



## 2019 TAX LEGISLATION AND RELATED DEVELOPMENTS

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The 2019 Session of the 111th General Assembly was very active in considering and passing various tax and related legislation. Each such major legislative initiative was signed into law by first-term Governor Lee, with one exception that became law without the Governor's signature. The following is a general summary of some of the more notable tax initiatives and related developments enacted during 2019.

### I. Franchise and Excise Taxes.

**A. Excise Tax Decoupling From Transition Tax and GILTI Provisions of Federal Law.** On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act of 2017 ("Tax Reform Act"). While one main purpose was to reduce federal corporate income tax rate from 35% to 21% so that U.S. based multinational companies could better compete globally, other provisions of Tax Reform Act initiated new federal taxes on domestic entities doing business abroad. Two of those new federal tax provisions include a transition tax ("Transition Tax") under amended Section 965 of the Internal Revenue Code on the untaxed foreign earnings of certain specified corporations as if those earnings had been repatriated to the United States; and another such provision included a tax under Section 951A of the Code on global intangible low-taxed income ("GILTI") to essentially act as a global minimum tax applied broadly to certain income generated by controlled foreign corporations.

Some states in the computation of their business income taxes have decoupled from Transition Tax and/or GILTI provisions in order to avoid unintended state tax consequences to their business taxpayers and to support their continued economic development efforts. After considerable deliberation in which the Tennessee Chamber was involved, legislation was enacted at 2019 Public Chapter ("PC") No. 306 decoupling Tennessee excise tax from Transition Tax and GILTI provisions even though at the same time adding back into the excise tax calculations 5% of the income categories from each of those two federal initiatives. The foregoing is effective for all tax periods beginning on or after January 1, 2018.

This decoupling, even with a 5% addback, is consistent with the Legislature's deliberations during the 2018 Legislative Session where the excise tax was also decoupled at 2018 PC No. 1011 from Tax Reform Act's interest deduction limitations and taxation of economic development grants. These decoupling initiatives clearly reveal that the Tennessee Legislature will determine what is in the best interests of this State notwithstanding federal tax developments.

**B. F&E Credit Provisions Amended to Delete Certain Administrative Discretion.** To require more transparency, legislation was enacted at 2019 PC No. 451 which deleted certain discretionary authority given to the Commissioners of

the Department of Revenue and Department of Economic and Community Development to reduce the threshold number of jobs required for the F&E job tax credit where those Commissioners determined that such reduction in a particular instance was in the State's best interests. Those deletions apply to tax years beginning on or after January 1, 2019.

**C. F&E Credit For Qualified Broadband Equipment Deleted.** Pursuant to 2019 PC No. 501, effective July 1, 2019, F&E credit for the purchase price of qualified broadband internet access equipment is deleted.

### II. Sales and Use Taxes.

**A. Remote Sellers Must Begin Collecting/Remitting Sales Taxes as Early as October 1, 2019.** The Department of Revenue promulgated Sales and Use Tax Rule 1320-05-01-.129(2) ("Rule 129(2)") effective January 1, 2017 so as to require remote sellers to begin collecting and remitting sales taxes to the Department where the remote seller made sales exceeding \$500,000 to consumers in Tennessee during the previous 12-month period. Rule 129(2) was thereafter challenged in court as being unconstitutional. That Rule was also delayed by the 2017 Legislative Session from becoming effective until certain legislative review conditions had been satisfied. Based upon the June 22, 2018 decision by U.S. Supreme Court in the case of South Dakota vs. Wayfair which eliminated the requirement of physical presence as a condition to such collection/remittance responsibilities, the litigation challenging Rule 129(2) was dismissed. Further, 2019 PC No. 429 enacted in the current Session states that the Department is no longer prohibited from collecting internet sales and use taxes pursuant to Rule 129(2). Thereafter, the Department announced in Notice #19-04 that those remote sellers meeting the \$500,000 sales threshold as of July 31, 2019 must register and begin collecting sales/use taxes by October 1, 2019. Remote sellers meeting that threshold after July 31 are similarly required to register and collect in accordance with other provisions of Rule 129(2).

**B. Elimination of Remote Sellers' Option to Use Uniform Local Rate.** Tennessee Code Annotated, Section 67-6-702(f), has provided that dealers with no Tennessee location may choose to pay, in lieu of the tax rate otherwise imposed by counties or municipalities, an uniform local tax rate of 2.25%. This option was intended to assist those remote sellers who have registered with the Department but could not always determine which of the multiple local rates throughout the State are applicable. As a result of efforts by local governments, 2019 PC No. 491 was enacted to address the sourcing of sales tax revenues for local governments, and Section 67-6-702(f) was deleted in its entirety effective October 1, 2019. Remote sellers must thereafter follow the directives in that new law in determining which local tax rate applies.

**C. Streamlined Conformity Delayed Until July 1, 2021.**

Beginning in 2007, the Tennessee General Assembly has been hesitant for various reasons to effectuate compliance with the remaining provisions of the Streamlined Sales and Use Tax Agreement not yet implemented in Tennessee. Those remaining provisions were set to take effect July 1, 2019, but as a result of 2019 PC No. 157 that effective date has now been rescheduled for July 1, 2021.

**D. Numerous Exemptions Enacted.** The 2019 Session resulted in a number of new or expanded exemptions for sales/use tax purposes, just some of which are as follows:

- (1) **Fitness Centers Exempt** – The admission, dues or other charges paid for physical fitness through exercise or other active physical conditioning is exempt pursuant to 2019 PC No. 159, effective July 1, 2019.
- (2) **Farm/Nursery Exemptions** – Effective July 1, 2019, pursuant to 2019 PC No. 427, water used directly in the production of food or fiber for human or animal consumption is exempt; and pursuant to 2019 PC No. 178 trailers used to transport certain livestock, farm products and nursery stock are also similarly exempt.
- (3) **Qualified Building Materials Exempt** – Pursuant to an application process that must be filed by October 1, 2019 with Department of Revenue, certain qualified building materials as set forth in 2019 PC No. 503 are exempt when various conditions are satisfied, including a capital investment of at least \$1 billion, effective May 24, 2019.
- (4) **Dumpster Exemption** – A taxable lease or rental does not include providing a dumpster or other container for waste or debris removal under certain conditions, pursuant to 2019 PC No. 483 effective July 1, 2019.
- (5) **Installation of Fiber-Optic Cable Exemption** – Pursuant to 2019 PC No. 501, effective July 2019, fiber-optic cable after it has become attached to a utility pole, building or other structure is deemed realty for purposes of sales/use tax laws.
- (6) **Periodicals Exemption Expanded** – Periodicals printed entirely on newsprint or bond paper have an expanded exemption under 2019 PC No. 473, effective July 1, 2019, if

distributed no less frequently than monthly with advertising supplements or other printed matter.

- (7) **Laundering/Dry Cleaning Taxable Service Narrowed** – Pursuant to 2019 PC No. 162, effective April 18, 2019, taxable laundry services do not include either (a) bathing of animals provided by a licensed veterinarian when rendered for a medical purpose, or (b) any carwash facility where the customer remains in custody of the vehicle and the preponderance of the wash is by the customer or automated equipment.

**III. Tennessee Sports Gaming Act.**

Pursuant to 2019 PC No. 507, an extensive sports wagering bill was enacted. Included within this new law is a 20% privilege tax imposed upon the adjusted gross income of a licensee. This PC became law without the Governor's signature, with certain administrative functions under the PC becoming effective on May 24, 2019 and certain licensing provisions becoming effective July 1, 2019. Governor Lee stated in a May 24, 2019 letter that he did believe that the expansion of gambling through online sports betting is not in the best interest of the state, but that compromise is a central part of governing and that he was allowing this bill to become law without his signature.

**IV. Property Taxes.**

**A. Clarification for PILOTs.** Pursuant to 2019 PC No. 265, effective April 30, 2019, certain provisions of Title 67, Chapter 5, dealing with property taxes have been amended to clarify that classification and use of property interests can be pursuant to lawful agreements between taxpayer and a local government or instrumentality thereof for payments in lieu of taxes.

**B. Expansion of Agricultural Land Definition.** The definition of agricultural land for purposes of greenbelt property tax treatment has been expanded by 2019 PC No. 436 effective January 1, 2020.

**V. Conclusion.**

These developments can be complex. As a result, before acting upon or in regard to the foregoing, careful consideration is required in context of your particular situation.

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