



TENNESSEE
DEPARTMENT OF REVENUE

Wayfair Update

Wayfair

- The Department promulgated Sales Tax Rule 129 in 2016
- Rule 129(2) – out-of-state dealers with no physical presence in Tennessee must collect tax if sales into Tennessee exceed \$500,000 during a 12-month period
- Enforcement of that Rule has been on hold pending the outcome of litigation
- On June 21, 2018, the United States Supreme Court issued its decision in the case of *South Dakota v. Wayfair* overturning the old “physical presence” requirement, which the Supreme Court had previously adopted.

Wayfair

Public Chapter 429 (2019) allows the Department to begin enforcing Rule 129 to require remote sellers to collect Tennessee sales tax, effective July 1, 2019

Wayfair – Next Steps

- The Department has issued Notice 19-04, which gives public notice of the requirement to begin collecting Tennessee sales tax, if the business meets the \$500,000 threshold
- Collection started October 1, 2019
- The Department will not apply Rule 129 (2) retroactively -- dealers who have no physical presence in Tennessee and who did not collect sales tax prior to October 1, 2019, will not be assessed for any prior periods

Legislative Update

Legislative Update

Streamlined Sales Tax

Public Chapter 157 - Delays the effective date of certain streamlined sales tax provisions until July 1, 2021

- Over the next few months the department will begin evaluating the continued relevance of these SSUTA provisions for Tennessee

Legislative Update – Sales Tax

- **Public Chapter 491 –**
 - Eliminates the uniform 2.25% local option sales tax rate previously available to out-of-state dealers with no physical presence in Tennessee
 - Requires out-of-state dealers to collect and report the local option sales tax rate applicable to the location where the sale is shipped or delivered
 - Effective October 1, 2019
- **Public Chapter 179 –** Extends the Retail Accountability Program (RAP) reporting requirements for wholesalers of food, candy, and nonalcoholic beverages until July 1, 2022

Legislative Update – Sales Tax

New Exemption

- **Public Chapter 159 – “Gym tax” exemption** – Exempts admission, dues, fees, or other charges paid to any person principally engaged in offering services or facilities for the development or preservation of physical fitness through exercise or other active physical fitness conditioning.
 - Exemption applies to gyms, fitness centers, fitness studios, high intensity interval training, cross training, ballet barre, Pilates, yoga, spin classes, aerobics classes, and other facilities that principally provide for exercise or other active physical fitness conditioning.
 - The exemption does not apply to country clubs, tennis clubs, golf courses, and the like.
 - Effective July 1, 2019

Legislative Update – Sales Tax

New Exemption

Public Chapter 162 – Exempts **car wash facilities**, coin-operated or otherwise, where the customer remains in custody of the vehicle and the preponderance of the vehicle's wash is completed by the customer or automated equipment.

- Effective on April 18, 2019 and applies to assessments imposed or pending as of the effective date.

Legislative Update – Sales Tax

New Exemptions

- **Public Chapter 178** – Exempts “**ag trailers**” – trailers used to transport farm products, nursery stock, or equipment, supplies or products used in agriculture or for other agricultural purposes. The purchaser must be a qualified farmer.
 - Effective July 1, 2019
- **Public Chapter 427** – Exempts “**ag water**” – Exempts water furnished by a utility district and used exclusively in a farming operation. The purchaser must be a qualified farmer.
 - Effective July 1, 2019

Legislative Update – Sales Tax

- **Public Chapter 483** – Provides that a taxable lease does not include providing a dumpster or other container for waste or debris removal when the provider of the dumpster is exclusively responsible for delivery and pickup of the dumpster.
 - The provider would pay sales or use tax when he/she purchases the container.
 - Effective July 1, 2019

Legislative Update – F&E and Business

- **Public Chapter 378** - "Facilitating Business Rapid Response to State-Declared Disaster Act" exempts certain out-of-state businesses, who do not otherwise have nexus in Tennessee, from franchise, excise and business tax resulting from "disaster or emergency related work" performed in the state.
 - Effective upon becoming law, May 10, 2019.
- **Public Chapter 451** – "Fair Accountability and Clarity in Tax Subsidies Act" eliminates some rarely used discretionary provisions in the job tax credit and headquarters credit statutes related to reduced job creation requirements.
 - Effective for tax periods beginning on or after January 1, 2019

Legislative Update

Professional Privilege Tax

- **Public Chapter 478** – Exempts all but four professions from the professional privilege tax beginning June 1, 2020.
 - Taxable professions beginning June 1, 2020
 - Lobbyist
 - Stock brokers-dealers, agents, and investment advisor
 - Physicians including osteopathic physicians
 - Attorneys



QUESTIONS?



BUSINESS TAX & LICENSING IN TENNESSEE
2019 UPDATE

Interesting Facts

- In FY 2019, businesses remitted over \$418 million in business tax
- About \$233 million was distributed back to local governments
- This is about 2.4% of total collections for the year
- Over 234,000 businesses in Tennessee have business licenses

Business Tax

OVERVIEW OF BUSINESS TAX

General Information

- Tax on gross taxable sales of tangible personal property and services
- Two taxes: state and municipality tax
- Tennessee Department of Revenue administers both the state and municipality tax
- Tax is paid on a *per location* basis, but filed on a *consolidated* basis through TNTAP

Taxes vs. Licenses

20

Taxes

- Collected at state level

Licenses

- Issued at the local level
- Unless the business is exempt, a current license should always be posted

State Tax

- All businesses in Tennessee are subject to the state tax
- An out-of-state entity is subject to state tax if they have **nexus** in Tennessee:
 - Organized or commercially domiciled in Tennessee
 - Owns or uses capital in Tennessee
 - Has bright-line presence in Tennessee if any:
 - Receipts: >\$500,000 or 25% of total receipts in TN
 - Property: >\$50,000 or 25% of total property by value in TN
 - Payroll: >\$50,000 or 25% of compensation is paid in TN
- Contractors have special considerations

Municipality Tax

- A business located in a city that has passed a business tax ordinance is subject to the municipality tax
- Does not apply to any out-of-state taxpayers (except out-of-state contractors with a deemed location)

Who is Subject to State Business Tax?

- Tennessee Retailers
 - With \$10,000+ sales per county where located
- Out-of-State Retailers
 - Performing activity that establishes nexus in Tennessee and having \$10,000+ sales in any county
- Tennessee Contractors
 - Having \$10,000+ sales in their home county or >\$50,000 sales in any other county
- Out-of-State Contractors
 - With \$10,000+ sales in any county

Who is Subject to City Business Tax?

- Tennessee Retailers
 - With \$10,000+ sales per municipality where located
- Tennessee Contractors
 - Having \$10,000+ sales in their home municipality or >\$50,000 sales in any other municipality
- Out-of-State Contractors
 - With >\$50,000 sales in any municipality

Business Tax

NEW FOR 2019

2019 Business License & Tax Legislation

Public Chapter 378 -

- Exempts out-of-state businesses, which do not otherwise have nexus in Tennessee

AND

- Exempts employees who are responding to state-declared disasters from business tax for the income and receipts generated from business conducted in the state in response to a disaster.
- Effective May 2019
- Local governments are prohibited from selling licenses to children

Business Tax

TAXPAYER RESPONSIBILITIES

Registration

- Every taxpayer subject to business tax must register
- Every location must be registered
- Keep contact information updated with state and local government
- In-state taxpayer can register with local official or Department of Revenue
- Out-of-state taxpayer must register with Department of Revenue
 - Exception for contractors having >\$50,000 in receipts in any county or city

Registration

Important Tips

- Both the city and county licenses must be of the same classification and type
- Certain businesses are only required to have one license per jurisdiction:
 - Classification 4
 - Cable Providers
 - Out of State Vending Businesses
 - Businesses that operate out of vending machines
 - Vacation Rentals

Business Licenses

- Initial \$15 fee
- Per location basis
- Must be displayed & cannot be transferred
- Expires on the 15th day of the 5th month following the fiscal year end
- If taxable sales equal \$3,000 or less, the business is not required to have a license
 - ***However,*** they can get a minimal activity or standard license

Standard vs Minimal Activity Licenses

31

Standard License-

- Taxable sales equal to or greater than \$10,000
- Automatic renewal upon payment of tax

Minimal Activity License

- If taxable sales of more than \$3,000 but less than \$10,000, a business can get a ***minimal activity license***
- \$15 per year
- Must renew each year

Renewing a License

- Standard Licenses are renewed by filing business tax via TNTAP
- A return takes one day to process
- The payment takes approximately 3 business days to process
- Record is transmitted electronically to the clerk after the payment clears the bank
- The clerk renews the license and the license is available via TNTAP the following day

Filing the Return

- Required to file electronically, unless a waiver is obtained from Revenue
- Returns are due by the **15th day of the 4th month** following the end of the taxpayer's **fiscal year** (not the same as the expiration date on the license)
- May receive one 30-day extension to file for good cause – must apply with Revenue for this

Consolidated Filing for Business Tax

- Business Tax returns are now consolidated, meaning all locations are reported on one return, but each location files its own numbers.
- When closing all locations of a business, complete a closure request and then file the return within 15 days of the closure date.
- When closing some (but not all) locations, submit the closure request for each location(s). The figures for each location will be submitted on the consolidated return when it is filed.

Electronic Filing

- TNTAP filing system began in May 2018 for business tax
- Requires consolidated tax return filing – all locations must be filed before the return can be submitted
- A username and password is needed for TNTAP– just add any tax account to your existing logon
- Each individual should have their own TNTAP log on
- Information on these changes is available online at www.TN.gov/revenue or www.TNTAPinfo.com.

Record Keeping & Retention

- Records must be kept for at least 3 years from December 31 of the year the return is filed
- Electronic records should be provided in a standard record format

Business Tax

CLASSIFICATIONS & TAX RATES

General

- Classified by dominant business activity
- Classified on a per location basis
- There are five different classifications
- Antique malls, flea markets, and the like have their own classification
- The classification for the city and county licenses must match
- Determines the tax rate

Classification Descriptions

Classification	Description
Class 1A	Food and beer for home preparation
Class 1B	Sales of building materials
Class 1C	Sales of farm, lawn, & garden supplies
Class 1D	Retail sales of gas, diesel, & motor oil
Class 1E	Wholesale sale of gas & diesel
Class 2	Tangible Personal Property
Class 3	Services & TPP specifically mentioned
Class 4	Contractors
Class 5A	Industrial Loan & Thrift
Class 5B	Natural Gas Marketer

Antique Malls, Flea Markets, & Special Events

- Antique malls, flea markets, craft shows, antique shows, gun shows, and auto shows are handled differently
- Administered locally by counties and cities
- Review Business Tax Guide at www.TN.gov/revenue for more information

Classification Tax Rates

Classification	Retailer Rate	Wholesaler Rate	General Rate
Class 1A	1/10 of 1%	1/40 of 1%	NA
Class 1B & 1C	1/10 of 1%	3/80 of 1%	NA
Class 1D	1/20 of 1%	NA	NA
Class 1E	NA	1/32 of 1%	NA
Class 2	3/20 of 1%	3/80 of 1%	NA
Class 3	3/16 of 1%	3/80 of 1%	NA
Class 4	NA	NA	1/10 of 1%
Class 5A	NA	NA	3/10 of 1%
Class 5B	NA	NA	1/50 of 1%

Wholesaler vs. Retailer Rate

- Separate wholesaler and retailer rates for Classifications 1, 2, & 3
- If a taxpayer's taxable gross sales are more than 50% wholesale sales – pay wholesale rate on all of its taxable sales
- If a taxpayer's taxable gross sales are at least 50% retail sales – pay retail rate on all of its taxable sales

Minimum Tax

- Classes 1-4 and 5B taxpayers must pay at least a minimum tax of \$22 for the county and \$22 for the city
- On a per-location basis for in-state taxpayers
- Out-of-state taxpayers must pay at least a minimum tax of \$22 for all of its activity in the state
- Class 5A taxpayers pay a minimum tax of \$450 per year, but have a maximum tax of \$1,500 per year

Municipality Rate

- Some city business tax ordinances before 1/1/2014 contained reduced rates
- Cities may retain these reduced rates or change them to the full state rate if they so choose
- If a city elects to start business tax now, must levy at the rates listed in previous table

Business Tax

EXEMPTIONS/EXCLUSIONS

Basic Business Tax Exemptions

- Taxable sales of less than \$10,000 per location in county and city returns
- Certain blind vendors
- Certain disabled former members of the armed forces
- Employees

Other Business Tax Exemptions

- Religious and charitable institutions on donated items
- Sales at state or county fairs
- Farm products direct from the farm and sold by the farmer
- Receipts from admissions to amusement or recreational activities conducted entirely by a non-profit

Exempt Services

- Tenn. Code Ann. § 67-4-708(3)(C)(i)-(xvi)
- Exemptions Include:
 - Medical, legal, educational, services by nonprofits, accounting, public utilities, insurance, veterinary, engineering, etc.
- **Still must pay tax on sales of tangible personal property and taxable services**

Manufacturers

- Exempt under Tenn. Code Ann. § 67-4-712(b)(2)
- To qualify for the exemption:
 - Over 50% of the business's gross receipts must be derived from manufacturing
 - Sales of the manufactured products must be made from the manufacturing location
- Must qualify for the exemption on a per-location basis
- If a manufacturer qualifies for the exemption, then **all sales** from that location are exempt

Business Tax

DEDUCTIONS

Deductions Include

- Trade-in allowances
- Amounts paid to subcontractors – Class 4 only!
- Sales of services delivered to customers located out-of-state
- Sales of tangible personal property in interstate commerce
- Bad debts
- Certain taxes

Business Tax

CREDITS

Personal Property Tax Credits

- Credit cannot exceed more than 50% of amount owed
- To claim the credit, the property must be at the location
- This is **not** real estate property tax!
- Double-check returns to ensure the correct type of property tax is being claimed

Business Tax

SPECIAL CONSIDERATIONS

Contractors

- If receipts of **more than \$50,000** in a jurisdiction – registration and license required for both county and/or city
 - Applies to both in-state and out-of-state contractors
- If in-state contractor has receipts of **\$50,000 or less** in a jurisdiction – no additional license required; report back to county and/or city of contractor's domicile
- If out-of-state contractor has receipts of **\$10,000-\$50,000** in a county – must pay on the state business tax return

Mobile Businesses & Temporary Locations

In-State Taxpayers

For Classifications 1, 2, and 3

- Do not buy a transient vendor license for an entity registered in Tennessee!
- Must display copy of license from home jurisdiction
- Tennessee businesses extending operations into another city or county do not need to register their temporary locations
- Taxable receipts are reported to their home municipality and/or county where they have a permanent location
- Rule 1320-04-05-.28(2)

Mobile Businesses & Temporary Locations

Out-of-State Taxpayers

For Classifications 1, 2, and 3

- Out-of-state taxpayers report their taxable receipts of \$10,000 or more earned in any county on a state business tax return
- Out-of-state taxpayers are exempt from municipality tax (exception for contractors having >\$50,000 of receipts within a city)
- Transient vendor licenses can be issued



QUESTIONS?