

1320-04-05 Business Tax Rules and Regulations

1320-4-5-.08 Computation of Tax.

(1) "Sales Price" means the total amount for which tangible personal property is sold or the amount charged for any of the things or services taxable under the Business Tax Law, including any services required to process the property or taxable services for sale, and without any deductions therefrom on account of the cost of the property or taxable services sold, the cost of materials used, losses, or any other expenses whatsoever, except cash discounts allowed on sales. It does not include finance charges, carrying charges, time price differential, or interest from credit extended on sales of tangible personal property under installment sales contracts, conditional sale contracts, or other contracts providing for deferred payments of the purchase price, if the amount of such finance charges, carrying charges, time price differential, or interest is in addition to the usual or established cash selling price, and provided that it is:

- (a) Segregated on the taxpayer's invoice or bill of sale, or
- (b) Billed separately to customers.

(2) The Business Tax is computed upon the sales price of items subject to the tax and is based upon the actual consideration passing, or agreed to be passed, between the purchaser and the vendor, less any deductions allowed by law, ~~but without any deduction for actual or possible bad debts.~~ Wholesalers and retailers making charge sales must report the Business Tax due on such sales for the period in which the sale is made, ~~regardless of when or whether any collection is made for such charges.~~

Authority: T.C.A. §§~~67-1-102, 67-4-701, 67-4-702, 67-4-703, and 67-4-711, 67-5822 and 67-101.~~
Administrative History: Original rule certified June 7, 1974; ~~Amendment filed [date]; effective [date].-~~

1320-4-5-.09 Construction Contractors and Exterminators.

(1) Contractors, as defined at T.C.A. §67-4-708, Classification 4, shall be liable for the business tax regardless of whether the contract is on a lump sum or cost-plus basis.

(2) A contractor shall pay tax under Classification 4 of the Business Tax Act upon all receipts without any deductions except as specifically provided. Tax is due upon all progress payment charges billed pursuant to the contract and received by the contractor, and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the equipment is operated by the lessor. Additionally, tax is due at the end of the contract period on the difference between the progress payment charges as billed and the payments received by the contractor. Amounts actually paid during the business tax period to subcontractors or other persons for the services enumerated in T.C.A. §67-4-711(a)(5) may be deducted provided the contractor adequately identifies such persons by supplying ~~the local collecting officers with~~ the names and addresses of the subcontractors or other persons and of the amounts subcontracted ~~or charged.~~ For contracts issued on or after October 1, 2009, the contractor may only deduct amounts paid to a subcontractor holding a business license or who is licensed by the state board for licensing contractors for work described in T.C.A. §67-4-708(4)(A) and must also supply the subcontractor's business license or license number issued by the board for licensing contractors. -The contractor must maintain in its books and records a copy of the subcontractor's business license or contractor's license.

(3) ~~(a)~~ A contractor shall obtain a license from the appropriate local officer and shall be liable for the ~~minimum tax-initial business license fee -and business tax on receipts as provided for in this rule-~~ in each county and/or municipality in which he receives more than \$50,000 ~~or more in from~~ contracts during any taxable period. The contractor must also file a business tax return and pay the business tax on such receipts for each such location. A contractor shall also obtain and license and is liable for the ~~minimum tax-initial business license fee~~ in the county and/or municipality in which his business is located and will pay business tax on his gross receipts derived in all locations ~~the state,~~ less any amounts reported ~~to for~~ counties and/or municipalities in which his contracts ~~total or~~ exceed \$50,000, during any taxable period. If

~~a contractor does not have a domicile or place of business in the state, he will not owe the tax imposed by T.C.A. §67-4-705 in a particular jurisdiction if his total receipts from contracts performed in that jurisdiction are less than \$50,000 during any taxable period.~~ "Receipts" used herein mean taxable receipts.

~~(b) The contractor shall be liable for the business minimum tax on September 30 in those for the jurisdiction(s) where his principal place of business is located. In For other counties and/or municipalities, the initial license fee minimum tax is due on the date when charges billed exceed \$50,000 and business tax gross receipts tax reports shall be filed in for such jurisdiction as of the next following September 30.~~

(4) Sales of tangible personal property and services to a contractor who in the course of performing his contract installs the property as a component part of an addition or improvement to or repair of real property are sales to a user and a consumer, and such sales are ~~taxable at the appropriate retail rate~~ considered retail sales unless the sales are exempt by specific provisions of the Business Tax Act and rules and regulations construing the Act.

(5) If a contract is performed within the jurisdiction of more than one (1) governmental entity, any business tax on receipts due shall be ~~paid to-sourced to~~ each such governmental entity proportionately based upon the amount of work actually performed within each governmental entity.

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-708, ~~67-4-709, and~~ 67-4-711, ~~67-4-714, and~~ 67-4-717. Administrative History: Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978. Amendment filed June 3, 1980; effective September 29, 1980. Amendment filed March 18, 1983; effective June 15, 1983. Amendment filed June ~~414~~, 1988; effective September 28, 1988; ~~Amendment filed [date]; effective [date].-~~

~~1320-4-5-.11 Credit for Personal Property Taxes. Repealed.~~

~~(1) The minimum tax actually paid may be taken as a credit against business tax due during the same period.~~

~~(2) In order for personal property taxes to be taken as a credit on a business tax return, the personal property taxes for which credit is sought must have been paid during the tax period covered by the return on which credit is claimed. Credits for personal property taxes cannot be used to pay the minimum business tax for the next taxable period. The minimum tax is due and payable on the dates set out at T.C.A. §67-4-714 (c) regardless of the amount of any credits.~~

Authority: T.C.A. §§67-1-102, ~~and~~ 67-4-703, ~~and~~ 67-4-713. Administrative History: Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983; ~~Repeal filed [date]; effective [date].-~~

1320-4-5-.12 Deductions from Gross Sales.

(1) Amounts representing the following transactions may be deducted from gross sales, prior to computing tax liability, provided such amounts have been included in the gross sales reported on the Business Tax Returns:

- (a) Cash discounts allowed and taken by customers on sales. (See [Rule](#) 1320-4-5-.04)
- (b) Returned merchandise or allowances or credits given to customers for specific sales. (See [Rule](#) 1320-4-5-.45.)
- (c) Trade-ins. (See [Rule](#) 1320-4-5-.54.)
- (d) Repossession to the extent allowed. (See [Rule](#) 1320-4-5-.44.)

(e) Contractor payments to subcontractors. (See [Rule](#) 1320-4-5-.09(2))

(f) Sales in bona fide interstate commerce. (See [Rule](#) 1320-4-5-.33(2)-(3).)

(g) Receipts for services rendered by nonprofit institutions and financial institutions and for accounting, insurance, and other services, all as provided for by law. (See [Rule](#) 1320-4-5-.16 and 1320-4-5-.32.)

(h) Accommodation and casual and isolated sales. (See [Rules](#) 1320-4-5-.01 and 1320-4-5-.05.)

[\(i\) Bad debts arising from receipts on which the business tax is imposed and paid as provided for by law.](#)

[\(j\) Any other deductions authorized by the Business Tax Act or by rules and regulations pertaining thereto.](#)

(2) Except as indicated in paragraph (1) of this rule, and as may otherwise be allowed by law, no other amounts attributable to any other transactions ~~including bad debts~~, may be deducted from gross sales.

(3) Any person claiming deductions from his gross sales must maintain sufficient invoices and other documents to substantiate his claims; otherwise, the deduction will not be allowed.

Authority: T.C.A. §§67-1-102, ~~and 67-4-703~~, [and 67-4-711](#). Administrative History: Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978.; [Amendment filed \[date\]; effective \[date\]](#).

1320-4-5-.13 Definitions-General.

As used in these Rules and Regulations, the following terms, wherever used, shall have the following meanings:

(1) "Act" shall mean the Business Tax Act, being part 7, Chapter 4, Title 67, T.C.A., as amended.

(2) "Commissioner" shall mean the Commissioner of Revenue of the State of Tennessee, or any of his duty authorized assistants.

(3) "Department" shall mean the Department of Revenue of the State of Tennessee.

(4) "Local ~~Collecting~~-Officers" shall mean County ~~Court~~-Clerks and the duly designated municipal officers responsible for [licensing of local businesses](#). ~~collecting the retail business tax imposed by local governments.~~

(5) "Lease or Rental" means the leasing or renting of tangible personal property and the possession or use ~~thereof of the property~~ by the lessee or renter for a consideration, without transfer of the title of such property, and such shall be considered as a taxable transaction within the meaning of the Business Tax Act.

(6) "Return" shall mean the report of a person liable for the Business Tax showing gross sales, deductions, credits, tax computations, and such other information as may be required ~~on the forms prescribed~~ by the Commissioner of ~~the departments of Insurance and Banking and Revenue and by local collection officers~~.

(7) "State" shall mean the State of Tennessee.

(8) "Tax" shall mean the Business Tax imposed by the Business Tax Act.

(9) "Manufacturer" shall mean those persons engaged in the businesses described in Division D- of the Standard Industrial Classification Index of 1967.

Authority: T.C.A. §§67-1-102, ~~67-4-702~~, and 67-4-703. Administrative History: Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983-; ~~Amendment filed [date]; effective [date].~~

1320-4-5-.14 Distribution from Warehouse or Other Central Location.

(1) Sales of tangible personal property and services by a licensed wholesaler or retailer from a central warehouse or other distribution point other than his principal place of business shall be subject to the appropriate wholesale or retail tax, and persons making such sales shall be liable for the business tax ~~minimum tax~~ for that location.

(2) Where a person merely stores property in a warehouse or other place for eventual delivery to one or more places of business operated by him from which sales are made, he shall not be deemed to be making sales at that location as contemplated by this Rule and Regulation.

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974-; ~~Amendment filed [date]; effective [date].~~

1320-4-5-.15 Dominant Business Activity Defined for Classification Purposes.

For purposes of the Business Tax, both wholesale and retail businesses are classified according to their dominant business activity. The item comprising the largest proportion of taxable gross sales of the business when compared with other items sold determines its classification. ~~A business may be taxed at both retail and wholesale rates but~~ Only one classification (of Classifications 1, 2, 3 or 4) shall apply. ~~Once the classification is determined, the gross sales of the business or the proportionate part of the receipts applicable to both wholesale and retail sales, if liability exists under both types of business, are taxed at the rate specified by such classification.~~ The fact that sales may be made at both wholesale and retail shall have no effect in determining the dominant business activity.

Authority: T.C.A. §§67-1-102, ~~and~~ 67-4-703, ~~and~~ 67-4-708. Administrative History: Original rule certified June 7, 1974-; ~~Amendment filed [date]; effective [date].~~

1320-4-5-.27 Local Adoption of Business Tax.

(1) Affirmative action must be taken by ~~county or~~ municipal governments in order to implement the business tax in their respective jurisdictions. The business tax may only be levied by passage of a resolution or ordinance by the appropriate governing body.

(2) Upon adoption or amendment of the business tax by any ~~county or~~ municipal government, a certified copy of the resolution or ordinance adopting or amending the business tax must be furnished to the department of revenue.

(3) ~~County or m~~Municipal governments that adopt the business tax after December 31, 2013, may ~~must impose the same or lesser levy the tax at the rates than those imposed by the Business Tax Act for any or all classifications in the Business Tax Act provided in T.C.A. §67-4-709. If the business tax was adopted by a municipal government prior to January 1, 2014, then it may continue to levy the tax at the same rate that was in effect as of January 1, 2014. Municipal governments may not reduce the tax rates, but they may repeal the business tax by ordinance.~~

~~(a) If lesser rates are imposed by county or municipal governments, the rates adopted must be made applicable to all persons alike in the same classification or category within a classification.~~

~~(b) The minimum tax of fifteen dollars (\$15) set out at T.C.A. § 67-4-709 may not be reduced or deleted by county or by municipal governments.~~

~~(c) Local governments may not reduce the tax rates, to zero (0) for any classification or category within a classification.~~

~~(d) Local governments shall not adopt tax rates which do not apply to all sales or receipts of any person subject to the business tax within each classification or category within a classification.~~

~~(e) Local governments shall not adopt the minimum tax without adopting the same or lesser tax rates as set out in T.C.A. §67-4-709(a)(1),(2),(3) and (4).~~

Authority: T.C.A. §§67-1-102, 67-4-703, ~~67-4-704~~, ~~67-4-705~~, and 67-4-709. Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987- Amendment filed [date]; effective [date].

1320-4-5-.28 Locations and Outlets-Operations in Other Localities-~~Peddlers~~.

(1) ~~The Business Tax is applicable to each place, location or outlet in the state from which business is carried on. This means that a~~ business which engages in business activity in several places, in different locations and through different outlets, must obtain a license from and pay the initial license fee to the appropriate local officer and must pay at least the minimum business tax to the Department ~~minimum tax for~~ each place, location or outlet; and it must report gross ~~loss~~ sales and tax due for each separate location. The fact that a business has several outlets in a single county or ~~city municipality~~ is immaterial. Such business may upon request submit a consolidated report to cover all such outlets in one county or city, however, a breakdown of sales by each outlet must accompany such consolidated report. ~~(See 1320-4-5-.52(2)).~~

(2) Subject to the exceptions enumerated hereinafter, persons subject to the Business Tax operating from an established place of business in one county or municipality~~city~~ who extend their operations into other counties and/or ~~cities municipalities~~ without establishing an office, headquarters or other place of business therein shall not be subject to the Business Tax filing and registration requirements for such other counties and/or ~~cities municipalities~~. Tax on total receipts from all taxable sales shall be due sourced to the county and ~~city municipality~~, if any, in which the established place of business is located.

(3) Excepted from the rule as stated in subparagraph (2) are:

~~a) Persons with no established place of business in this state. Such persons shall not be subject to the tax levied by T.C.A. § 67-4-705, and the receipts subject to T.C.A. § 67-4-704 shall be sourced to the state's general fund.~~

~~(ba) Contractors subject to Rule 1320-4-5-.09 with taxable receipts of \$50,000 and out-of-state contractors with taxable receipts of \$3,000 or more~~

~~(eb) Property management companies and individuals providing rentals lasting less than 180 days must have a county and/or city business tax license and registration for each county and/or city in which it has rental properties, if the property management company's or individual's taxable gross receipts are ten thousand dollars (\$10,000) or more in a particular county and/or city where it does business. If a property management company or individual manages multiple locations within one county and/or city, the property management company or individual shall be required to register only one location per county and/or city and report all gross receipts in that county and/or city to the registered location. The property management company or individual will be subject to business tax at the local rate for the jurisdiction in which each rental property is located, and the taxes from such shall be sourced to the county or city in which the rental property is located.~~

~~(4) Persons engaged in business in the state without establishing a physical location, outlet, or other place of business in the state are subject to the state business tax levied under T.C.A. § 67-4-704.~~

~~who make sales and delivery of merchandise or services concurrently and on the spot to their customers are deemed to be "peddlers."~~

~~(a) All peddlers, both full-time and part-time, must pay the Business Tax measured by the applicable rate of tax as provided in the Business Tax Act. Full-time peddlers must pay the minimum tax and possess the license as provided for in the Act; part-time peddlers are not required, however, to pay the minimum tax or possess the license as provided for in the Act.~~

~~(b) A full-time peddler is one who is regularly engaged in business somewhere as a peddler as herein defined. Persons regularly engaged in a seasonal business somewhere are full-time peddlers during the seasonal period.~~

~~_____ (c) A part-time peddler is one who does not devote his full-time regularly as a peddler. A person does not become a part-time peddler merely because he remains in a county or municipality for a few days and then moves on to a different locality.~~

Authority: T.C.A. §§~~67-1-102, 67-4-703, 67-4-706, and 67-4-723, and 67-4-724, 67-5822 and 67-101.~~
Administrative History: Original rule certified June 7, 1974.; Amendment filed [date]; effective [date].

1320-4-5-.30 Tax Due Date-Delinquency Tax Periods.

~~(1) The business tax minimum tax provided for in T.C.A. §67-4-709 of the T.C.A., is an annual tax for the privilege a license to engage in any of the business activities made subject to the Business Tax. The minimum tax paid by a person may be applied to any tax that he may owe, if any, when the return provided for in §67-4-715, T.C.A., is submitted to the appropriate officer.~~

~~(2) The minimum tax for new businesses shall be due 20 days after the date of commencement of business or the opening of each additional outlet. All taxes shall be due as follows:~~

~~(a) Classification 1 - December 31~~

~~(b) Classification 2 - March 31~~

~~(c) Classification 3 - June 30~~

~~(d) Classification 4 - September 30~~

~~(e) Classification 5 - December 31~~

~~(3) All persons liable for taxes imposed under the Business Tax Act shall be delinquent in the payment of their tax on the following dates:~~

~~(a) Classification 1 - March 1~~

~~(b) Classification 2 - June 1~~

~~(c) Classification 3 - September 1~~

~~(d) Classification 4 - December 1~~

~~(e) Classification 5 - March 1~~

~~(4) Persons subject to the tax imposed by the Business Tax Act shall compute and pay their tax liability based on the following tax periods:~~

~~(a) Classification 1 - January 1 through December 31~~

~~(b) Classification 2 - April 1 through March 31~~

~~(c) Classification 3 - July 1 through June 30~~

~~(d) Classification 4 - October 1 through September 30~~

~~(e) Classification 5 - January 1 through December 31~~

~~(2) Pursuant to the authority in T.C.A. §67-4-715(g), the business tax return is due on the 15th day of the fourth month following the end of yourthe taxpayer's fiscal year. -For example, if a taxpayer's fiscal year coincides with the calendar year ends on December 31, then yourits return will be due on April 15.~~

~~(5) When any person shall either fail to pay the business minimum tax or fail to make any return and pay the full amount of tax required by the Business Tax Act, there shall be imposed, in addition to other~~

~~penalties provided, a specific penalty to be added to the tax in the amount of five percent (5%) of the net amount of tax due for each 30 days or fraction thereof during which the failure continues.~~

~~(a) The above-mentioned specific penalty shall not exceed twenty-five percent (25%) of the net amount of tax due in the aggregate.~~

~~(b) The above-mentioned specific penalty shall not be less than fifteen five dollars (\$15) on a delinquent return regardless of the amount of tax due.~~

~~1. The minimum penalty of five dollars (\$5) shall not, however, apply to the delinquent payment of the minimum tax.~~

~~2. The penalty applicable to the delinquent minimum tax shall be computed as in paragraph (5) above.~~

~~(c) Any local tax collection officer waiving payment of penalty pursuant to T.C.A. §67-4-720(d) must have written documentation attached to any return for which penalty is waived to support such action.~~

~~(6) A fee of \$3.50 may be charged by the County Court Clerks for collecting and recording amounts from the Business Tax; provided, however, that only one fee may be charges persons paying the annual minimum tax and filing annual tax returns if both are paid on the same date. However, a separate fee of \$3.50 may be charged for each license issued a taxpayer who may file a consolidated return.~~

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-709, ~~67-4-715, and~~ 67-4-717, ~~67-4-719 and 67-4-720.~~
Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987; ~~Amendment filed [date]; effective [date].~~

1320-4-5-.36 Persons Exempt from the Business Tax.

(1) Persons making occasional and isolated sales or transactions who do not hold themselves out as engaged in business.

(2) Persons having a total value of sales of less than ~~\$500.00~~ \$10,000.00 per year.

(3) Certain blind persons. (See [T.C.A. §67-4-712, T.C.A.](#))

(4) Certain disabled veterans. (See [T.C.A. §67-4-712, T.C.A.](#))

(5) Newspaper route carriers and newspaper peddlers.

(6) Farmers making sales of farm products direct from the farm and produced by themselves, including catfish farmers. (See [Rule 1320-4-5-.16](#))

(7) Persons employed by another who work for wages or salary and who are under the direction and control of the employer in the performance of their duties.

~~(98) Any charitable or religious institutions making sales of donated items and articles produced from donated items.~~

~~(109) Certain persons conducting shows, displays, or exhibits sponsored by a nonprofit organization of gun collectors. (See [T.C.A. §67-4-712, T.C.A.](#))~~

~~(110) Certain persons whose only business activity during the tax period is conducted at the Tennessee state fair or a county fair. (See [T.C.A. §67-4-712, T.C.A.](#))~~

~~(1211) Movie theaters qualifying for the exemption under [T.C.A. §67-6-309](#).~~

Authority: T.C.A. §§67-1-102, ~~and 67-4-702,~~ 67-4-703, ~~and 67-4-712.~~ Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987; ~~Amendment filed [date]; effective [date].~~

1320-4-5-.37 ~~Persons Making Wholesale and Retail Sales Repealed~~

~~(1) A person whose business is primarily that of making wholesale sales but who makes more than 20% of his sales at retail is liable for both the wholesale and retail Business Tax at the appropriate rates on each category of such sales. If the person makes 20% or less of his sales at retail, he is liable for the Business Tax at the appropriate wholesale rate on all of his sales, both wholesale and retail. (Either category shall be based on net taxable sales after allowable deductions).~~

~~(2) A person whose business is primarily that of making retail sales but who makes more than 20% of his sales at wholesale is liable for the Business Tax at the appropriate retail rate on the retail sales, and at the appropriate wholesale rate on the wholesale sales. If the person makes 20% or less of his sales at wholesale, he is liable for the Business Tax at the appropriate retail rate on all of his sales, both retail and wholesale.~~

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974; Repeal filed [date]; effective [date].

1320-4-5-.41 Real Estate Sales and Rentals.

(1) Persons who receive monies or other consideration for the sale or rental of real property belonging to them, not including rentals lasting less than 180 days, are not liable for the Business Tax on such sales or rentals.

(2) Persons receiving or entitled to receive commissions, fees, service charges, or other income, credits or property value in money for services rendered concerning the sale or rental of real or personal property belonging to others are liable for the Business Tax on such receipts.

(3) The employing unit, whether designated as a real estate firm, broker, agency, partnership, or corporation which owns or conducts a real estate business, but not the employees thereof, is liable for business tax both the minimum and gross receipts tax. The tax shall be paid on the total receipts (as enumerated in paragraph (2b) above) which are due and payable. It is immaterial, as regards tax liability, whether the total receipts are divided between the employing unit and the employee, salesman, or other representative of the employing unit or whether the division is made by the employing unit or by the owner, purchaser or other party in interest. In any event the tax is payable on the total amount of receipts due and payable for services rendered.

(4) The minimum and gross receipts taxes business tax are due and payable to the Department for to each county and city municipality, if any, where the employing unit maintains an office or place of business. The regardless of the location of the property involved in the sale or rental or the place where a contract for the sale or rental of the property is entered into shall not be considered in determining what county and municipality may impose the Business Tax.

(5) Where receipts, as enumerated herein, are divided, or split, between bona fide real estate agents or brokers, as distinguished from a division between an agent or broker and one of his employees, that portion of the receipts retained or received by each business shall become a part of its gross receipts subject to the Business Tax.

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974. Amendment filed [date]; effective [date].

1320-4-5-.42 Preservation of Records.

(1) Every person liable for the Business Tax shall keep and preserve sufficient and complete records for a period of at least three years to determine the amount of Business Tax for which he may be liable. It is advisable, however, that such records be kept and preserved for a period of six years. Such records shall include and show the following:

- (a) A daily record of all cash and credit sales, including sales under any type of financing or installment plan in use;
- (b) A record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;
- (c) A record of all exclusions, deductions and exemptions allowed by law and/or claimed in filing Business Tax Returns;
- (d) A true and complete inventory of the value of the stock on hand taken at least once yearly. All of the records required to be kept and preserved shall be open for examination at any time by the commissioner or local collecting officers, or their duly authorized representatives.

(2) If an assessment has been made and an appeal therefrom has been made to the Commissioner, ~~to a local collecting officer,~~ or to a court, all books and records, as above specified, relating to the period covered by such proposed assessment, must be preserved until the final disposition of the appeal.

Authority: T.C.A. §§ ~~67-1-102, and 67-4-703, and 67-4-722~~. Administrative History: Original rule certified June 7, 1974; Amendment filed [date]; effective [date].

1320-4-5-.47 Sales for Resale.

(1) Sales for resale include those whereby a supplier of materials, supplies, equipment and services makes such tangible personal property or services available for further processing as a component part of a product to legitimate dealers engaged in and actually reselling or leasing such property or services to a user or consumer. Sales to a manufacturer or processor for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials become a component part of the finished product are likewise considered sales for resale.

(2) Sales of tangible personal property and services to a ~~licensed~~ retailer who may make further distributions from a central warehouse or other distribution point to others for resale shall be deemed to be wholesale sales, ~~and the licensed retailer shall be liable for wholesale tax on any such distributions if receipts from such exceed 20% of his total sales.~~

(3) Sales for resale made by a wholesaler to another wholesaler shall not be subject to business tax ~~be deemed wholesale sales and taxable at the appropriate tax rate. Wholesale sales shall not include the transfer of tangible personal property from a wholesaler to another wholesaler where the amount paid by the transferee to the transferor does not exceed the transferor's cost including freight in and storage cost and transportation costs incurred in the transfer from the transferor to the transferee.~~

(4) The price charged by the vendor for tangible personal property or services or the quality of such property or services is immaterial in determining whether or not a sale is one for resale. The controlling factor is what the vendee does with his purchase.

(5) Sales to a contractor who in the course of performing his contract installs property or uses services in a structure, as a component part thereof, are retail sales to a user or consumer, ~~and are taxable at the appropriate retail rate.~~

Authority: T.C.A. §§ ~~67-1-102, 67-4-702, and 67-4-703~~ 67-5822 and 67-101. Administrative History: Original rule certified June 7, 1974; Amendment filed [date]; effective [date].

1320-4-5-.53 Taxpayers' Returns and Records.

(1) All persons liable for the Business Tax shall make complete reports of all sales and other business receipts and list any deductions which they are entitled to make for each separate place, location, or outlet in the State, and submit them on their Business Tax returns ~~to the appropriate collection officer,~~ as provided for in the Business Tax Act and the Rules and Regulations relating thereto. Sales and receipts which are excludable, as provided for in the Act and these Rules and Regulations, shall not be included in the gross sales reported; but allowable deductions shall be included in the gross sales reported and listed

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as a deduction on the Business Tax Return and so treated in computing and paying the Business Tax due.

(2) Persons with two or more business locations in a city and/or county may, upon request to and approval by the Commissioner of Revenue, obtain forms and file with the appropriate collection officer consolidated tax returns, provided only, however, that such businesses are taxable under the same classification and at the same tax rate. Such person Consolidated returns must maintain in its books and records contain a schedule, by individual locations, giving information necessary to determine tax liability at each location.

~~(3) All Business Tax returns, audits of all taxpayers, information provided the Department by municipalities and/or counties and information provided the counties and/or municipalities by the Department of Revenue for the administration, enforcement, and/or collection of the Business Tax are confidential and the contents shall not be revealed to any person except as follows:~~

~~(a) To the taxpayer personally, or~~

~~(b) To an attorney or other agent duly authorized by the taxpayer in such a manner as the Commissioner may require, or~~

~~(c) To employees of the Department and duly authorized officials of counties and municipalities for the purpose of checking, comparing and correcting returns, or~~

~~(d) To any collection, regulatory, or inspection agency of this State, the United States, or another State; provided, that before such information may be divulged to the United States or another State, such government unit shall agree to furnish this State with such information as it may deem necessary to enforce the Tennessee tax laws, or~~

~~(e) In accordance with proper judicial order, or as otherwise required by law.~~

Authority: T.C.A. §§ 67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978; Amendment filed [date]; effective [date].

1320-4-5-.57 Transfer of License.

(1) ~~Except as otherwise provided in paragraph (2), t~~he license, required pursuant to T.C.A. §67-4-723, may neither be transferred from one person to another person nor from one business location to another business location, except as provided for under T.C.A. §67-4-721.

(2) A business may be transferred from one location in a municipality to another location within the same municipality one time during any tax year if the licensee notifies the local collecting officer at least five (5) days prior to the last day of business at the old location and pays to such local collecting officer three dollars and fifty cents (\$3.50) for a recording fee the fee as set forth in T.C.A. §8-21-701.

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983; Amendment filed [date]; effective [date].

~~1320-4-5-.60 YEARLY, MONTHLY, OR QUARTERLY PAYMENTS TO DEPARTMENT OF REVENUE BY LOCAL COLLECTORS. Repealed.~~

~~(1) (a) It is provided in T.C.A., §8-21-701(57), that each local collector of each county and or municipality from and after June 1, 1972 shall be required to pay the Commissioner 15% of the total amount collected under the provisions of the Business Tax Act, Part 7, Chapter 4, Title 67, T.C.A. This provision shall apply to all collections, except fees charged by the clerks for collecting and recording amounts from the business tax as provided in §8-21-301(57).~~

~~(b) The statute also provides that such payments shall be made to the Commissioner on May 31, 1973 for collections from June 1, 1972 through May 31, 1973 and each May 31 thereafter for the previous period~~

~~of June 1 through May 31. Such Ppayments by local officials must be made within 20 days after the due date or they shall be considered delinquent and subject to penalty and interest.~~

~~(c) For the convenience of the local collecting officers, the Department of Revenue may accept payments on a monthly or quarterly basis during a taxable period with a final adjustment being made covering the full taxable period by the due date of May 31 each year. Any local official collectors desiring to make payments to the Commissioner in any manner other than on an annual basis shall first seek written authority to do so from the Commissioner and if such is granted, the frequency of payments may not be changed during a tax year without written request from the local official collector and authorization from the Commissioner.~~

~~(2) T.C.A. 8-21-701Section 8-21-15, subsection (A)(40), provides that for receiving and paying over all taxes, fines, forfeitures, fees and amercements county court clerks shall be entitled to 5% of the amount collected and paid over. This commission may not be deducted from the amount paid due the Department of Revenue. as set out in (a) above (15% of business tax collections). The 5% commission may be deducted from total business tax collections before payments of such are made to the proper county official, but any amount that would otherwise relate to the 15% fees due the state would be borne by the county and not charged to the Department of Revenue. The net effect is that the County Court Clerk is entitled to 5% of the adjusted gross collections, and the state is entitled to 15% of the adjusted gross collections.~~

~~(3) Local collecting officers shall accept all remittances made in payment of tax liability. Any partial payments of tax liability shall be reported and paid collected and reported to the Commissioner of Revenue on the report covering the reporting period in which such sums are received by the local collecting officer. In addition, one hundred fifteen percent (1005%) of any such partial payments shall be paid to the Commissioner by the local collecting officer on the due date for the period in which such sums were collected. Any such sums not collected, reported, or paid over to the Commissioner shall be considered to be late payments subject to the provisions of T.C.A., §§67-??5824(c) and 67-5826???. The local collecting officers shall bill any person liable for the tax for any portion of the tax liability which is deficient, plus additional penalty and interest on the deficient amount.~~

Authority: T.C.A. §§67-5822 and 67-101. Administrative History: Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983; Repeal filed [date]; effective [date].

1320-4-5-.61 Antique Malls, Flea Markets, Craft Shows, Antique Shows, Gun Shows, and Auto Shows.

(1) Promotions conducted by non-profit organizations shall refer to cases where the promoter is a non-profit association, corporation, or organization, and shall not depend on whether or not the individual booth owner or renter is a non-profit entity. However, individual booth owners or renters who are non-profit entities shall be exempt from the tax.

(2) A booth shall be any area or space for which a promoter charges a separate fee.

~~(3) One hundred Fifteen (1005) percent of all fees submitted to the local tax officers by a promoter shall be paid retained by the local tax officials to the Commissioner of Revenue.~~

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-71067-5822. Administrative History: Original rule filed October 11, 1983; effective January 16, 1984; Amendment filed [date]; effective [date].