

Chattanooga Tax Practitioners

Tennessee Works Tax Act of 2023
Transportation Modernization Act

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Introduction

- Governor Bill Lee originally unveiled the “Tennessee Works Tax Act of 2023” (TWTA) in his State of the State address on February 6, 2023.
- The TWTA had three primary purposes:
 - Enhance Tennessee’s economic competitiveness;
 - Simplify taxes for Tennessee business; and
 - Tax relief for Tennessee working families.
- TWTA made modifications to:
 - Sales and Use Taxes;
 - Franchise and Excise Taxes; and
 - Business Tax

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Sales and Use Tax – Food Purchase Holiday

- The “big ticket” from a revenue standpoint is a three-month state-wide sales tax holiday on food and food purchases starting August 1, 2023 and ending October 31, 2023.
- State tax on food is normally 4%, local governments are being reimbursed by the State for the lost local sales tax! No tax on food.
 - Covers food and food ingredients
 - Excludes sales from micro markets and vending machines
 - Projected \$288 million tax benefit for Tennessee customers
 - Governor’s office estimates a \$100 benefit for each Tennessee family

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Sales and Use Tax – Food Purchase Holiday (Cont'd)

- Food and Food Ingredients are defined as “liquid, concentrated, solid, frozen, dried or dehydrated substances that are sold to be ingested or chewed by humans and are consumed for their taste or nutritional value.
- Food ingredients do NOT include alcoholic beverages, tobacco, candy, dietary supplements, and prepared food. (See Important Notice 17-20)
- Dealers must report exempt sales through Oct 2023 reporting periods.

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Sales Tax Sourcing Rule Change

- The purpose of the change is to make Tennessee's sourcing rules more compatible with the Streamlined Sales Tax Agreement which has been adopted by 23 other states.
- The change effectively changes the rules for the tangible property and services described on the next slide from sourcing where the service is actually provided or performed (current law) to where the serviced goods are destined.

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Sales Tax Sourcing Rule Change (Cont'd)

- Effective July 1, 2024, Property and services whose source is changed
 - Repairing of tangible personal property (TPP) or computer software;
 - Laundering or dry cleaning of TPP;
 - Installing of TPP that remains TPP after installation; and
 - Installing of computer software
- Tennessee tax is even imposed where repair, cleaning or installation occurs at a place of business outside of Tennessee if:
 - Serviced TPP or computer software is delivered by the Seller to:
 - The purchaser or its designee to a location within the physical limits of Tennessee; or
 - A carrier for delivery to a place with the physical limits of Tennessee.

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Additional Tax on Sales of Hemp-Derived Products

- Effective July 1, 2023, new 6% sales tax for the privilege of engaging in the business of selling products containing a hemp-derived Cannabinoid at retail.
 - Tax reported in same manner as sales tax with tax due monthly.
- Tax applies in addition to the 7% normal sales tax rate and the applicable local option tax.
- TDOR required to inspect the retail establishments where such products are sold and confiscated non-compliant hemp-derived cannabinoid products.

Sunset of Sales Tax Exemption for Admission to Certain Events

- Currently admission charges to events by certain entities that promote, produce, and control the entire production are exempt from sales tax.
- For such amusement or recreational activities conducted, produced, or provided at a facility owned by a sports authority after January 1, 2027 and eligible to receive a special allocation of state sales tax.

Miscellaneous Sales Tax Changes

- Certain types of trailers used for non-commercial purposes and removed from Tennessee within 3 calendar days of purchase are added to the exempt list (Effective July 1, 2023)
- Repossession Sales Tax Credit expanded to include:
 - Dealer who principally sells used automobiles;
 - Collects downpayment averaging not more than 5% of automobile sales price;
 - Assigns 100% of its security interments to affiliated finance company;
 - Advances from its own funds the sale tax amount on each purchase;
 - Reimburses the finance company for sales tax company is unable to collect from the purchaser.
- Taxpayer must receive confirmation from TDOR that it meets criteria before claiming the credit.

Franchise and Excise Tax

- F&E tax is imposed on taxpayers doing business and having substantial nexus in Tennessee.
- Taxpayers basically include all entities that provide limited liability to its owners.
- Tax Base Reduction of Franchise tax – the first \$500,000 of property will be excluded from the **minimum measure base but not the net worth base**. (Effective for tax years ending on or after Dec 31, 2024).
 - Note: Franchise tax continues to be based on the GREATER of the taxpayer's net worth or its minimum measure (i.e. the \$500,000 does not apply to the net worth franchise tax base)
 - Estimated that 68,000 current F&E taxpayers will benefit

Franchise and Excise Tax (Cont'd)

- Excise Tax standard deduction of up to \$50,000
 - Cannot be taken to create or increase a net loss;
 - Deduction applies to pre-apportioned net earnings; and
 - Effective for tax years ending on or after Dec. 31, 2024.

Franchise and Excise Tax (Cont'd)

- TN will phase in a Single Sales Factor (SSF) apportionment formula over a three year period, replacing the three factor apportionment formula that triple-weights the sales factor (property/payroll/sales).
 - For calendar year taxpayers, 2023 is first year of phase in!
- When phased in, property and payroll factors are eliminated.
- Apportionment is calculated by only sales/receipts factor.
- Aligns TN with 33 other states that have adopted the SSF apportionment.

Franchise and Excise Tax (Cont'd)

- Phase in:
 - 5x sales factor with denominator of 7 (tax years ending on or after Dec 31, 2023 but before December 31, 2024);
 - 11x sales factor with denominator of 13 (tax years ending on or after Dec. 31, 2024 but before Dec 31, 2025).
 - SSF only (tax years ending on or after Dec. 31, 2025).
 - Manufacturers already using SSF will continue to do so and ignore phase in.
- Annual election to remain on triple-weighted sales factor if:
 - Taxpayer has net earnings for year (as opposed to net loss);
 - Three-factor triple-weighted sales formula results in a greater tax liability.
 - Some taxpayers may prefer to apply existing JTC and/or IMC to reduce their F&E tax liability). Also financial statement impact on tax asset on balance sheet.

Franchise and Excise Tax (Cont'd)

- Other Changes
 - Couples with federal bonus depreciation provisions of the Tax Cuts and Jobs Act of 2017's accelerated method of depreciation that permits an immediate deduction of a percentage of the cost of eligible assets in same year the assets are placed in service.
 - Taxpayers may take bonus depreciation for assets purchased on or after January 1, 2023 if taxpayer takes bonus depreciation on federal return.
 - Note: at present time the 100% bonus depreciation phases out over 5 years. For asset acquired in calendar year 2023 the bonus percentage is 80% and goes down 20% per year thereafter. **TN coupled with the TCJA so its bonus depreciation follows the same pattern.**

Franchise and Excise Tax (Cont'd)

- Creates a two-year paid family medical leave credit based on the federal paid family and medical leave credit under IRC Section 45S.
 - Credit equal to federal employer tax credit on compensation paid in Tennessee as determined under the payroll factor apportionment provisions.
 - Offset up to 50% of taxpayer's combined F&E tax.
 - Has a 25 year carryforward.
 - Applies to tax years ending on or after December 31, 2023 but before December 31, 2025.

Franchise and Excise Tax (Cont'd)

- Extends several franchise and excise tax credits from 15 years to 25 years for credits earned in tax years ending on or after December 31, 2008
 - Jobs tax credits;
 - Industrial machinery credit;
 - Brownfield property credits;
 - Community investment credits;
 - Qualified production credits; and
 - Paid family and medical leave credit (new credit).

Franchise and Excise Tax (Cont'd)

- Brownfield Remediation Costs F&E Credit
 - Equal to remediation costs for brownfield property for a qualified development project in a tier 3 or tier 4 enhancement county.
 - Maximum credit is \$500,000 and can offset up to 100% of F&E tax liability.
 - Any unused brownfield remediation credit can be carried forward for 25 years.
 - This is in addition to brownfield property credit based on purchase price.

Business Tax

- Started life in 1971 as a tax collected by the local governments but was shifted to the TDOR because it was widely ignored.
- Gross receipts tax on sale of TPP and most services to TN customers.
- Often overlooked by out of state taxpayers selling into TN.
- Since 2016 it has applied to out of state entities selling into TN even if they did not have a physical location in Tennessee that have triggered economic nexus by having annual sales of over \$500,000 in TN.

Business Tax

- Currently for businesses with TAXABLE SALES in the jurisdiction (county or municipality) in excess of \$10,000 are required to file an annual Business Tax Return with TDOR and obtain a business license from county and/or municipality in which it operates.
- Exemption is increased from \$10,000 to \$100,000 for tax years ending on or after Dec. 31, 2023.
- State projects that 140,000 current Business Tax filers will not have to file in the future
- Note: Businesses with annual gross receipts of more than \$3,000 but less than \$100,000 within a jurisdiction are required to obtain a minimal activity license from local county and/or incorporated municipality. Annual renewal fee of \$15 for each location within the jurisdiction.
 - If gross receipts \$100,000 or more, still required to obtain the minimal activity license for each location but if registered and pay Business Tax no additional charge.

Business Tax (Cont'd)

- Expanded manufacturing exemption
 - Current law exempts from business tax an entity primarily engaged in manufacturing at a Tennessee location.
 - Expands exemption to sales by entities engaged in manufacturing (i.e., fabrication and processing for tangible personal property for resale and consumption off the premises) **from any location – not just TN locations.**
 - Exemption expanded to apply not only to sales of products made from the manufacturing location, but also to any such sales made from a storage or warehouse facility located within a ten-mile radius of the manufacturing location.

Business Tax (Cont'd)

- Reduced tax rate for Industrial Loan and Thrift Companies
 - Presently the Business Tax rate on Industrial Loan and Thrift Companies is 0.3% while rest of businesses have rates in a range of 1/50 of one percent (0.0002) to 3/16 of one percent (0.001875%).
 - Rate reduction to 1/10 of one percent (0.001).
- Higher licensing/filing threshold for certain contractors
 - Currently contractors are deemed to have established a location within a county and/or municipality when it has taxable sales exceeding \$50,000 in that jurisdiction even if it does not have an actual physical location in that jurisdiction.
 - Filing threshold raised to \$100,000.
 - Effective date: tax years ending on or after December 31, 2023

Transportation Modernization Act

- Increase in registration fee for electric vehicles and creates a new registration fee for hybrid vehicles and plug-in hybrid vehicles.
 - Registrations on or after January 1, 2024 and prior to January 1, 2027 registration fee is:
 - All-electric vehicles \$200
 - Hybrid and plug-in hybrid vehicles \$100
 - Registration on or after January 1, 2027 and prior to January 1, 2028 registration fee is:
 - All-electric vehicles \$274
 - Hybrid and plug-in hybrid \$100
 - Registrations on or after January 1, 2028, adjust annually to inflation or deflation.

Transportation Modernization Act (Cont'd)

- County clerk permitted to raise fees for handling mail orders of license plates and decals in an amount not to exceed applicable US postal service price increase in any given year.
 - Effective date: April 25, 2023
- Unclaimed and Abandoned Vehicles
 - Permits garagekeepers to notify owners and lienholders of unclaimed or abandoned vehicles by overnight delivery using a nationally recognized carrier with proof of delivery.
 - Authorizes garagekeepers and towing companies to tow abandoned, immobile, or unattended vehicles at the request of private property owners.
 - Effective date: April 24, 2023