the other state.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.