

CHAPTER NO. 499

SENATE BILL NO. 2310

By Kyle

Substituted for: House Bill No. 2317

By McMillan

AN ACT to amend Tennessee Code Annotated, Title 45, Title 48, Title 55, Title 56, Title 57, and Title 67, relative to taxation.

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

SECTION 1. Tennessee Code Annotated, Section 67-8-104(d), is amended by deleting the language in its entirety and by substituting instead the following language:

(d) All contributions or distributions made to or on behalf of beneficiaries under any college education savings plan authorized by Title 49, Chapter 7, Part 8 or 9, by federal law, or by the laws of another state are exempt from all taxation under this chapter. This exemption shall include, but is not limited to, contributions to and distributions from plans defined in 26 U.S.C. § 529 and accounts properly designated as education savings accounts, education IRAs, or future tuition payment plans, however described.

SECTION 2. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately numbered subdivision:

() "Tennessee historic property preservation or rehabilitation entity" means an entity that satisfies all of the following requirements:

(A) The Tennessee historic property preservation or rehabilitation entity must be a corporation or limited liability company organized under the laws of Tennessee that is directly or indirectly controlled by a not-for-profit entity, as defined in this part. Such not-for-profit entity must directly or indirectly hold not less than fifty-one percent (51%) of the Tennessee historic property preservation or rehabilitation entity's ownership interest and voting control;

(B) The Tennessee historic property preservation or rehabilitation entity must be organized for the purpose of preserving or rehabilitating a historic property listed on the National Register of Historic Places;

(C) The not-for-profit entity must receive approval of its historic certification application--Part 3 by the United States department of the interior national park service; and

(D) The historic property must be used in the performance of the exempt activity or function of the controlling not-for-profit entity.

SECTION 3. Tennessee Code Annotated, Section 67-4-2008(a)(13), is amended by deleting the language in its entirety and substituting instead the following language:

(13) Tennessee historic property preservation or rehabilitation entities.

SECTION 4. Tennessee Code Annotated, Section 67-6-322(i), is amended by deleting the language “an entity that satisfies all of the requirements of § 67-4-2008(a)(11)” and substituting instead the language “any Tennessee historic property preservation or rehabilitation entity as defined in § 67-4-2004”.

SECTION 5. Tennessee Code Annotated, Section 67-6-330(a), is amended by deleting the language in subdivision (6) and substituting instead the following language:

(6) Gross proceeds derived from admissions to amusement or recreational activities conducted, produced, or provided by:

(A) Not-for-profit museums, not-for-profit entities which operate historical sites and not-for-profit historical societies, organizations or associations;

(B) Organizations which have received and currently hold a determination of exemption from the Internal Revenue Service pursuant to 26 U.S.C. § 501(c);

(C) Organizations listed in Major Group No. 86 of the Standard Industrial Classification Manual of 1972, as amended, prepared by the office of management and budget of the federal government; or

(D) Tennessee historic property preservation or rehabilitation entities as defined in § 67-4-2004;

provided, that this exemption shall not apply unless such entities, societies, associations or organizations promote, produce and control the entire production or function;

SECTION 6. Tennessee Code Annotated, Section 67-6-206(b), is amended by adding the following as a new, appropriately designated subdivision:

() Notwithstanding subdivision (2), the term “manufacturer” does not include any person whose principal business is the preparation of food for immediate retail sale.

SECTION 7. Tennessee Code Annotated, Section 67-6-102(a)(16), is amended by adding the following as a new, appropriately designated subdivision:

() “Industrial machinery” does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale.

SECTION 8. Tennessee Code Annotated, Section 67-1-1441, is amended by deleting the language therein in its entirety and substituting instead the following:

(a) Inspectors, agents, representatives or officers appointed by the commissioner shall be cloaked with and have the duty, power, and authority as sheriffs, police officers and other peace officers to enforce the provisions of this part.

(b) Any duly authorized officer or employee of the department who has been specifically designated by the commissioner to enforce the provisions of this part is authorized and empowered to go armed or carry a pistol while on active duty engaged in enforcing the provisions of this part. Any such person is also authorized and empowered to execute search warrants and do all acts incident thereto in the same manner as search warrants may be executed by sheriffs, police officers and other peace officers.

SECTION 9. Tennessee Code Annotated, Section 67-1-1418, is amended by deleting the following language from subsection (b):

(1) That the sale shall not be conducted in any manner other than:

(A) By public auction; or

(B) By public sale under sealed bids;

and by substituting instead the following language:

(1) That the sale shall not be conducted in any manner other than:

(A) By public auction;

(B) By public internet auction; or

(C) By public sale under sealed bids;

SECTION 10. Tennessee Code Annotated, Section 57-6-104(b), is amended to include “, material” between the words “container” and “and” in the first sentence thereof.

SECTION 11. Tennessee Code Annotated, Section 57-6-104(b), is amended to include “, material” between the words “container” and “and” in the second sentence thereof.

SECTION 12. Tennessee Code Annotated, Section 57-6-104(b), is amended to include “, material” between the words “container” and “and” in the third sentence thereof.

SECTION 13. Tennessee Code Annotated, Section 57-6-104(c)(1), is amended to include “, material” between the words “container” and “and” in the first sentence thereof.

SECTION 14. Tennessee Code Annotated, Section 57-6-104(c)(1), is amended by deleting the second sentence in its entirety and by substituting instead the following sentence:

As used in this section, “category” refers to cans, returnable bottles, nonreturnable bottles, kegs and barrels; “container” refers to size in ounces; “material” refers to the principal material used to manufacture each category type, including without limitation metal, glass and/or plastic.

SECTION 15. Tennessee Code Annotated, Section 67-2-114, is amended by deleting subsection (c) in its entirety.

SECTION 16. Tennessee Code Annotated, Section 67-2-107, is amended by adding the following as a new subsection:

(e) An extension of time of six (6) months in which to file the return required by this section and pay the tax shown to be due shall be granted, provided that a request for extension is made in writing by the taxpayer or the taxpayer's authorized representative on a form prescribed by the commissioner or by providing a copy of the taxpayer's request for an automatic extension of time to file its federal income tax return for the corresponding tax period. The request shall not be filed on the original due date of the return but, instead, shall be attached to the return filed on or before the extended due date. Interest as provided by § 67-1-801(a) shall attach to the unpaid amount due from the original due date of the return until the date paid. If the taxpayer fails to file the request for extension required by this subsection or if the return is not filed with payment of the tax shown to be due by the extended due date, penalty as provided by § 67-1-804 shall attach as though no extension had been granted.

SECTION 17. Tennessee Code Annotated, Section 67-6-523, is amended by deleting the language "three (3) years" each place that it appears and substituting instead the language "three (3) years from December 31 of the year in which the associated return required by this chapter was filed".

SECTION 18. Tennessee Code Annotated, Section 67-4-2809, is amended by adding the following as a new subsection:

(c) Notwithstanding any other provision of this section, in the event the tax levied by this part is voluntarily paid to the department of revenue and not as a result of an investigation or arrest by a state or local law enforcement agency, such voluntarily paid tax shall be considered unencumbered upon payment and the commissioner shall credit the entire tax proceeds to the general fund.

SECTION 19. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as a new, appropriately numbered subdivision:

() "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;

SECTION 20. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as a new, appropriately numbered subdivision:

() "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

SECTION 21. Tennessee Code Annotated, Section 67-6-329(a)(12), is amended by deleting the words "School books" and substituting instead "Textbooks, workbooks and".

SECTION 22. Tennessee Code Annotated, Section 56-4-213, is amended by designating the present language as subsection (a) and adding the following new subsection:

(b) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by Title 67, Chapter 6.

SECTION 23. Tennessee Code Annotated, Section 56-4-302, is amended by adding the following new subsection:

(c) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by Title 67, Chapter 6.

SECTION 24. Tennessee Code Annotated, Section 56-4-402, is amended by adding the following new subsection:

(c) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by Title 67, Chapter 6.

SECTION 25. Tennessee Code Annotated, Section 56-13-128, is amended by adding the following new subsection:

(e) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by Title 67, Chapter 6.

SECTION 26. Tennessee Code Annotated, Section 56-35-107, is amended by adding the following new subsection:

(d) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by Title 67, Chapter 6.

SECTION 27. Tennessee Code Annotated, Section 67-1-1802(a)(1), is amended by deleting the language “, with the commissioner under oath and supported by proper proof,” from the fifth sentence and substituting instead the language “with the commissioner under penalties of perjury” and by inserting the following language between the fifth and sixth sentences:

The claim must set forth each ground upon which a refund is claimed, the amount of such refund, the tax period, the tax type, and information reasonably sufficient to apprise the commissioner of the general basis for the claim. A refund requested on a franchise and excise tax return, or amended return, properly filed with the commissioner is deemed to comply with the requirements of the preceding sentence.

SECTION 28. Tennessee Code Annotated, Section 67-1-801, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) When it is determined by administrative review that any person is entitled to a refund or credit of any tax collected or administered by the commissioner, interest shall be added to the amount of refund or credit due, beginning forty-five (45) days from the date the commissioner receives proper proof to verify that the refund or credit is due and payable. When it is determined by court order that any person is entitled to a refund or credit of any tax collected or administered by the commissioner, interest shall be added

to the amount of refund or credit due, beginning forty-five (45) days from the date of filing a claim for refund pursuant to § 67-1-1802(a), forty-five (45) days from the date of waiver by the commissioner pursuant to § 67-1-1802(c)(2), or on the date of payment in the case of any tax collected after suit was filed under § 67-1-1801. The rate of interest to be paid pursuant to this subsection shall be determined as provided in subsection (a). Except for taxes collected after suit was filed under § 67-1-1801, no interest shall be added to any refund made or credit given by the commissioner for which no claim for refund or application for credit was made by the taxpayer pursuant to § 67-1-1802(a) or waived by the commissioner pursuant to § 67-1-1802(c)(2).

SECTION 29. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (1) and by substituting instead the following:

(1) "Affiliate" means any entity:

(A) In which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest;

(B) That, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer; or

(C) In which an entity described in subdivision (1)(B) directly or indirectly has more than fifty percent (50%) ownership interest.

For purposes of this subdivision (1), a noncorporate entity is more than fifty percent (50%) owned if upon liquidation more than fifty percent (50%) of the assets of the noncorporate entity directly or indirectly accrue to the entity having the ownership interest;

SECTION 30. Tennessee Code Annotated, Section 67-4-2006(b)(1)(L), is amended by deleting the words "affiliated business entities" and substituting instead the word "affiliates".

SECTION 31. Tennessee Code Annotated, Section 67-4-2006(b)(2)(O), is amended by deleting the words "affiliated business entities" and substituting instead the word "affiliates".

SECTION 32. Tennessee Code Annotated, Section 67-4-2006(b)(2)(P), is amended by deleting the words "affiliated business entities" and substituting instead the word "affiliates".

SECTION 33. Tennessee Code Annotated, Section 67-4-2006(d)(1), is amended by deleting the words "affiliated business entities" and substituting instead the word "affiliates".

SECTION 34. Tennessee Code Annotated, Section 67-4-2006(d)(2), is amended by deleting the words "affiliated business entities" and substituting instead the word "affiliates".

SECTION 35. Tennessee Code Annotated, Section 67-4-2008(a)(5), is amended by deleting the words "neither related to nor" from the first sentence and by substituting instead the word "not".

SECTION 36. Tennessee Code Annotated, Section 67-4-2008(a)(5), is amended by deleting subdivision (A) in its entirety and by substituting instead the following:

(A) "Affiliated" means entities that are affiliates or part of an affiliated group;

SECTION 37. Tennessee Code Annotated, Section 67-4-2008(a)(5), is amended by deleting subdivision (E) in its entirety.

SECTION 38. Tennessee Code Annotated, Section 67-4-2008(a)(12)(A)(iii), is amended by deleting the words "neither related to nor" from the first sentence and by substituting instead the word "not".

SECTION 39. Tennessee Code Annotated, Section 67-4-2008(a)(12)(B), is amended by deleting subdivision (i) in its entirety and by substituting instead the following:

(i) "Affiliated" means entities that are affiliates or part of an affiliated group;

SECTION 40. Tennessee Code Annotated, Section 67-4-2008(a)(12)(B), is amended by deleting subdivision (iv) in its entirety.

SECTION 41. Tennessee Code Annotated, Section 67-4-2014(c), is amended by deleting the language "of corporations" from the second sentence of subdivision (1) and by deleting subdivision (5) in its entirety.

SECTION 42. Tennessee Code Annotated, Section 67-4-2014(c)(2), is amended by deleting the language "controlled groups as defined in 26 U.S.C. § 267(f)" and by substituting instead the language "affiliated groups".

SECTION 43. Tennessee Code Annotated, Section 67-4-2014(c)(3), is amended by deleting the language "persons identified in 26 U.S.C. § 267(b)" and by substituting instead the language "affiliates".

SECTION 44. Tennessee Code Annotated, Section 67-4-2112(c), is amended by deleting the language "of corporations" from the second sentence of subdivision (1) and by deleting subdivision (5) in its entirety.

SECTION 45. Tennessee Code Annotated, Section 67-4-2112(c)(2), is amended by deleting the language "controlled groups as defined in the Internal Revenue Code, § 267(f)" and by substituting instead the language "affiliated groups".

SECTION 46. Tennessee Code Annotated, Section 67-4-2112(c)(3), is amended by deleting the language "persons identified in the Internal Revenue Code, § 267(b)" and by substituting instead the language "affiliates".

SECTION 47. Tennessee Code Annotated, Section 67-6-103(d)(1), is amended by adding the following language as a new, appropriately designated subdivision:

() Notwithstanding the allocations provided for in subsection (a), if a baseball and softball complex, comprised of at least nineteen (19) baseball and softball fields and designed to host both local league play as well as regional and national youth baseball and softball tournaments, is constructed adjacent to a stadium used by a franchise for a minor league affiliate of a major league baseball team (American or National League) playing at the Class AA level or higher, with respect to which an apportionment and distribution is made pursuant to subdivision (1)(A) of this subsection, then an amount

shall be apportioned and distributed to the entity which is responsible for the retirement of the debt on such baseball and softball complex equal to the amount of state and local tax revenue derived from the sale of food and drink sold on the premises of the baseball and softball complex. This apportionment and distribution shall continue until the debt on the baseball and softball complex is retired or until thirty (30) years from the date the complex begins operations, whichever is sooner. Such apportionment and distribution shall continue in the event the adjacent stadium ceases to house a minor league affiliate of a major league baseball team playing at the Class AA level or higher. Notwithstanding any provision of this subdivision to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529 § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856 § 4, shall be apportioned and distributed pursuant to this subdivision. All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856, respectively.

SECTION 48. Tennessee Code Annotated, Section 67-6-102(a)(35), is amended by deleting the current language and substituting instead the following:

(35)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including but not limited to directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service

provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones;

SECTION 49. Tennessee Code Annotated, Section 67-6-102(a)(2), is amended by deleting the current language and substituting instead the following:

(2) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services. As used in this subdivision:

(A) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

SECTION 50. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as a new, appropriately numbered subdivision:

() "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

SECTION 51. Tennessee Code Annotated, Section 67-6-329(c)(1), is amended by deleting the current language and by substituting instead the following:

(1) Coin-operated telephone service;

SECTION 52. Tennessee Code Annotated, Section 67-6-102(a)(17), is amended by deleting the current language and by substituting instead the following:

“International”, as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

SECTION 53. Tennessee Code Annotated, Section 67-6-102(a)(18), is amended by deleting the current language and by substituting instead the following:

“Interstate”, as used in connection with telecommunications services, means a telecommunications service that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

SECTION 54. Tennessee Code Annotated, Section 67-6-102(a)(20), is amended by deleting the current language and by substituting instead the following:

“Intrastate”, as used in connection with telecommunications services, means a telecommunications service that originates in one United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession.

SECTION 55. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subdivision (19) [definition of “interstate telecommunications”] and subdivision (27) [definition of “residential service”] in their entirety.

SECTION 56. Tennessee Code Annotated, Section 67-6-539, is amended by deleting the current language and substituting instead the following:

67-6-539.

(a) For purposes of this section, a bundled transaction is the retail sale of two or more services, where (1) the services are otherwise distinct and identifiable and (2) the services are sold for one non-itemized price. A bundled transaction does not include the sale of any services in which the sales price varies, or is negotiable, based on the selection by the purchaser of the services included in the transaction.

(b) Notwithstanding any other law to the contrary, in the case of a bundled transaction of telecommunication services, ancillary services, Internet access services, or audio or video programming services such as cable, wireless cable, or direct-to-home satellite television programming services:

(1) If the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services shall be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including but not limited to, non-tax purposes.

(2) If the price is attributable to services that are subject to tax at different tax rates, the total price shall be treated as attributable to the services subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

(3) If the taxes that would have otherwise been collected on the distinct and identifiable services would have been designated to different funds or purposes, such designation shall be based on the same allocation utilized in (1) or (2). However, if the total of the bundled transaction was subjected to tax or subjected to tax at the higher combined state and local rate a reasonable allocation method approved by the commissioner shall be made for designation of the taxes to the different funds or purposes.

(4) The provisions of this section shall apply unless otherwise provided by federal law.

SECTION 57. Tennessee Code Annotated, Section 67-6-224, is amended by deleting that section in its entirety and by substituting instead the following:

67-6-224.

(a) A taxpayer who establishes a "qualified headquarters facility" in this state shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sales or use of "qualified tangible personal property".

(b) For purposes of this section, the following definitions shall apply:

(1) "Facility" means a building or buildings, either newly constructed, expanded, or remodeled, housing headquarters staff employees and located in a county or metropolitan statistical area in this state. A facility may include parking facilities exclusively for the use of headquarters staff employees and visitors, provided, that the parking facilities are built in conjunction with the newly constructed, expanded, or remodeled building or buildings. An expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in this state. The facility must be utilized as a headquarters facility for a period of at least ten (10) years beginning from the date of substantial completion;

(2) "Full-time employee job" means a permanent, rather than seasonal or part-time, employment position providing employment as a headquarters staff employee for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37.5) hours per week with minimum health care, as described in Title 56, Chapter 7, Part 22;

(3) "Headquarters facility" means a facility in this state that houses the international, national, or regional headquarters of a taxpayer where

headquarters staff employees are located and employed and where the primary headquarters related functions and services are performed;

(4) "Headquarters related functions and services" means those functions involving administrative, planning, research and development, marketing, personnel, legal, computer or telecommunications services performed by headquarters staff employees on an international, national, or regional basis. For purposes of this subsection (b), regional means a geographic area comprised of at least Tennessee and one (1) or more of its contiguous states. "Headquarters related functions and services" does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center;

(5) "Headquarters staff employees" means executive, administrative, or professional workers performing headquarters related functions and services. An executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise. An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations. A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study;

(6) "Investment period" means that the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility. However, in no event shall the investment period exceed six (6) years;

(7) "Minimum investment" means:

(A) A minimum investment by the taxpayer and lessor to the taxpayer of fifty million dollars (\$50,000,000) or more in a building or buildings, either newly constructed, expanded, or remodeled; or

(B) A minimum investment by the taxpayer and the lessor to the taxpayer of twenty million dollars (\$20,000,000) in a building or buildings, either newly constructed, expanded, or remodeled, along with the creation of not less than two hundred (200) new full-time employee jobs created during the investment period with average wages or salaries equal to or greater than two hundred percent (200%) of the average wage in the county or the metropolitan statistical area in which the taxpayer is located, whichever is higher, as reported in the Monthly Labor Report published by the Department of Labor and Workforce Development for the month of January of the year in which such full-time employee jobs are created.

The minimum investment may include, but is not limited to, the purchase price of an existing building, and the cost of building materials, labor, equipment, parking facilities, and landscaping, but shall not include land or inventory;

(8) "New full-time employee job" means full-time headquarters staff employee jobs that are new to the state of Tennessee and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in Tennessee as a job position of the taxpayer or of another business entity. The new full-time employee jobs must be created and filled within the investment period. An employee in a new full-time employee job may be employed at a temporary location in this state pending completion of construction or renovation work at the qualified headquarters facility;

(9) "Qualified headquarters facility" means a headquarters facility where the taxpayer has made the minimum investment during the investment period;

(10) "Qualified headquarters facility relocation expenses" means those expenses that both the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, are necessary to relocate headquarters staff employees to a qualified headquarters facility in conjunction with the initial establishment of such facility in this state.

(11) "Qualified tangible personal property" means building materials, machinery, and equipment used exclusively in the qualified headquarters facility and purchased or leased during the investment period. Qualified tangible personal property does not include supplies or repair parts. Qualified tangible personal property does not include any payments with respect to leases of qualifying tangible personal property which extend beyond the investment period. Qualified tangible personal property does not include any materials, machinery, or equipment that replaces tangible personal property that previously generated a credit under this section.

(c) A taxpayer qualifying for this credit must be subject to the taxes imposed by Chapter 4, Parts 20 and 21 of this title or be an insurance company as defined in § 56-1-102(2). The taxpayer shall not be permitted to take advantage of any additional sales tax or other state tax credits, exemptions, or reduced rates which would otherwise be valuable as a result of the same purchases or minimum investment, except the tax credits provided under §§ 67-4-2109(a), (b), and (c) and 67-4-2009(1) and (4)(A)(ii). A taxpayer qualifying for this reduced rate shall also not be permitted to utilize the credits available to hospital companies under § 67-4-2009.

(d)(1) A taxpayer seeking this credit shall first submit to the Commissioner of Revenue an application to qualify as a headquarters facility together with a plan describing the investment to be made and, if applicable, documentation verifying employment and wage information. In the case of a leased facility, the lessor shall also file an application and plan if any taxes paid by the lessor are to be claimed as part of the credit provided in subsection (a). The application and plan shall be submitted on forms prescribed by the commissioner and shall demonstrate that the requirements of the law will be met.

(2) After approval of the application and business plan, the commissioner shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for the credit provided for in this section.

(3) In order to receive the credit, the taxpayer must submit a claim for

credit along with documentation as required by the commissioner showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor in the case of a leased facility, contractors, and subcontractors on sales or use of qualified tangible personal property. Documentation verifying that the minimum investment requirements have been met shall include, but are not limited to, employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules as required by the commissioner.

(4) The commissioner shall review the claim for credit and notify the taxpayer of the approved tax credit amount and provide direction for taking the credit. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the amount approved and provided direction to the taxpayer on the proper methodology for taking the credit. The credit may only be taken by the taxpayer establishing the "qualified headquarters facility".

(e) If the minimum investment requirements are not made within the investment period, or the terms of this section are not met, the taxpayer shall be subject to assessment for any sales or use tax, penalty, or interest which would otherwise have been due and for which credit was taken. The statute of limitations shall not begin to run on these assessments until December 31 of the final year of the ten-year period provided for in subdivision (b)(1).

(f) Credits under this section shall not reduce the taxes earmarked and allocated to education pursuant to § 67-6-103(c).

(g) Nothing in this section shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit.

SECTION 58. Chapter 284, Section 3, of the Public Acts of 2003 is amended by deleting the language "but shall be null and void and cease to be of effect on December 31, 2006".

SECTION 59. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new subsection:

(g)(1) For purposes of this subsection, the terms "Headquarters facility," "Headquarters staff employees," "Investment period," "Qualified headquarters facility," and "Qualified headquarters facility relocation expenses" shall have the same meaning as defined in § 67-6-224.

(2) In addition to the job tax credit provided in subsection (c), there is allowed a credit against a taxpayer's franchise and/or excise tax liability equal to any qualified headquarters facility relocation expenses incurred by the taxpayer during the investment period for establishing a qualified headquarters facility, provided that both of the following criteria are met:

(A) the taxpayer establishes a qualified headquarters facility and is eligible for the credit provided in § 67-6-224; and

(B) the taxpayer qualifies for the job tax credit provided in subdivision (2)(H) of subsection (c) of this section in connection with a required capital investment in excess of one billion dollars (\$1,000,000,000).

(3) Notwithstanding any provision to the contrary, the total credit allowed to a taxpayer under this subsection shall not exceed an amount equal to fifty thousand dollars (\$50,000) multiplied by the number of headquarters staff employee positions relocated by the taxpayer to the qualified headquarters facility during the investment period.

(4) To the extent any amount allowed as a credit under this subsection exceeds the combined tax imposed by this part and Part 20 of this chapter, the amount of such excess shall be considered an overpayment and shall be refunded to the taxpayer. Such refund shall be subject to the procedures of § 67-1-1802; provided however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund must be filed with the Commissioner within three (3) years from December 31 of the year in which the qualified headquarters facility relocation expense was incurred.

(5) If the qualified headquarters facility is not utilized as a headquarters facility for a period of at least ten (10) years beginning from the date of substantial completion of the qualified headquarters facility, the taxpayer shall be subject to an assessment of the total amount of credit or refund taken pursuant to this subsection plus interest.

(6) If the headquarters staff employee position does not remain filled in Tennessee for a period of at least five (5) years beginning from the date such employee position was relocated to Tennessee, the taxpayer shall be subject to an assessment of the total amount of credit or refund taken relating to such employee position pursuant to this subsection plus interest.

(7) Nothing in this subsection shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit provided in this subsection.

SECTION 60. Tennessee Code Annotated, Section 67-6-102(a)(28)(F)(v), is amended by deleting the present language and substituting instead the following:

(v) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made therefor; provided, that the provisions of this subdivision (a)(28)(F)(v) shall not apply to the bathing of animals provided by a licensed veterinarian when rendered for a medical purpose in conjunction with the practice of veterinary medicine, as defined in § 63-12-103;

SECTION 61. Tennessee Code Annotated, Title 67, Chapter 4, Part 21, is amended by adding the following as a new, appropriately designated section:

67-4-21____.

(a) Notwithstanding any provision of this part to the contrary, the tax imposed by this part on any manufacturer shall be levied only on the first two billion dollars (\$2,000,000,000) of apportioned net worth or real and tangible personal property owned or used in Tennessee.

(b) For purposes of this section, "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing.

SECTION 62. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by adding the following as a new subdivision:

(J) Notwithstanding the requirement in subdivision (2)(A) that a job tax credit shall only be allowed for net new full-time employee jobs, the credit otherwise provided that in this subsection (c) shall be allowed for new high-skill, high-wage, full-time employee jobs in high-technology areas, emerging occupations, or skilled manufacturing regardless of whether net employment is increased; provided however this subdivision shall apply only to new jobs created by a taxpayer who failed to meet the net increase requirement due to worker layoffs or reductions where such workers have been certified by the United States Department of Labor's Division of Trade Adjustment Assistance ("USDOL") as having been adversely affected by foreign trade so as to be eligible for assistance in accordance with the United States Trade Adjustment Assistance Reform Act of 2002. A taxpayer seeking qualification for jobs tax credit under this subsection shall be required to satisfy all other requirements of this subsection (c) and shall be required to provide evidence to the Commissioner of Revenue of the USDOL's certification of eligibility for assistance for the taxpayer's adversely affected worker group.

SECTION 63. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new subdivision at the end of subsection (c):

(4) Nothing in this subsection (c) shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit provided in this subsection.

SECTION 64. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subdivision:

(M) Any deduction made pursuant to 26 U.S.C. § 199.

SECTION 65. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by deleting Section 67-6-537 in its entirety and by substituting instead the following as a new section:

67-6-537.

(a) This section applies to sellers who satisfy all of the following requirements:

(1) The seller registers to pay and/or to collect and remit applicable sales and/or use tax on sales made to purchasers in this state in accordance with the

terms of the Streamlined Sales and Use Tax Agreement within twelve (12) months of the effective date of this state's becoming a member in substantial compliance with the Agreement;

(2)(i) During the twelve-month period preceding the state's becoming a member in substantial compliance with the Agreement, the seller was not registered to collect and remit tax under this chapter; or

(ii) During the twelve-month period preceding the state's becoming an associate member of the agreement, the seller was not registered to collect and remit tax under this chapter; and

(3) There is no audit or assessment pending with respect to the seller, and the department has not notified the seller that it will be the subject of an audit.

(b) A seller who satisfies the criteria set out in subsection (a) is not liable for sales or use tax not collected from its customers prior to the date of its registration, nor liable for any related interest or penalty, subject to the limitations contained in subsection (c).

(c)(1) A seller remains liable for tax collected from its customers but not remitted to the state, and remains liable for any related interest and penalty.

(2) A seller remains liable for any use tax due which arises from its capacity as a buyer and user or consumer of taxable items.

(3) The release from liability provided by subsection (b) is void unless the seller maintains its registration and continues to collect and remit applicable sales and use taxes for at least thirty-six months. The statute of limitations provided in Section 67-1-1501 is tolled during the thirty-six month period.

(4) Fraud or intentional misrepresentation of a material fact voids the release from liability provided by subsection (b).

SECTION 66. Tennessee Code Annotated, Section 67-6-537, is amended by adding the following as a new subsection:

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

67-6-542.

For the period of time that this state is an associate member of the Streamlined Sales and Use Tax Agreement, the commissioner shall have the authority to provide to

voluntary sellers the monetary allowances required to be provided pursuant to Article VI of the Streamlined Sales and Use Tax Agreement. For purposes of this section “voluntary seller” means a seller that does not have a requirement to register in Tennessee to collect the Tennessee tax pursuant to this chapter.

SECTION 68. Tennessee Code Annotated, Section 67-6-102, is amended by deleting the following language:

(A) “Sales price” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(B) “Sales price” shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iv) Credit for any trade-in, as determined by Section 67-6-510.

and by substituting instead the following language:

(A) “Sales price” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(B) "Sales price" shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(iv) Credit for any trade-in, as determined by Section 67-6-510.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will

reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group), or

(c) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

SECTION 69. Tennessee Code Annotated, Section 67-6-230, is amended by inserting in subsection (a) the words "or the sale of prepaid wireless calling service" between the phrase "recharge of the card" and the phrase "shall be subject" and is further amended by inserting in subsection (b) the words "or computer software" between the word "property" and the comma in the first sentence.

SECTION 70. Tennessee Code Annotated, Section 67-6-329, is amended by deleting subsection (b) in its entirety.

SECTION 71. Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting the following language:

Federal retail excise tax imposed by §§ 4051-4053 of the Internal Revenue Code of 1954, as amended, or as such tax may be amended hereafter, when such tax is a part of the sales price;

Federal excise tax on diesel fuel purchased for off-road use as provided in Chapter 3 of this title, whether or not such tax is required by law to be passed on to the ultimate consumer; when such tax is a part of the sales price;

and is further amended by adding the following as a new, appropriately numbered subdivision:

() The sale of United States and Tennessee flags sold by a non-profit organization.

SECTION 72. Tennessee Code Annotated, Section 67-6-409, is amended by deleting the language in subsection (b) and substituting instead the following:

(b) Sellers that follow the requirements of this section are not liable for the tax imposed by this chapter otherwise applicable if it is determined that the purchaser improperly claimed an exemption, in which case the purchaser shall be liable for the tax. In the event a seller has a recurring business relationship with a purchaser, the seller is relieved from the tax imposed by this chapter if the seller has obtained a blanket exemption certificate from the purchaser. A seller shall not be required to update or renew blanket exemption certificates when there is a recurring business relationship. For purposes of this subdivision, a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. The seller shall remain liable for the tax if either of the following applies:

(1) The purchaser claims an entity-based exemption and the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in this state and the standard exemption certificate clearly and affirmatively indicates the claimed exemption is not available in this state; or

(2) The seller accepts an exemption certificate claiming multiple points of use for sales of tangible personal property, other than computer software for which an exemption claiming multiple points of use is acceptable under § 67-6-903.

SECTION 73. Tennessee Code Annotated, Section 67-6-903, is amended by deleting the language in its entirety and substituting instead the following:

67-6-903.

(a) Notwithstanding the provisions of Section 67-6-902, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software, or a service that the digital good, computer software, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase an exemption certificate claiming multiple points of use or meet the requirements of subsections (b) or (c). Computer software, for purposes of this section, includes but is not limited to, computer software delivered electronically or otherwise. Computer software received in person by a business purchaser at a business location of the seller is not included.

(1) Upon receipt of an exemption certificate claiming multiple points of use, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

(2) A purchaser delivering an exemption certificate claiming multiple points of use may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's books and records as they exist at the time the transaction is reported for sales and use tax purposes.

(3) A purchaser delivering an exemption certificate claiming multiple points of use shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due will be calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to subsection (a)(2).

(4) The exemption certificate claiming multiple points of use will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principles of subsections (a)(2) and (a)(3) until it is revoked in writing.)

(b) Notwithstanding subsection (a), when the seller knows that the product will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection

(a), the seller may work with the purchaser to produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller's and purchaser's business records as they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to subsection (a)(3). In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.

(c) When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use exemption as required in subsection (a), or certification pursuant to subsection (b), the seller shall collect and remit the tax based on the provisions of Section 67-6-902.

(d) A holder of a direct pay permit shall not be required to deliver an exemption certificate claiming multiple points of use to the seller. A direct pay permit holder shall follow the provisions of subsections (a)(2) and (a)(3) in apportioning the tax due on a digital good, computer software, or a service that will be concurrently available for use in more than one jurisdiction.

(e) Nothing in this section shall limit a person's obligation for sales or use tax to any state in which the qualifying purchases are concurrently available for use, nor limit a person's ability to claim a credit for sales or use taxes legally due and paid to other jurisdictions.

SECTION 74. Tennessee Code Annotated, Section 67-6-905, is amended by deleting the language of subdivision (c)(3) in its entirety and substituting instead the following:

(3) A sale of a prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with § 67-6-902. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in § 67-6-902(a)(5), shall include as an option the location associated with the mobile telephone number.

and is further amended by deleting the language of subdivision (d)(10) in its entirety and substituting instead the following:

(10) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

and is further amended by inserting the following language as a new definition in subsection (d):

() "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered

electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

SECTION 75. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (34) in its entirety and substituting instead the following:

(34) "Unitary business" or "unitary group" means business activities or operations of financial institutions that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. "Unitary business" may be applied within a single legal entity or between multiple entities. "Unitary business" or "unitary group" includes those entities that are engaged in a unitary business transacted wholly in, or in and out of the State of Tennessee, even if some of the entities would not be subject to tax in this state if considered apart from their unitary group.

SECTION 76. Tennessee Code Annotated, Section 67-4-2006(a), is amended by deleting subdivision (3) in its entirety and substituting instead the following:

(3) For financial institutions which form a unitary business, as is defined in § 67-4-2004, "net earnings" or "net loss" is defined as the combined net earnings or net loss as defined in subdivision (a)(1) for all members of the unitary group with all dividends, receipts and expenses resulting from transactions between members of the unitary group excluded when computing combined net earnings, and subject to the adjustments in subsections (b) and (c) on a combined basis, even if some of the members would not be subject to taxation under this part if considered apart from their unitary group.

SECTION 77. Tennessee Code Annotated, Section 67-4-2007(e), is amended by designating the current language as subdivision (1) and adding the following as a new subdivision (2):

(2) Financial institutions subject to tax in this state that are members of a unitary group shall file a combined return and pay tax based on the apportioned combined net earnings of the entire unitary group as defined in § 67-4-2006(a)(3). The members of the group shall designate one member that is subject to tax in this state to file the combined return. Each member subject to tax in this state shall be jointly and severally liable for the tax imposed by this part with regard to the unitary business.

SECTION 78. Tennessee Code Annotated, Section 67-4-2013, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b)(1) Notwithstanding any other provision of this part, net earnings of a financial institution that is not a member of a unitary group and therefore not filing a combined return and that has business activities both in and outside this state shall be apportioned by multiplying such earnings by the quotient of the institution's total receipts attributable to the transaction of business in Tennessee, as determined under subdivision (b)(3), divided by the institution's total receipts attributable to transacting business in all taxing jurisdictions, as determined under subdivision (b)(3). "Receipts" includes all gross income derived from transactions and activities in the regular course of business, except that receipts from the

disposition of assets such as securities and money market transactions are included to the extent of the net taxable gain on such transactions.

(2) A unitary group shall have earnings apportioned to Tennessee which consists of the apportioned net earnings of the unitary group as determined under the provisions of subdivision (b)(1), including the receipts of those members of the unitary business that would not be subject to taxation in this state if considered apart from the unitary group.

(3) Receipts, as used in this section, shall be attributed to Tennessee as follows:

(A) Receipts from the lease or rental of real or tangible personal property shall be attributed to Tennessee if the property is located in Tennessee;

(B)(i) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property shall be attributed to Tennessee if the security or sale property is located in Tennessee. If any part of the sale property or property standing as security for the payment of the debt is located part in and part outside the state, only such proportion of the interest income or other receipts shall be attributed to Tennessee as the value of the property in the state bears to the whole property;

(ii) "Value" means only that value which the property would command at a fair and voluntary sale. Value shall be determined at the time the loan is made and shall not vary from year to year. In the event additional real or tangible personal property is pledged as security or otherwise covered under a loan or installment sales contract after the time the loan is made, the ratio based on the value of the property in the state compared to the whole property shall be adjusted;

(C) Interest income and other receipts from consumer loans not secured by real or tangible personal property shall be attributed to Tennessee if the loan is made to a resident of Tennessee, whether at a place of business, by a traveling loan officer, by mail, telephone or other electronic means;

(D) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property shall be attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are to be attributed to the state in which the business applied for the loan. As used in this subdivision (b)(3)(D), "applied for" means initial inquiry, including customer assistance in preparing the loan application, or submission of a completed loan application, whichever occurs first. For attribution purposes, "loan" does not include demand deposit clearing accounts, federal funds, certificates

of deposit, and other similar wholesale banking instruments issued by other financial institutions;

(E) All receipts and fee income from the issuance of letters of credit, acceptance of drafts, and other devices for assuring or guaranteeing a loan or credit shall be attributed in the same manner as interest income and other receipts from the loan are attributed as set out in subdivision (b)(3)(B), (C), or (D);

(F) Interest income, merchant discount, other receipts, including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders, and fees shall be attributed to the state to which the card charges and fees are regularly billed;

(G) Receipts from the sale of an asset, tangible or intangible, shall be attributed in the same manner that the income from the asset would be attributed under this subsection (b);

(H) Receipts from the performance of fiduciary and other services shall be attributed in accordance with § 67-4-2012(i);

(I) Receipts from the issuance of traveler's checks, money orders or United States savings bonds shall be attributed to the state where such items are purchased;

(J) Receipts from a participating financial institution's portion of participation loans shall be attributed as otherwise provided under this subsection (b). A participation loan is any loan in which more than one (1) lender is a creditor to a common borrower; and

(K) Any other receipts not specifically attributed to Tennessee or to another taxing jurisdiction when applying this subsection shall be attributed to Tennessee in the same proportion that the enumerated receipts are attributed to Tennessee under subdivisions (A) through (J).

SECTION 79. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following as a new sentence at the end of subsection (a):

In the event the return covers a period of less than twelve (12) months, the excise tax shall not be prorated.

SECTION 80. Tennessee Code Annotated, Section 67-4-2103, is amended by deleting subsection (d) in its entirety and substituting instead the following:

(d) Notwithstanding any law to the contrary except as otherwise provided in this subsection, for tax years beginning on or after January 1, 2004, a taxpayer that is a member of an affiliated group or a financial institution affiliated group may elect to compute its net worth on a consolidated basis; provided that upon such election, each member of the group shall be required to compute its net worth on a consolidated basis. However, such election shall not be allowed unless each member of the group closes its

taxable year on the same date, except that the election shall be allowed when a member exits the group during the taxable year due to a change in ownership, merger, or liquidation of the member, in which case the member exiting the group shall be excluded from the group and shall compute its net worth as otherwise provided in this part.

SECTION 81. Tennessee Code Annotated, Section 67-4-2114, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c) Financial institutions subject to tax in this state that are members of a "unitary group," as defined in § 67-6-2004, shall file a combined return and pay the tax imposed by this part, after apportionment, based on all operations of the unitary business. This report shall include the information set out in subsections (a) and (b) for every member of the unitary group even if some of the members would not otherwise be subject to taxation under this part. Dividends, receipts and expenses resulting from transactions between members of a unitary group shall be excluded from the return for purposes of apportionment under § 67-4-2118. The members shall designate one member that would otherwise be subject to tax on a separate entity basis to file the combined return. Each member subject to tax in this state shall be jointly and severally liable for the tax imposed by this part.

SECTION 82. Tennessee Code Annotated, Section 67-4-2115, is amended by deleting the section in its entirety and substituting instead the following:

67-4-2115. The franchise tax return shall be filed as provided in § 67-4-2015. In the event the taxpayer's taxable year is closed within less than twelve (12) months of incorporation, domestication, or commencing of business, the franchise tax of a domestic corporation will be prorated to cover the proportionate part of the year since the date of incorporation or the date of commencing business, whichever occurred first, and the franchise tax of a foreign corporation will be prorated to cover the proportionate part of the year since beginning business in this state, provided that in such an event annualization of rent paid will be required when determining the minimum franchise tax base under § 67-4-2108. In the event the taxpayer changes its accounting period covered by the federal return, a return will be required for each closing of an accounting period, and the franchise tax will be prorated to cover the proportionate part of the year covered by the return, provided that in such an event annualization of rent paid will be required when determining the minimum franchise tax base under § 67-4-2108. Except as provided in this section, the franchise tax shall not be prorated.

SECTION 83. Tennessee Code Annotated, Section 67-4-2118, is amended by deleting the section in its entirety and substituting instead the following:

67-4-2118.

(a) Notwithstanding any other provision of this part, a financial institution which is not filing a combined report and which has business activity both in and outside Tennessee and which is paying tax based on its net worth shall apportion its tax base to Tennessee by multiplying net worth by the quotient of the institution's total receipts attributable to the transaction of business in Tennessee, as determined under subsection (c), divided by the institution's total receipts attributable to transacting business in all taxing jurisdictions, as determined under subsection (c). "Receipts" includes all gross income derived from transactions and activities in the regular course of

business, except that the receipts from the disposition of assets such as securities and money market transactions are included to the extent of the net taxable gain on such transactions.

(b) A unitary group shall have net worth apportioned to Tennessee based on the apportioned net worth of the unitary group as determined under the provisions of subsection (a), including the receipts of those members of the unitary business that would not be subject to taxation in this state if considered apart from the unitary group.

(c) "Receipts," as used in this section, shall be attributed to Tennessee as follows:

(1) Receipts from the lease or rental of real or tangible personal property shall be attributed to Tennessee if the property is located in Tennessee;

(2)(A) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property shall be attributed to Tennessee if the security or sale property is located in Tennessee. If any part of the sale property or property standing as security for the payment of the debt is located part in and part outside the state, only such proportion of the interest income or other receipts shall be attributed to Tennessee as the value of the property in the state bears to the whole property;

(B) "Value" means only that value which the property would command at a fair and voluntary sale. Value shall be determined at the time the loan is made and shall not vary from year to year. In the event additional real or tangible personal property is pledged as security or otherwise covered under a loan or installment sales contract after the time the loan is made, the ratio based on the value of the property in the state compared to the whole property shall be adjusted;

(3) Interest income and other receipts from consumer loans not secured by real or tangible personal property shall be attributed to Tennessee if the loan is made to a resident of Tennessee, whether at a place of business, by a traveling loan officer, by mail, by telephone or by other electronic means;

(4) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property shall be attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are to be attributed to the state in which the business applied for the loan. As used in this subdivision (c)(4), "applied for" means initial inquiry, including customer assistance in preparing the loan application, or submission of a completed loan application, whichever occurs first. For attribution purposes, "loan" does not include demand deposit accounts, federal funds, certificates of deposit, and other similar wholesale banking instruments issued by other financial institutions;

(5) All receipts and fee income from the issuance of letters of credit, acceptance of drafts, and other devices for assuring or guaranteeing a loan or

credit shall be attributed in the same manner as interest income and other receipts from the loan are attributed as set out in either subdivision (c)(2), (3) or (4);

(6) Interest income, merchant discount, other receipts, including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders, and fees shall be attributed to the state to which the card charges and fees are regularly billed;

(7) Receipts from the sale of an asset, tangible or intangible, shall be attributed in the same manner that the income from the asset would be attributed under this section;

(8) Receipts from the performance of fiduciary and other services shall be attributed in accordance with § 67-4-2111(i);

(9) Receipts from the issuance of traveler's checks, money orders or United States savings bonds shall be attributed to the state where such items are purchased; and

(10) Receipts from a participating financial institution's portion of participation loans shall be attributed as otherwise provided under this subsection. A participation loan is any loan in which more than one (1) lender is a creditor to a common borrower.

(11) Any other receipts of gross income not specifically attributed to Tennessee or to another taxing jurisdiction when applying this subsection shall be attributed to Tennessee in the same proportion that aggregate receipts are attributed to Tennessee under subdivisions (1) through (10).

(d) A financial institution affiliated group electing to compute its net worth on a consolidated basis shall compute its tax in the following manner:

(1) The financial institution affiliated group shall prepare a pro forma consolidated balance sheet in accordance with generally accepted accounting principles wherein transactions and holdings between members of the group and holdings in non-domestic persons have been eliminated;

(2) The consolidated net worth for the financial institution affiliated group shall be the difference between total assets less the sum of total liabilities shown on the consolidated balance sheet prepared pursuant to subdivision (d)(1) and twenty-five percent (25%) of the financial institution affiliated group's securities classified as held to maturity or available for sale as shown on the group's accounting statements prepared in accordance with generally accepted accounting principles at the close of business on the last day of the tax year as shown by a pro forma consolidated balance sheet;

(3) Each member of the group shall apportion its net worth to Tennessee by multiplying the net worth of the entire financial institution affiliated group as computed under subdivision (d)(2) by a fraction, the numerator of which is the total gross receipts of the member attributable to Tennessee during the tax

period, and the denominator of which is the aggregate gross receipts of all members of the group during the tax period. For purposes of this subdivision (d)(3), receipts shall be determined as follows:

(A) Dividends and receipts resulting from transactions between members of the group shall be excluded from both the numerator and denominator;

(B) If the member is a financial institution, then for purposes of calculating the member's numerator, receipts shall be attributed to Tennessee in a manner consistent with the provisions of subsection (c);

(C) If a member is not a financial institution, then for purposes of calculating the member's numerator, receipts shall be attributed to Tennessee in a manner consistent with § 67-4-2111(h) through (k); and

(D) The denominator shall consist of the total gross receipts of all members of the group during the tax period and shall be determined by adding the total gross receipts derived from the activities enumerated in subdivisions (c)(1)-(c)(11) by the group's financial institution members and the total gross receipts of the group's non-financial institution members as determined in accordance with § 67-4-2111(g)(1) and (g)(4) during the tax period; and

(4) The unitary members of the financial institution affiliated group shall report and pay the franchise tax computed under this section on a combined return. As such, the unitary group shall pay franchise tax on the greater of the unitary group's combined apportioned equity or the unitary group's combined minimum tax base calculated in accordance with § 67-4-2108. The non-unitary members of the financial institution affiliated group shall report and pay the franchise tax computed under this section on a separate entity basis. As such, the non-unitary members shall pay franchise tax on the greater of apportioned net worth as calculated on a consolidated basis or the non-unitary member's minimum tax base as determined in accordance with § 67-4-2108.

SECTION 84. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new, appropriately designated section:

67-6- ____.

(a) A credit shall be granted in the manner provided in subsection (b) for the amount of the sales tax due on a transaction accommodation fee included in the sales price of a sale or the gross proceeds of a lease; provided that in order for the credit to apply, the transaction accommodation fee must be separately stated on the face of the invoice from the dealer to the customer.

(b) The credit shall apply such that sales tax is owed on the sales price or gross proceeds, less the transaction accommodation fee associated with such sale or lease.

(c) For purposes of this section, the following definitions shall apply:

(1) "Full-time employee" means a permanent, rather than seasonal or part-time, employee who is normally scheduled to work at least thirty-seven and one-half (37.5) hours per week and receives minimal healthcare as described in Title 56, Chapter 7, Part 22;

(2) "Qualified motor vehicle manufacturer" means a producer as defined in § 55-17-123(d)(2) that has made the required capital investment within the investment period necessary to qualify for the credit provided in § 67-4-2109(c)(2)(H) or one of its related business entities;

(3) "Related business entity" means a business entity:

(A) In which the qualified motor vehicle manufacturer, directly or indirectly, has more than thirty-five percent (35%) ownership interest;

(B) That, directly or indirectly, has more than thirty-five percent (35%) ownership interest in the qualified motor vehicle manufacturer; or

(C) In which a person described in subdivision (3)(B) directly or indirectly has more than thirty-five percent (35%) ownership interest.

For purposes of this subdivision (3), a noncorporate entity is more than thirty-five percent (35%) owned if upon liquidation more than thirty-five percent (35%) of the assets of the noncorporate entity directly or indirectly accrue to the entity having the ownership interest; and

(4) "Transaction accommodation fee" means the charge made by a franchised motor vehicle dealer to a qualified motor vehicle manufacturer in consideration for selling or leasing a motor vehicle produced by the qualified manufacturer to one of the qualified manufacturer's full-time employees.

SECTION 85. Tennessee Code Annotated, Section 67-4-2109(c)(2)(I), is amended by inserting the following language between the third and fourth sentences:

In addition to the tax credits allowed to the taxpayer under this subsection (c) for the first tax year, all or a portion of the tax credits allowable under this subsection (c) may also apply on an annual basis to offset taxpayer's franchise tax and excise tax liability under Title 67, Chapter 4, for each tax year after the first tax year up to a total period not to exceed ten (10) years, in which the full-time employee jobs created by the required capital investment for which credits were originally issued remain filled by employees at wages equal to or greater than one hundred fifty percent (150%) of Tennessee's average industrial wage for all manufacturing sectors as reported in the Monthly Labor Report published by the Department of Labor and Workforce Development for the month of January of the tax year for which the credit is being taken; provided that the Commissioner of Economic and Community Development, with the written concurrence of the comptroller of the treasury, shall have determined that the location and nature of the capital investment is economically desirable and in the best interests of the citizens of this state, and shall have executed a writing specifying, for a given business enterprise, the maximum period for which the additional tax credits granted pursuant to this subsection (c) will be allowed and the amount or percentage of

additional tax credits that will be allowed from year to year after the first tax year during the specified maximum period.

SECTION 86. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as two new, appropriately numbered subdivisions:

() "Obligated member entity" means a limited liability company, limited partnership or limited liability partnership, all of whose members or partners are fully liable for the debts, obligations and liabilities of the entity, as provided in § 67-4-2008(b), (c) and (d), and that have filed appropriate documentation to that effect with the secretary of state;

() "Obligated member" means a member or partner of an obligated member entity that is fully liable for the debts, obligations and liabilities of the entity, as provided in § 67-4-2008(b), (c) and (d), and that has filed appropriate documentation to that effect with the secretary of state;

SECTION 87. Tennessee Code Annotated, Section 67-4-2008(a), is amended by deleting subdivision (9) in its entirety and by substituting instead the following:

(9) Obligated member entity; provided that:

(A) For tax years beginning before January 2, 2000, the appropriate documentation as required in § 67-4-2008(b), (c) and (d) shall be filed on or before September 15, 2000, with the secretary of state;

(B) For tax years beginning on or after July 2, 2004, but before August 1, 2005, the appropriate documentation as required in § 67-4-2008(b), (c) and (d) shall be filed on or before August 1, 2005, with the secretary of state;

(C) For tax years beginning on or after August 1, 2005, the appropriate documentation as required in § 67-4-2008(b), (c) and (d) shall be filed on or before the first day of the taxable year for which a return is filed;

(D) To the extent that any obligated member or any owner thereof provides limited liability protection, the obligated member entity shall owe the tax otherwise imposed by this part and by Part 21 of this chapter on the portion of income and equity attributable to such obligated member. For purposes of this subdivision, ownership includes any form of ownership, whether in whole, in part, direct or indirect. Also, for purposes of this subdivision, estates, trusts that are not taxpayers, not-for-profit entities, or other entities exempt under § 67-4-2008 shall not be deemed to provide limited liability protection;

(E) If an additional obligated member is admitted to the obligated member entity, such obligated member must file the appropriate documentation with the secretary of state within sixty (60) days of such member's admission; and

(F) For purposes of this subdivision (a)(9), obligated members may be "fully liable" even though one (1) or more persons or individuals dealing with the obligated member entity have by contract agreed to limit their claims against one (1) or more obligated members or against the obligated member entity;

SECTION 88. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new subsection:

(h)(1) There shall be allowed for any financial institution a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in Part 20 of this chapter, an amount equal to five percent (5%) of a qualified loan or qualified long-term investment made to an eligible housing entity for any eligible activity.

(2) There shall be allowed for any financial institution a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in Part 20 of this chapter, an amount equal to ten percent (10%) of a grant, contribution, or qualified low-rate loan made to an eligible housing entity for any eligible activity.

(3) For purposes of this subsection the following definitions shall apply:

(A) "Eligible activity" means an activity that creates or preserves affordable housing for low-income Tennesseans, an activity to help low-income Tennesseans obtain safe and affordable housing, an activity which builds the capacity of an eligible non-profit to provide housing opportunities to low-income Tennesseans, and any other activities approved by the executive director of the Tennessee Housing Development Agency and the Commissioner of Revenue;

(B) "Eligible housing entity" means a Tennessee nonprofit corporation with an Internal Revenue Code § 501(c)(3) status, the Tennessee Housing Development Agency, a public housing authority, or a development district;

(C) "Financial institution" has the definition as provided in § 67-4-2004;

(D) "Low-income" means any individual or family at or below eighty percent (80%) of the applicable area median family income as determined by family size;

(E) "Qualified low-rate loan" means a loan that is at least four percent (4%) below the prime rate as published by the Wall Street Journal at the time the loan is approved;

(F) "Qualified loan" means a loan that is at least two percent (2%) below the prime rate as published by the Wall Street Journal at the time the loan is approved that does not qualify as a qualified low-rate loan; and

(G) "Qualified long-term investment" means an equity investment made for a period of more than five (5) years to an eligible housing entity.

(4) In order to take the credit, the regulated financial institution must maintain a certification from the Tennessee Housing Development Agency establishing entitlement to the credit.

(5) The eligible housing entity receiving the funds must maintain such records as required by the Tennessee Housing Development Agency to ensure that affordable housing opportunities are being provided.

(6) The department of revenue is authorized to share with the Tennessee Housing Development Agency information necessary to effectuate the purposes of this subsection. The Tennessee Housing Development Agency shall be bound by restrictions on disclosure of such information otherwise applicable to the department of revenue.

(7) The Commissioner of Revenue and the executive director of the Tennessee Housing Development Agency are authorized to promulgate rules and regulations to effectuate the purposes of this subsection. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(8) Any unused credit may be carried forward for fifteen (15) years after the tax year in which the credit originated.

SECTION 89. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following as a new, appropriately designated section:

67-6-2____.

(a) A taxpayer that establishes a qualified facility to support an emerging industry in this state shall be eligible for a credit of all the state sales or use taxes paid to the State of Tennessee, except tax at the rate of one-half percent (0.5%), on the sale or use of qualified tangible personal property.

(b) For purposes of this section, the following definitions shall apply:

(1) "Emerging industry" means an industry that promotes high-skill, high-wage jobs in high-technology areas or emerging occupations as determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development in a manner prescribed by the department of revenue. Emerging industry shall not include those primarily engaged in manufacturing, warehousing and distribution, call centers or convention or trade show facilities. High-wage shall be any wage equal to or greater than the wage described in subdivision (3) below;

(2) "Investment period" means the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending three (3) years after substantial completion of the construction, expansion, or remodeling of the qualified facility. However, in no event shall the investment period exceed six (6) years;

(3) "Minimum investment" means a minimum investment in a qualified facility by the taxpayer and lessor to the taxpayer of one-hundred million dollars (\$100,000,000) or more in a building or buildings, either newly constructed, expanded, or remodeled along with the creation of not less than fifty (50) full-time employee positions created primarily for the support of the operations at the

qualified facility during the investment period with average wages or salaries equal to or greater than one hundred and seventy-five percent (175%) of the average wage in the county or the metropolitan statistical area in which the qualified facility is located, whichever is higher, as reported in the Monthly Labor Report published by the Department of Labor and Workforce Development for the month of January of the year in which such full-time employee positions are created. The minimum investment shall not include land or inventory;

(4) "Full-time employee position" means a permanent, rather than seasonal or part-time, position at a qualified facility for at least twelve (12) consecutive months for at least thirty-seven and one-half (37 ½) hours per week with minimum health care as described in Title 56, Chapter 7, Part 22, that is new to the State of Tennessee and further, that for at least ninety (90) days prior to being filled by the taxpayer, the position did not exist in Tennessee as a position of the taxpayer or of another business entity. The full-time employee position at the qualified facility must be created and filled within the investment period. An employee in a new full-time employee position may be placed at a temporary location in this state pending completion of construction or renovation work at the qualified facility.

(5) "Qualified facility" means a building or buildings, improvements and other infrastructure built or installed in conjunction with operations at such building or buildings, either newly constructed, expanded, or remodeled, and located in a county or metropolitan statistical area in this state where the taxpayer has made the minimum investment during the investment period. The qualified facility must maintain fifty (50) qualifying full-time employee positions and be utilized to support an emerging industry for a period of at least ten (10) years beginning from the date of substantial completion;

(6) "Qualified tangible personal property" means building materials, machinery, and equipment used exclusively in the qualified facility and purchased or leased during the investment period. Qualified tangible personal property does not include supplies or repair parts. Qualified tangible personal property does not include any payments with respect to leases of qualifying tangible personal property which extend beyond the investment period. Qualified tangible personal property does not include any materials, machinery, or equipment that replaces tangible personal property that previously generated a credit under this section.

(c) A taxpayer qualifying for this credit must be subject to the taxes imposed by Chapter 4, Parts 20 and 21, of this title or be an insurance company as defined in § 56-1-102(2). The taxpayer shall not be permitted to take advantage of any additional sales tax or other state tax credits, exemptions, or reduced rates as a result of the same purchases or minimum investment claimed under this section, except the tax credits provided under §§ 67-4-2109(a), (b), and (c) and 67-4-2009(1) and (4)(A)(ii). A taxpayer qualifying for this credit shall also not be permitted to utilize the credits available to hospital companies under § 67-4-2009.

(d)(1) A taxpayer seeking this credit shall first submit to the Commissioner of Revenue an application to qualify as a qualified facility together with a plan describing the investment to be made. In the case of a leased qualified facility,

the lessor shall also file an application and plan if any taxes paid by the lessor are to be claimed as part of the credit in subsection (a). The application and plan shall be submitted on forms prescribed by the Commissioner of Revenue and shall demonstrate that the requirements of the law will be met.

(2) After approval of the application and business plan, the Commissioner of Revenue shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for the credit provided for in this section.

(3) In order to receive the credit, the taxpayer must submit a claim for credit along with documentation as required by the Commissioner of Revenue showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor in the case of a leased qualified facility, contractors, and subcontractors on sales or use of qualified tangible personal property. Documentation verifying that the minimum investment requirements have been met shall include, but are not limited to, employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules as required by the commissioner.

(4) Upon establishing the fifty (50) full-time employee positions and meeting the minimum investment threshold, the Commissioner of Revenue shall review the claim for credit and notify the taxpayer of the approved tax credit amount and provide direction for taking the credit. The taxpayer may not take the credit until the Commissioner of Revenue has notified the taxpayer of the amount approved and provided direction to the taxpayer on the proper methodology for taking the credit. The credit may only be taken by the taxpayer establishing the qualified facility.

(e) If the qualified facility does not maintain at least fifty (50) qualifying full-time employee positions or is not utilized to support an emerging industry for a period of at least ten (10) years beginning from the date of substantial completion, the taxpayer shall be subject to an assessment of sales or use tax, penalty, or interest which would otherwise have been due and for which credit was taken; provided, however, that the assessment shall be prorated based on the period of time that the terms of this subdivision are not met. The statute of limitations shall not begin to run on these assessments until December 31 of the final year of the ten-year period provided for in subdivision (b)(5).

(f) Credits under this section shall not reduce the taxes earmarked and allocated to education pursuant to § 67-6-103(c).

(g) Nothing in this section shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit.

SECTION 90. Tennessee Code Annotated, Section 67-4-2109(c)(2)(A)(v), is amended by deleting the language "January 1, 2008" and by substituting instead the language "January 1, 2011".

SECTION 91. Section 1 of this act shall take effect upon becoming a law and shall apply to all such plans, funds, contracts or accounts in existence on the effective date of this act or that are established after such effective date, the public welfare requiring it. Sections 2, 3, and 4 of this act shall take effect upon becoming a law and shall apply to transactions occurring on or after June 3, 2004, and to tax periods ending on or after June 3, 2004, the public welfare requiring it. Sections 15 and 16 of this act shall take effect upon becoming a law and shall apply to tax periods ending on or after December 31, 2004, the public welfare requiring it. Sections 66 and 68 through 74 of this act shall take effect at 12:03 a.m. on July 1, 2007, the public welfare requiring it. Sections 29 through 46 of this act shall take effect upon becoming a law and shall apply to tax periods beginning on or after January 1, 2005, the public welfare requiring it. Section 61 of this act shall take effect upon becoming a law and shall apply to tax periods ending after December 31, 2005, the public welfare requiring it. Section 84 of this act shall take effect upon becoming a law and shall apply to transactions and assessments occurring on or after such effective date, the public welfare requiring it. Sections 86 and 87 of this act shall take effect upon becoming a law and shall apply to tax periods ending on or after July 1, 2005, the public welfare requiring it. All remaining sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 26, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 22nd day of June 2005


PHIL BREDEESEN, GOVERNOR