

CHAPTER NO. 959

SENATE BILL NO. 3454

By Crutchfield, Clabough

Substituted for: House Bill No. 3542

By McMillan, Head

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 5; Title 6; Title 7; Title 8; Title 9; Title 12; Title 16; Title 30; Title 36; Title 39; Title 40; Title 45; Title 47; Title 48; Title 49; Title 54; Title 55; Title 56; Title 57; Title 61; Title 62; Title 67; Title 68; Title 69; Title 70 and Title 71, relative to taxation.

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

SECTION 1. Tennessee Code Annotated, Section 67-6-102(13), is amended by adding the following language after the present language:

If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(A) a percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(B) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

SECTION 2. Tennessee Code Annotated, Section 67-6-102(43), is amended by deleting all of present subdivision (B) and substituting instead the following:

(B) "Prosthetic device" does not include

(i) Corrective eyeglasses; or

(ii) Contact lenses.

SECTION 3. Tennessee Code Annotated, Section 67-6-102(48)(A), is amended by deleting subdivision (vii) in its entirety and by adding the following to subdivision (B) as a new subdivision:

() Credit for any trade-in; as determined by § 67-6-510.

SECTION 4. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following new subdivisions:

() "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter-drugs".

() "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The "over-the-counter-drug" label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

"Over-the-counter-drug" does not include grooming and hygiene products.

SECTION 5. Tennessee Code Annotated, Section 67-6-103, is amended by deleting the language in subsection (g) in its entirety and substituting instead the following:

The state sales tax received under the provisions of this chapter from interstate telecommunications sold to businesses shall be distributed as follows: The revenue from a rate equal to four percent (4%) of tax shall be deposited in the telecommunications ad valorem tax reduction fund created by § 67-6-222. All other revenue shall be deposited in the state general fund and allocated pursuant to subsections (a) and (c).

SECTION 6. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c) Notwithstanding the provisions of subsections (a) and (b), all revenue generated from the one-half percent (0.5%) increase in the sales tax rate that became effective April 1, 1992, shall be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12).

SECTION 7. Tennessee Code Annotated, Section 67-6-206(b)(2), is amended by deleting the words "reduced rates" and substituting instead the word "exemption".

SECTION 8. Tennessee Code Annotated, Section 67-6-207(a), is amended by inserting a comma in the first sentence immediately after the word "repair".

SECTION 9. Tennessee Code Annotated, Section 67-6-229, is amended by deleting the last sentence thereof and substituting instead the following sentence:

This section does not apply to sales of school books, food and food ingredients, or prepared food when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12).

SECTION 10. Tennessee Code Annotated, Section 67-6-313, is amended by deleting the language in subsection (a) in its entirety and by substituting instead the following:

It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state for export, or produced or manufactured in this state for export. If the sale of tangible personal property imported into this state is sourced to this state pursuant to Part 9 of this chapter, this exemption shall apply provided that the purchaser's use of the tangible personal property imported into this state is limited to storage, inspection, or repackaging for shipment of the property for export outside this state.

SECTION 11. Tennessee Code Annotated, Section 67-6-314, is amended by adding the words "dispensed pursuant to a prescription" immediately following the existing language in subdivision (2) and is further amended by adding the words "dispensed pursuant to a prescription" immediately following the existing language in subdivision (3) and is further amended by deleting subdivision (4) in its entirety and renumbering the remaining subdivisions accordingly.

SECTION 12. Tennessee Code Annotated, Section 67-6-317, is amended by deleting the language therein in its entirety and substituting instead the following:

The sale of disposable non-prosthetic ostomy products for use by persons who have had colostomies, ileostomies, or urostomies is exempt from the tax levied by this chapter.

SECTION 13. Tennessee Code Annotated, Section 67-6-320, is amended by deleting subsections (a) and (b) in their entirety and substituting instead the following:

(a) There is exempt from the tax imposed by this chapter any drug, including over-the counter-drug for human use dispensed pursuant to a prescription. This exemption shall not apply to grooming and hygiene products.

(b) There is exempt from the tax imposed by this chapter:

(1) The sale or use of insulin.

(2) The sale or use of medical oxygen for human use dispensed pursuant to a prescription, and the disposable medical supplies necessary to administer such oxygen.

SECTION 14. Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting subdivision (22) in its entirety and substituting instead the following:

(22) Prepared food, as defined in § 67-6-228, when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12). This provision shall not be interpreted to exempt a public or private school or school support group from paying sales or use taxes on the cost price of prepared food or food and food ingredients, as defined by § 67-6-228, purchased for resale by the school or a school support group at fund raisers, sports events and the like pursuant to the provisions of § 67-6-229, or to exempt sales from any vending machine, including vending machines located on the premises of public or private schools, from the sales tax.

SECTION 15. Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting the language in subdivision (2) in its entirety and substituting instead the following:

(2) Motor vehicle fuel now taxed per gallon by Chapter 3, Part 2 of this title;

SECTION 16. Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting subdivision (5) in its entirety.

SECTION 17. Tennessee Code Annotated, Section 67-6-337, is amended by deleting the language therein in its entirety and substituting instead the following:

There are exempt from the tax imposed by this chapter all sales for which the consideration given is food stamps, food coupons or for which an electronic debit card or other electronic benefits transfer system is used or which utilizes such other means as the Department of Human Services may approve, and which cards, systems or other means may be issued, authorized or used by the department or the federal government, their agents or contractors to assist persons, on a means-tested basis, to purchase eligible food and food ingredients, prepared food, candy and dietary supplements in accordance with the laws and regulations issued by the federal government pursuant to the Food Stamp Act of 1964, 7 U.S.C. § 2011 et seq., or the department pursuant to Title 71, Chapter 5, Part 3, or in accordance with any other current enabling legislation or subsequent enabling legislation or regulations authorizing issuance of food coupons, food stamps or the use of any electronics benefits transfer process, including, but not limited to, the use of any electronic debit card system or other such system as the department may approve. If any other consideration other than that provided for in the preceding sentence is used in any sale, that portion of such sale shall be fully taxable.

SECTION 18. Tennessee Code Annotated, Section 67-6-408, is amended by inserting the words, symbols and punctuation "and § 67-4-2701" between the word "chapter" and the word "from" in subsection (1), and by inserting the words, symbols and punctuation "and § 67-4-2307" between the word "chapter" and the word "from" in subsection (2).

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following as a new section:

67-6-5____. (a) Notwithstanding Chapter 856, § 4(g), of the Public Acts of 2002, sales to or use by a contractor, subcontractor, or material vendor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a lump sum or unit price construction contract entered into prior to July 15, 2002, or awarded by the state or a political subdivision pursuant to a bid opening which occurred prior to July 15, 2002, shall be subject to tax at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 plus the applicable local option sales tax rate under the provisions of Part 7 of this chapter. In addition, sales to or use by a subcontractor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a written subcontract entered into prior to September 1, 2002, if such subcontract is made pursuant to a general contract described in this section, shall be subject to tax at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

(b) If the tax in subsection (a) is paid to a vendor, such contractor or subcontractor may file a claim with the commissioner for a refund of any such tax paid to any of the contractor's vendors at a rate in excess of six percent (6%) plus the local option sales tax rate in effect or operative on July 1, 2002, in the county or municipality in which the sale is sourced.

(c) If the tax in subsection (a) is remitted directly to the department by such contractor or subcontractor, the contractor or subcontractor may claim a credit on its sales and use tax return covering the same period in which the tax is paid. Such credit shall equal the amount of tax remitted to the department at a rate in excess of six percent (6%) plus the local option sales tax rate in effect or operative on July 1, 2002, in the county or municipality in which the sale is sourced.

(d) For purposes of this section the term "lump sum or unit price construction contract" means a written contract for the construction of improvements to real property under which the amount payable to the contractor, subcontractor or material vendor is fixed without regard to the costs incurred in the performance of the contract.

SECTION 20. Tennessee Code Annotated, Section 67-6-509, is amended by adding the following new subsections:

(c) Notwithstanding subsection (a) above, a model 1 seller under the Streamlined Sales and Use Tax Agreement shall not be entitled to the vendor's compensation described in subsection (a).

(d)(A) In addition to any compensation that may be provided under subsection (a) above, the commissioner is authorized to provide the monetary allowances required to be provided by the state to certified service providers and voluntary sellers pursuant to Article VI of the Streamlined Sales and Use Tax Agreement as it may be amended from time to time.

(B) Such monetary allowances shall be in the form of vendor's compensation allowances that certified service providers or voluntary sellers are permitted to retain from the tax revenue collected on remote sales to be remitted to the state pursuant to this chapter.

(C) The details of such monetary allowances shall, in the case of a model 1 seller, be outlined in each contract between the Streamlined Sales and Use Tax Agreement governing board and the certified service provider. Vendor's compensation rates on remote sales that may be retained by a volunteer model 2 or model 3 seller and all other volunteer sellers that are not model 2 or 3 sellers shall be determined by the commissioner in accordance with the provisions of Article VI of the Streamlined Sales and Use Tax Agreement and the commissioner shall cause such rates and their effective dates to be filed with the secretary of state for publication in the Tennessee Administrative Register.

(D) Vendor's compensation rates published in the Tennessee Administrative Register shall remain in effect until new rates determined by the commissioner and published in the Tennessee Administrative Register become effective.

(e) For purposes of subsection (d) above, "voluntary seller" or "volunteer seller" means a seller that does not have a requirement to register in Tennessee to collect the Tennessee tax pursuant to this chapter and "remote sales" means revenue generated by such a seller for Tennessee for which the seller does not have a requirement to register to collect the Tennessee tax pursuant to this chapter.

SECTION 21. Tennessee Code Annotated, Section 67-6-536, is amended by deleting all of the language of subsection (d) and substituting instead the following:

Notwithstanding any provision of law to the contrary, a seller that is:

(1) registered using the central registration system provided by states that are members of the Streamlined Sales and Use Tax Agreement; and

(2) does not have a legal requirement to register in this state; and

(3) is not a Model 1, 2 or 3 seller; and

(4) has not accumulated more than one thousand dollars (\$1,000) in state and local sales and use taxes;

shall be permitted to file a sales and use tax return at any time within one year of the month of initial registration and shall be permitted to file future returns on an annual basis in succeeding years. Such returns shall be due the twentieth (20th) day of the month following the tax period covered by the return. A seller that has accumulated Tennessee state and local sales and use tax funds in the amount of one thousand dollars (\$1,000) shall file a return by the twentieth (20th) day of the month following the month in which such accumulated taxes reach or exceed one thousand dollars (\$1,000). Nothing in this subsection (d) shall relieve a seller who collects Tennessee sales or use tax from its customers from liability for failure to pay over those funds to the commissioner on behalf of the state.

SECTION 22. Tennessee Code Annotated, Section 67-6-537, is amended adding the following as a new subsection (d):

(d) A seller or certified service provider shall not have any additional liability for state or local option taxes imposed by this chapter if the taxpayer or certified service provider charged and collected an incorrect amount of sales or use tax in reliance on erroneous data in the taxability matrix provided by the department pursuant to Section 328(A) of the Streamlined Sales and Use Tax Agreement.

SECTION 23. Tennessee Code Annotated, Section 67-6-608, is amended by adding the following as a new subsection:

(c) The fact that a person has registered pursuant to this section shall not be used in determining whether such person so registered has sufficient nexus with Tennessee so as to be subject to any tax at any time.

SECTION 24. Tennessee Code Annotated, Section 67-6-702, is amended by inserting the words "sold unaffixed to realty as completed units" immediately after the words "modular homes" in subsection (d).

SECTION 25. Tennessee Code Annotated, Section 67-6-702, is amended by adding the following as a new subsection:

(h) Notwithstanding any other law to the contrary, sales of tangible personal property upon which a state sales and use tax is levied shall be subject to a local sales and use tax at the rate of two and one-fourth percent (2.25%) when obtained from any vending machine or device.

SECTION 26. Tennessee Code Annotated, Section 67-6-706(a)(3), is amended by deleting all of the language after the semicolon therein and substituting instead the following:

provided, that no tax shall be collected under any such ordinance or resolution until the earliest effective date allowed under the provisions of this part.

SECTION 27. Tennessee Code Annotated, Section 67-6-710, is amended by adding the following new subsection:

() (1) Proceeds of the tax provided for in § 67-6-702(h) shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (1) of this subsection shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

SECTION 28. Tennessee Code Annotated, Section 67-6-712, is amended by adding the following as a new subsection:

() When local sales tax revenues received by the department cannot be identified to a particular situs, the following distribution shall be made.

(1) Fifty percent (50%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712; and

(2) Fifty percent (50%) shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(3) The amount received by the county under subdivision (2) shall be distributed first as provided for in Section 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

SECTION 29. Tennessee Code Annotated, Section 67-6-716, is amended by deleting the language "made a reasonable effort to notify dealers of the new tax or change in the rate" in

subsections (1), (2) and (3) and substituting instead the language "issued general notification of the new tax or change in the rate to dealers affected".

SECTION 30. Tennessee Code Annotated, Section 67-6-901, is amended by deleting the symbols, numbers, and punctuation "§ 67-9-902(d)," wherever they appear and substituting instead the symbols, numbers, and punctuation "§ 67-6-902(d)," and is further amended by deleting the symbols, numbers and punctuation "§ 67-9-905," and substituting instead the symbols, numbers, and punctuation "§ 67-6-905,".

SECTION 31. Tennessee Code Annotated, Section 67-6-901(c), is amended by deleting the words and punctuation "modular homes," in subdivision (1).

SECTION 32. Tennessee Code Annotated, Section 67-6-902(c), is amended by inserting the words, punctuation and numbers "and watercraft with a displacement of under fifty (50) tons," between the letter and punctuation "(d)", and the word "shall".

SECTION 33. Tennessee Code Annotated, Section 67-6-903, is amended by deleting the punctuation and letter "(b)" in subsection (d) and substituting instead the punctuation and letter "(c)".

SECTION 34. Tennessee Code Annotated, Section 67-6-906, is amended by deleting the language therein in its entirety and substituting instead the following:

(a) The retail sale, excluding the lease or rental, of watercraft with a displacement of less than fifty (50) tons and the sale or transfer, including lease or rental, of manufactured homes, or mobile homes; and the retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in § 67-6-902(d); shall be sourced as follows:

(1) If a dealer regularly engaged in making sales or transfers of the property being sold, the transaction is sourced to the business location of the dealer making the sale and the dealer shall collect the applicable state and local sales tax.

(2) If the sale or transfer of property is made by a dealer or person not regularly engaged in making sales or transfers of the property being sold, and such property is required by law to be registered and/or titled by the county clerk or the agency with which the property is licensed, registered or otherwise recorded requires sales tax to be paid to the county clerk as a prerequisite, the clerk shall collect the applicable state and local sales or use tax at the rate applicable in the clerk's county jurisdiction.

(3) In all other situations where Tennessee sales or use tax is due but has not been paid by the purchaser, the purchaser shall file a use tax return with the commissioner and pay the applicable state and local tax. In such a case, the purchaser shall pay the local use tax at the rate applicable in the county or municipality where the place of primary use of the property takes place.

(4) For purposes of subsection (3) above, the place of primary use of the property shall be the owner's Tennessee street address. If the owner has more than one Tennessee address, the place of primary use of the property shall be

the primary street address at which the owner keeps the property. The property's place of primary use shall not be altered by intermittent use at different locations, such as the use of business property that accompanies employees on business trips and service calls.

(b) Notwithstanding any other law to the contrary, the retail sale, including the lease or rental, of watercraft with a displacement of fifty (50) tons or more shall be sourced under the provisions of § 67-6-902(d).

SECTION 35. Tennessee Code Annotated, Title 67, Chapter 6, Part 9, is amended by adding the following as a new section:

67-6-9____. (a) For purposes of this section, a "retail florist" is a seller who is primarily engaged in the retail sale of cut flowers and floral arrangements that are primarily either sold over-the-counter or delivered locally by the same florist. For this purpose, the term "primarily" means more than fifty percent (50%) of the seller's total gross sales or receipts are derived from that activity. In determining if a business is primarily a florist, the total sales price of cut flowers and floral arrangements includes all charges made by the florist to the purchaser of such as separately stated delivery or service charges. All service, relay and any other charges for orders, including charges for long distance telephone calls and telegraph service that are separately stated and represent cost to the retail florist, without any mark-up, shall be considered to be part of the total selling price subject to the sales tax.

(b) Notwithstanding any other law to the contrary, the sale of cut flowers, floral arrangements, potted plants and any associated tangible personal property by a retail florist shall be sourced as follows:

(1) If the transaction takes place prior to January 1, 2006;

(A) the sale shall be sourced to the location of the florist that took the order from the purchaser even if such florist forwards the order to another retail florist in a different taxing jurisdiction to prepare and deliver to the recipient identified by the purchaser; and

(B) the retail florist that took the order shall collect from the purchaser the applicable state sales tax and the local sales tax applicable in such retail florist's taxing jurisdiction and remit such tax to the appropriate taxing authority; and

(C) if a Tennessee retail florist receives instructions from another retail florist for the delivery of flowers, such receiving florist will not be held liable for tax with respect to any receipts that such florist may realize from the transaction.

(2) If the transaction takes place on or after January 1, 2006, and the retail florist taking the order forwards it to another retail florist in a different taxing jurisdiction to prepare and deliver to the recipient identified by the purchaser, the sale is sourced to the location in the taxing jurisdiction where delivery to the recipient (the purchaser's donee) occurs; and

(A) the retail florist that took the order shall collect from the purchaser the applicable state sales tax and the local sales tax applicable in the taxing jurisdiction where delivery to the recipient (the purchaser's donee) occurs and remit such tax to the appropriate taxing authority; and

(B) if a Tennessee retail florist receives instructions from another retail florist for the delivery of flowers, such receiving florist will not be held liable for sales or use tax with respect to any receipts that such florist may realize from the transaction.

SECTION 36. Tennessee Code Annotated, Title 67, Chapter 4, Part 23, is amended by adding the following as a new section:

67-4-23___. It is not the intention of this part to levy a tax upon articles of tangible personal property imported into this state for export, or produced or manufactured in this state for export. If the sale of tangible personal property imported into this state is sourced to this state pursuant to Part 9 of Chapter 6, this exemption shall apply provided that the purchaser's use of the tangible personal property imported into this state is limited to storage, inspection, or repackaging for shipment of the property for export outside this state.

SECTION 37. Tennessee Code Annotated, Section 67-4-2302, is amended by deleting the following language and punctuation in subsection (b):

, and shall have the authority and power to prescribe the method by which persons liable for the tax levied shall remit the tax and make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such persons

and is further amended by deleting the present language of subsection (c) in its entirety and substituting instead the following:

The exemptions provided for in Sections 67-6-308, 67-6-322, 67-6-325, 67-6-326, 67-6-328, 67-6-329, 67-6-331, 67-6-340, and 67-6-384 are applicable to the tax levied under this part.

and is further amended by adding the following new subsection (d):

(d)(1)(A) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this part, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner returns showing the purchase price arising from the purchase, use, importation for use, or consumption of the goods and services taxed pursuant to this part during the preceding calendar month.

(B) At the time of transmitting the return required hereunder to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due, and failure to so remit such tax shall cause the tax to become delinquent.

(2)(A) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(B) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(3)(A) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(B) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

(4)(A) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of special user privilege tax owed to the state, and the amount of such person's purchases, uses, importations for use, or consumption taxable under this part, and such other books of account as may be necessary to determine the amount of tax hereunder, and all such books and records shall be open to inspection at all reasonable hours to the commissioner or any person duly authorized by either of them.

(B) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is responsible for paying the tax on the transaction(s) represented by the record.

SECTION 38. Tennessee Code Annotated, Section 67-4-2303(h)(1), is amended by deleting in its entirety all language and punctuation following the word "distributed" in subdivision (B) and substituting instead the following:

to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion that the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census or other census authorized by law.

SECTION 39. Tennessee Code Annotated, Section 67-4-2304, is amended by deleting the language of subsection (b) in its entirety and substituting instead the following:

The tax collected pursuant to this section shall be deposited in the state general fund.

SECTION 40. Tennessee Code Annotated, Section 67-4-2305, is amended by inserting in subsection (a) the words, symbols and punctuation "67-4-2307, 67-4-2701," between the symbols "§§" and the numbers and punctuation "67-6-302," and adding at the end of this section the following:

This section does not apply to sales of food and food ingredients, candy, dietary supplements, alcoholic beverages, tobacco and fuel.

SECTION 41. Tennessee Code Annotated, Section 67-4-2305(b), is amended by deleting in its entirety all language and punctuation following the word "distributed" in subdivision (2) and substituting instead the following:

to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion that the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census or other census authorized by law.

SECTION 42. Tennessee Code Annotated, Title 67, Chapter 4, Part 23, is amended by adding the following new section:

67-4-2308. (a) The taxes imposed by this part shall not apply to any property or services:

(1) upon which the sales or use tax imposed by Title 67, Chapter 6, has been paid;

(2) upon which a sales or use tax was previously legally imposed and collected by another state, at a rate equal to or greater than the rate of tax provided for in this part; or

(3) upon which another state has previously legally imposed and collected a tax substantially similar to the tax imposed by this part, at a rate equal to or greater than the rate of tax provided for in this part.

(b) If the taxes described in subsection (a) are at a rate lesser than the rate imposed by this part, the tax imposed by this part shall be at the difference between the rate of tax imposed by this part and the rate of the tax described in subsection (a).

(c) Notwithstanding subsections (a) and (b) above, the tax levied by this part shall apply without reduction for any sales or use tax or tax substantially similar to the tax levied by this part that is paid to another state on the same transaction if such state does not have the first right to tax or has no statutory provisions to reduce its sales or use tax, or tax substantially similar to the tax levied by this part, by any payment of the tax levied by this part. Each taxpayer seeking a reduction of the tax levied by this part due to payment of a sales or use tax or tax substantially similar to the tax levied by this part to another state on the same transaction shall furnish evidence to the satisfaction of the commissioner that the tax statutes of the other state would allow a reduction of its sales or use taxes or tax substantially similar to the tax levied by this part in like factual situations.

(d) The taxpayer shall bear the burden of maintaining documentary proof that the taxes described in subsection (a) have been paid.

SECTION 43. Tennessee Code Annotated, Section 67-4-2401, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) There is levied a privilege tax of 9 % of the gross charge for services provided by a cable television service provider authorized pursuant to Title 7, Chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service), when such services are delivered to the subscriber at a location in Tennessee.

SECTION 44. Tennessee Code Annotated, Section 67-4-2401(c)(2), is amended by deleting the language "to the cities and counties in accordance with collections" and substituting instead the following:

to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law

SECTION 45. Tennessee Code Annotated, Section 67-4-2402, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) There is levied a privilege tax of 8.25% of the gross charge for services provided by a direct-to-home satellite service provider, when such services are delivered to the subscriber at a location in Tennessee.

SECTION 46. Tennessee Code Annotated, Section 67-4-2407(a), is amended by deleting the words "sales tax" and substituting the words "tax levied by this part".

SECTION 47. Tennessee Code Annotated, Title 67, Chapter 4, Part 24, is amended by adding the following new sections:

67-4-2408. The exemptions provided for in §§ 67-6-308, 67-6-322, 67-6-325, 67-6-328, 67-6-329(a)(13), and 67-6-384 are applicable to the tax levied under this part.

67-4-2409. The tax imposed by this part shall not apply when the television programming or television services are sold for resale. "For resale" shall mean that the customer of the cable television service, wireless cable television service, or direct-to-home satellite provider purchases the services, sells those services to others, and is liable for the tax imposed by this part, or for the sales tax imposed by Title 67, Chapter 6, on its sales of those specific services. The commissioner is authorized and empowered to require the use of certificates of resale, or other satisfactory proof, as proof that any sale claimed to be a sale for resale is in fact a sale for resale. In cases where a customer purchases some services for resale and others for the customer's use and consumption, the seller must separate the taxable and resale amounts on the bill, invoice, or statement provided to its customer.

SECTION 48. Tennessee Code Annotated, Section 67-4-2507(a), is amended by deleting the words "sales tax" and substituting the words "tax levied by this part".

SECTION 49. Tennessee Code Annotated, Section 67-1-110(c), is amended by adding the following as a new subdivision (6) and by renumbering the remaining subdivisions accordingly:

(6) Know the department's policies with respect to use and retention of personally identifiable information;

SECTION 50. Tennessee Code Annotated, Section 67-1-1712, is amended by inserting the words "and the Department" between the word "Provider" and the word "shall" in subsection (a).

SECTION 51. Tennessee Code Annotated, Section 67-1-1802, is amended by adding the following language at the end of subsection (d):

If a certified service provider, as defined in § 67-6-102, has assumed sales and use tax return filing responsibilities of the seller, such provider shall have the right to claim, on behalf of the seller, any bad debt allowance or refund available to the seller under the provisions of § 67-6-507.

SECTION 52. Tennessee Code Annotated, Section 6-51-115(b), is amended by adding the following as a new subdivision (3):

When the amount of local option sales tax produced by businesses in the annexed area cannot be determined from sales tax returns filed by the businesses, the commissioner may determine the amount to be distributed to the county over the fifteen (15) year period based on the best information available. For this purpose, the commissioner may use information obtained from business tax returns or obtain additional information from the businesses involved.

SECTION 53. Tennessee Code Annotated, Section 6-51-115, is amended by adding the words, numbers, symbol and punctuation "except that § 67-6-716 shall control the effective date of local jurisdictional boundary changes for sales and use tax purposes," between the word and punctuation "contrary," and the word "whenever" in the first sentence of subsection (a).

SECTION 54. Tennessee Code Annotated, Section 67-6-386, is amended by deleting the words and punctuation ", except as provided in this section," in subsection (a), and is further amended by deleting the words "sold to commercial air carriers" in subsection (a), and is further amended by deleting the words "Commercial air carriers seeking to make purchases of aviation fuel exempt from tax and common" in subsection (c) and by substituting instead the word "Common", and is further amended by deleting subsection (d) in its entirety and relettering the remaining subsection accordingly.

SECTION 55. Tennessee Code Annotated, Section 67-4-2306 is repealed.

SECTION 56. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

PART 27 – AVIATION FUEL

67-4-2701. There is levied a privilege tax of 4.5% of the gross charge for the sale, the use, the consumption, the distribution and the storage of aviation fuel used in

the operation of airplane or aircraft motors. For purpose of this part, "gross charge" shall include the actual price paid for the aviation fuel without any deductions therefrom, except for federal excise tax.

67-4-2702. (a) The taxes levied herein shall be collected from the dealer as defined in T.C.A. § 67-6-102, and paid at the time and in the manner hereinafter provided. The tax imposed by this chapter shall be collected by the dealer from the consumer insofar as it can be done.

(b) The dealer shall indicate in some definite manner whether the customer is paying this privilege tax. This indication must be stated on the ticket, invoice, or other record given to the customer.

(c) The tax levied by this section shall be paid by the purchaser in those cases where the seller of the aviation fuel is not liable to collect the tax.

(d) The tax levied by this part is a transactional tax in lieu of the sales or use tax and shall be considered a sales or use tax for purposes of reciprocity and giving credit for sales or use tax paid.

67-4-2703. (a) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers on or before the twentieth (20th) day of each month to transmit to the commissioner returns showing the gross charges arising from the sale of aviation fuel taxable under this chapter during the preceding calendar month.

(b) Each dealer shall also remit the amount of tax due with each return required herein. If the taxes due with the return are not remitted to the commissioner before the due date of the return, the return shall be considered delinquent and penalty and interest shall attach to the taxes due as provided by law.

(c) Each dealer of aviation fuel shall include on the return, a statement under penalty of perjury, evidencing the total amount in gallons of aviation fuel sold and the dollar amount collected from such sales, and any other information as may be required by the commissioner on forms prescribed by the department.

67-4-2704. (a) The Commissioner of Revenue shall administer and enforce the assessment and collection of the taxes levied by this part.

(b)(1) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(2) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(c) The commissioner is empowered to examine the books and records of any person subject to the provisions of this part.

67-4-2705. (a) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(b) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

67-4-2706. (a) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of tax owed to the state, and the amount of such person's gross charges taxable under this part, and such other books of account as may be necessary to determine the amount of tax hereunder, and all such books and records shall be open to inspection at all reasonable hours to the commissioner or any person duly authorized by either of them.

(b) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is responsible for paying the tax on the transaction(s) represented by the record.

67-4-2707. The tax collected under this part shall be deposited to the transportation equity fund.

67-4-2708. The tax imposed by this part shall not apply when the aviation fuel is sold for resale. The commissioner is authorized and empowered to require the use of certificates of resale, or other satisfactory proof, as proof that any sale claimed to be a sale for resale is in fact a sale for resale.

67-4-2709. The exemptions provided for in §§ 67-6-308, 67-6-322, 67-6-325, 67-6-328, 67-6-329(a)(13), and 67-6-384 are applicable to the tax levied under this part.

67-4-2710. There is exempt from the tax imposed by this chapter fuel and petroleum products sold to or used by a commercial air carrier, certified by the carrier to be used for consumption, shipment or storage in the conduct of its business as an air common carrier for a flight destined for or continuing from a location outside the United States.

67-4-2711. (a) A commercial air carrier may purchase aviation fuel without payment of tax to the dealer by presenting the dealer with a certificate issued pursuant to Tennessee Code Annotated, Section 67-6-528, in which case the carrier becomes liable for reporting and payment of the privilege tax pursuant to the terms of this section.

(b) For purposes of this section, "commercial air carrier" means an entity authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property by air in interstate or foreign commerce.

67-4-2712. (a) The tax imposed by this part shall not apply to any aviation fuel:

(1) upon which a sales or use tax was previously legally imposed and collected by another state, at a rate equal to or greater than the rate of tax provided for in this part; or

(2) upon which another state has previously legally imposed and collected a tax substantially similar to the tax imposed by this part, at a rate equal to or greater than the rate of tax provided for in this part.

(b) If the taxes described in subsection (a) are at a rate lesser than the rate imposed by this part, the tax imposed by this part shall be at the difference between the rate of tax imposed by this part and the rate of the tax described in subsection (a).

(c) Notwithstanding subsections (a) and (b) above, the tax levied by this part shall apply without reduction for any sales or use tax or tax substantially similar to the tax levied by this part that is paid to another state on the same transaction if such state does not have the first right to tax or has no statutory provisions to reduce its sales or use tax, or tax substantially similar to the tax levied by this part, by any payment of the tax levied by this part. Each taxpayer seeking a reduction of the tax levied by this part due to payment of a sales or use tax or tax substantially similar to the tax levied by this part to another state on the same transaction shall furnish evidence to the satisfaction of the commissioner that the tax statutes of the other state would allow a reduction of its sales or use taxes or tax substantially similar to the tax levied by this part in like factual situations.

(d) The taxpayer shall bear the burden of maintaining documentary proof that the taxes described in subsection (a) have been paid.

SECTION 57. Tennessee Code Annotated, Section 67-4-2302, is amended by adding the following as a new subsection:

() Any tax levied by this part is a transactional tax in lieu of the sales or use tax and shall be considered a sales or use tax for purposes of reciprocity and giving credit for sales or use tax paid.

SECTION 58. Tennessee Code Annotated, Section 67-6-805, is amended by deleting the present language in its entirety and substituting instead the following:

(a) The Commissioner of Revenue is authorized to enter into, on behalf of the State of Tennessee, the agreement styled "Streamlined Sales and Use Tax Agreement", adopted November 12, 2002, by the Streamlined Sales Tax Implementing States, including any amendment to the agreement so long as the amendment has also been adopted by the Streamlined Sales Tax Implementing States. After Tennessee becomes a member of the agreement, the commissioner is authorized to take any and all action pursuant to the state's membership in the agreement, provided such action is not inconsistent with any law of this state.

(b) No provision of any agreement entered into by the commissioner under the authority of subsection (a) invalidates or amends any provision of the law of the State of Tennessee. Implementation of any condition of the agreement in the State of

Tennessee, whether adopted before, at, or after membership of the State of Tennessee in the agreement, must be authorized by the general assembly by legislative enactment.

(c) The agreement referenced in this section is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

(d) No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of the State of Tennessee and the other member states and not by the terms of the agreement.

(e) No person shall have any cause of action or defense under the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the State of Tennessee, or any political subdivision of the State of Tennessee on the grounds that the action or inaction is inconsistent with the agreement.

(f) No law of the State of Tennessee, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

(g) Determinations pertaining to the agreement that are made by the member states are final when rendered and are not subject to protest, appeal or review in any court in this state.

SECTION 59. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as a new subdivision:

() "Resale" shall mean a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" shall mean the sale of such property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the commissioner.

SECTION 60. Tennessee Code Annotated, Section 67-6-102(31)(C), is amended by deleting the words and punctuation ", paging service, and cable television service sold to customers or to others by hotels or motels" and substituting instead the words "and paging service".

SECTION 61. Tennessee Code Annotated, Section 67-6-231, is amended by deleting the present language in its entirety and substituting instead the following:

The sale or use of computer software, including prewritten computer software, shall be subject to the tax levied by this chapter, regardless of whether such software is delivered electronically, by use of tangible storage media, or otherwise, and shall be sourced under the provisions of Part 9 of this chapter.

SECTION 62. Tennessee Code Annotated, Section 67-6-201(9), is amended by deleting the language "other than cable, wireless cable or satellite" and substituting instead the

language "except for television services sold by persons subject to the tax in Title 67, Chapter 4, Part 24".

SECTION 63. Tennessee Code Annotated, Section 67-6-205(c)(9), is amended by deleting the language "other than cable, wireless cable or satellite" and substituting instead the language "except for television services sold by persons subject to the tax in Title 67, Chapter 4, Part 24".

SECTION 64. Tennessee Code Annotated, Title 67, Chapter 4, Part 24, is amended by adding the following new section:

67-4-2410. A person who has paid the tax imposed by this part on any sale taxable under this part may take credit for any bad debts arising from such sale, in any return filed under the provisions of this part. The provisions of §§ 67-6-507(e) and 67-1-1802(d) shall apply to such credit.

SECTION 65. Tennessee Code Annotated, Title 67, Chapter 4, Part 25, is amended by adding the following new section:

67-4-2507. A person who has paid the tax imposed by this part on any sale taxable under this part may take credit for any bad debts arising from such sale, in any return filed under the provisions of this part. The provisions of §§ 67-6-507(e) and 67-1-1802(d) shall apply to such credit.

SECTION 66. Tennessee Code Annotated, Section 67-6-349, is repealed.

SECTION 67. Tennessee Code Annotated, Section 67-6-407, is amended by deleting the present language in its entirety and substituting instead the following:

(a) The commissioner has the authority to require any person who pays the tax imposed by this chapter, if such tax is to be allocated to the transportation equity fund pursuant to § 67-6-103, to file a quarterly report not later than thirty (30) days after the last day of the preceding calendar quarter. Such report shall be executed under penalty of perjury, stating the total amount in gallons of fuel subject to the tax, the dollar amount of tax paid on such sales or uses, and any other information as may be required by the commissioner on forms prescribed by the department. The report required herein shall be supplemental to any other required by the commissioner or the department. A failure to file the report shall result in a civil penalty to be determined by the commissioner pursuant to the authority contained in § 67-6-402.

(b) The commissioner may furnish the reports authorized by this section, or the tax information contained therein, to the Department of Transportation solely for the purpose of administering the transportation equity fund. Any information released to the Department of Transportation pursuant to this subsection shall be subject to the provisions of Title 67, Chapter 1, Part 17, including the criminal penalties contained therein.

SECTION 68. Section 82 of Chapter 357 of the Public Acts of 2003, as codified in Tennessee Code Annotated, is amended by deleting the words, numbers, and punctuation "then on the first day of the second quarter following the effective date of the Streamlined Sales


Tax Agreement, the public welfare requiring it; provided, that in no event shall any provision of this act take effect prior to July 1, 2004" and substituting instead "at 12:01 a.m. on July 1, 2005".

SECTION 69. Tennessee Code Annotated, Section 67-4-2305(a), is amended by inserting the language "67-6-331," after the language "67-6-321,".

SECTION 70. Sections 58 and 68 of this act shall take effect upon becoming a law, the public welfare requiring it. All other sections of this act shall take effect at 12:02 a.m. on July 1, 2005, the public welfare requiring it.

PASSED: May 21, 2004


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 15th day of June 2004


PHIL BREDESEN, GOVERNOR