



Department of
Revenue

Tax Manual Updates

December 2023

Please find below, a brief overview of substantive updates the Department made to various tax manuals. These updates are predominately based on new legislation and taxpayer questions or issues, as well as opportunities for improved clarity or expanded guidance. Changes were not made to every manual, only those outlined below.

Alcohol Tax Manual

Non-Alcoholic Beers

- Updated page 29 of the Alcohol Tax Manual to state that products or beverages that contain less than 0.5% of alcohol by weight are not considered “beer” for Tennessee tax purposes.

To-Go Alcohol Sales

- Updated pages 56-57 of the Alcohol Tax Manual to remove the section on to-go alcohol sales. Public Chapter 451 (2021) allowed properly licensed restaurants, limited-service restaurants, or wine-only restaurants to offer to-go alcoholic beverages and beer for consumption off the premises under certain circumstances. This law was repealed, effective July 1, 2023.

Business Tax Manual

Determining Whether a Taxpayer Meets the \$100,000 Threshold

- Updated pages 11 and 19 of the Business Tax Manual to inform taxpayers to use the amount on Schedule A, Line 1: Total Gross Sales to determine whether a taxpayer meets the \$100,000 threshold.

Eisai v. Gerregano

- Updated the wholesaler-to-wholesaler sales section in Chapter 5 to provide a discussion of a recent court case, *Eisai v. Gerregano*.

Remote Employee Home Offices

- Updated Chapter 2 to state that generally - remote employee home offices do not constitute physical business locations for municipal-level business tax purposes. But compensation paid to in-state employees must be included when determining if an out-of-state business has substantial nexus in Tennessee.

Exempt Sales of Services

- Updated Chapter 8 of the Business Tax Manual to clarify that the Standard Industrial Classification Index of 1972 (“SIC Index”) provides definitions of business activities that are taxable and business activities that are exempt under the Tennessee Code. The definitions of the 16 types of services provided in the SIC Index should be used to determine whether a business’s activities qualify as exempt under the Tennessee Code.

County Clerk Sales and Use Tax Manual for Automobiles & Boats

Relocating to Tennessee

- Updated page 15 to clarify that automobiles and personal effects imported into Tennessee by new residents relocating from another state or another country are exempt from use tax under Tenn. Code Ann. § 67-6-210(b).

Farmers, Nursery Operators, and Timber Harvesters Tax Manual

Address Change and Certificate Renewal

- Updated Chapter 3 to explain that the agricultural exemption must be renewed every four years and before the Department will renew a certificate, qualifying farmers, nursery operators, and timber harvesters must verify they still qualify for the exemption. The update includes a link to the Department’s verification/renewal instructions.

Franchise and Excise Tax Manual

Tennessee Works Tax Act

- Updated the guidance regarding the new, optional apportionment election on pages 24, 184, 362, 561, and 564 to clarify that a taxpayer must look to Schedule J to determine whether it has net earnings for purposes of this election.
- Updated pages 184, 187, 362, 561, and 564 to provide guidance regarding the implementation of apportionment Schedules N1, 170NC1, and 174NC1, which pertain to the optional apportionment election.
- Updated the apportionment reference charts that begin on page 448 – primarily to reflect the new apportionment schedules that have been implemented for “qualified member”/telecom taxpayers and for taxpayers making the optional apportionment election.

- Updated page 570 to provide notice to captive REIT taxpayers that, for tax years ending on or after December 31, 2023, these taxpayers will complete both Schedules N and N1 on Form FAE174 for franchise and excise tax standard apportionment purposes, respectively.

FONCE Exemption

- Updated the guidance regarding the passive investment income test on pages 40 and 41 to clarify that a taxpayer must include receipts derived from non-passive sources (as defined in the manual) on a gross basis, rather than a net basis.

Job Tax Credit

- Updated page 491 to clarify that a taxpayer must qualify for the qualified headquarters facility sales tax credit in order to qualify for the additional annual job tax credit for higher level investments at the \$10 million investment/100 jobs tier.

Sales and Use Tax Manual

Tennessee Works Tax Act

- Provided a high-level overview of the sales and use tax provisions included in the Tennessee Works Tax Act. The provisions are not effective until July 1, 2024.

Relocating to Tennessee

- Updated page 82 to clarify that automobiles and personal effects imported into Tennessee by new residents relocating from another state or another country are exempt from use tax under Tenn. Code Ann. § 67-6-210(b).

Marketplace Facilitator

- Updated sourcing provisions for physical marketplaces.

Restocking Fees

- Addressed the taxation of dealer restocking fees.

Artwork Used in Advertising Materials

- Added a new section in Chapter 5 to explain the taxability of preliminary and final artwork used in advertising materials.

Made-to-Order Sales

- Added a new section to Chapter 5 to address made-to-order sales under sales tax rule 41.

Sale for Resale

- Updated page 25 to reiterate that resale certificates are automatically issued to retailers upon applying for a sales and use tax account.