

Classification 4

Notice #09-00

Business Tax

August 2009



Highlights

- *Classifications 4 taxpayers will file business tax returns with the Department of Revenue beginning with the returns due November 30, 2010.*

INTRODUCTION

Chapter 530 of the Public Acts of 2009 amends various provisions of the Business Tax Act for purposes of simplifying the tax and shifting its primary administration from the local level to the state level. This notice is intended to provide information to persons taxable under Tenn. Code Ann. § 67-4-708(4), i.e., Classification 4 taxpayers, regarding procedural and substantive changes in the business tax.

Business tax returns will now be filed with the Tennessee Department of Revenue, instead of the county clerk and/or city official. These changes will first take effect for taxpayers in Classifications 1 and 5 with the filing of the returns due on February 28, 2010. Therefore, Classification 4 taxpayers will file the return due November 30, 2009 with the county clerk and/or the city official using the old form. Classification 4 taxpayers will file with the Tennessee Department of Revenue beginning with the returns due on November 30, 2010, using the new Classification 4 return.

DISCUSSION

Under the 2009 amendments to the Business Tax Act, the annual business tax return(s) will be filed and taxes paid to the Tennessee Department of Revenue.

The first business tax returns filed with the Department of Revenue for Classification 4 will be due on or before November 30, 2010, for the taxable period ending September 30, 2010. The taxpayer must also remit the tax due to the Department at that time. However, business tax returns due November 30, 2009, must be filed with the county clerk and/or the city official in accordance with the old law.

The tax rates remain unchanged. The appropriate business tax return will be sent to the taxpayer prior to the filing due date. However, please note that failure of any person to receive a return from the Department does not relieve such person from the payment of the tax. Forms will be made available on the Department of Revenue's website at www.tn.gov/revenue/forms no later than December 1, 2009.

Furthermore, as required currently, a business with a location within the limits of a Tennessee city that has enacted the business tax must file two business tax returns for that location – one return for the city and one return for the county. A business with a location outside the limits of any Tennessee city, or inside the limits of a city that has not enacted the business tax, must file one business tax return for that location for the county. Please note that these returns due November 30, 2010 must be filed with the Tennessee Department of Revenue.

Businesses required to file sales and use tax returns and make tax payments electronically under Tenn. Code Ann. § 67-6-504 are also required to file the business tax return electronically and remit business tax payments electronically, using a method approved by the Commissioner of Revenue. Information regarding electronic filing as well as updated tax forms will be available on the Department's website at www.TN.gov/revenue/onlinefiling.

➤ *If a contractor earns more than \$50,000 in a location outside its domicile, then it must obtain a business license and file a return for that location.*

➤ *A contractor can deduct amounts paid to a subcontractor holding a business license or contractor's license if the contractor submits the required form.*

➤ *The personal property tax credit can offset up to 50% of the total business tax liability.*

➤ *The new minimum business tax will be \$22 per year and the one-time licensing fee will be \$15.*

➤ *County clerks and designated city officials will continue to issue business licenses for a one-time fee of \$15.*

 **References:**
PC 530 § 69-93 (2009)

Contractor's Deemed Location

If a contractor, during any taxable period, receives more than \$50,000 on all contracts for work performed in a city and/or county outside the contractor's city and county of domicile, then the contractor is deemed to have a location in the city and/or county in which the work was performed. The contractor must obtain a business license from that city and/or county at the time the contractor's gross receipts in that city and/or county exceed \$50,000 and must file a business tax return for that city and/or county for the taxable period. However, the amount of gross receipts reported on the return for such city and/or county will not be reported on either of the returns for the contractor's city and county of domicile.

Subcontractor Deduction

Tenn. Code Ann. § 67-4-711 provides a list of deductions that may be taken against the business tax. The deduction given to contractors for amounts actually paid to subcontractors is amended to allow the deduction only if the subcontractor holds a business license or a contractor's license. A contractor must remit to the state on a form prescribed by the commissioner the name and address of the subcontractor, the business license or contractor's license number of the subcontractor, and the amount subcontracted. Additionally, a contractor is required to maintain in its records a copy of the subcontractor's license. The change applies to all contracts issued on or after October 1, 2009. All contracts issued before October 1, 2009, are subject to the statute as it existed immediately prior to this change.

Personal Property Tax Credit

Tenn. Code Ann. § 67-4-713 allows certain personal property tax credits for persons who pay the business tax. Tenn. Code Ann. § 67-4-713(b) has been amended to allow the credit for personal property tax paid to offset both the state and local portion of the business tax, but the credit is limited to an amount that equals no more than fifty percent (50%) of the total business tax liability.

The personal property tax credit can be taken only for personal property tax paid during the tax period covered by the return or paid before the due date of the return and can be taken only for personal property tax paid in the jurisdiction for which the return is being filed. Real property taxes are not allowed as a credit for business tax purposes.

Minimum Tax

The minimum tax that must be paid by all entities registered to do business in Tennessee, including all entities that are inactive in Tennessee but have not been properly terminated, is twenty-two dollars (\$22) per year. After calculating the tax liability, including all allowable deductions and credits, the taxpayer will pay the calculated tax or twenty-two dollars (\$22), whichever is greater.

Business Tax License

Businesses will continue to obtain a business tax license from the county clerk of the county in which the business is located and/or designated city official of the municipality in which the business is located. There will be a one-time licensing fee of fifteen dollars (\$15) that will be paid both to the county clerk and, if the business is located within the municipality, to the designated city official. The fee(s) will be paid and the license(s) granted at the time of registration. The county clerk and/or designated city official will renew the business license for no additional fee each year that the business files a return with the department and remits the amount due.

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.