

**RULES
OF
DEPARTMENT OF REVENUE
MISCELLANEOUS TAX DIVISION**

**CHAPTER 1320-04-05
BUSINESS TAX RULES AND REGULATIONS**

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1320-04-05-.01 ACCOMMODATION SALES AND OTHER SIMILAR TRANSACTIONS.

- (1) The term "accommodation sales" means occasional and incidental sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property, provided the following condition is met: The amount paid by the buyer to the seller does not exceed the amount paid by the seller to his vendor in the acquisition of the article, but to which may be added the cost of freight, in storage cost, and transportation cost incurred in the transfer from the seller to the buyer. Receipts from a bona fide accommodation sale shall not be deemed to be taxable under the Business Tax Act and may be deducted from the gross sales in determining the tax base, provided such sales have been included in the gross sales reported on the Business Tax Return.

(Rule 1320-04-05-.01, continued)

- (2) Where a person transfers property to another for resale on a memorandum basis, and in turn receives property in kind for the property transferred, there is deemed to be no sale and no Business Tax payable on the transaction.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.02 BROKERS.

- (1) A person who acts as a broker or an agent for another in making sales of tangible personal property or services without maintaining a stock of merchandise or taking title to any such property and who receives a commission or fee for his service is performing a taxable service and, with the exception of a food broker, is taxable under classification 3 at the retail service rate on his total commissions and fees. A food broker is taxable under classification 1 also on his commissions and fees.
- (2) A person who makes sales of tangible personal property or services without acquiring possession thereof, but who acquires title thereto, is a wholesaler or retailer, and is liable for the Business Tax as a vendor.
- (3) A person, who, as a part of his normal business activities, buys and sells intangible personal property or real property is not liable for the business tax on receipts from such sales.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.03 BUSINESS TAX-NATURE AND APPLICATION. The Business Tax is a privilege tax imposed upon persons engaged in various businesses and activities in the state. If a dealer invoices the business tax as a separate item and passes it on to his customer, then the tax shall be added to the gross receipts and be used in determining the tax base for both Business Tax and Sales and Use Tax purposes.

Authority: T.C.A. §§ 67-1-102, 67-4-702, 67-4-703, 67-4-704 and 67-4-705. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-04-05-.04 REPEALED.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-04-05-.05 CASUAL AND ISOLATED SALES.

- (1) The Business Tax does not apply to casual and isolated sales by persons who are not engaged in the business of selling tangible personal property or furnishing any of the services subject to the Business Tax. Likewise, the tax does not apply to sales of tangible personal property or services not normally sold by a wholesaler or retailer and which, if property, has been used by the dealer prior to the sale. These exemptions, however, do not apply to any sales of tangible personal property or taxable services bought for resale by those persons who hold themselves out as engaged in business, notwithstanding the fact that the sales may be few and infrequent.
- (2) Manufacturers, processors, wholesalers, or jobbers engaged in the business of distributing tangible personal property or furnishing services subject to the Business Tax are not deemed to be making casual and isolated sales when they sell such tangible personal property or services to purchasers for use or consumption, notwithstanding the fact that such sales may comprise a small fraction of their total business. (See 1320-04-05-.16(1)(c) and 1320-04-05-.29(3).)

(Rule 1320-04-05-.05, continued)

- (3) Persons regularly engaged in the recurring sale of tangible personal property at antique malls, flea markets, craft shows, antique shows, gun shows and auto shows and antique malls, flea markets, crafts shows, antique shows, gun shows and auto shows regularly engaged in the recurring sale of tangible personal property shall not be considered to be making casual and isolated sales. It shall be the burden of such persons and businesses to prove that their sales are actually casual and isolated in order to qualify for the exemption.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974. Amendment filed October 11, 1983; effective January 16, 1984.

1320-04-05-.06 CEMETERIES AND MEMORIAL GARDENS. Income derived from interment charges made by cemeteries, memorial gardens, etc., is taxable under the Business Tax Act. In cases where no deed or certificate of ownership is given, charges for burial in lots, crypts, etc., will be deemed to be charges made for the right of sepulcher and the entire gross income therefrom is taxable without any deduction for amounts set aside for perpetual care. The sale of boxes, urns, markers, vases, plants, shrubs and other tangible personal property are also taxable under the Business Tax Act.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.07 COMMISSION AGENTS AND FACTORS.

- (1) Persons operating as a commission agent or as a factor, such as an oil company bulk station or any other type of business that does billing in the name of the supplier they represent while using their own employees or agents and their own equipment and supplies in operating their business, shall use the gross commissions received by them as a basis for computing their Business Tax liability. Such persons shall obtain a separate license in their own name even though the principal they represent may have obtained a license for reporting sales made by the commission agent or factor.
- (2) Persons operating as a commission agent or as a factor but who make sales in their own right, e.g., as a jobber, or in a similar capacity, are taxable as sellers.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.08 COMPUTATION OF TAX.

- (1) "Sales Price" means the total amount for which tangible personal property is sold or the amount charged for any of the things or services taxable under the Business Tax Law, including any services required to process the property or taxable services for sale, and without any deductions therefrom on account of the cost of the property or taxable services sold, the cost of materials used, losses, or any other expenses whatsoever, except cash discounts allowed on sales. It does not include finance charges, carrying charges, time price differential, or interest from credit extended on sales of tangible personal property under installment sales contracts, conditional sale contracts, or other contracts providing for deferred payments of the purchase price, if the amount of such finance charges, carrying charges, time price differential, or interest is in addition to the usual or established cash selling price, and provided that it is:
 - (a) Segregated on the taxpayer's invoice or bill of sale, or
 - (b) Billed separately to customers.
- (2) The business tax is computed upon the sales price of items subject to the tax and is based upon the actual consideration passing, or agreed to be passed, between the purchaser and

(Rule 1320-04-05-.08, continued)

the vendor, less any deductions allowed by law. Wholesalers and retailers making charge sales must report business tax due on such sales for the period in which the sale is made.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.09 CONSTRUCTION CONTRACTORS AND EXTERMINATORS.

- (1) Contractors, as defined at T.C.A. § 67-4-708, Classification 4, shall be liable for business tax regardless of whether the contract is on a lump sum or cost-plus basis.
- (2) A contractor shall pay tax under Classification 4 of the Business Tax Act upon all receipts without any deductions except as specifically provided. Tax is due upon all progress payment charges billed pursuant to the contract and received by the contractor and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the equipment is operated by the lessor. Additionally, tax is due at the end of the contract period on the difference between the progress payment charges as billed and the payments received by the contractor. Amounts actually paid during the business tax period to subcontractors or other persons for the services enumerated in T.C.A. § 67-4-711(a)(5) may be deducted provided the contractor adequately identifies such persons by supplying the names and addresses of the subcontractors or other persons and the amounts subcontracted. For contracts issued on or after October 1, 2009, the contractor may deduct only amounts paid to a subcontractor holding a business license or who is licensed by the state board for licensing contractors for work described in T.C.A. § 67-4-708(4)(A) and must also supply the subcontractor's business license or license number issued by the board for licensing contractors. The contractor must maintain in its books and records a copy of the subcontractor's business license or contractor's license.
- (3) A contractor shall obtain a license from the appropriate local officer and shall be liable for the initial business license fee in each county and/or municipality in which he receives more than \$50,000 from contracts during any taxable period. The contractor must also file a business tax return and pay the business tax on such receipts for each such location. A contractor shall also obtain a license and shall be liable for the initial business license fee in the county and/or municipality in which his business is located and will pay business tax on his gross receipts derived in the state, less any amounts reported for counties and/or municipalities in which his contracts exceed \$50,000, during any taxable period. If a contractor does not have a domicile or place of business in the state, he will not owe the tax imposed by T.C.A. § 67-4-705 in a particular jurisdiction if his total receipts from contracts performed in that jurisdiction are less than \$50,000 during any taxable period. "Receipts" used herein mean taxable receipts.
- (4) Sales of tangible personal property and services to a contractor who in the course of performing his contract installs the property as a component part of an addition or improvement to or repair of real property are sales to a user and a consumer, and such sales are considered retail sales unless the sales are exempt by specific provisions of the Business Tax Act and rules and regulations construing the Act.
- (5) If a contract is performed within the jurisdiction of more than one (1) governmental entity, any business tax on receipts due shall be attributed to each such governmental entity proportionately based upon the amount of work actually performed within each governmental entity.

Authority: T.C.A. §§ 67-1-102, 67-4-703, 67-4-708, 67-4-709, 67-4-711, 67-4-714, and 67-4-717. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective

(Rule 1320-04-05-.09, continued)

August 14, 1978. Amendment filed June 3, 1980; effective September 29, 1980. Amendment filed March 18, 1983; effective June 15, 1983. Amendment filed June 14, 1988; effective September 28, 1988. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.10 CONTAINERS, WRAPPING AND PACKAGING-MATERIALS AND RELATED PRODUCTS.

- (1) Persons making sales of nonreturnable containers or wrapping and packaging materials to retailers for use in containing property sold at retail or for use in connection with services rendered at retail are making retail sales of such property.
- (2) Persons making sales of returnable containers or wrappings and packaging materials to either retailers or to anyone else for use in connections with sales of tangible personal property or services are making retail sales of such property.
- (3) Persons making sales of paper napkins, toilet tissue, drinking straws, wooden spoons and other items of a similar nature, to a purchaser who uses such items in connection with the conduct of his business, and not for resale, are making retail sales of such property.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.11 REPEALED.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Repeal filed June 28, 2016; effective September 26, 2016.

1320-04-05-.12 DEDUCTIONS FROM GROSS SALES.

- (1) Amounts representing the following transactions may be deducted from gross sales, prior to computing tax liability, provided such amounts have been included in the gross sales reported on the business tax returns:
 - (a) Cash discounts allowed and taken by customers on sales. (See Rule 1320-04-05-.04)
 - (b) Returned merchandise or allowances or credits given to customers for specific sales. (See Rule 1320-04-05-.45)
 - (c) Trade- ins. (See Rule 1320-04-05-.54)
 - (d) Repossession to the extent allowed. (See Rule 1320-04-05-.44)
 - (e) Contractor payments to subcontractors. (See Rule 1320-04-05-.09(2))
 - (f) Sales in bona fide interstate commerce. (See Rule 1320-04-05-.33(2))
 - (g) Receipts for services rendered by nonprofit institutions and financial institutions and for accounting, insurance, and other services, all as provided for by law. (See Rule 1320-04-05-.16 and 1320-04-05-.32)
 - (h) Accommodation and casual and isolated sales. (See Rules 1320-04-05-.01 and 1320-04-05-.05)

(Rule 1320-04-05-.12, continued)

- (i) Bad debts arising from receipts on which the business tax is imposed and paid as provided for by law.
 - (j) Any other deductions authorized by the Business Tax Act or by rules and regulations pertaining thereto.
- (2) Except as indicated in paragraph (1) of this rule, and as may otherwise be allowed by law, no other amounts attributable to any other transactions may be deducted from gross sales.
- (3) Any person claiming deductions from his gross sales must maintain sufficient invoices and other documents to substantiate his claims; otherwise, the deduction will not be allowed.

Authority: T.C.A. §§ 67-1-102, 67-4-703, 67-4-711. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.13 DEFINITIONS – GENERAL. As used in these Rules and Regulations, the following terms, wherever used, shall have the following meanings:

- (1) "Act" shall mean the Business Tax Act, being part 7, Chapter 4, Title 67, T.C.A., as amended.
- (2) "Commissioner" shall mean the Commissioner of Revenue of the State of Tennessee, or any of his duly authorized assistants.
- (3) "Department" shall mean the Department of Revenue of the State of Tennessee.
- (4) "Local Officers" shall mean County Clerks and the duly designated municipal officers responsible for licensing of local businesses.
- (5) "Lease or Rental" means the leasing or renting of tangible personal property and the possession or use of the property by the lessee or renter for a consideration, without transfer of the title of such property, and such shall be considered as a taxable transaction within the meaning of the Business Tax Act.
- (6) "Return" shall mean the report of a person liable for business tax showing gross sales, deductions, credits, tax computations, and such other information as may be required by the Commissioner.
- (7) "State" shall mean the State of Tennessee.
- (8) "Tax" shall mean the business tax imposed by the Business Tax Act.
- (9) "Manufacturer" shall mean those persons engaged in the businesses described in Division D of the Standard Industrial Classification Index of 1987, as amended.

Authority: T.C.A. §§ 67-1-102, 67-4-702, and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.14 DISTRIBUTION FROM OWN WAREHOUSE OR OTHER CENTRAL LOCATION.

- (1) Sales of tangible personal property and services by a licensed wholesaler or retailer from a central warehouse or other distribution point other than his principal place of business shall be subject to the appropriate wholesale or retail tax, and persons making such sales shall be liable for the business tax for that location.

(Rule 1320-04-05-.14, continued)

- (2) Where a person merely stores property in a warehouse or other place for eventual delivery to one or more places of business operated by him from which sales are made, he shall not be deemed to be making sales at that location as contemplated by this Rule and Regulation.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.15 DOMINANT BUSINESS ACTIVITY DEFINED FOR CLASSIFICATION PURPOSES. For purposes of business tax, both wholesale and retail businesses are classified according to their dominant business activity. The item comprising the largest proportion of taxable gross sales of the business when compared with other items sold determines its classification. Only one classification (of Classifications 1, 2, 3, or 4) shall apply. The fact that sales may be made at both wholesale and retail shall have no effect in determining the dominant business activity.

Authority: T.C.A. §§ 67-1-102, 67-4-703, and 67-4-708. **Administrative History:** Original rule certified June 7, 1974. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.16 EXCLUSIONS.

- (1) Generally, the receipts attributable to the following transactions, unless otherwise prohibited in the Business Tax Act, may be excluded in reporting gross sales on the Business Tax Returns:
 - (a) Consumer taxes such as those passed on to the purchaser under the provisions of the Sales and Use Tax Law (Chapter 6, Title 67, T.C.A.) and the Liquor by the Drink Law (Chapter 1, Title 57, T.C.A.).
 - (b) Receipts derived from medical and allied health services to human beings, except services of persons engaged in the business of making dentures and artificial teeth; religious, charitable, legal, educational, domestic, accounting services, architecture, engineering, surveying, and veterinary services; services rendered by non-profit membership organizations for the promotion of the interest of the members; educational and research agencies; public utilities as defined by T.C.A., §65-4-10; banks, building and loan associations, mortgage bankers, and other similar organizations; insurance companies and holding companies; operators of residential and non-residential buildings other than hotels, motels, or rooming houses; persons operating camps and trailer parks where charges are made for rental only of real property are exempt from the tax, but persons renting trailers to transients, or selling tangible personal property, or making separate charges for specific services furnished are not exempt; lessors of agricultural, forestry, mining, oil, public utility and airport properties.
 - (c) Receipts from sales of tangible personal property which is either manufactured by or, if not manufactured by, is incidental to the primary operation of a manufacturer who is subject to the ad valorem tax imposed under Chapter 5 of Title 67, T.C.A., and is sold either at the manufacturing location or any other manufacturing location operated by it within the same county.
 - (d) Receipts of the producer from sales of livestock, poultry and other farm products directly from the farm, including catfish farmers.
 - (e) The cost of sales of livestock; poultry or other farm products, other than those excluded as sales directly from the farm by the producer, to the end result that the Business Tax imposed shall apply only to the amount of all commissions, fees, margins or other charges received from such sales.

(Rule 1320-04-05-.16, continued)

- (f) Receipts of persons which are subject to gross receipts tax for their engaging in the business of operating as bottlers and manufacturers of soft drinks and soft drinks substitutes; gas, water, and electric current companies; telephone and telegraph companies; theaters, motion picture and vaudeville shows; establishments selling mixed drinks or setups for mixed drinks; and vendors of tangible personal property through vending machines, all of which persons are liable for or elect to pay the gross receipts tax to the state under the provisions of Chapter 4 parts 4 and 5, Title 67, T.C.A.
 - (g) Receipts of owners, or others having similar interests, from the sale or rental of real property; but this exclusion shall not include the receipts of brokers or agents as commissions' for the sale or rental thereof.
 - (h) Receipts from rental of films to theaters which pay the tax imposed by T.C.A. §67-6-212.
 - (i) Receipts from rental of films, transcriptions and recordings to radio or television stations operating under a certificate from the Federal Communications Commission.
- (2) Any other amounts attributable to the exclusions authorized by the Business Tax Act, or rules and regulations pertaining thereto, may also be excluded. (See Rule 1320-04-05-.36)

Authority: §§ 67-1-102, 67-4-703, and 67-6-212. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Amendment filed March 17, 1987; effective June 29, 1987.

1320-04-05-.17 FOOD. Food is defined to include all material which is used for animal as well as for human consumption to sustain physical growth, repair tissues, maintain vital processes and to furnish energy.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.18 FREIGHT AND DELIVERY CHARGES. Freight, delivery, or other like transportation charges are subject to the Business Tax if title to the property being transported passes to the vendee at the destination point. Where title to the property being transported passes to the vendee at the point of origin, the freight or other transportation charges are not subject to the Tax. It is immaterial whether the vendor or vendee actually pays for any charges made for transportation, whether the charges are actually paid by one for the other, or whether a credit or allowance is made or given for such charges. In cases where a vendor makes a separate charge for delivering tangible personal property in his own vehicle, or makes arrangements for delivering tangible personal property other than by a common carrier, the delivery charges shall be considered a part of the selling price subject to the Tax.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.19 FUNERAL DIRECTORS.

- (1) Persons engaged in business as a funeral director shall be liable for the Business Tax as determined by the manner in which they indicate the billing to their customers.
 - (a) In the case of a "unit price," (such as where there is one stated price for the casket, burial vault, and all services furnished) the transaction shall be regarded as a sale of tangible personal property and taxed under Classification 2 of the Business Tax Act.

(Rule 1320-04-05-.19, continued)

- (b) In the case of a "functional price," or "itemization," (such as where there is a segregation of the price of the casket, burial vault and other tangible personal property sold and charges for services rendered) the tax rate shall be determined by the classification comprising the dominant business activity, either Classification 2 or Classification 3.
- (2) In cases where a funeral director makes "cash advances" for opening graves, transportation, newspaper notices, telephone calls and other similar services, and furnishes items such as flowers and clothing, acting as an agent for his customer and making a charge for reimbursement for the advances without adding any profit to the charges for himself, such charges shall be included in the gross sales of the funeral director but may be deducted on the Business Tax Return in computing the Business Tax due and payable.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.20 HOSPITALS, CONVALESCENT, AND REST HOMES, ETC. Hospitals and persons rendering allied health services to human beings, including convalescent and rest home care, are rendering services, and are the users and consumers of products sold to them. Sales to the State, or other governmental agencies, and institutions exempt from paying Sales and Use Tax under the provisions of T.C.A. § 67-6-322, are deemed to be wholesale sales. Sales to all other institutions, etc., not otherwise exempt from sales and use tax under T.C.A. § 67-6-322, are deemed to be retail sales.

Authority: T.C.A. §§ 67-1-102, 67-4-702 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-04-05-.21 INSTALLATION SALES.

- (1) Tangible personal property which is sold and attached to real property, but which is ordinarily removed by the owner or tenant, such as window air conditioning units, curtain and drapery rods, gasoline pumps, etc., shall be deemed to be personal property. Charges for installing tangible personal property as a part of and in connection with the sale of tangible personal property are subject to the business tax if the property continues to be personal property after installation. The tax is due from the person making the sale of personal property regardless of whether the property is installed by that person or by another person acting for him. The tax shall be computed based on the dominant business activity of the person making the sale of the personal property. Persons making charges for installing personal property not as a part of and in connection with the sale of the tangible personal property shall be taxed under classification four (4) of the business tax.
- (2) Charges made for installing tangible personal property which becomes a part of real property, and which is not ordinarily removed by the owner or tenant, such as carpeting, electrical wiring, etc., shall be deemed to be made by a contractor, and the person installing such property shall pay the appropriate Business Tax as a contractor.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974. Amendment: filed May 18, 1978, effective August 14, 1978.

1320-04-05-.22 INSTALLMENT AND CREDIT SALES. Persons making conditional, charge, or installment sales must report the total selling price of such sales and pay the appropriate Business Tax due thereon in the reporting period in which the contracts of sale are entered into.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.23 LAY-AWAY SALES. Lay-away, lay-by, and/or will-call sales shall be included in the Business Tax base for the taxable period in which the delivery is made. Where the property is returned to

(Rule 1320-04-05-.23, continued)

inventory because of nonpayment for the merchandise and any previously made payments are forfeited because the sale is not completed, the amount forfeited shall be included in the Business Tax base at that time.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.24 LEASE OR RENTAL.

- (1) Leases and rentals of tangible personal property are deemed sales of tangible personal property and subject to the Business Tax. When real property and tangible personal property are leased or rented, that portion of the charges made for or properly attributable to lease or rental of tangible personal property shall be considered as sales subject to the Business Tax. The tax shall apply to all leases of tangible personal property delivered to a lessee or rentee in this state, regardless of where the property may be taken or used, whether within or without the state, and the tax will apply to whatever charges are made.
- (2) Persons engaged in the business of leasing or renting tangible personal property to users or consumers are taxable as retailers and persons leasing or renting tangible personal property to persons who in turn will lease or rent the property to others are taxable as wholesalers.

Authority: T.C.A. §§ 67-5822 and Section 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.25 LEASED DEPARTMENTS. Persons operating leased departments or concessionaires are not permitted to include their tax liability on the returns of the lessor or grantor of the concession but must file separate returns and pay applicable taxes imposed by the Business Tax Law, including the initial and minimum license fees.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.26 LIVESTOCK, POULTRY, AND OTHER FARM PRODUCTS. "Livestock, poultry and other farm products," as used in Classification 4 of the Business Tax Act, shall mean those in the same or raw form as that delivered by a farmer without any form of processing or manufacturing whatsoever having been made upon the products.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.27 LOCAL ADOPTION OF BUSINESS TAX.

- (1) Affirmative action must be taken by municipal governments in order to implement the business tax in their respective jurisdictions. The business tax may be levied only by passage of a resolution or ordinance by the appropriate governing body.
- (2) Upon adoption or amendment of the business tax by any municipal government, a certified copy of the resolution or ordinance adopting or amending the business tax must be furnished to the Department.
- (3) Municipal governments that adopt the business tax after December 31, 2013, must levy the tax at the rates provided in T.C.A. § 67-4-709. If the business tax was adopted by a municipal government prior to January 1, 2014, then it may continue to levy the tax at the same rate that was in effect as of January 1, 2014. Municipal governments may not reduce the tax rates, but they may repeal the business tax by ordinance.

(Rule 1320-04-05-.27, continued)

Authority: T.C.A. §§ 67-1-102, 67-4-703, 67-4-704, 67-4-705, and 67-4-709. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.28 LOCATIONS AND OUTLETS – OPERATIONS IN OTHER LOCALITIES.

- (1) A business which engages in business activity in several places, in different locations and through different outlets, must obtain a license from and pay the initial license fee to the appropriate local officer and must pay at least the minimum business tax to the Department for each place, location or outlet; and it must report gross sales and tax due for each separate location. The fact that a business has several outlets in a single county or city is immaterial. Such business may upon request submit a consolidated report to cover all such outlets in one county or city; however, a breakdown of sales by each outlet must accompany such consolidated report.
- (2) Subject to the exceptions enumerated hereinafter, persons subject to business tax operating from an established place of business in one county or city who extend their operations into other counties and/or cities without establishing an office, headquarters or other place of business therein shall not be subject to the filing and registration requirements for such other counties and/or cities. Tax on total receipts from all taxable sales shall be attributed to the county and city, if any, in which the established place of business is located.
- (3) Excepted from the rule as stated in subparagraph (2) are:
 - (a) Contractors subject to Rule 1320-04-05-.09.
 - (b) A property management company or an individual providing rentals lasting less than 180 days must have a county and/or city business tax license and registration for each county and/or city in which it has rental properties, if the property management company's or individual's taxable gross receipts are ten thousand dollars (\$10,000) or more in a particular county and/or city where it does business. If a property management company or individual manages multiple locations within one county and/or city, the property management company or individual shall be required to register only one location per county and/or city and report all gross receipts in that county and/or city to the registered location. The property management company or individual will be subject to business tax at the local rate for the jurisdiction in which each rental property is located, and the taxes from such shall be attributed to the county or city in which the rental property is located.

Authority: T.C.A. §§ 67-5822, 67-101, 67-1-102, 67-4-703, 67-4-706, 67-4-723, and 67-4-724. **Administrative History:** Original rule certified June 7, 1974. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.29 MANUFACTURERS AND PROCESSORS.

- (1) Sales of industrial materials and services to manufacturers and processors who further process, manufacture or convert such materials as a component part of articles of tangible personal property, or use the services in preparing such a product for sale or resale, are considered to be sales at wholesale and, therefore, are subject to the Business Tax.
- (2) Sales of machinery and supplies and services, other than those in (1) above to manufacturers or processors, are retail sales, unless the property or services are shown by the manufacturer or processor to be for resale, in which case the sales are wholesale sales subject to the wholesale tax.

(Rule 1320-04-05-.29, continued)

- (3) Sales of tangible personal property manufactured or processed by a manufacturer or processor, who is subject to the ad valorem tax under Part 5 of Chapter 5 of Title 67, T.C.A., are exempt from the Business Tax if made at the manufacturing or processing location within this state. Sales of such property which is not manufactured or processed by a manufacturer or processor but which is incidental to the operation of such manufacturer or processor are also exempt from the Business Tax if made at the manufacturing or processing location or outlet that is subject to the ad valorem tax under provisions of said Chapter.
- (4) Sales of tangible personal property manufactured or processed by a manufacturer or processor from locations other than the manufacturing or processing location where the ad valorem tax is paid are subject to the Business Tax. Such sales are taxable at either the retail or wholesale tax rate, whichever is applicable.
- (5) A manufacturer or processor who is subject to ad valorem tax under the provisions of Part 5 of Chapter 5 of Title 67, T.C.A., and who also sells tangible personal property which he has manufactured outside the state, or has brought tangible personal property or services for resale, shall be liable for the ad valorem and personal property taxes as follows:
 - (a) All property used exclusively in the manufacturing or processing operation shall be subject to the tax imposed by Part 5 of Chapter 5 of Title 67, T.C.A..
 - (b) All property used exclusively in the sales of property manufactured by him outside the state, or tangible personal property or services bought for resale, shall be exempt; from the provisions of Part 5 of Chapter 5 of Title 67, T.C.A., and personal property taxes.
 - (c) The value of property used partially in connection with manufacturing operations exempt from the Business Tax and partially in connection with sales subject to the Business Tax shall be prorated.

Such proration shall be as determined by the ratio of sales of property manufactured in this state subject to the tax imposed by Part 5 of Chapter 5 of Title 67, T.C.A., and receipts from other sales subject to the Business Tax. The portion of the value applicable to property used in connection with manufacturing operations shall be subject to the ad valorem tax imposed by Part 5 of Chapter 5 of Title 67, T.C.A., and that portion of the value applicable to other sales activities shall be exempt from the provisions of Part 5 of Chapter 5 of Title 67, T.C.A., and personal property taxes.

Authority: T.C.A. §§ 67-1-102, 67-4-702, 67-4-703, 67-4-704, and Part 5 of Chapter 5, Title 67, T.C.A.
Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-04-05-.30 TAX DUE DATE-DELINQUENCY-TAX PERIODS.

- (1) The business tax provided for in T.C.A. § 67-4-709 is an annual tax for the privilege to engage in any of the business activities made subject to business tax.
- (2) Pursuant to the authority in T.C.A. § 67-4-715(g), the business tax return is due on the 15th day of the fourth month following the end of the taxpayer's fiscal year. For example, if a taxpayer's fiscal year ends on December 31, then its return will be due on April 15.

Authority: T.C.A. §§ 67-1-102, 67-4-703, 67-4-709, 67-4-715, 67-4-717, 67-4-719 and 67-4-720.
Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.31 MOTOR VEHICLE, TRAINER, AND/OR SIMILAR RENTALS.

- (1) Persons engaging in the business of motor vehicle and/or trailer rentals, or having contracts with service stations or other business entitles to act as their agent for the rental of such equipment to customers, are liable for the Business Tax imposed on rentals in their counties and/or municipalities at each location where such vehicles are maintained and rented, including their own locations as well as those of their agents. Agents operating the service stations or other business locations where such rentals are made are liable for the Business Tax on the commissions they receive for the services performed.
- (2) Payments by service stations or other businesses in regard to the tax shall be made to the locality where the customers pay for the rental of the equipment.
- (3) Deposits made by customers and which are refundable when a motor vehicle, trailer, and/or similar rentals are left at the destination, and which are actually refunded to the customer, may be deducted from the gross receipts in determining the Business Tax.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.32 NONPROFIT MEMBER ORGANIZATIONS. Organizations operating on a nonprofit membership basis for promotion of interest of the members shall be exempt from the Business Tax on services rendered. The sale of food, beverages or other tangible personal property, shall constitute a taxable activity, and such organizations shall pay tax under the appropriate classification.

Authority: T.C.A. §§ 67-1-102, 67-4-703 and 67-4-708. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-04-05-.33 NON-RESIDENT PURCHASES.

- (1) Deliveries of tangible personal property and services to customers in the State of Tennessee are sales subject to the Business Tax. It is immaterial that the property may thereafter be transported outside the state.
- (2) Deliveries of tangible personal property or services to customers outside the State of Tennessee by a person subject to the Business Tax or by a common carrier before a customer obtains possession are sales exempt from the Business Tax.

Authority: T.C.A. §§ 67-1-102, 67-4-703 and 67-4-712. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.34 PATRONAGE DIVIDENDS OF COOPERATIVE ASSOCIATIONS. The amount of cash and other patronage dividends, declared by cooperative selling associations or corporations are paid to or credited to a member's account from the earnings of such association or corporation, may be taken as a deduction from gross sales for the tax period in which the distributions and credits are made.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-04-05-.35 PERSON-DEFINED. The term "person" shall mean any individual, partnership, corporation, receiver, trust, trustee, or any other legal entity engaged in any of the business activities made subject to the business tax by the Business Tax Act. The term "person," however, does not include the United States of America, the State of Tennessee or political subdivisions thereof, or any of the agencies thereof, nor does the term include utility districts organized under the provisions of Chapter 26 of Title 6, T.C.A., or electric membership corporations or cooperatives organized under the provisions of Chapters 24 and 25 of Title 65, T.C.A., to the extent that such political or quasipolitical entity may be the seller or furnisher of the goods or services which would otherwise be taxable under the Business Tax Act.

(Rule 1320-04-05-.35, continued)

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.36 PERSONS EXEMPT FROM BUSINESS TAX.

- (1) Persons making occasional and isolated sales or transactions who do not hold themselves out as engaged in business.
- (2) Persons having a total value of sales of less than \$10,000 per year.
- (3) Certain blind persons.
- (4) Certain disabled veterans.
- (5) Newspaper route carriers and newspaper peddlers.
- (6) Farmers making sales of farm products direct from the farm and produced by themselves, including catfish farmers. (See Rule 1320-04-05-.16)
- (7) Persons employed by another who work for wages or salary and who are under the direction and control of the employer in the performance of their duties.
- (8) Charitable or religious institutions making sales of donated items and articles produced from donated items.
- (9) Certain persons conducting shows, displays, or exhibits sponsored by a nonprofit organization of gun collectors.
- (10) Certain persons whose only business activity during the tax period is conducted at the Tennessee state fair or a county fair.
- (11) Movie theaters qualifying for the exemption under T.C.A. § 67-6-309.

Authority: T.C.A. §§ 67-1-102, 67-4-702, 67-4-703, and 67-4-712. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.37 REPEALED.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2016; effective September 26, 2016.

1320-04-05-.38 PUBLIC WAREHOUSING AND STORAGE.

- (1) Persons engaged in the business of warehousing and storage of any tangible personal property belonging to others for a charge or fee are rendering services and are taxable under the Business Tax Act. Gross sales shall include all charges made for such service and shall include charges for crating, boxing, and packaging used in the performance of these services. Receipts from the sale of any tangible personal property made by the warehouseman to satisfy a warehouseman's lien on account of storage or service charges shall likewise be included in gross receipts in establishing the Business Tax base. This Rule applies also to persons operating grain elevators, tobacco warehouses and like facilities where charge is made for services rendered.

(Rule 1320-04-05-.38, continued)

- (2) Persons operating a warehouse and, in addition, leasing space within the warehouse without furnishing any services to the lessee of the space may exclude the receipts for such leases from the gross sales subject to the Business Tax, or deduct them from the gross sales if the receipts are included in the gross sales reported on the Business Tax return.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.39 PUBLISHERS OR PRINTERS OF NEWSPAPERS AND OTHER PERIODICALS.

- (1) Persons engaged in the business of publishing or printing newspapers, other periodicals, and other printed matter, shall be deemed to be manufacturers who are subject to ad valorem tax imposed in Chapter 5, Title 67, T.C.A., and shall be exempt from the Business Tax in the same manner as are other manufacturers.
- (2) Publishers or printers of newspapers or other periodicals engaged in any other activity made taxable under the Business Tax Act shall be liable for the appropriate tax on such activity.
- (3) Activities engaged in that are incidental to the manufacturing portion of the business shall not, however, be subject to the tax.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-04-05-.40 RADIO AND TELEVISION STATIONS.

- (1) Persons operating radio and television stations under authority of a certificate from the Federal Communications Commission are not liable for the Business Tax.
- (2) Persons who operate cable television services are subject to the tax.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-04-05-.41 REAL ESTATE SALES AND RENTALS.

- (1) Persons who receive monies or other consideration for the sale or rental of real property belonging to them, not including rentals lasting less than 180 days, are not liable for business tax on such sales or rentals.
- (2) Persons receiving or entitled to receive commissions, fees, service charges, or other income, credits or property value in money for services rendered concerning the sale or rental of real or personal property belonging to others are liable for business tax on such receipts.
- (3) The employing unit, whether designated as a real estate firm, broker, agency, partnership, or corporation which owns or conducts a real estate business, but not the employees thereof, is liable for business tax. The tax shall be paid on the total receipts (as enumerated in paragraph (2) above) which are due and payable. It is immaterial, with regard to tax liability, whether the total receipts are divided between the employing unit and the employee, salesman, or other representative of the employing unit or whether the division is made by the employing unit or by the owner, purchaser or other party in interest. In any event the tax is payable on the total amount of receipts due and payable for services rendered.

(Rule 1320-04-05-.41, continued)

- (4) The business tax is due and payable to the Department for each county and city, if any, where the employing unit maintains an office or place of business, regardless of the location of the property involved in the sale or rental or the place where a contract for the sale or rental of the property is entered.
- (5) Where receipts, as enumerated herein, are divided, or split, between bona fide real estate agents or brokers, as distinguished from a division between an agent or broker and one of his employees, that portion of the receipts retained or received by each business shall become a part of its gross receipts subject to business tax.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.42 RECORDS - PRESERVATION OF.

- (1) Every person liable for business tax shall keep and preserve sufficient and complete records for a period of at least three years to determine the amount of business tax for which he may be liable. It is advisable, however, that such records be kept and preserved for a period of six years. Such records shall include and show the following:
 - (a) A daily record of all cash and credit sales, including sales under any type of financing or installment plan in use;
 - (b) A record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;
 - (c) A record of all exclusions, deductions and exemptions allowed by law and/or claimed in filing business tax returns; and,
 - (d) A true and complete inventory of the value of the stock on hand taken at least once yearly. All of the records required to be kept and preserved shall be open for examination at any time by the Commissioner or local collecting officers, or their duly authorized representatives.
- (2) If a proposed assessment has been made and an appeal therefrom has been made to the Commissioner or to a court, all books and records, as above specified, relating to the period covered by such proposed assessment must be preserved until the final disposition of the appeal.

Authority: T.C.A. §§ 67-1 -102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.43 REPAIR SERVICES. The total charges made by those engaged in the business of repairing tangible personal property, including parts, labor, and any other charges, shall be deemed to be service charges and taxable at either the wholesale rate or retail rate, whichever is applicable.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.44 REPOSSESSIONS.

- (1) Except as otherwise provided in this rule, a wholesaler or retailer may not deduct the unpaid amounts on repossessed tangible personal property from their gross proceeds of sales in submitting their reports.

(Rule 1320-04-05-.44, continued)

- (2) In cases where a wholesaler or retailer sells any article of personal property on a security agreement, or any other instrument whereby he retains title to the property, and he repossesses or enforces his lien against the said property and there is an unpaid principal balance of more than five hundred dollars (\$500) the dealer may deduct, in reporting his gross receipts, an amount equal to the unpaid balance minus five hundred dollars (\$500). The unpaid balance to be considered in this calculation is only that amount which constitutes principal, and shall not include interest, carrying charges or any similar charges. Any wholesaler or retailer claiming such a deduction or deductions shall preserve, as a part of the official records of his business, full information concerning the sale and subsequent repossession of the subject item of personal property; and such information shall include identification of parties and items involved, the dates of the sale and repossession, the amount of the original price to the purchaser upon which the Business Tax was due to be paid, and the amount of unpaid balance which forms the basis for the deduction.
- (3) A bank or other financial institution purchasing contracts without recourse from wholesalers or retailers relating to tangible personal property which was sold by the latter under a security agreement or other title-retained instrument may not claim any deduction or credit for any unpaid balances remaining due on any such contracts following repossessing of the property or any other action to enforce the lien.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.45 RETURNED MERCHANDISE AND ALLOWANCES. In the event a person subject to the Business Tax gives credit to a customer for tangible personal property voluntarily returned to him or gives a credit or allowance to a customer as an adjustment or otherwise with respect to a specific sale, whether or not the property is returned, the amount of credit or allowance actually given or credited to the customer's account may be deducted from the gross sales subject to the Business Tax.

Authority: T.C.A. §§ 67-5822 and Section 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05.46 SALES BY OUT-OF-STATE VENDOR. Sales of tangible personal property or services made by a Tennessee dealer to an out-of state vendor who directs that the dealer act as his agent to deliver or ship such property or services to his customer in Tennessee shall be deemed to be a sale by the Tennessee vendor and subject to the Business Tax.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.47 SALES FOR RESALE.

- (1) Sales for resale include those whereby a supplier of materials, supplies, equipment and services makes such tangible personal property or services available for further processing as a component part of a product to legitimate dealers engaged in and actually reselling or leasing such property or services to a user or consumer. Sales to a manufacturer or processor for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials become a component part of the finished product are likewise considered sales for resale.
- (2) Sales of tangible personal property and services to a retailer who may make further distributions from a central warehouse or other distribution point to others for resale shall be deemed to be wholesale sales.
- (3) Sales for resale made by a wholesaler to another wholesaler shall not be subject to business tax.

(Rule 1320-04-05-.47, continued)

- (4) The price charged by the vendor for tangible personal property or services or the quality of such property or services is immaterial in determining whether or not a sale is one for resale. The controlling factor is what the vendee does with his purchase.
- (5) Sales to a contractor who in the course of performing his contract installs property or uses services in a structure, as a component part thereof, are retail sales to a user or consumer.

Authority: T.C.A. §§ 67-101, 67-5822, 67-1-102, 67-4-702, and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.48 SALES OF SERVICES AND TANGIBLE PERSONAL PROPERTY.

- (1) A person exempt under the provisions of T.C.A. § 67-4-708, classification 3, from paying the tax on receipts from services rendered is, nevertheless, liable for the tax on receipts from sales of tangible personal property.
- (2) A person engaged in the business of selling tangible personal property is liable for the Business Tax even though he may call his business a service.

Authority: T.C.A. §§ 67-1-102, 67-4-703, and 67-4-708. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-04-05-.49 SALES TO EMPLOYEES. Sales to employees shall be included in the Business Tax base. The tax shall be based upon sales price of the property or service sold, or upon the cost price of property or service furnished to the employee as part of his compensation without a specific charge being made for such property or service furnished.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.50 SALES TO USERS EXEMPT FROM PAYING OTHER TAXES. Sales of tangible personal property to the State of Tennessee or any county or municipality or subdivision thereof, or the sale to any religious, educational or charitable institution as defined in §67-3014, T.C.A., shall be deemed to be wholesale sales and taxable at the appropriate wholesale taxable rate. Such sales made to the Federal Government shall likewise be deemed to be wholesale sales.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.51 SPECULATIVE BUILDERS.

- (1) Persons building houses or other structures on their own property from their own plans and not under contract and offering them for sale are not considered to be selling tangible personal property or rendering a taxable service and are not taxable under the Business Tax Act.
- (2) If, during the course of construction of a house or other structure a builder agrees to sell the property and alters the plans to the specifications of the buyer, he shall be deemed to be a contractor and liable for the appropriate business tax on the total receipts over and above the price for which the property would otherwise be sold.
- (3) A builder is subject to the provisions of paragraph (2) if:
 - (a) He contracts to sell a building and lot prior to completion of the construction of the building and,

(Rule 1320-04-05-.51, continued)

- (b) He alters the building plans to the specifications of the buyer.

Both of the conditions in subparagraphs (a) and (b) must be present in order for builder to be subject to the provisions of paragraph (2).

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-04-05-.52 REPEALED.

Authority: T.C.A. § 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Repeal filed June 28, 2000; effective September 11, 2000.

1320-04-05-.53 TAXPAYERS' RETURNS AND RECORDS.

- (1) All persons liable for business tax shall make complete reports of all sales and other business receipts and list any deductions which they are entitled to make for each separate place, location, or outlet in the State, and submit them on their business tax returns as provided for in the Business Tax Act and the Rules and Regulations relating thereto. Sales and receipts which are excludable, as provided for in the Act and these Rules and Regulations, shall not be included in the gross sales reported; but allowable deductions shall be included in the gross sales reported and listed as a deduction on the business tax return and so treated in computing and paying business tax due.
- (2) Persons with two or more business locations in a city and/or county may, upon request to and approval by the Commissioner, file consolidated tax returns, provided only, however, that such businesses are taxable under the same classification and at the same tax rate. Such person must maintain in its books and records information necessary to determine tax liability at each location.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.54 TRADE-INS.

- (1) When an item of tangible personal property is taken in trade as a credit or part payment on the sale of new or used articles, the Business Tax shall be computed on the difference between the sales price of the new or used article sold and any credit actually given for the used article accepted in the trade.
- (2) A credit will not be allowed for trade-ins unless the item so traded is of a like kind and character of that which is purchased and indicated as a trade-in by model and serial number, where applicable, on an invoice given to the customer.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.55 TRADING STAMPS.

- (1) Persons engaged in the business of redeeming trading stamps which have been given by other dealers shall be deemed to be a dealer and shall be liable for the Business Tax on the retail value of the merchandise given for the stamps. This value shall be deemed to be the value which is assigned to the book of stamps.

(Rule 1320-04-05-.55, continued)

- (2) The sale of trading stamps to concerns who give them to customers in exchange for purchases in their stores is not taxable under the Business Tax Act.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.56 TRAILER PARKS OR CAMPS. Persons operating trailer parks or camps where charges are made only for rental of real property are exempt from the business tax, but persons renting trailers to transients for occupancy at the trailer park location for a period of 90 days or less, or selling tangible personal property, or making separate charges for specific services furnished are liable for the business tax under the appropriate classification. (See 1320-04-05-.16.)

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.57 TRANSFER OF LICENSE.

- (1) The license, required pursuant to T.C.A. § 67-4-723, may neither be transferred from one person to another person nor from one business location to another business location, except as provided for under T.C.A. § 67-4-721.
- (2) A license may be transferred from one location in a municipality to another location within the same municipality one time during any tax year if the licensee notifies the local collecting officer at least five (5) days prior to the last day of business at the old location and pays to such local collecting officer the fee as set forth in T.C.A. § 8-21-701.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Amendments filed June 28, 2016; effective September 26, 2016.

1320-04-05-.58 TRANSPORTATION COMPANIES. Persons other than carriers or other public utilities as defined in Section 65-401, T.C.A., engaged in the business of furnishing transportation services or carrying or hauling passengers or personal property for a consideration, are liable for the Business Tax based upon all intrastate receipts. Each station, terminal or other central location shall be considered as a separate place of business.

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.59 VENDING MACHINES

- (1) All persons making sales of tangible personal property through coin-operated vending machines and electing to pay the Gross Receipts Tax imposed in Item 65(c)(1), T.C.A. § 67-4-503, shall pay such tax in lieu of the Business Tax. If a person who is otherwise engaged in business and pays Business Tax on all taxable receipts and, as an incident thereto, sells merchandise through his own or leased vending machine and does not elect to pay the Gross Receipts Tax under said § 67-4-503, he is not liable for the per-machine privilege tax imposed in § 67-4-503, but shall be required to include receipts from such machine in the base for his Business Tax
- (2) If a vending machine operator sells tangible personal property by any means other than through vending machines, or makes charges for servicing coin-operated machines other than those he owns, he is subject to, and must pay, the appropriate Business Tax applicable to such other activities.

(Rule 1320-04-05-.59, continued)

Authority: T.C.A. §§ 67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-04-05-.60 REPEALED.

Authority: T.C.A. §§ 67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Repeal filed June 28, 2016; effective September 26, 2016.

1320-04-05-.61 ANTIQUE MALLS, FLEA MARKETS, CRAFT SHOWS, ANTIQUE SHOWS, GUN SHOWS AND AUTO SHOWS

- (1) Promotions conducted by non-profit organizations shall refer to cases where the promoter is a non-profit association, corporation, or organization, and shall not depend on whether or not the individual booth owner or renter is a non-profit entity. However, individual booth owners or renters who are non-profit entities shall be exempt from the tax.
- (2) A booth shall be any area or space for which a promoter charges a separate fee.

Authority: T.C.A. §§ 67-5822, 67-1-102, 67-4-703, and 67-4-710. **Administrative History:** Original rule filed October 11, 1983; effective January 16, 1984. Amendments filed June 28, 2016; effective September 26, 2016.