

CHAPTER NO. 357

SENATE BILL NO. 899

**By Clabough, Henry, Atchley, Crutchfield, Miller, Cohen, Cooper, McLeary,
Mr. Speaker Wilder**

Substituted for: House Bill No. 832

By Head, Maddox, Mr. Speaker Naifeh, Borchert, Yokley, Brenda Turner, Litz, Shaw

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 5; Title 6; Title 7; Title 8; Title 9; Title 12; Title 16; Title 30; Title 36; Title 39; Title 40; Title 45; Title 47; Title 48; Title 49; Title 54; Title 55; Title 56; Title 57; Title 61; Title 62; Title 67; Title 68; Title 69; Title 70 and Title 71, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 1, Part 17, is amended by adding the following new section:

(a) A Certified Service Provider shall comply with the privacy policy of the Streamlined Sales and Use Tax Agreement, and such policy is enforceable by the attorney general.

(b) Returns and tax information of a Model 1 seller may be disclosed to the seller's certified service provider.

SECTION 2. Tennessee Code Annotated, Section 67-1-1802, is amended by adding the following new subsection:

(d) The provisions of this subsection are specifically made applicable to a refund arising from the application of § 67-6-507(e)(5).

SECTION 3. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subsection (6) in its entirety.

SECTION 4. Tennessee Code Annotated, Title 67, Chapter 6, is amended by substituting the words "purchase price" for the words "cost price" wherever they appear in such chapter.

SECTION 5. Tennessee Code Annotated, Section 67-6-102(a)(7), is amended by deleting the words and punctuation 'Dealer' means every person, as used in this chapter, who:" and substituting instead the following:

"Dealer" means every person, as used in this chapter, including where the context requires, Model 1, 2 and 3 sellers, who:

SECTION 6. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting the present subsection (9) in its entirety and renumbering the remaining subsections:

SECTION 7. Tennessee Code Annotated, Section 67-6-102(a)(13)(A)(iv)(B), is amended by deleting the words, number, and punctuation “the cost of which, for any single article, exceeds one thousand dollars (\$1,000)”; and is further amended by adding at the end of the subitem the following:

“for the purposes of this subdivision, ‘remanufacturing’ means making new or different products with new or different functions from the scrap materials used to make them.”

SECTION 8. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subsection (16) in its entirety and substituting instead the following:

(16) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) Lease or rental does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 USC Section 7701(h)(1).

(C) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title 47, Chapter 2A, or other provisions of federal, state or local law.

(D) This definition shall be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

SECTION 9. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subsection (20) in its entirety and substituting instead the following:

(20) "Mobile telecommunications service" means the same as that term is defined in 4 United States Code Section 124(7).

SECTION 10. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subsection (25) in its entirety and substituting instead the following:

(25) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

SECTION 11. Tennessee Code Annotated, Section 67-6-102(a), subsection (26), is amended by deleting item (B) in subsection (26) in its entirety and is further amended by adding to subsection (26) the following new items:

() "Sale" includes charges for admission, dues or fees which constitute a sale under this section except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state of Tennessee for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

() "Sale" includes all such transactions as the commissioner, upon investigation, finds to be in lieu of sales;

() "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

() "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments;

SECTION 12. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subsection (27) in its entirety and substituting instead the following:

(27)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges;

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for any trade-in, as determined by Section 67-6-510.

(B) "Sales price" shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

SECTION 13. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subsection (28) in its entirety.

SECTION 14. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subsection (30) in its entirety and substituting instead the following:

(30)(a) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

(b) "Tangible personal property" does not include signals broadcast over the airwaves.

SECTION 15. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following new subdivisions:

() "Certified automated system" means software certified under the SSUTA to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

() "Certified service provider" means an agent certified under the SSUTA to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

() "Commercial air carrier" means an entity authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

() "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

() "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

() "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

() "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

() "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

() "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department.

() "Direct pay permit holder" means a taxpayer who holds a direct pay permit.

() "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than "food and food ingredients," "dietary supplements" or "alcoholic beverages":

(A) Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

() "Durable medical equipment" means equipment, including repair and replacement parts for same, (but does not include "mobility enhancing equipment"), which:

(A) Can withstand repeated use; and

(B) Is primarily and customarily used to serve a medical purpose; and

(C) Generally is not useful to a person in the absence of illness or injury;
and

(D) Is not worn in or on the body.

() “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

() “Local tax jurisdiction” shall mean a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies.

() “Mobility enhancing equipment” means equipment including repair and replacement parts to same, but does not include “durable medical equipment,” which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

() “Model 1 Seller” means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

() “Model 2 Seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

() “Model 3 Seller” means a seller that has sales in at least five states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

() “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

() “Prewritten computer software” means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more “prewritten computer software” programs or prewritten portions thereof does not cause the combination to be other than “prewritten computer software”. “Prewritten computer software” includes software designed and developed by the author or other creator to

the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software"; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

() (A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body.

(B) "Prosthetic device" does not include:

- (i) Corrective eyeglasses;
- (ii) Contact lenses;
- (iii) Hearing aids; and
- (iv) Dental prostheses.

() "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

SECTION 16. Tennessee Code Annotated, Section 67-6-102, is amended by deleting subsection (b) in its entirety.

SECTION 17. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (f) in its entirety.

SECTION 18. Tennessee Code Annotated, Section 67-6-103, is amended by adding the following new appropriately designated subsection:

() Notwithstanding the provisions of this section to the contrary and notwithstanding the provisions of Section 67-6-710, the moneys received under the provisions of this chapter from interstate telecommunication services sold to businesses shall be distributed as follows: The revenue from a rate equal to one-half percent (0.5%) of tax shall be deposited in the general fund and earmarked for education purposes for kindergarten through grade twelve (K-12) in accordance with § 67-6-103(c)(2). The revenue from a rate equal to one-half percent (0.5%) of tax shall be distributed to incorporated municipalities in the proportion each population bears to the aggregate

population of the state and to unincorporated areas of counties in the proportion each population bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712. The revenue from a rate equal to four percent (4%) of tax shall be deposited in the telecommunications ad valorem tax reduction fund created by § 67-6-222. All other revenue shall be deposited in the state general fund and allocated pursuant to § 67-6-103(a).

SECTION 19. Tennessee Code Annotated, Section 67-6-201, is amended by deleting subsections (9) and (10) and substituting the following appropriately numbered subsection:

() Charging a fee for subscription to, access to or use of television services, provided by any electronic means other than cable, wireless cable or satellite.

() Whether or not the person has a place of business in this state, delivers tangible personal property in this state, if the delivery is made to a consumer in this state or to another person, for redelivery to a consumer in this state pursuant to a retail sale made by such person to such consumer; provided that this shall not be construed to impose a tax which is invalid either under the commerce clause or the due process clause of the Constitution of the United States.

SECTION 20. Tennessee Code Annotated, Section 67-6-202, is amended in subsection (a) by deleting the phrase “§ 67-6-702(d)” and substituting instead “§ 67-6-702”.

SECTION 21. Tennessee Code Annotated, Section 67-6-202, is amended by deleting subsection (b) in its entirety and by adding the following as a new, appropriately lettered, subsection:

() This section levies a tax on the sales price of tangible personal property obtained from any vending machine or device.

SECTION 22. Tennessee Code Annotated, Section 67-6-203, is amended by deleting subsection (b) and re-designating subsection (c) accordingly.

SECTION 23. Tennessee Code Annotated, Section 67-6-204, is amended by deleting subsection (b) and re-designating the remaining sections accordingly.

SECTION 24. Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the words “of the gross charge for” and substituting instead “on the sales price of”.

SECTION 25. Tennessee Code Annotated, Section 67-6-205, is amended by adding the following as a new, appropriately lettered, subsection:

() The retail sale of the following services are taxable under this chapter:

(1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. The tax does not

apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more;

(2) Charges for services rendered by persons operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles. The tax does not apply, however, to charges for such services made by the state and its political subdivisions when providing on-street parking space for which charges are collected, or when operating or conducting a garage or parking lot which is unattended and such charges are collected by parking meters;

(3) The furnishing, for a consideration, of either intrastate or interstate telecommunication services;

(4) The performing for a consideration of any repair services with respect to any kind of tangible personal property;

(5) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made therefor; provided, that the provisions of this subdivision shall not apply to the bathing of animals provided by a licensed veterinarian when rendered for a medical purpose in conjunction with the practice of veterinary medicine, as defined in § 63-12-103;

(6) The installing of tangible personal property which remains tangible personal property after installation where a charge is made for such installation, whether or not such installation is made as an incident to the sale thereof, and whether or not any tangible personal property is transferred in conjunction with such installation service;

(7) The enriching of uranium materials, compounds, or products, which is performed on a cost-plus basis or on a "toll enrichment fee" basis;

(8) The renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis. This subdivision (8) does not apply to the renting or providing of space to a craft fair, antique mall, or book fair or gun show, if such gun show or book fair is sponsored by a not-for-profit corporation. This subdivision (8) also does not apply to the renting or providing of space at a flea market or the renting or providing of space at conventions, trade shows, or expositions, if such conventions, trade shows, or expositions do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales;

(9) Charging a fee for subscription to, access to or use of television services, provided by any electronic means other than cable, wireless cable, or satellite.

SECTION 26. Tennessee Code Annotated, Section 67-6-206(b), is amended in subdivision (1) by deleting the words, numbers, and punctuation "Tax at the rate of one percent

(1%) is likewise" and substituting instead the following "No tax is" and by deleting the words, numbers, and punctuation "Tax at the rate of one and one-half percent (1.5%) shall be" and substituting instead "No tax is". Section 67-6-206(b) is further amended by deleting subdivisions (2) through (7) and substituting instead the following subdivision:

(2) For the purpose of this subsection, "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale, and also includes a person engaged at a location in packaging automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(A) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(B) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

"Packaging", as used in this subdivision, refers only to the fabrication and/or installation of that packaging which will accompany the automotive aftermarket product when sold at retail. The reduced rates shall apply only to such substances used in the packaging process. Such use must be established to the satisfaction of the commissioner by separate metering or otherwise. To qualify for the exemption under this subdivision, a person shall apply for and receive a certificate of qualification for the exemption from the commissioner. Such person shall provide a copy of the certificate to that person's supplier of such substances to evidence qualification for the exemption.

SECTION 27. Tennessee Code Annotated, Section 67-6-207, is deleted in its entirety and the following new section is substituted in its place:

67-6-207. (a) The sale at retail, lease, rental, use, consumption, distribution, repair storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter when sold to a qualified farmer or nurseryman in accordance with subsection (b):

(1) any appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, but excluding an automobile, truck, household appliances or property which becomes real property when erected or installed;

(2) grain bins and attachments thereto;

(3) aircraft designed and used for crop dusting, such as an agracat or other similar airplanes which are designed for crop dusting purposes;

(4) equipment used exclusively for harvesting timber;

(5) trailers used to transport livestock, as defined in § 44-18-101;

(6) self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemical on farms to aid in the production of food or fiber for human or animal consumption (notwithstanding the fact that such equipment may

be mounted on a chassis with wheels), if such equipment is not designed for over-the-road use, but may be driven over-the-road from the source of supply to the farm, and tender beds and spreader beds, even if mounted on a truck chassis;

(7) systems for poultry environment control, feeding and watering poultry and conveying eggs;

(8) replacement parts or labor relative to the repair of subsections (1) - (8) hereof;

(9) "Gasoline" as defined by statute in Tennessee, upon which a privilege tax per gallon is paid, and not refunded, or gasoline or diesel fuel used for "agricultural purposes" as defined in § 67-3-1203(2); except that pre-mixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter. For purposes of this subsection, "diesel fuel" means any petroleum distillate with at least twelve (12) to sixteen (16) carbon atoms per molecule and which has a boiling point of between three hundred fifty degrees Fahrenheit (350 degrees F) and six hundred fifty degrees Fahrenheit (650 degrees F) or any petroleum distillate which is ordinarily and customarily sold and used as a source of fuel for diesel engines;

(10) seeds, seedlings, plants grown from seed and liners (cuttings) which will produce food or fiber (including tobacco) for human or animal consumption;

(11) fertilizer to be used to aid in the growth and development of seeds, seedlings or plants as defined in subdivision (10);

(12) pesticides which are sold for the purpose of aiding in the production of food or fiber (including tobacco) for human or animal consumption. As used in this section, "pesticide" means any substance or mixture of substances or chemicals intended for defoliating or desiccating plants or for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria or weeds, including, but not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliants, plant regulators and nematocides;

(13) containers for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, as defined in Section (10), and plastic or canvas used in covering feed bins, silos and other similar storage structures;

(14) livestock and poultry feeds, drugs used for livestock and instruments used for the administration of such drugs;

(15) any natural or artificial substance used in the reproduction of livestock, including semen or embryos;

(16) adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides or herbicides or for use as a

soil conditioner when such is intended to aid in the growth and development of food or fiber (including tobacco) for human or animal consumption;

(17) agri-sawdust;

(18) electricity and liquified gas, including, but not limited to, propane and butane used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale;

(19) coal, wood, woodproducts or wood by-products, or fuel oil, which is used as energy fuel in the production of nursery and greenhouse crops.

(b) For purposes of this section, "a qualified farmer or nurseryman" means a person who meets one or more of the following criteria:

(1) that the person is the owner or lessee of agricultural land from which one thousand dollars (\$1,000) or more of agricultural products were produced or sold during the year, including payments from government sources;

(2) the person is in the business of providing for-hire custom agricultural services for the plowing, planting, harvesting, growing, raising or processing of agricultural products or for the maintenance of agricultural land;

(3) the person is the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1996, Tennessee Code Annotated, Sections 67-5-1001, et seq.;

(4) the person's federal income tax return contains one or more of the following:

(A) business activity on IRS schedule F (Profit or Loss From Farming);

(B) farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss).

(5) the person otherwise establishes to the satisfaction of the commissioner that the person is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in Section 67-6-301(c)(2).

(c) Persons seeking to become qualified farmers or nurserymen shall apply to the commissioner for authority to make purchases exempt from tax. This application shall require such information as the commissioner deems necessary. If the commissioner finds from such information that the applicant is entitled to be a qualified farmer or nurseryman, the commissioner shall issue a certificate granting such authority for a period of four (4) years or until the applicant is no longer operating within the scope of its original application. Any misrepresentation made on the application by the applicant will subject the applicant to any applicable tax, penalty and interest.

(d) Persons who have obtained authority from the commissioner to make purchases tax exempt as a qualified farmer or nurseryman shall provide their vendors with a copy of their authority and such purchases shall then be exempt from tax.

(e) Persons making purchases exempt from tax under this section shall keep records to establish that the property qualifies for the exemption. The purchaser shall be liable for tax, penalty and interest for making non-qualifying purchases without payment of tax.

SECTION 28. Tennessee Code Annotated, Section 67-6-209(b), is amended by deleting the sentence: "The exemption provided for herein for private nonprofit colleges or universities shall apply only to the state portion of the sales tax."

SECTION 29. Tennessee Code Annotated, Section 67-6-212(a), is amended by deleting the words "of the gross receipts or gross proceeds" and substituting instead "on the sales price".

SECTION 30. Tennessee Code Annotated, Title 67, Part 6, is amended by deleting Section 67-6-217 in its entirety.

SECTION 31. Tennessee Code Annotated, Section 67-6-218, is amended by deleting the section in its entirety.

SECTION 32. Tennessee Code Annotated, Section 67-6-219, is amended by deleting the section in its entirety.

SECTION 33. Tennessee Code Annotated, Section 67-6-221, is amended by deleting this section in its entirety.

SECTION 34. Tennessee Code Annotated, Title 67, Chapter 6, is amended by deleting Section 67-6-226 in its entirety.

SECTION 35. Tennessee Code Annotated, Title 67, Chapter 6, is amended by deleting Section 67-6-227 in its entirety.

SECTION 36. Tennessee Code Annotated, Section 67-6-228, is amended by deleting the present language in its entirety and substituting instead the following:

(a) Notwithstanding any provision of this part to the contrary, except as otherwise provided in subsection (c), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of six percent (6%) of the sales price.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, or dietary supplements.

(c) The retail sale of the food and food ingredients sold as prepared food shall be taxed at the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

(d) For purposes of this section:

(1) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

(2) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(a) A vitamin;

(b) A mineral;

(c) A herb or other botanical;

(d) An amino acid;

(e) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f) A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. §101.36.

(3) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in subdivision (ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods

containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code so as to prevent food borne illnesses.

(4) "Alcoholic Beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume.

(5) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

SECTION 37. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following as a new section:

Notwithstanding the exemptions provided by §§ 67-6-322 and 67-6-329 for sales to schools, "retail sale" and "sale at retail" subject to tax include any sale of tangible personal property or taxable services to a public or private school, grades kindergarten through twelve (K-12), or school support group, where such property or services are intended for resale by the school or school support group. Resales of such tangible personal property or taxable services by such school or school support group shall not be subject to tax. If for any reason a vendor does not collect and remit tax to the department on the sale of these items to the school or school support group, then the school or school support group shall be liable for use tax based on the purchase price of the items. This section does not apply to sales of school books, and food and food ingredients, including prepared food.

SECTION 38. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding a new appropriately designated sections as follows:

Section 67-6-2... (a) Notwithstanding any other provision of law to the contrary, the sale of a prepaid telephone calling card and/or the recharge of the card shall be subject to the tax levied by this chapter and shall be sourced under the provisions of Section 67-6-902(a) at the time of the sale or recharge. No additional tax shall be due when the telecommunication service is provided to the user of the calling card.

(b) Notwithstanding any other provision of law to the contrary, the sale of a warranty or service contract, covering the repair or maintenance of tangible personal property, shall be subject to the tax levied by this chapter and sourced under the provisions of Section 67-6-902(a) at the time of the sale of the contract. No additional tax shall be due on any repairs to the extent they are covered by the contract.

Section 67-6-2... The sale or use of computer software shall be subject to the tax levied by this chapter and sourced under the provisions of Section 67-6-902(a).

SECTION 39. Tennessee Code Annotated, Section 67-6-312, is repealed.

SECTION 40. Tennessee Code Annotated, Section 67-6-314, is amended by deleting subsections (1) through (5) and substituting instead the following:

(1) The sale or use of prosthetic devices.

- (2) The sale or use of durable medical equipment for home use.
- (3) The sale or use of mobility enhancing equipment.
- (4) The sale or repair of surgical supports of all kinds, and other similarly medical corrective or support appliances and devices.
- (5) Any syringe used to dispense insulin.

SECTION 41. Tennessee Code Annotated, Section 67-6-318, is repealed.

SECTION 42. Tennessee Code Annotated, Section 67-6-320, is amended by deleting subsections (a) and (b) in their entirety and substituting instead the following:

(a) There is exempt from the tax imposed by this chapter any drug for human use dispensed pursuant to a prescription.

(b) There is exempt from the tax imposed by this chapter:

(1) The sale or use of insulin.

(2) The sale or use of oxygen prescribed or recommended for the medical treatment of a human being by a licensed practitioner of the healing arts, and the durable medical equipment and other equipment necessary to administer such oxygen.

SECTION 43. Tennessee Code Annotated, Section 67-6-322(g), is amended by deleting the subsection in its entirety and replacing it with the following:

(g) The sale, purchase, use, consumption or distribution of energy in the form of steam or chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government is exempt from sales or use tax.

SECTION 44. Tennessee Code Annotated, Section 67-6-329 (a)(1), is amended by replacing the comma with a period after "and not refunded" and deleting the remainder of the subdivision.

SECTION 45. Tennessee Code Annotated, Section 67-6-329, is amended by deleting subdivisions (a)(3), (a)(4), (a)(5), a(6), (a)(7), (a)(8), (a)(9), (a)(10) and (A)(17) in their entirety and the remaining sections renumbered.

SECTION 46. Tennessee Code Annotated, Section 67-6-329(a)(11), is deleted in its entirety and the remaining sections renumbered.

SECTION 47. Tennessee Code Annotated, Section 67-6-329, is amended in subdivision (a)(12) by deleting the words "and school lunches".

SECTION 48. Tennessee Code Annotated, Section 67-6-329(a), is amended by adding the following new, appropriately lettered subdivisions:

() Federal retail excise tax imposed by §§ 4051-4053 of the Internal Revenue Code of 1954, as amended, or as such tax may be amended hereafter, when such tax is a part of the sales price;

() Federal excise tax on diesel fuel purchased for off-road use as provided in Title 67, Chapter 3, whether or not such tax is required by law to be passed on to the ultimate consumer, when such tax is a part of the sales price;

() Dyed diesel fuel purchased for off-road use as provided in Title 67, Chapter 3;

() Industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, sizing;

() Materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale;

() Film, including negatives, used in the business of printing, or provided to a business of printing to obtain the services of such business; or typesetting used in the business of printing and materials necessary for such typesetting or typesetting or materials necessary for typesetting provided to a business of printing to obtain the services of such business;

() Home communication terminals, remote control devices, and other similar equipment purchased on or after January 1, 2000, by a cable television service provider authorized pursuant to Title 7, Chapter 59, and held for sale or lease to its subscribers;

() Charges for subscriptions to, access to, or use of television programming or television services provided by a provider of cable television service authorized pursuant to Title 7, Chapter 59, by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service), or by a provider of direct-to-home satellite service;

() Utility poles, anchors, guys, and conduits;

() Aircraft used for and owned by a person providing flight training;

() Food and food ingredients, as defined in Section 67-6-228, when sold by a public or private school.

SECTION 49. Tennessee Code Annotated, Section 67-6-330, is amended in subdivision (a)(2) by deleting the words "Gross proceeds or receipts from" and substituting instead "The sales price of", and is further amended in subdivisions (a)(7), (a)(13) and (a)(16) by deleting the words "Gross proceeds derived from" and substituting instead "The sales price of", and is further amended in subdivision (a)(15) by deleting the words "Gross proceeds or receipts derived from" and substituting instead "The sales price of".

SECTION 50. Tennessee Code Annotated, Section 67-6-330, is amended by deleting subdivision (a)(3) in its entirety and renumbering the remaining sections.

SECTION 51. Tennessee Code Annotated, Section 67-6-340, is amended by deleting subdivision (c) in its entirety.

SECTION 52. Tennessee Code Annotated, Section 67-6-348, is amended by adding the following as a new subsection:

() For purposes of this section, "clothing" shall mean all human wearing apparel suitable for general use.

SECTION 53. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new section:

(a) Notwithstanding other provisions of this chapter, except as provided in this section, no tax is imposed with respect to sales of tangible personal property to common carriers for use outside this state.

(b) Persons seeking to make purchases exempt from tax shall apply to the commissioner for a certificate as provided in § 67-6-528 to obtain the exemption. The common carrier must give a copy of the certificate to each dealer from which it intends to make purchases exempt from tax.

(c) If a common carrier fails to keep records as required by the commissioner to establish that property purchased exempt from tax was not used in this state but was removed from this state for use and consumption outside this state, then the common carrier shall be liable for tax on such property at the full rate provided by § 67-6-203 regardless of whether such carrier had previously obtained a certificate as provided by this section; provided that the carrier shall be given credit for any tax paid on such property pursuant to Title 67, Chapter 4, Part 23, as provided in Section 75 of this Act.

(d) This section does not apply to sales of food and food ingredients, candy, dietary supplements, alcoholic beverages, tobacco and fuel.

SECTION 54. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Section 67-6-3... (a) Notwithstanding other provisions of this chapter, except as provided in this section, no tax is imposed with respect to the sale or use of aviation fuel sold to commercial air carriers that is actually used in the operation of airplane or aircraft motors.

(b) Notwithstanding other provisions of this chapter, no tax is imposed with respect to the sale or use of diesel fuel sold to or used by a common carrier that is actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

(c) Commercial air carriers seeking to make purchases of aviation fuel exempt from tax and common carriers seeking to make purchases of diesel fuel to be used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce exempt from tax shall apply to the commissioner for a certificate as provided in § 67-6-528 to obtain the exemption. The carrier must give a copy of the

certificate to each dealer from which it intends to make purchases of aviation fuel or qualified diesel fuel exempt from tax.

(d) If the commercial air carrier fails to keep records as required by the commissioner to establish that property purchased exempt from tax was actually used in the operation of airplane or aircraft motors, then the air carrier shall be liable for tax on such property at the full rate provided by § 67-6-203 regardless of whether such carrier had previously obtained a certificate as provided by this section; provided that the carrier shall be given credit for any tax paid on such property pursuant to Title 67, Chapter 4, Part 23, as provided in Section 75 of this Act.

(e) If the common carrier fails to keep records as required by the commissioner to establish that diesel fuel purchased exempt from tax was actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce, then the common carrier shall be liable for tax on such property at the full rate provided by § 67-6-203 regardless of whether such carrier had previously obtained a certificate as provided by this section; provided that the carrier shall be given credit for any tax paid on such property pursuant to Title 67, Chapter 4, Part 23, as provided in Section 75 of this Act.

SECTION 55. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Section 67-6-3... There is exempt from the use tax levied by this chapter the fabrication of computer software by a person for such person's own use and consumption.

SECTION 56. Tennessee Code Annotated, Section 67-6-402(b), is amended by deleting the words "suitable brackets of prices for applying the tax or any other method" and substituting instead the following: "suitable methods for applying the tax".

SECTION 57. Tennessee Code Annotated, Title 67, Chapter 6, Part 4, is amended by adding the following new section:

(a) When a purchaser claims an exemption:

(1) The seller must obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the member states of the Streamlined Sales and Use Tax Agreement acting jointly.

(2) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used.

(3) The seller must use the standard form for claiming an exemption electronically as adopted jointly by the member states.

(4) The seller must obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(5) The commissioner may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number which must be presented to the seller at the time of the sale.

(6) The seller must maintain proper records of exempt transactions and provide them to the commissioner when requested.

(b) Sellers that follow the requirements of this section are not liable for any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption. The purchaser is liable for the tax.

(c) Sellers that do not follow the requirements of this section shall be liable for the tax.

(d) Sellers that fraudulently fail to collect tax or that solicit a purchaser to participate in the unlawful claim of an exemption shall be liable for the tax.

SECTION 58. Tennessee Code Annotated, Section 67-6-504, is amended by adding the following words and punctuation after the phrase "during the preceding calendar month" at the end of subsection (a):

"; provided that each dealer shall be required to file only one return per month for all of its locations within the state".

Section 67-6-504 is further amended by deleting subsection (e) and by adding the following new subsections:

(e) In computing the tax due or to be collected as the result of any transaction, the tax rate shall be the sum of the applicable state and local rate, if any, and the tax computation must be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax shall be rounded to the next whole cent.

(f) A seller may elect to compute the tax due on a transaction on either an item or an invoice basis, and may apply the rounding rule provided for in subsection (e) to the aggregated state and local taxes. A seller shall not be required to collect the tax on a bracket system.

(g)(1) Any dealer making sales subject to the tax imposed by this chapter may choose to collect and remit taxes as a Model 1, Model 2 or Model 3 seller, subject to the provisions of this subsection. For purposes of this subsection, tax includes any associated interest and penalty.

(2) A dealer choosing Model 1 must contract with a certified service provider and must permit the certified service provider to determine the tax due, to collect the tax, to file returns and to remit the tax to the appropriate state, on all of its sales, leases or rentals of tangible personal property or services that are subject to the tax levied by this chapter or that are subject to the sales tax of any other state, including the District of Columbia, that is a member of the Streamlined Sales and Use Tax Agreement. A Model 1 seller's liability to this state for the tax levied by this chapter is limited to the tax due on its own purchases, the tax due on any of its sales, leases or rentals which are made

outside the system provided by the certified service provider, and the tax due in the event of fraud by the Model 1 seller.

(3) A dealer choosing Model 2 must use a certified automated system to determine the tax due on all of its sales, leases or rentals of tangible personal property or services that are subject to the tax levied by this chapter or that are subject to the sales tax of any other state, including the District of Columbia, that is a member of the Streamlined Sales and Use Tax Agreement. A Model 2 seller is not liable for any errors made by the certified automated system in determining the tax due on any transaction.

(4) A dealer who wishes to collect and remit taxes as a Model 3 seller must apply to and be approved by the commissioner for such certification.

(h) A certified service provider has, and is subject to, all of the rights, liabilities, duties and responsibilities imposed by this chapter as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases.

(i) The commissioner may enter into contracts with certified service providers for the collection and reporting of the tax imposed under this chapter. The commissioner may enter into such contracts in conjunction with other states.

SECTION 59. Tennessee Code Annotated, Section 67-6-507, is amended by deleting subsection (e) in its entirety and substituting instead the following:

(e) A deduction from taxable sales shall be allowed for bad debts arising from a sale on which the tax imposed by this chapter was paid.

(1) Any deduction taken that is attributed to bad debts shall not include interest.

(2) For purpose of calculating the deduction, a "bad debt" is as defined in 26 U.S.C. § 166. However, the amount calculated pursuant to 26 U.S.C. § 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt, and repossessed property.

(3) The deduction provided for by this subsection shall be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(4) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(5) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, the taxpayer may file a refund claim and receive a refund pursuant to § 67-1-1802. The statute of limitations for filing such claim shall be measured from the due date of the return on which the bad debt could first be claimed.

(6) Where filing responsibilities have been assumed by a Certified Service Provider, the service provider may claim, on behalf of the seller, any bad debt allowance provided by this section; provided the service provider credits or refunds the full amount of any bad debt allowance or refund received to the seller.

(7) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property or service and the sales tax thereon, and then to interest, service charges, and any other charges.

(8) In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states of the Streamlined Sales and Use Tax Agreement, such allocation shall be permitted.

SECTION 60. Tennessee Code Annotated, Section 67-6-528, is amended by deleting all language in the section and substituting instead the following:

(a) Common Carriers and commercial air carriers seeking to make purchases exempt from tax pursuant to Section 67-6-... or Section 67-6-... shall apply to the commissioner for a certificate. This application shall be made upon forms provided by the commissioner and shall require information deemed necessary by the commissioner to establish that the applicant is a common carrier making purchases of tangible personal property for use outside this state or is a commercial air carrier that actually uses aviation fuel in the operation of airplanes or aircraft motors or is a common carrier that actually uses diesel fuel in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce. The certificate may be revoked by the commissioner at any time if the commissioner finds that the holder no longer meets the conditions precedent for the exemption.

(b) Common carriers making purchases exempt from tax pursuant to Section 67-6-... shall keep records of all such purchases establishing to the satisfaction of the commissioner that items purchased were not used in Tennessee but were removed from this state for use and consumption outside this state.

(c) Commercial air carriers making purchases exempt from tax pursuant to Section 67-6-... shall keep records of all such purchases establishing to the satisfaction of the commissioner that the fuel was actually used in the operation of airplanes or aircraft motors.

(d) Common carriers making purchases of diesel fuel exempt from tax pursuant to Section 67-6-... shall keep records of all such purchases establishing to the satisfaction of the commissioner that the fuel was actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

SECTION 61. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new sections:

Section __. Sellers and Certified Service Providers have no liability to the State or local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or Certified Service Provider relying on erroneous data provided by the commissioner on tax rates, boundaries, or taxing jurisdiction assignments.

Section __. Notwithstanding Section 67-6-806(a), if a nine digit zip code designation is not available for a street address, or if a seller is unable to determine the nine digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine digit zip code designation by utilizing software approved by the member states to the Streamlined Sales Tax Agreement that makes this designation from the street address and the five digit zip code of the purchaser. The provisions of this section do not apply when the product purchased is received by the purchaser at the business location of the seller. The provisions of this section have no application if the commissioner provides an addressed-based provision pursuant to Section 67-6-806(d).

Section __. The department may enter into a reciprocal agreement with the comparable department of another state to furnish records concerning purchases made by citizens of the other state from a dealer in this state where the dealer collects neither a sales nor a use tax on such sales; provided, that the other state agrees to furnish the same records to this state and each sale is in excess of five hundred dollars (\$500). All dealers in Tennessee making sales to purchasers in another state where no sales or use tax is collected shall furnish the department copies of all such invoices or suitable substitutes for sales in excess of five hundred dollars (\$500) with their monthly returns; provided, that the department notifies such dealers of the existence of a reciprocal agreement.

Section __. (a) Model 1, 2, or 3 sellers shall submit their returns in such format as required by the member states to the Streamlined Sales and Use Tax Agreement; provided, however, that all such returns shall be filed electronically.

(b) Notwithstanding any provision of law to the contrary, the commissioner is authorized to require Model 1, 2, or 3 sellers twice each year to submit additional, informational returns as permitted by the members states to the Streamlined Sales and Use Tax Agreement.

(c) Notwithstanding the provisions of Section 67-1-703 to the contrary, all remittances from Model 1, 2, or 3 sellers shall be made electronically, using ACH Credit or ACH Debit processes. The commissioner is authorized to provide for an alternative method of making the payment in the event the electronic funds transfer process fails.

(d) Sellers who register using the central registration system provided by the member states to the Streamlined Sales and Use Tax Agreement, who are not Model 1, 2, or 3 sellers, and who have no legal requirement to register in this state, are not required to file a return until the earlier of one year after they initially register or when they have collected state and local taxes in the amount of \$1,000 or more; provided, however, that nothing in this subsection shall relieve a seller who collects Tennessee sales tax from its customers from liability for failure to pay over those funds to the commissioner on behalf of the state.

Section ___. (a) This section applies to sellers who satisfy all of the following requirements:

(1) The seller registers to pay and/or to collect and remit applicable sales and/or use tax on sales made to purchasers in this State in accordance with the terms of the Streamlined Sales and Use Tax Agreement within twelve months of the effective date of this state's becoming a member of the Agreement.

(2) During the twelve-month period preceding the State's becoming a member of the Agreement, the seller was not registered to collect and remit tax under this chapter.

(3) There is no audit or assessment pending with respect to the seller, and the department has not notified the seller that it will be the subject of an audit.

(b) A seller who satisfies the criteria set out in subsection (a) is not liable for sales or use tax not collected from its customers prior to the date of its registration, nor liable for any related interest or penalty, subject to the limitations contained in subsection (c).

(c)(1) A seller remains liable for tax collected from its customers but not remitted to the state, and remains liable for any related interest and penalty.

(2) A seller remains liable for any use tax due which arises from its capacity as a buyer and user or consumer of taxable items.

(3) The release from liability provided by subsection (b) is void unless the seller maintains its registration and continues to collect and remit applicable sales and use taxes for at least thirty-six months. The statute of limitations provided in Section 67-1-1501 is tolled during the thirty-six month period.

(4) Fraud or intentional misrepresentation of a material fact voids the release from liability provided by subsection (b).

Section ___. (a) These customer refund procedures apply when a purchaser seeks a refund of over-collected sales or use taxes from a seller.

(b) Nothing in this section shall require the Department to refund to a purchaser taxes collected in error by a seller from the purchaser.

(c) Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.

(d) A cause of action against a seller for the over-collected sales or use taxes does not accrue until a purchaser has provided a written notice of the over-collection and a request for a refund to the seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

(e) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller:

(A) uses either a provider or a system, including a proprietary system, that is certified by the Department; and

(B) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

SECTION 62. Tennessee Code Annotated, Section 67-6-601, is amended by adding the following as a new appropriately designated subsection:

() A person does not have nexus with Tennessee for sales and use tax purposes by reason of the relationship between the person and a commercial printer or mailer having a presence in Tennessee.

SECTION 63. Tennessee Code Annotated, Title 67, Chapter 6, Part 6, is amended by adding the following new section:

Section __. (a) Notwithstanding the provisions of Sections 67-6-601 and 67-6-602, a person may register using the central, electronic registration system provided by member states of the Streamlined Sales and Use Tax Agreement; and furthermore the commissioner shall permit a person to register through an agent under procedures adopted by member states of the Streamlined Sales and Use Tax Agreement.

(b) By registering using the central, electronic system, the seller agrees to collect and remit sales and use taxes for all taxable sales sourced to Tennessee. If Tennessee ceases to be a member of the agreement, the seller remains liable to remit all taxes previously collected on sales sourced to this state.

SECTION 64. Tennessee Code Annotated, Section 67-6-702(d), is amended by deleting the period at the end of the first sentence and adding the following words and punctuation:

; provided, however, and notwithstanding any other law to the contrary, "single article" applies only to motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes and only such items shall be regarded as "single articles". Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as a part of the unit. In addition, all necessary parts and equipment installed by

a motor vehicle dealer which are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit. Parts and accessories and any other additional or incidental items or services that are part of the sale of a manufactured home shall be treated as part of the manufactured home unit in the same manner as parts and accessories for motor vehicles are treated as part of the motor vehicle unit.

SECTION 65. Tennessee Code Annotated, Section 67-6-702, is amended by deleting the present subsections (b), (e), (f) and (g) in their entirety, and by amending subsection (a)(1) to replace the period at the end of the subsection with a semicolon and add "and provided further that the tax levied on the sale, purchase, use, consumption of electricity, piped natural or artificial gases, or other heating fuels delivered by the seller shall be one-half percent (.5%).

SECTION 66. Tennessee Code Annotated, Section 67-6-704, is amended by deleting the subsection in its entirety and replacing it with the following words:

No county or incorporated city or town is authorized to levy a sales or use tax on the sale, purchase, use, consumption or distribution of energy in the form of steam or chilled water sold by an energy resource recovery facility operated in a county with a metropolitan form of government.

SECTION 67. Tennessee Code Annotated, Section 67-6-706(a)(3), is amended by deleting the words, numbers, and punctuation "month occurring at least thirty days" and substituting instead the words, numbers, and punctuation "calendar quarter occurring at least sixty days".

SECTION 68. Tennessee Code Annotated, Section 67-6-710, is amended by deleting subsections (e) and (f) in their entirety.

SECTION 69. Tennessee Code Annotated, Section 67-6-714, is deleted in its entirety.

SECTION 70. (a) The commissioner shall refund the portion of the local tax imposed by this chapter that is attributable to the amendment of the single article provision of the Local Option Revenue Act by this Act for any taxpayers that pay business tax under Title 67, Chapter 4, Part 7; franchise and excise tax under Title 67, Chapter 4, Parts 20 and 21; or sales and use tax under Title 67, Chapter 6.

(b) The refund provided for by this section shall be limited to the difference in tax paid by the person entitled to such refund and the tax that would have been paid on the first thirty-two hundred dollars (\$3,200) of the sale price of a single article as defined in Section 67-6-702(d) on tangible personal property other than motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes prior to the effective date of Section 64 of this act. The refund shall only be allowed on tangible personal property purchased by the taxpayer for use in the business for which the taxpayer is registered under subsection (a).

(c) A person entitled to a refund pursuant to this section shall make a single yearly claim for refund to the commissioner, covering a period of twelve (12) consecutive calendar months, the period to be specified by the commissioner. The commissioner is authorized to make refunds pursuant to this section, provided a claim is filed with the commissioner, under oath and supported by proper proof, within six (6) months after the end of the twelve (12) month period covered by the claim. The provisions of § 67-1-1802 do not apply to refunds made pursuant to this section.

(d) In lieu of filing a claim for refund a dealer registered for sales and use tax may take a credit on its sales and use tax return for the tax that would be refundable under subsection (b) of this section. Any dealer that takes this credit on its sales and use tax return must file on an annual basis an information report with the commissioner. This information report shall be in a format approved by the commissioner and shall contain sufficient information for the commissioner's delegates to verify the validity of a credit taken under this section. This information report shall include:

- (1) Information showing that the item qualifies as a single article under § 67-6-702;
- (2) The amount of the Tennessee sales tax remitted on the single article;
- (3) The local jurisdiction to which the tax was paid;
- (4) If applicable, information regarding the vendor to whom the tax was paid; and
- (5) Such other information as necessary to determine the validity of the credit taken.

This information report shall be filed within sixty (60) days of the close of each calendar year in which a credit was taken on any sales and use tax return.

SECTION 71. Tennessee Code Annotated, Title 67, Chapter 6, Part 7, is amended by adding the following new section:

Notwithstanding any other provision in this part:

(a) A local tax imposed under this part or change in a local tax rate shall become effective only on the first day of a calendar quarter and no sooner than sixty-one days after the commissioner has made a reasonable effort to notify dealers of the new tax or change in the rate; provided, however, the failure of a dealer to receive notice does not relieve it of the obligation to collect, remit or pay the tax imposed under this part; and further provided that the failure of a purchaser to receive notice does not relieve the purchaser of any use tax obligation.

(b) Notwithstanding the provisions of subsection (a), with respect to purchases from printed catalogs where the purchaser computes the tax based on local rates published in the catalog, a local tax imposed under this part or change in a local tax rate shall become effective only on the first day of a calendar quarter and no sooner than one hundred twenty-one days after the commissioner

has made a reasonable effort to notify dealers of the new tax or change in the rate; provided, however, the failure of a dealer to receive notice does not relieve it of the obligation to collect, remit or pay the tax imposed under this part; and further provided that the failure of a purchaser to receive notice does not relieve the purchaser of any use tax obligation.

(c) For sales and use tax purposes only, local jurisdiction boundary changes shall become effective only on the first day of a calendar quarter and no sooner than one sixty-one days after the commissioner has made a reasonable effort to notify dealers of the new tax or change in the rate; provided, however, the failure of a dealer to receive notice does not relieve it of the obligation to collect, remit or pay the tax imposed under this part; and further provided that the failure of a purchaser to receive notice does not relieve the purchaser of any use tax obligation.

SECTION 72. Tennessee Code Annotated, Section 67-8-802, is amended by deleting subsection (a) and substituting instead the following:

(a) For purposes of Sections 67-6-803 and 67-6-804, "agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001, by the national conference of state legislatures' special task force on state and local taxation of telecommunications and electronic commerce and adopted by the executive committee of the national conference of state legislatures; for purposes of Sections 67-6-804 through 67-6-806, "agreement" means the agreement styled "Streamlined Sales and Use Tax Agreement," adopted November 12, 2002, by the Streamlined Sales Tax Implementing States, including any amendment to the agreement so long as the amendment has also been adopted by the Streamlined Sales Tax Implementing States.

SECTION 73. Tennessee Code Annotated, Title 67, Chapter 6, Part 8, is amended by deleting Section 67-6-805 through Section 67-6-808, and by substituting instead the following new sections:

67-6-805. (a) The commissioner of revenue is authorized to enter into, on behalf of the state of Tennessee, the agreement styled "Streamlined Sales and Use Tax Agreement," adopted November 12, 2002, by the Streamlined Sales Tax Implementing States, including any amendment to the agreement so long as the amendment has also been adopted by the Streamlined Sales Tax Implementing States. After Tennessee becomes a member of the agreement, the commissioner is authorized to take any and all action pursuant to the state's membership in the agreement, provided such action is not inconsistent with any law of this state.

(b) No provision of any agreement entered into by the commissioner under the authority of subsection (a) invalidates or amends any provision of the law of the state of Tennessee. Implementation of any condition of the agreement in the state of Tennessee, whether adopted before, at, or after membership of the state of Tennessee in the agreement, must be authorized by the general assembly by legislative enactment.

(c) The agreement referenced in this section is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a

cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

(d) No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of the state of Tennessee and the other member states and not by the terms of the agreement.

(e) No person shall have any cause of action or defense under the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the state of Tennessee, or any political subdivision of the state of Tennessee on the grounds that the action or inaction is inconsistent with the agreement.

(f) No law of the state of Tennessee, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

(g) Determinations pertaining to the agreement that are made by the member states are final when rendered and are not subject to protest, appeal or review in any court in this state.

67-6-806. (a) The commissioner shall provide and maintain a database that describes boundary changes for all counties, cities and towns that levy a tax pursuant to Part 7 of this chapter. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

(b) The commissioner shall provide and maintain a database of all sales and use tax rates for all counties, cities and towns of the jurisdictions that levy a tax pursuant to Part 7 of this chapter. For the identification of the state, counties, cities and towns, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology.

(c) The commissioner shall provide and maintain a database that assigns each five digit and nine digit zip code within the State to the proper tax rates and jurisdictions. If the zip code area includes more than one local tax rate, the rate assigned to that area must be the lowest rate otherwise applicable within the area.

(d) The commissioner shall participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec. 119). If the commissioner develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in subsection (c) of this section.

SECTION 74. Tennessee Code Annotated, Title 67, Chapter 6, is amended by adding the following new Part 9:

67-6-901. (a) Notwithstanding any other law to the contrary, this part shall apply in determining whether a transaction is subject to the tax levied under the provisions of

this chapter, and if so in determining the applicable local tax levied under the provisions of Part 7 of this chapter. The provisions of this part apply regardless of the characterization of a product as tangible personal property, a digital good, or a service, and apply only to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(b) Nothing in this part is intended to impose tax on a transaction if a state tax on the transaction is prohibited by the United States constitution or the constitution of this state.

(c) The general provisions of §§ 67-6-902 through 67-6-905 do not apply to sales or use taxes levied on the following, except as specifically provided for in this subsection (c); instead the special provisions of § 67-6-906 shall apply:

(1) The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes.

(2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in § 67-9-902(d). The retail sale of these items shall be sourced according to existing law as of the effective date of this part, and the lease or rental of these items shall be sourced according to § 67-9-902(d).

(3) Telecommunications services, as set out in § 67-9-905, shall be sourced in accordance with that section.

67-6-902. (a) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(3) When subsections (a)(1) and (a)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subsections (a)(1), (a)(2), and (a)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When none of the previous rules of subsections (a)(1), (a)(2), (a)(3), or (a)(4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(b) The lease or rental of tangible personal property, other than property identified in subsection (c) or subsection (d), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a).

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (d), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a).

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (a), notwithstanding the exclusion of lease or rental in subsection (a). For purpose of this part, "transportation equipment" means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds (10,001 lbs) or greater, trailers, semi-trailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subsections (d)(1) through (d)(3).

(e) For the purposes of subsection (a), the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property,

(2) Making first use of services, or

(3) Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

67-6-903. (a) Notwithstanding the provisions of Section 67-6-902, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a Multiple Points of Use or "MPU" Exemption Certificate disclosing this fact.

(b) Upon receipt of the MPU Exemption Certificate, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

(c) A purchaser delivering the MPU Exemption Certificate may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

(d) The MPU Exemption Certificate will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (b) and the facts existing at the time of the sale) until it is revoked in writing.

(e) A holder of a direct pay permit shall not be required to deliver a MPU Exemption Certificate to the seller. A direct pay permit holder shall follow the provisions of subsection (c) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.

67-6-904. (a) Notwithstanding Section 67-6-902, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a Direct Mail Certificate or information to show the jurisdictions to which the direct mail is delivered to recipients.

(1) Upon receipt of the Direct Mail Certificate, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A Direct Mail Certificate shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(2) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a Direct Mail Certificate or delivery information, as required by subsection (a) of this section, the seller shall collect the tax according to Section 67-6-902(a)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Certificate or delivery information to the seller.

67-6-905. (a) Except for the defined telecommunication services in subsection (c), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, codified at 4 USCS §§ 116-126.

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of prepaid calling service is sourced in accordance with Section 67-6-902. Provided however, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in Section 67-6-902(a)(5) shall include as an option the location associated with the mobile telephone number.

(4) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(d) For the purpose of this section, the following definitions apply:

(1) "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to

offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(3) "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(4) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(5) "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.

(6) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(7) "Home service provider" means the same as that term is defined 4 USC § 124(5).

(8) "Mobile telecommunications service" means the same as that term is defined in 4 USC § 124(7).

(9) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(10) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(11) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code,

whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(12) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(13) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(ii) If the location in subdivision (13)(1)(i) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(iii) If the locations in subdivisions (13)(i) and (13)(ii) are not known, the service address means the location of the customer's place of primary use.

67-6-906. (a) The retail sale or transfer, including lease or rental, of watercraft, modular homes, manufactured homes, or mobile homes; and the retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in § 67-9-902(d); shall be sourced according to the following rules:

(b) If the sale or transfer is made by a dealer regularly engaged in such sales or transfers, the transaction is sourced to the business location of the seller.

(c) If the sale or transfer is made by a dealer who is registered with the department for sales and use taxes, but who is not regularly engaged in such sales or transfers, the transaction is sourced to the business location of the seller.

(d) In all other cases the sale or transfer is sourced to the primary location of the property. The primary property location shall be the address for the property provided by the owner and that is placed on the application for title or registration, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls. If the purchaser does not apply for title or registration, the transaction shall be sourced to the place of where the property is usually located, or if that place cannot be ascertained, to the place of domicile of the purchaser.

SECTION 75. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following new part:

PART 23 – SPECIAL USER PRIVILEGE TAXES

67-4-2301. This part may be cited as the “Special User Privilege Tax Law”.

67-4-2302. (a) There is levied on the purchase, use, importation for use, or consumption of the goods and services named in this part, at the rates specified by this part, a user privilege tax to be paid by the purchaser, user, or consumer.

(b) The commissioner of revenue shall administer and enforce the assessment and collection of the taxes levied by this part, and shall have the authority and power to prescribe the method by which persons liable for the tax levied shall remit the tax and make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such persons. All persons subject to the tax levied by this part are required to register with the Department of Revenue.

(c) The exemptions provided for in Sections 67-6-308, 67-6-322(a) and (b), 67-6-329(a)(13) [exemption for sales made to state of Tennessee and to any county or municipality within the state], and 67-6-384 are applicable to the tax levied under this part.

67-4-2303. (a) There is levied a tax of 1.5% on the purchase price of water, and a tax of 1.5% on the purchase price of gas, electricity, fuel oil, coal, and other energy fuel, sold to or used by manufacturers.

(b) For the purpose of this section, "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale.

(c) Water, gas, electricity, fuel oil, coal, and other energy fuel sold to or used by manufacturers shall be exempt from the tax levied by this section whenever it may be established to the satisfaction of the commissioner, by separate metering or otherwise, that the substance is exclusively used directly in the manufacturing process, coming into direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of such contact. Whenever the commissioner determines that the use of such substance by a manufacturer meets such test, the commissioner shall issue a certificate evidencing the entitlement of the manufacturer to the exemption. The certificate may be revoked by the commissioner at any time upon a finding that the conditions precedent to the exemption no longer exist. The commissioner's action as to the granting or revoking of a certificate shall be reviewable solely by a petition for common law certiorari addressed to the chancery court of Davidson County.

(d) Any water or energy fuel used by a manufacturer in fabricating or processing tangible personal property for resale shall be exempt from the tax imposed by this section when same are produced or extracted directly by the manufacturer from facilities owned by the manufacturer or in the public domain.

(e) Notwithstanding the requirement of direct contact, there shall be exempt entirely from the tax imposed by this section electricity used to generate radiant heat for production of heat-treated glass when sold to or used by manufacturers; provided, that

the manufacturer has applied for and received a certificate of exemption as required by this section.

(f) The tax levied by this section shall also apply to the use of such substances by a person engaged at a location in packaging automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(1) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(2) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

"Packaging", as used in this subsection, refers only to the fabrication and/or installation of that packaging which will accompany the automotive aftermarket product when sold at retail. The tax shall apply only to such substances used in the packaging process if such use is established to the satisfaction of the commissioner by separate metering or otherwise.

(g) Notwithstanding the requirement of direct contact, natural gas used to generate heat for the production of primary aluminum and aluminum can sheet products when sold to or used by manufacturers shall be exempt from the tax imposed by this section; provided, that the manufacturer applies for and receives a certificate of exemption as required by this section.

(h) (1) The tax collected on the use of water shall be distributed as follows: sixty-seven percent shall be deposited to the state general fund and the remaining thirty-three percent shall be distributed to the cities and counties in accordance with collections.

(2) The tax collected on the use of gas, electricity, fuel oil, coal, and other energy fuel shall be deposited to the state general fund.

67-4-2304. (a) There is levied a tax of 7.0% on the purchase price of energy in the form of steam or chilled water purchased from an energy resource recovery facility operated in a county with a metropolitan form of government.

(b) The tax collected on the use of gas, electricity, fuel oil, coal, and other energy fuel shall be deposited to the state general fund.

67-4-2305. (a) There is levied a tax at the rate of five and one-quarter percent (5 1/4%) on the purchase price of tangible personal property, excluding items listed in Sections 67-6-302, 67-6-321, and 67-6-313(i), sold and delivered to common carriers in this state for use outside this state.

(b) The tax collected under this section shall be distributed as follows: 71.43 percent shall be deposited to the state general fund and the remaining 28.57 percent shall be distributed to the cities and counties in accordance with collections.

67-4-2306. (a) There is levied a tax of four and one-half percent (4 ½%) on the purchase price (calculated exclusive of any federal excise tax paid by the producer or purchaser on such fuel) of aviation fuel, except for fuel described in Section 67-6-349, used by common carriers that is actually used in the operation of airplane or aircraft motors.

(b) For purposes of this section, "commercial air carrier" means an entity authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(c) The tax collected under this section shall be distributed to the transportation equity trust fund.

67-4-2307. (a) There is levied a tax of 6.0% on the purchase price of diesel fuel sold to or used by a common carrier that is used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

(b) The tax collected under this section shall be distributed to the transportation equity trust fund.

SECTION 76. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following new part:

67-4-2401. (a) There is levied a privilege tax of 9 % of the gross charge for services provided by a cable television service provider authorized pursuant to Title 7, Chapter 59, by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service).

(b) Such tax shall not apply to the first fifteen dollars (\$15.00) of gross charges for television programming or television service charges or fees provided by a cable television service provider authorized pursuant to Title 7, Chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption.

(c) The tax collected under this section shall be distributed as follows: 82 percent shall be deposited to the state general fund and the remaining 18 percent shall be distributed to the cities and counties in accordance with collections.

67-4-2402. (a) There is levied a privilege tax of 8.25 % of the gross charge for services provided by a direct-to-home satellite service provider.

(b) The tax collected under this section shall be deposited to the state general fund.

67-4-2403. (a) The taxes levied herein shall be collected from the dealer as defined in T.C.A. § 67-6-102 and paid at the time and in the manner hereinafter provided. The tax imposed by this chapter shall be collected by the dealer from the consumer insofar as it can be done.

(b) The providers shall indicate in some definite manner whether their customers are paying this privilege tax. This indication must be stated on the ticket, invoice, or other record given to the customer.

67-4-2404. (a) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner returns showing the gross charges arising from the sale of services taxable under this chapter during the preceding calendar month.

(b) At the time of transmitting the return required hereunder to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due, and failure to so remit such tax shall cause the tax to become delinquent.

67-4-2405. (a) The commissioner of revenue shall administer and enforce the assessment and collection of the taxes levied by this part.

(b) (1) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(2) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(c) The commissioner is empowered to examine the books and records of any person subject to the provisions of this part.

67-4-2406. (a) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(b) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

67-4-2407. (a) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of sales tax owed to the state, and the amount of such person's gross receipts taxable under this part, and such other books of account as may be necessary to determine the amount of tax hereunder, and all such books and records shall be open to inspection at all reasonable hours to the commissioner or any person duly authorized by either of them.

(b) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is responsible for paying the tax on the transaction(s) represented by the record.

SECTION 77. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following new part:

67-4-2501. (a) There is levied a privilege tax of seven percent (7.0 %) of gross charges on the retail sale of dyed diesel fuel, as that term is defined in § 67-3-1203. For purposes of this part, retail sale shall mean the same as defined in § 67-6-102.

(b) The commissioner is authorized and empowered to require the use of certificates of resale, or other satisfactory proof, as proof that any sale claimed to be other than a "retail sale" is in fact not a retail sale.

(c) The tax collected under this section shall be deposited to the state general fund.

67-4-2502. (a) The tax shall be collected from the dealer as defined in T.C.A. § 67-6-102 and paid at the time and in the manner hereinafter provided. The tax imposed by this part shall be collected by the dealer from the consumer insofar as it can be done.

(b) The dealer shall indicate in some definite manner whether its customers are paying this privilege tax. This indication must be stated on the ticket, invoice, or other record given to the customer.

67-4-2503. Sales to governmental entities that are exempt from the sales tax imposed by Title 67, Chapter 6, and sales of fuel to a "qualified farmer or nurseryman," as defined in § 67-6-207 for "agricultural purposes" as defined in § 67-3-1203, shall be exempt from the tax imposed by this part.

67-4-2504. (a) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this part, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner returns showing the gross charges of fuel taxable under this part during the preceding calendar month.

(b) At the time of transmitting the return required hereunder to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due, and failure to so remit such tax shall cause the tax to become delinquent.

67-4-2505. (a) The commissioner of revenue shall administer and enforce the assessment and collection of the taxes levied by this part.

(b) (1) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(2) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(c) The commissioner is empowered to examine the books and records of any person subject to the provisions of this part.

67-4-2506. (a) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(b) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

67-4-2507. (a) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of sales tax owed to the state, and the amount of such person's gross retail sales taxable under this part, and such other books of account as may be necessary to determine the amount of tax hereunder, and all such books and records shall be open to inspection at all reasonable hours to the commissioner, the commissioner's delegates, or any person duly authorized by either of them.

(b) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is responsible for paying the tax on the transaction(s) represented by the record.

SECTION 78. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 79. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following section:

(a) For purposes of this section, a "bundled transaction" means a transaction consisting of distinct and identifiable telecommunications services which are sold for a single nonitemized price.

(b) In the case of a bundled transaction of telecommunications services, if the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services shall be subject to tax unless the provider can reasonably identify such portion from its books and records kept in the regular course of business for purposes other than sales taxes.

(c) In the case of a bundled transaction of telecommunications services, if the price is attributable to services that are subject to tax at different rates, the total price shall be treated as attributable to the services subject to tax at the higher combined state and local tax rate unless the provider can reasonably identify the portion of the price

attributable to the services subject to tax at the lower rate from its books and records kept in the regular course of business for purposes other than sales taxes.

(d) If the taxes that would have otherwise been collected on the distinct and identifiable telecommunications services would have been designated to different funds or purposes, such designation shall be based on the same allocation utilized in (b) or (c). However, if the total of the bundled transaction was subjected to tax or subjected to tax at the higher combined state and local rate a reasonable allocation method approved by the commissioner shall be made for designation of the taxes to the different funds or purposes.

(e) The provisions of this section shall be effective with respect to bills submitted by telecommunications service providers to their customers that are dated on or after January 1, 2004.

SECTION 80. Tennessee Code Annotated, Section 67-6-313(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

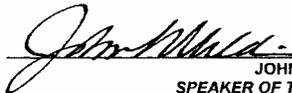
(a) It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export without any use in this state so long as title, risk of loss, or possession passed from the seller to the purchaser prior to importation.

SECTION 81. Sections 20, 64 and 70 shall take effect on January 1, 2006, the public welfare requiring it.

SECTION 82. The General Assembly finds and determines that the Streamlined Sales Tax Agreement is necessary to stop the loss of sales tax revenue due to the rapid growth of Internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate undue burden on interstate commerce; and that this act is necessary in order for Tennessee to be in compliance with the Streamlined Sales Tax Agreement. Under the Streamlined Sales Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. Therefore, the provisions of this act shall become effective either on the effective date specified for that section or, if no effective date is listed for the section, then on the first day of the second quarter following the effective date of the Streamlined Sales Tax Agreement, the public welfare requiring it; provided, that in no event shall any provision of this act take effect prior to July 1, 2004, the public welfare requiring it.

SECTION 83. No provision of this act is intended to nor shall it be construed so as to modify, amend or repeal any provisions of Tennessee Code Annotated, Section 67-6-510, the provisions of which shall be controlling with respect to the allowance of the credit for the used article taken in trade so that the tax levied by Chapter 6 of Title 67 shall continue to be paid only on the "net difference" as that term is used in paragraphs (a) and (b) of Tennessee Code Annotated, Section 67-6-510.

PASSED: May 29, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 16th day of June 2003


PHIL BREDESEN, GOVERNOR