

Tennessee Department of Revenue

STREAMLINED SALES AND USE TAX

Section-by-section summary of Public Chapter 357

SECTION 1. Amends taxpayer confidentiality statutes to require certified service provider to comply with privacy policy of Streamlined Sales and Use Tax Agreement ("SSUTA"). Authorizes department of revenue to disclose tax information to a seller's to certified service provider.

SECTION 2. Technical amendment to authorize refunds based on bad debts.

SECTION 3. Deletes definition of "cost price."

SECTION 4. Substitutes "purchase price" for "cost price" wherever that term appears in Title 67, Chapter 6. (See Sec. 15 for definition.)

SECTION 5. Technical amendment to definition of "dealer" to include sellers who use certified tax collection software or certified service providers.

SECTION 6. Deletes definition of "farm equipment" and machinery because of \$250 threshold. Farm equipment and machinery exemption is preserved in Section 27.

SECTION 7. Removes the \$1000 threshold for the exemption for machinery used to remanufacture industrial machinery and adds a definition of "remanufacturing."

SECTION 8. Amends the definition of "lease or rental."

SECTION 9. Amends the definition of "mobile telecommunications service."

SECTION 10. Amends the definition of "retail sale."

SECTION 11. Amends the definition of "sale." Preserves but moves provisions in current law.

SECTION 12. Amends the definition of "sales price."

SECTION 13. Deletes the definition of "service address." Definitions for sourcing telecommunications are moved to another section (see section 74 of the bill).

SECTION 14. Amends the definition of "tangible personal property."

SECTION 15. Adds definitions of certified automated system, certified service provider, commercial air carrier, computer, computer software, delivery charges, direct mail, direct pay permit, direct pay permit holder, drug, durable medical equipment, electronic, local tax jurisdiction, mobility enhancing equipment, model 1 seller, model 2 seller, model 3 seller, prescription, prewritten software, prosthetic device, purchase price.

SECTION 16. Deletes definitions related to sourcing of mobile telecommunications. Definitions for sourcing telecommunications are moved to another section (see section 74 of the bill).

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SECTION 17. Deletes special provision regarding allocation of sales tax revenue from cable television services.

SECTION 18. Provides for allocation of revenue from sales tax on interstate telecommunication services sold to business.

SECTION 19. Technical amendment to the list of taxable privileges. [Cable, wireless cable and satellite are deleted from the list of taxable privileges and subjected to a special privilege tax in Section 76].

SECTION 20. Amends reference to single article for purposes of applying state single article cap.

SECTION 21. Makes clear that vending machine sales are subject to tax as any other sale of tangible personal property.

SECTION 22. Deletes special provisions relating to the taxation of distributors of catalogs and fliers and nexus of customers of in-state printers and mailers. The nexus provision is moved to a new code section by section 62 of the bill.

SECTION 23. Deletes provision stating that providing tangible personal property with an operator constitutes a service, which the bill provides for in section 8 in the definition of "lease." Also deletes the provision exempting property used in flight training, which the bill provides for in section 48.

SECTION 24. Amends description of tax base on sale of services to "sales price" instead of "gross charge."

SECTION 25. Moves and makes certain amendments required by SSUTA to description of services subject to tax.

SECTION 26. Provides complete exemption for, rather than reduced tax rates on, energy and water sold to manufacturers. (See section 75 below for special user tax.)

SECTION 27. Amends exemption on farm equipment and related parts and service by limiting the exemption to farmers and nurserymen and moves exemptions for farm and nursery items listed elsewhere in TCA 67-6-102(9), 67-6-218 and 67-6-329.

SECTION 28. Amends exemption on materials used for college construction to include local tax.

SECTION 29. Amends description of tax base on sale of admissions and other amusements to "sales price" instead of gross receipts.

SECTION 30. Replaces reduced rate on aviation fuel with the full state rate. (See sections 54, 60 and 75 below for treatment of commercial air carriers.)

SECTION 31. Repeals reduced rate for energy fuels used in farming. Complete exemption provided in Section 27 of this Act.

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SECTION 32. Repeals reduced rate on sales to common carriers for use outside the state. (See sections 53, 60 and 75 below for sales tax exemption and special user tax for common carriers.)

SECTION 33. Repeals special tax rate on interstate telecommunication service sold to business. (See section 18 for special allocation provisions.)

SECTION 34. Repeals special tax rates on cable television service. (cable and wireless cable are exempted from sales and use tax and subjected to a special privilege tax. See Sections 19, 48 and 76).

SECTION 35. Repeals special tax rates on satellite television service. (satellite television service is exempted from sales and use tax and subjected to a special privilege tax. See Sections 19, 48 and 76).

SECTION 36. Technical amendments to definitions relating to reduced rate on food.

SECTION 37. Moves to new section the existing tax treatment of sales to schools.

SECTION 38. Moves to new section the existing tax treatment of pre-paid telephone calling cards, warranty contracts, and computer software.

SECTION 39. Repeals separate section exempting insulin. Insulin exemption preserved in section 41 below.

SECTION 40. Revises exemptions for various health related items.

SECTION 41. Repeals separate section exempting oxygen. Oxygen exemption preserved in section 42 below.

SECTION 42. Exempts prescription drugs, insulin and oxygen.

SECTION 43. Exempts from state tax the sale of energy in the form of steam or chilled water sold by an energy resource recovery facility. An exemption from local tax is preserved in TCA 67-6-704. A privilege tax on the sale of energy in the form of steam or chilled water sold by an energy resource recovery facility at a rate equal to the state sales tax rate is imposed in Section 75 of this Act.

SECTION 44. Removes reference to gasoline for agricultural purposes. This exemption is preserved in Section 27 of this act.

SECTION 45. Repeals exemption on farm and nursery related items. These exemptions are preserved in Section 27 of this act.

SECTION 46. Repeals \$500 threshold on sales of caskets and burial vaults.

SECTION 47. Deletes exemption for "school lunches" as a product. Exemption preserved as entity exemption in section 48 below.

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SECTION 48. Moves certain existing exemptions to new code section, and adds exemptions for certain food sold by a school. Exempts cable, wireless cable and satellite from sales and use tax as these sales are subjected to a special privilege tax in Section 76.

SECTION 49. Technical amendment to description of tax base of certain miscellaneous exemptions.

SECTION 50. Repeals \$150 threshold for membership fees to recreation clubs or community service organizations.

SECTION 51. Repeals due care requirement imposed on sellers of exempt railroad materials.

SECTION 52. Defines "clothing" for purposes of exempting certain sales of used clothing.

SECTION 53. Provides an exemption for qualified common carriers purchasing items for use outside of Tennessee. (See also sections 32, 60, 75).

SECTION 54. Provides an exemption for commercial air carriers purchasing aviation fuel and an exemption for common carriers purchasing diesel fuel for use in locomotives and railcars. (See also sections 30, 60, 75)

SECTION 55. Moves to new section the current exemption for computer software fabricated for one's own use.

SECTION 56. Deletes reference to tax brackets.

SECTION 57. Adopts exemption administration provisions.

SECTION 58. Provides that each entity may not be required to file more than one return per month, permits computation of tax on item or invoice basis, and adopts rounding rule. Provides that any seller may choose to be a model 1 or 2 seller, that a seller who qualifies may be a model 3 seller. Provides for the rights and liabilities of certified service providers and model 1 and model 2 sellers.

SECTION 59. Adopts SSUTA bad debt provision.

SECTION 60. Requires common carriers and commercial air carriers to apply for certificate to make exempt purchases. (See also sections 30, 53, 54)

SECTION 61. Provides that sellers have no liability for relying on erroneous data provided by commissioner on tax rates and tax jurisdiction boundaries, and that sellers may use zip codes to determine tax boundaries in certain situations. Provides that commissioner may require sellers to file additional, information returns twice each year, and that model 1, 2 and 3 sellers shall report and remit electronically. Provides for limited amnesty if a seller registers within one year of Tennessee become a member of the SSUTA. Provides that a purchaser's claim against a seller for over-collected taxes does not accrue until the purchaser gives notice to the seller.

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SECTION 62. Moves current law provision regarding nexus of out-of-state person using Tennessee printer or mailer.

SECTION 63. Permits registration using central system provided by SSUTA member states. Provides that such registration is effective for all SSUTA member states.

SECTION 64. Limits "single article" treatment to motor vehicles, aircraft, boats and manufactured homes.

SECTION 65. Eliminates special local tax rates on industrial machinery, water used by manufacturers, farm machinery, and items sold to common carriers. Eliminates reduced local rate on interstate telecommunication services and repeals local tax exemption for interstate telecommunication services sold to business. Imposes reduced rate of local tax on sale of certain energy fuels delivered by the seller. Eliminates special local rate for sellers with no Tennessee location.

SECTION 66. Repeals local tax exemption on fuels to electricity, piped natural and artificial gas, and heating fuels delivered by the seller. A reduced rate local tax is imposed on the sale of these items in Section 65. Exempts from local tax sale of energy by energy resource recovery facility.

SECTION 67. Provides that new local tax may not go into effect for at least 60 days after enactment and must begin on the first day of a calendar quarter.

SECTION 68. Repeals special allocation rules of local tax on tax remitted by sellers with no Tennessee location and on local tax on interstate telecommunication services.

SECTION 69. Repeals local tax exemption for cable television service.

SECTION 70. Authorizes taxpayers that pay business tax, franchise and excise tax, or sales and use tax to file a claim for refund for amounts paid on single articles of tangible personal property other than motor vehicles, aircraft, watercraft, modular and manufactured homes, if purchased for business use. The refund is limited to the difference in tax paid and the tax that would have been paid prior to the effective date of this act. Provides for, in the alternative, a credit to be taken on the taxpayer's sales and use tax return, if certain required information is provided to the Department by the taxpayer.

SECTION 71. Enacts limitations on when a new local tax or a local rate change may go into effect, generally and with respect to catalog sales. Requires the commissioner to give notice.

SECTION 72. Technical amendment re-defining "agreement" for purposes of provisions regarding the state becoming a member of the SSUTA.

SECTION 73. Authorizes the commissioner to enter into the SSUTA. Re-enacts provisions regarding legal effect of agreement itself. Requires the commissioner to provide a data base of local jurisdiction boundaries and to participate with SSUTA member states to develop an address-based system for assigning local tax jurisdictions.

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SECTION 74. Enacts SSUTA sourcing rules for determining which state's and local jurisdiction tax applies to certain sales.

SECTION 75. Enacts special user taxes to replace special sales tax rates not permitted under SSUTA: Water and utilities used by manufacturers, materials used in college construction, items purchased by common carriers for use outside the state, aviation fuel sold or used by commercial air carriers, diesel fuel sold to common carriers for use in locomotives and railcars in interstate commerce and energy purchased from energy resource recovery facility.

SECTION 76. Enacts special privilege taxes to replace sales taxes on cable, wireless cable and satellite services.

SECTION 77. Enacts special privilege taxes to replace sales taxes on the sale of dyed diesel fuel.

SECTION 78. Severability clause.

SECTION 79. Defines "bundled transactions" for telecommunications industry and provides for sales tax treatment for those transactions.

SECTION 80. Rewording of the "import/manufacture for export" provision in Sec. 67-6-313(a) to make clear the provision is retained, but applies only to goods where title, risk of loss, or possession passed to seller before importation.

SECTION 81. Effective date: Sections 20, 64 and 70 are effective 1/1/06.

SECTION 82. Statement of legislative finding for need of SSTA. Effective date: Unless a particular section has an effective date (See Sec. 81), effective first day of the second quarter following the effective date of the SSTA, but in no event prior to July 1, 2004.

SECTION 83. The act does not modify the present provision allowing exclusion of trade-in allowances from the tax.