

CHAPTER NO. 786**HOUSE BILL NO. 3544****By Representatives McMillan, Miller****Substituted for: Senate Bill No. 3457****By Senators Crutchfield, Kyle**

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 1, Chapter 4, and Chapter 6, relative to taxation.

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

SECTION 1. Tennessee Code Annotated, Section 67-1-703, is amended by adding the following as a new subsection:

() (1) The commissioner is authorized but not required to accept credit cards, debit cards, or other similar financial transaction cards in payment of all taxes or other amounts collected by the department. The commissioner may adopt reasonable policies and rules governing the manner of acceptance of such cards.

(2) The commissioner may enter into appropriate agreements with card issuers or other appropriate parties as needed to facilitate the acceptance of payments authorized by this subsection. The commissioner may impose a surcharge or convenience fee upon persons making payment by credit card, debit card, or other similar financial transaction cards to wholly or partially offset, in the aggregate, any discount or administrative fees charged to the department on such payments.

(3) The commissioner also may enter into appropriate agreements with third-party service providers for the acceptance and processing of credit card, debit card, or other similar financial transaction card payments on the commissioner's behalf. Such agreements may authorize the third-party service provider to impose a surcharge or convenience fee upon persons making such payments.

(4) When a person elects to make a payment to the department by credit card, debit card, or other similar financial transaction card and a surcharge or convenience fee is imposed as authorized by this subsection, the payment of the surcharge or convenience fee shall be deemed voluntary and shall not be refundable. No person making any payment to the department by credit card, debit card, or other similar financial transaction card shall be relieved from liability for the underlying obligation except as to the extent that the department realizes final payment of the underlying obligation in cash or the equivalent. If final payment is not made by the card issuer or other guarantor of payment, then the underlying obligation shall survive and the department shall retain all remedies for enforcement which would have applied if the transaction had not occurred.

SECTION 2. Tennessee Code Annotated, Section 67-4-2015, is amended by deleting the language in subsection (g) and substituting instead the following:

(g)(1) An extension of time of six (6) months in which to file the franchise and excise tax return will be granted; provided that, on or before the original due date of the return, the taxpayer has paid franchise and excise taxes equal to ninety percent (90%) of the liability for the tax year for which the extension is being requested, and the extension request is made as required in subdivision (2) of this subsection. Where the taxes paid on or before the original due date of the return do not equal ninety percent (90%) of the liability for the tax year for which the extension is being requested, or if the return is not filed by the extended due date, penalty as provided by § 67-1-804 and interest as provided by § 67-1-801(a) shall attach as though no extension had been granted.

(2) An extension request shall be made as follows:

(A) If the taxpayer is not required to make a tax payment with its extension request, the taxpayer may use either a form prescribed by the commissioner or a copy of the taxpayer's request for an automatic extension of time to file its federal income tax return for the corresponding tax period. The form shall not be filed on the original due date of the return but, instead, shall be attached to the return filed on or before the extended due date;

(B) If the taxpayer is required to make a tax payment with its extension request and the taxpayer does not file its federal income tax return as a member of a consolidated group, the taxpayer may use either a form prescribed by the commissioner or a copy of the taxpayer's request for an automatic extension of time to file its federal income tax return for the corresponding tax period. The form shall be filed with the tax payment on or before the original due date of the return; and

(C) If the taxpayer is required to make a tax payment with its extension request and the taxpayer files its federal income tax return as a member of a consolidated group, the taxpayer must use a form prescribed by the commissioner. The form shall be filed with the tax payment on or before the original due date of the return.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following as a new section:

Section 67-6-____. (a) The commissioner may, in the commissioner's sole discretion, enter into a managed compliance agreement with an eligible dealer. Such agreement may provide for 1) one (1) or more effective use tax rates for purchases subject to tax under this chapter; 2) a procedure under which the eligible dealer can use a direct pay permit issued by the commissioner to purchase tangible personal property or services without paying to its supplier the tax imposed by this chapter; 3) a term not to exceed three years, provided nothing shall preclude the commissioner from entering into a subsequent agreement with the same dealer; 4) the conditions under which the agreement may require modification or termination; 5) a procedure to resolve disputes concerning the agreement; and 6) any such other provisions as the commissioner and the eligible dealer mutually agree upon to carry out the purposes of this section.

(b) The commissioner may, in the commissioner's sole discretion, terminate a managed compliance agreement and conduct an audit of an eligible dealer if the eligible dealer fails to fulfill any of the terms of a managed compliance agreement and such

failure is materially adverse to the commissioner and the dealer fails to cure such failure not later than thirty (30) days after the mailing of written notice of such failure by the commissioner, provided no such notice need be given in the event such failure is not capable of being cured or the commissioner believes that the collection of any tax required to be collected and paid to the state or of any assessment will be jeopardized by delay.

(c) Other than as authorized by this section and expressly agreed in the managed compliance agreement, nothing in this section shall abridge or alter any requirements, rights, or obligations of an eligible dealer or the commissioner granted or imposed by statute or regulation.

(d) For purposes of this section:

(1) "Effective use tax rate" means the rate of use tax to be applied against a predetermined base of purchases for the purpose of computing the eligible taxpayer's use tax liability for a defined period;

(2) "Eligible dealer" means any person who is required to file any return or to pay or remit any tax under this chapter and who, in the opinion of the commissioner, meets the following criteria:

(A) Demonstrates a willingness and ability to comply with the tax laws of this state;

(B) Maintains an acceptable system of internal controls and business records;

(C) Maintains a large volume of taxable purchases; and

(D) Cooperates with Tennessee's efforts to collect tax; and

(3) "Managed compliance agreement" means an agreement between the commissioner and an eligible taxpayer that provides for an agreed upon method for calculating and remitting use tax on that taxpayer's purchases.

SECTION 4. Tennessee Code Annotated, Section 67-1-804(b), is amended by adding the following as a new subdivision immediately after the existing subdivision (1) and redesignating the remaining subdivisions accordingly:

(2) When any person fails to disclose any transaction in the manner prescribed by this title and fails to report and pay the total amount of taxes due, if such failure is determined by the commissioner to be due to negligence, there shall be imposed a penalty in the amount of fifty percent (50%) of the underpayment.

SECTION 5. Section 2 of this act shall take effect upon becoming a law and apply to tax periods ending on or after July 1, 2004, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 13, 2004


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 28th day of May 2004


PHIL BREDESEEN, GOVERNOR