



State of Tennessee

PUBLIC CHAPTER NO. 514

HOUSE BILL NO. 644

By Representatives McCormick, Kevin Brooks, Towns

Substituted for: Senate Bill No. 603

By Senator Norris

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 20; Title 67, Chapter 4, Part 21; Title 67, Chapter 4, Part 7 and Title 67, Chapter 6, relative to taxation.

WHEREAS, Tennessee's sales and use taxes, franchise and excise taxes, and business tax are intended to be broad-based taxes levied on all persons engaging in business in this State; and

WHEREAS, advances in technology and business practices now enable out-of-state companies to engage in business in this State in ways previously unaddressed by this General Assembly; and

WHEREAS, a physical presence in this State is now unnecessary to conduct profitable business in this State to the same extent as locally-based businesses; and

WHEREAS, advances in technology now enable out-of-state businesses to comply with this State's tax laws at costs similar to the compliance costs of locally-based businesses; and

WHEREAS, in light of these changes, many states have already reformed their rules for applying taxes to out-of-state businesses; and

WHEREAS, as applied to modern businesses, older provisions of this State's tax laws result increasingly in outcomes unintended by this General Assembly, and discourage businesses from investing in this State's property and people; and

WHEREAS, by changing these laws, this General Assembly intends to keep this State's tax laws in line with modern business practices; now, therefore,

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

SECTION 1. This act shall be known and may be cited as the "Revenue Modernization Act."

SECTION 2. Tennessee Code Annotated, Section 67-1-803(a), is amended by deleting subdivision (2) and substituting instead the following:

(2) Under no circumstances, however, shall this authority be deemed to extend to any interest payable under the law in connection with any case of tax deficiency or delinquency.

SECTION 3. Tennessee Code Annotated, Section 67-4-702(a), is amended by inserting the following as a new subdivision:

()

(A) "Substantial nexus in this state" means any direct or indirect connection of the taxpayer to this state such that the taxpayer can be required under the Constitution of the United States to remit the tax imposed under this part. Such connection includes, but is not limited to, any of the following:

(i) The taxpayer is organized or commercially domiciled in this state;

(ii) The taxpayer owns or uses its capital in this state;

(iii) The taxpayer has systematic and continuous business activity in this state that has produced gross receipts attributable to customers in this state; or

(iv) The taxpayer has bright-line presence in this state. A person has bright-line presence in this state for a tax period if any of the following applies:

(a) The taxpayer's total receipts in this state during the tax period, as determined consistent with § 67-4-2012, exceed the lesser of five hundred thousand dollars (\$500,000) or twenty-five percent (25%) of the taxpayer's total receipts everywhere during the tax period;

(b) The average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period, as determined consistent with § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the average value of all the taxpayer's total real and tangible personal property; or

(c) The total amount paid in this state during the tax period by the taxpayer for compensation, as determined consistent with § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the total compensation paid by the taxpayer;

(B) Notwithstanding subdivision () (A), no company that is treated as a foreign corporation under the Internal Revenue Code and that has no income effectively connected with a United States trade or business shall be considered to have a "substantial nexus in this state." For these purposes, whether a company has income effectively connected with a United States trade or business shall be determined in accordance with the provisions of the Internal Revenue Code;

SECTION 4. Tennessee Code Annotated, Section 67-4-711(a)(6), is amended by deleting the subdivision and substituting instead the following:

(6) The sale of any service that is delivered to a location outside this state;

SECTION 5. Tennessee Code Annotated, Section 67-4-717, is amended by deleting subsection (a) and substituting instead the following:

(a)

(1) Except as otherwise provided in this part, all persons with a substantial nexus in this state during the tax period and engaged in this state in any vocation, occupation, business, or business activity set forth as taxable under § 67-4-708(1)–(5), with or without establishing a physical location, outlet, or other place of business in the state, shall be subject to the tax levied by § 67-4-704. For purposes of this section, the phrase "engaged in this state" shall include, but not be limited to, any of the following:

(A) The sale of tangible personal property that is shipped or delivered to a location in this state;

(B) The sale of a service that is delivered to a location in this state;

(C) The leasing of tangible personal property that is located in this state; or

(D) Making sales as a natural gas marketer to customers located within this state through the presence in this state of the seller's property, through the holding of pipeline capacity by the seller on pipelines located in this state, or through the presence in this state of the seller's employees, agents, independent contractors, or other representatives acting on behalf of the seller to solicit orders, provide customer service, or conduct other activities in furtherance of such sales. For purposes of this subdivision (a)(1)(D), the phrase "presence in this state of the seller's property" shall include property owned by the seller in this state during delivery to the customer, whether in a pipeline or otherwise.

(2) All persons that are subject to the tax levied by § 67-4-704 and have a physical location, outlet, or other place of business within a municipality in this state shall be subject to the tax levied by § 67-4-705. Persons that do not have a physical location, outlet, or other place of business within a municipality in this state shall not be subject to the tax levied by § 67-4-705.

SECTION 6. Tennessee Code Annotated, Section 67-4-2004, is amended by inserting the following as a new, appropriately designated subdivision:

()

(A) "Substantial nexus in this state" means any direct or indirect connection of the taxpayer to this state such that the taxpayer can be required under the Constitution of the United States to remit the tax imposed under this part and part 21 of this chapter. Such connection includes, but is not limited to, the following:

(i) The taxpayer is organized or commercially domiciled in this state;

(ii) The taxpayer owns or uses its capital in this state;

(iii) The taxpayer has systematic and continuous business activity in this state that has produced gross receipts attributable to customers in this state;

(iv) The taxpayer licenses intangible property for use by another party in this state and derives income from that use of intangible property in this state; or

(v) The taxpayer has bright-line presence in this state. A person has bright-line presence in this state for a tax period if any of the following applies:

(a) The taxpayer's total receipts in this state during the tax period, as determined under § 67-4-2012, exceed the lesser of five hundred thousand dollars (\$500,000) or twenty-five percent (25%) of the taxpayer's total receipts everywhere during the tax period;

(b) The average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period, as determined under § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the average value of all the taxpayer's total real and tangible personal property; or

(c) The total amount paid in this state during the tax period by the taxpayer for compensation, determined under § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the total compensation paid by the taxpayer;

(B) Notwithstanding subdivision () (A), no company that is treated as a foreign corporation under the Internal Revenue Code and that has no income effectively connected with a United States trade or business shall be considered to have a "substantial nexus in this state";

(C) To the extent a company that is treated as a foreign corporation under the Internal Revenue Code has income effectively connected with a United States trade or business, such company's net earnings and net worth for purposes of the taxes imposed by this part and part 21 of this chapter shall be its net earnings and net worth connected with its United States trade or business, and only property used in, payroll attributable to, and receipts effectively connected with such company's United States trade or business shall be considered for purposes of calculating such company's apportionment fraction;

(D) For purposes of subdivisions () (B) and (C), whether a company has income effectively connected with a United States trade or business and the amount of its net earnings and net worth connected with its United States trade or business shall be determined in accordance with the provisions of the Internal Revenue Code;

SECTION 7. Tennessee Code Annotated, Section 67-4-2007(a), is amended by deleting from the first sentence the language "doing business in Tennessee" and substituting instead the language "doing business in this state and having a substantial nexus in this state".

SECTION 8. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)

(1) Except as otherwise provided in this part, for tax years beginning prior to July 1, 2016, all net earnings shall be apportioned to this state by multiplying the earnings by a fraction, the numerator of which shall be the property factor plus the payroll factor plus twice the receipts factor, and the denominator of the fraction shall be four (4).

(2) Except as otherwise provided in this part, for tax years beginning on or after July 1, 2016, all net earnings shall be apportioned to this state by multiplying the earnings by a fraction, the numerator of which shall be the property factor plus the payroll factor plus three (3) times the receipts factor, and the denominator of the fraction shall be five (5).

SECTION 9. Tennessee Code Annotated, Section 67-4-2012, is further amended by deleting subsections (i) and (j) in their entireties and substituting instead the following language as new subsections (i) and (j):

(i)

(1) Sales, other than sales of tangible personal property, are in this state if the taxpayer's market for the sale is in this state. The taxpayer's market for a sale is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state;

(D) In the case of intangible property:

(i) That is rented, leased, or licensed, if and to the extent the intangible property is used in this state; provided, that

intangible property utilized in marketing a good or service to a consumer is considered used in this state if that good or service is purchased by a consumer who is in this state; and

(ii) That is sold, if and to the extent the property is used in this state; provided, that:

(a) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is considered used in this state if the geographic area includes all or part of this state;

(b) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subdivision (i)(1)(D)(i); and

(c) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

(2) If the state or states of assignment under subdivision (i)(1) cannot be determined, the state or states of assignment shall be reasonably approximated.

(3) If the state of assignment cannot be determined under subdivision (i)(1) or reasonably approximated under subdivision (i)(2), such sale shall be excluded from the numerator and denominator of the sales factor.

(4) If the application of this subsection (i) to a tax year results in a lower apportionment factor than under the application of the apportionment method in subsection (i) as it was in effect prior to January 1, 2016, then a taxpayer may annually elect to apply the apportionment method in subsection (i) as in effect prior to January 1, 2016; provided, however, the election must result in a higher apportionment factor for the tax year, and the taxpayer must have net earnings, rather than a net loss, for that tax year as computed under § 67-4-2006.

(j)

(1) For any qualified member of a qualified group, total receipts in this state shall equal the receipts from all sales of tangible personal property that are in this state as determined under subsection (h), plus the arithmetical average of the receipts from all sales other than sales of tangible personal property that are in this state as determined under each of the following alternative methods:

(A) All sales that are in this state as determined under subsection (i); and

(B) All sales, other than sales of tangible personal property, where the earnings-producing activity is performed:

(i) In this state; or

(ii) Both in and outside this state and a greater proportion of the earnings-producing activity is performed in this state than in any other state, based on costs of performance.

(2) For purposes of this subsection (j), the following definitions shall apply:

(A) "Qualified expenditures" means expenditures incurred in transactions with persons who are not members of the qualified group for the following:

(i) Purchasing tangible personal property placed in service in this state by a member of the qualified group; and

(ii) Payroll for employees employed by a member of the qualified group at a facility in this state;

(B) "Qualified group" means an affiliated group that meets both of the following criteria:

(i) One or more members of the group is a qualified member; and

(ii) The members of the group, during the tax period, either:

(a) Incur, in the aggregate, qualified expenditures in an amount greater than one hundred fifty million dollars (\$150,000,000); or

(b) Make sales that are subject to the tax imposed by chapter 6 of this title in excess of one hundred fifty million dollars (\$150,000,000);

(C) "Qualified member" means a person that is principally engaged in the sale of "telecommunications service," "mobile telecommunications service," "Internet access service," "video programming service," "direct-to-home satellite television programming service," or a combination of such services, as each such term is used or defined in chapter 6 of this title.

(3) The method provided by this subsection (j) for determining the total receipts in this state of a qualified member shall be the only method for determining such receipts under this part.

SECTION 10. Tennessee Code Annotated, Section 67-4-2013(b)(3), is amended by adding the following language as a new subdivision (H) and redesignating existing subdivision (H) and remaining subdivisions accordingly:

(H) Receipts equal to the net gain or income from the sale of a security made by a person who is a dealer in such security within the meaning of 26 U.S.C. § 475 shall be attributed to Tennessee if such person's customer is located in Tennessee and such receipt is not otherwise attributed under subdivision (b)(3)(G). For purposes of this subdivision (b)(3)(H), a customer is in this state if the customer is an individual, trust, or estate that is a resident of this state and, for all other customers, if the customer's commercial domicile is in this state. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this state if the billing address of the customer, as shown in the records of the dealer, is in this state;

SECTION 11. Tennessee Code Annotated, Section 67-4-2013(b)(3)(I), as redesignated, is amended by deleting the language "§ 67-4-2012(i)" and substituting instead the language "§ 67-4-2012(i)(1)(C)".

SECTION 12. Tennessee Code Annotated, Section 67-4-2013(b)(3)(L), as redesignated, is amended by deleting the language "(b)(3)(A)-(J)" at the end of the subdivision and substituting instead the language "(b)(3)(A)-(K)".

SECTION 13. Tennessee Code Annotated, Section 67-4-2013(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d)

(1) For tax years beginning prior to July 1, 2016, the net earnings of a captive REIT affiliated group shall be apportioned to this state based on property,

payroll, and double weighted receipts as provided in § 67-4-2012(a)(1), including the factors of those members of the affiliated group that would not be subject to taxation in this state if considered apart from the affiliated group; provided, however, that dividends, receipts, and expenses resulting from transactions between members of the affiliated group shall be excluded for purposes of apportionment under this subdivision (d)(1).

(2) For tax years beginning on or after July 1, 2016, the net earnings of a captive REIT affiliated group shall be apportioned to this state based on property, payroll, and triple weighted receipts as provided in § 67-4-2012(a)(2), including the factors of those members of the affiliated group that would not be subject to taxation in this state if considered apart from the affiliated group; provided, however, that dividends, receipts, and expenses resulting from transactions between members of the affiliated group shall be excluded for purposes of apportionment under this subdivision (d)(2).

SECTION 14. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following language as a new section:

(a) Notwithstanding any law to the contrary, a taxpayer that meets the gross sales threshold and the receipts factor threshold during the tax period qualifies for the application of this section and may elect the application of this section by filing an election form with the department and providing such information as may be required by the commissioner on or before the due date of the tax return for the period for which such election is to take effect. Such election shall remain in effect until revoked by the taxpayer or until the taxpayer no longer qualifies for the election.

(b) For purposes of this section, the following shall apply:

(1) A taxpayer meets the gross sales threshold if the taxpayer's sales of tangible personal property made in this state during the tax period to all distributors exceed one billion dollars (\$1,000,000,000), as determined under § 67-4-2012 without regard to this section;

(2) A taxpayer meets the receipts factor threshold if the taxpayer's receipts factor, as determined under § 67-4-2012 without regard to this section, exceeds ten percent (10%); and

(3) "Certified distribution sales" means sales of tangible personal property made in this state by the taxpayer to any distributor, whether or not affiliated with the taxpayer, that is resold for ultimate use or consumption outside the state; provided, that the distributor has certified that such property has been resold for ultimate use or consumption outside this state. Such certification shall be made in the manner prescribed by the commissioner.

(c)

(1) A taxpayer that has made the election described in subsection (a) shall, so long as such election is in effect, apportion net earnings and net worth in the manner prescribed elsewhere in this part and part 21 of this chapter; provided, however, that the total amount derived from certified distribution sales shall be excluded from the numerator of the receipts factor, as that term is defined elsewhere in this part and part 21 of this chapter.

(2) A taxpayer that has made the election described in subsection (a) shall, so long as such election is in effect, pay to the commissioner, annually, an excise tax on the total amount of certified distribution sales excluded from the numerator of the taxpayer's receipts factor. The amount of such tax shall be computed in the following manner:

(A) In the case of taxpayers excluding no more than two billion dollars (\$2,000,000,000) of certified distribution sales for the tax period, the amount of such tax shall be five-tenths of one percent (0.5%) of the total amount of certified distribution sales;

(B) In the case of taxpayers excluding more than two billion dollars (\$2,000,000,000) but no more than three billion dollars (\$3,000,000,000) of certified distribution sales for the tax period, the amount of such tax shall be:

(i) Three-eighths of one percent (0.375%) of certified distribution sales in excess of two billion dollars (\$2,000,000,000); plus

(ii) Ten million dollars (\$10,000,000);

(C) In the case of taxpayers excluding more than three billion dollars (\$3,000,000,000) but no more than four billion dollars (\$4,000,000,000) of certified distribution sales for the tax period, the amount of such tax shall be:

(i) One-fourth of one percent (0.25%) of certified distribution sales in excess three billion dollars (\$3,000,000,000); plus

(ii) Thirteen million, seven hundred fifty thousand dollars (\$13,750,000); and

(D) In the case of taxpayers excluding more than four billion dollars (\$4,000,000,000) of certified distribution sales for the tax period, the amount of such tax shall be:

(i) One-eighth of one percent (0.125%) of certified distribution sales in excess of four billion dollars (\$4,000,000,000); plus

(ii) Sixteen million, two hundred fifty thousand dollars (\$16,250,000).

(3) The tax due under subdivision (c)(2) shall be in addition to all other taxes, including the tax imposed by § 67-4-2007(a).

SECTION 15. Tennessee Code Annotated, Section 67-4-2105(a), is amended by deleting from the first sentence the language "doing business in Tennessee" and substituting instead the language "doing business in this state and having a substantial nexus in this state".

SECTION 16. Tennessee Code Annotated, Section 67-4-2111, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)

(1) Except as otherwise provided in this part, for tax years beginning prior to July 1, 2016, the net worth of a taxpayer doing business both in and outside this state shall be apportioned to this state by multiplying such values by a fraction, the numerator of which shall be the property factor plus the payroll factor plus twice the receipts factor, and the denominator of the fraction shall be four (4).

(2) Except as otherwise provided in this part, for tax years beginning on or after July 1, 2016, the net worth of a taxpayer doing business both in and outside this state shall be apportioned to this state by multiplying such values by a fraction, the numerator of which shall be the property factor plus the payroll factor plus three (3) times the receipts factor, and the denominator of the fraction shall be five (5).

SECTION 17. Tennessee Code Annotated, Sections 67-4-2111, is further amended by deleting subsections (i) and (j) in their entireties and substituting instead the following language as new subsections (i) and (j):

(i)

(1) Sales, other than sales of tangible personal property, are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for a sale is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(D) In the case of intangible property:

(i) That is rented, leased, or licensed, if and to the extent the intangible property is used in this state; provided, that intangible property utilized in marketing a good or service to a consumer is considered used in this state if that good or service is purchased by a consumer who is in this state; and

(ii) That is sold, if and to the extent the property is used in this state; provided, that:

(a) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is considered used in this state if the geographic area includes all or part of this state;

(b) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subdivision (i)(1)(D)(i); and

(c) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

(2) If the state or states of assignment under subdivision (i)(1) cannot be determined, the state or states of assignment shall be reasonably approximated.

(3) If the state of assignment cannot be determined under subdivision (i)(1) or reasonably approximated under subdivision (i)(2), such sale shall be excluded from the numerator and denominator of the sales factor.

(4) If the application of this subsection (i) to a tax year results in a lower apportionment factor than under the application of the apportionment method in this subsection (i) as it was in effect prior to January 1, 2016, then a taxpayer may annually elect to apply the apportionment method in this subsection (i) as in effect prior to January 1, 2016; provided, however, the election must result in a higher apportionment factor for the tax year, and the taxpayer must have net earnings, rather than a net loss, for that tax year as computed under § 67-4-2006.

(j)

(1) For any qualified member of a qualified group, total receipts in this state shall equal the receipts from all sales of tangible personal property that are in this state as determined under subsection (h), plus the arithmetical average of

the receipts from all sales other than sales of tangible personal property that are in this state as determined under each of the following alternative methods:

(A) All sales that are in this state as determined under subsection (i); and

(B) All sales, other than sales of tangible personal property, where the earnings-producing activity is performed:

(i) In this state; or

(ii) Both in and outside this state and a greater proportion of the earnings-producing activity is performed in this state than in any other state, based on costs of performance.

(2) For purposes of this subsection (j), the following definitions shall apply:

(A) "Qualified expenditures" means expenditures incurred in transactions with persons who are not members of the qualified group for the following:

(i) Purchasing tangible personal property placed in service in this state by a member of the qualified group; and

(ii) Payroll for employees employed by a member of the qualified group at a facility in this state;

(B) "Qualified group" means an affiliated group that meets both of the following criteria:

(i) One or more members of the group is a qualified member; and

(ii) The members of the group, during the tax period, either:

(a) Incur, in the aggregate, qualified expenditures in an amount greater than one hundred fifty million dollars (\$150,000,000); or

(b) Make sales that are subject to the tax imposed by chapter 6 of this title in excess of one hundred fifty million dollars (\$150,000,000);

(C) "Qualified member" means a person that is principally engaged in the sale of "telecommunications service," "mobile telecommunications service," "Internet access service," "video programming service," "direct-to-home satellite television programming service," or a combination of such services, as each such term is used or defined in chapter 6 of this title.

(3) The method provided by this subsection (j) for determining the total receipts in this state of a qualified member shall be the only method for determining such receipts under this part.

SECTION 18. Tennessee Code Annotated, Section 67-4-2118(c), is amended by adding the following language as a new subdivision (8) and redesignating existing subdivision (8) and remaining subdivisions accordingly:

(8) Receipts equal to the net gain or income from the sale of a security made by a person who is a dealer in such security within the meaning of 26 U.S.C. § 475 shall be attributed to Tennessee if such person's customer is located in Tennessee and the receipt is not otherwise attributed under subdivision (c)(7). For purposes of this subdivision (c)(8), a customer is in this state if the customer is an individual, trust, or

estate that is a resident of this state and, for all other customers, if the customer's commercial domicile is in this state. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this state if the billing address of the customer, as shown in the records of the dealer, is in this state;

SECTION 19. Tennessee Code Annotated, Section 67-4-2118(c)(9), as redesignated, is amended by deleting the language "§ 67-4-2111(i)" and substituting instead the language "§ 67-4-2111(i)(1)(C)".

SECTION 20. Tennessee Code Annotated, Section 67-4-2118(c)(12), as redesignated, is amended by deleting the language "(c)(1)-(10)" at the end of the subdivision and substituting instead the language "(c)(1)-(11)".

SECTION 21. Tennessee Code Annotated, Section 67-6-102, is amended by inserting the following as a new subdivision:

() "Video game digital product" means the right to access and use computer software that facilitates human interaction with a user interface to generate visual feedback for amusement purposes, when possession of the computer software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis;

SECTION 22. Tennessee Code Annotated, Section 67-6-231(a), is amended by designating the current language as subdivision (1) and adding the following language as subdivision (2):

(2) For purposes of subdivision (a)(1), "use of computer software" includes the access and use of software that remains in the possession of the dealer who provides the software or in the possession of a third party on behalf of such dealer. If the customer accesses the software from a location in this state as indicated by the residential street address or the primary business address of the customer, such access shall be deemed equivalent to the sale or licensing of the software and electronic delivery of the software for use in this state. If the sales price or purchase price of the software relates to users located both in this state and outside this state as indicated by a residential street or business address, the dealer or customer may allocate to this state a percentage of the sales price or purchase price that equals the percentage of users in this state. Any dealer that purchases computer software only for the purpose of reselling access and use of such software as described in this subdivision (a)(2) shall be entitled to purchase such software exempt from the tax imposed by this chapter, subject to the same rules that apply generally to any sale of tangible personal property for resale; provided, however, that software purchased by a qualified data center for access and use by an affiliated company, as defined by § 67-6-395(c), shall be deemed to be used and consumed by the qualified data center and not resold to the affiliated company. Nothing in this subdivision (a)(2) shall be construed to impose a tax on any services that are not currently subject to tax under this chapter, such as, but not limited to, information or data processing services, including the capability of the customer to analyze such information or data provided by the dealer; payment or transaction processing services; payroll processing services; billing and collection services; Internet access; the storage of data, digital codes, or computer software; or the service of converting, managing, and distributing digital products.

SECTION 23. Tennessee Code Annotated, Section 67-6-233, is amended by deleting the language "specified digital products" wherever it appears and substituting instead the language "specified digital products or video game digital products" and is further amended by deleting the language "specified digital product" wherever it appears and substituting instead the language "specified digital product or video game digital product".

SECTION 24. Tennessee Code Annotated, Section 67-6-387, is amended by redesignating the existing language as subsection (a) and adding the following as new subsection (b):

(b) There is exempt from the tax imposed by this chapter the access and use of software that remains in the possession of the dealer who provides the software or in the

possession of a third party on behalf of such dealer, as described in § 67-6-231(a)(2), where such access and use of the software is solely by a person or such person's direct employee, as defined in subsection (a), for the exclusive purpose of fabricating other software that is both:

- (1) Owned by that person; and
- (2) For that person's own use and consumption.

SECTION 25. Tennessee Code Annotated, Section 67-6-395, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) There is exempt from the tax imposed by this chapter the use of computer software that is developed and fabricated by an affiliated company, regardless of whether such software is accessed and used as described in § 67-6-231(a)(2) or delivered by other means.

SECTION 26. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following as a new section:

It is the legislative intent to impose the taxes levied by this chapter to the fullest extent allowed under the constitutions of the United States and the state of Tennessee.

SECTION 27. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following as a new section:

(a) A dealer is presumed to have a representative, agent, salesperson, canvasser, or solicitor operating in this state for the purpose of making sales and is presumed to have a substantial nexus with this state if:

(1) The dealer enters into an agreement or contract with one (1) or more persons located in this state under which the person, for a commission or other consideration, directly or indirectly refers potential customers to the dealer, whether by a link on an Internet web site or any other means; and

(2) The dealer's cumulative gross receipts from retail sales made by the dealer to customers in this state who are referred to the dealer by all residents with this type of an agreement with the dealer exceed ten thousand dollars (\$10,000) during the preceding twelve (12) months.

(b) The presumption in subsection (a) may be rebutted only by clear and convincing evidence that the person with whom the dealer has an agreement or contract did not conduct any activities in this state that would substantially contribute to the dealer's ability to establish and maintain a market in this state during the preceding twelve (12) months.

SECTION 28. Tennessee Code Annotated, Section 67-4-2006(b)(2)(N), is amended by deleting the subdivision and by substituting instead the following:

(N) Any intangible expense paid, accrued, or incurred in connection with a transaction with one (1) or more affiliates, if the intangible expense has been disclosed in accordance with subdivision (d)(1) and either of the following conditions are met:

(i) The affiliate to whom the expense has been paid, accrued, or incurred is registered for and paying the tax imposed by this part; or

(ii) The expense was paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States or to an affiliate that is otherwise not required to be registered for or to pay the tax imposed by this part;

SECTION 29. Tennessee Code Annotated, Section 67-4-2006(d), is amended by deleting the subsection and by substituting instead the following:

(d)

(1) Any taxpayer that pays, accrues, or incurs intangible expenses as a result of a transaction with one (1) or more affiliates shall disclose the intangible expenses on the form as prescribed by the commissioner.

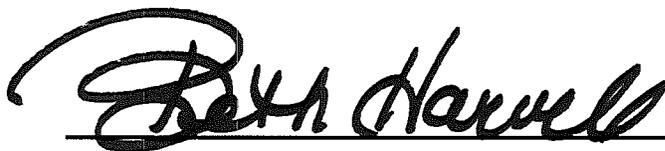
(2) Any taxpayer that pays, accrues, or incurs intangible expenses as a result of a transaction with one (1) or more affiliates and either fails to disclose the intangible expenses or fails to add the expenses to net earnings or net losses in accordance with subdivision (b)(1)(K) shall be subject to a negligence penalty as set forth in § 67-1-804(b)(2).

SECTION 30. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that 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 31. Sections 3, 4, 5, 6, 7, 14, and 15 of this act shall take effect January 1, 2016, the public welfare requiring it, and shall apply to all tax years beginning on or after January 1, 2016. Sections 9, 10, 11, 12, 17, 18, 19, 20, 28, and 29 of this act shall take effect July 1, 2016, the public welfare requiring it, and shall apply to all tax years beginning on or after July 1, 2016. Sections 21, 22, 23, 24, 25, and 27 of this act shall take effect July 1, 2015, the public welfare requiring it. Section 2 of this act shall take effect July 1, 2016, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 644

PASSED: April 22, 2015



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 20th day of May 2015



BILL HASLAM, GOVERNOR