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Sales and Use Taxes

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Sales and Use Taxes

Reference Number: CTAS-226

State Sales and Use Tax

Reference Number: CTAS-1616

Authority. T.C.A., Title 67, Chapter 6, Parts 1 through 6.

Description. The sales and use tax in Tennessee is in the process of undergoing changes as a part of a national effort to streamline sales tax collections. Numerous reforms and changes to Tennessee law have been adopted by the General Assembly but not yet implemented. The implementation dates for these amendments were tied to certain developments at the national level, which have been delayed. As a result, many statutes regarding sales and use tax are expected to change but at an uncertain date. The description of the sales and use tax in this Section reflects the law as it reads prior to the implementation of certain of these changes related to the streamlining effort. The sales and use tax is imposed upon every person who (1) engages in the business of selling tangible personal property at retail in this state; (2) uses or consumes in this state any item or Article of tangible personal property; (3) is the recipient of certain specified things or services or who rents or furnishes any of the things or services taxable; (4) stores for use or consumption in this state any item or Article of tangible personal property; (5) leases or rents such property within the state, or charges admission, dues or fees, or sells space as defined in the statutes dealing with the sales tax; (6) charges a fee for subscription to television services; (7) leases or rents tangible personal property; (8) performs specifically taxable services; (9) sells or uses admissions, dues and fees on amusements; and (10) certain other specifically listed taxable activities. T.C.A.

§ 67-6-201. The taxable privileges listed above are modified by numerous credits and exemptions. This tax is included as a source of county revenue because the state sales and use tax is the source of most of the state funds allocated to county school systems under the Basic Education Program (BEP). Counties do not receive a direct allocation from this tax as do municipalities.

The Tennessee Department of Revenue administers the tax, which is imposed upon every dealer engaging in a taxable privilege under this chapter. T.C.A. § 67-6-501. The current general state sales and use tax rate is 7 percent with an additional state tax of 2.75 percent levied on the amount in excess of \$1,600 but less than or equal to \$3,200 on sales of any single Article of personal property. T.C.A. §§ 67-6-202 through 67-6-205. Additionally, a number of statutes provide for variation of rates for different products (e.g., the rate for the retail sale of food and food ingredients is 4 percent).

Streamlining Sales Tax

Reference Number: CTAS-1617

In 2003 the General Assembly passed a massive act to make a multitude of changes and adjustments to the sales tax laws in order to bring Tennessee into compliance with the provisions of the national Streamlined Sales and Use Tax Agreement. 2003 Public Chapter 357. In 2004 Public Chapter 959, many revisions were made to the 2003 act regarding the streamlined sales tax provisions. Since 2004, the effective dates for many of these provisions have been continually extended.

Local Option Sales Tax

Reference Number: CTAS-1618

Authority. T.C.A., Title 67, Chapter 6, Part 7.

Description. Any county, by resolution of its legislative body, or any city or town by ordinance of its governing body, may levy a sales tax on the same privileges subject to the state sales tax, with certain exceptions. T.C.A. § 67-6-702. Telecommunications services and certain energy related services are exempt from the local tax or limited in the rate chargeable. T.C.A. §§ 67-6-702 and 704. No local sales tax or increase in the local sales tax is effective until it is approved in a referendum in the county or city levying it. T.C.A. § 67-6-705.

If the county has levied the tax at the maximum rate, no city in the county may levy an additional local

sales tax. If a county has a sales tax of less than the maximum, a city may levy an additional tax up to the difference between the county rate and the maximum. If a city passes an ordinance to increase its sales tax rate above the county rate, the city ordinance is suspended for 40 days during which time the county legislative body may pass a resolution to increase the county tax. If such a resolution is passed, the ordinance remains suspended until a countywide referendum is held. If the referendum is successful, the city ordinance is dead. However, if the referendum is not successful, the city may proceed with a city referendum on the matter. T.C.A. § 67-6-703. If the city referendum passes, the city receives all revenues generated by the increase above the county level; the first half is not earmarked for education. However, if the county, at a later date, raises its sales tax rate up to the level of the city rate, then the distribution formula outlined below would apply to the entire local option portion of the sales tax.

A resolution or ordinance levying the sales tax may be initiated by a petition of 10 percent of the registered voters of the taxing jurisdiction. T.C.A. § 67-6-707. The tax, once levied, is perpetual unless the resolution or ordinance establishes a specific termination date or unless the tax is repealed by a manner in which it could be adopted. T.C.A. §§ 67-6-708, 67-6-709. The same exemptions generally apply to the local option sales tax as apply to the state sales tax. The local sales tax cannot exceed 2.75 percent, and applies only up to the first \$1,600 on the sale or use of any single Article of personal property. The old law provided for a \$5 or \$7.50 single item limit on the sale or use of any single Article of personal property. These limits remain effective unless and until the county legislative body removes these old limits by a resolution, whereupon the local option tax will apply to the first \$1,600 on the sale or use of any single Article of personal property. T.C.A. § 67-6-702.

Distribution. Revenue from local option sales tax levied by counties is distributed as follows:

1. 50 percent specifically for education, to be distributed in the same manner as the county property tax for school purposes.
2. 50 percent distributed on the basis of where the sale occurred. Taxes collected inside a municipality are distributed to that municipality, and taxes collected in unincorporated areas are distributed to the county. Counties and cities may contract with each other for distribution of the half not allocated to school purposes. T.C.A. § 67-6-712.

In 1998, the General Assembly passed Public Chapter 1101 which was a major reform of the annexation and incorporation laws having a great impact upon the way the local option sales tax is distributed among cities and counties. T.C.A. § 6-51-115. It included a "hold harmless" provision to protect county revenue sources. When a city annexes territory or a new city incorporates, revenue amounts generated in that area by local option sales taxes, which had been received by the county prior to the annexation or incorporation, continue to go to the county for 15 years after the date of the annexation or incorporation. During that time, any increase in the situs-based portion of the revenues generated in the area would be distributed to the annexing or incorporating municipality. Note that this does not affect the distribution of the first half of the local option sales tax, which would continue to go to education funding. If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

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