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APRIL 2012 UPDATE ON THE TENNESSEE BUSINESS TAX

By: Harlan Dodson

Practitioners should be aware of a significant change in the administration of the Tennessee Business Tax. Tennessee has long had a Business Tax, Tenn. Code Ann. § 67-4-701, et seq. It was largely administered at the local level and was not a serious concern for most businesses. However, in 2009, the Tennessee legislature significantly amended and broadened the law as to this tax, and, more importantly, provided for it to be administered by the Tennessee Department of Revenue, which will do it well. Now, practically all businesses need to be properly licensed and filing returns.

The Tennessee Department of Revenue is actively enforcing the business tax. New businesses need to register and taxable entities not yet registered and filing business tax returns are encouraged to do so to avoid penalties. The following is a brief introduction to the business tax with instructions for registering and filing the returns. There are myriad special provisions and exceptions so it is well to be generally familiar with the Act. The Department is very helpful if you call with a question.

Business tax and registration requirements are imposed on all businesses (ownership type does not matter, so individuals as well as partnerships, LLC's and corporations are covered) selling more than \$3,000 a year in tangible personal property (retail or wholesale) or particular services. The tax is levied by local authorities, but the Tennessee Department of Revenue is responsible for processing, auditing and collecting the tax. Depending on where the taxpayer is located, some businesses will be required to register twice and file two returns – one for the county and one for the city. Businesses in a Metropolitan Government, such as Nashville-Davidson County are only required to register once.

Many Tennessee cities, and all Tennessee counties except Clay, Claiborne and Morgan counties, require businesses in their jurisdictions to be licensed and pay the business tax. A business license costs \$15, and each individual business location must display a license. The licensing entity will automatically renew the business license for free upon notice from the Department of Revenue that the taxpayer has filed a business tax return and paid any amount due.

Most taxable entities are required to file return(s) with the Department of Revenue, and pay a minimum of \$22 of tax per required return. The tax period and deadlines for returns and payments vary depending on the classification of the taxpayer under the Business Tax Act. A return must also be filed when a business changes its tax classification, terminates, or is transferred; relocation within a taxing jurisdiction does not trigger a return. Entities that are not properly dissolved, surrendered, withdrawn, cancelled or otherwise properly terminated are still required to file returns and pay the tax. Penalties and interest apply to late returns and payments; while penalties may be waived, interest cannot be waived.

INSTRUCTIONS: The first step is to determine if your client's business is required to register for a business license and file a return under the Business Tax Act. If the total value of the sales is \$3,000 or more per year, determine which classification in Tenn. Code Ann. § 67-4-708 best describes your business and double check any exemptions in the classifications or in Tenn. Code Ann. §67-4-712. There are five taxable

classifications depending on dominant business activity, which have different tax rates, tax periods and filing deadlines; and general exemptions for manufacturers, producers selling livestock, poultry, nursery stock and other farm products directly from the farm, employees and any business with less than \$3,000 in total sales from taxation.

If the client is required to pay the business tax and has not been doing so, the Department of Revenue has procedures to waive all penalties, if the client voluntarily registers and reports and agrees to pay three years worth of back taxes and any interest. If the Department initiates the approach, the client may have to pay six to ten years worth of back taxes and interest, and will be subject to a mandatory 25% penalty on any tax due.

Taxpayers will need to complete the return form that matches their classification. Forms and instructions are available: www.tn.gov/revenue/forms/business/index.htm. Forms can be submitted by mail or online. Taxpayers owing more than \$1,000 in business tax are required to file electronically. Businesses required to pay sales tax electronically are also required to pay the business tax electronically. Any taxpayer required to file returns electronically shall be penalized \$500 for each instance of filing a return by any other means. Taxpayers may request to file a consolidated return if the taxpayer operates more than one place of business in a single county or city, otherwise a separate return must be filed for each county and city.

A final return must be filed within 15 days of a sale or termination of the business. Upon filing and payment of any tax due, the seller should ask the Department for a tax clearance letter, stating that no taxes, interest or penalties are due. A successor to a business is liable for any unpaid business tax, interest and/or penalties. As an alternative to obtaining a tax clearance letter through the seller, a purchaser can limit or eliminate its liability by following the procedure in Tenn. Code Ann. § 67-4-721(d).

Once the voluntary disclosure for business taxes is complete, the client will need to obtain a business license from the county clerk, and designated city official if applicable. All business tax taxpayers are required to obtain and display a business license. To obtain a business license, you may approach the county and/or city official directly, or complete the online application at: <https://apps.tn.gov/bizreg/>. Cities and counties levying the tax are listed at: [www.tn.gov/revenue/tntaxes/businessstax /comprehensivelisting.pdf](http://www.tn.gov/revenue/tntaxes/businessstax/comprehensivelisting.pdf).

If a business changes ownership, the new owners may need to apply for a new license. Instructions for changes in ownership are on the back of the business license. Five days before relocating a business within the same taxing jurisdiction, county and city officials must be notified and the business's license can usually be transferred for a reduced fee; any additional moves within the year will require a new license. A move between taxing jurisdictions requires a new license.