

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 1320-5-2
LOCAL SALES AND USE TAX RULES**

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1320-5-2-.01 REPEALED.

Authority: T.C.A. §§ 67-1-102 and 67-6-504(i). **Administrative History:** Original rule certified June 7, 1974. Amendment filed February 27, 1976; effective May 14, 1976. Amendment filed February 14, 1990; effective April 1, 1990. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-2-.02 COLLECTION OF LOCAL SALES TAX.

- (1) Any local government imposing a local sales tax may provide that it will collect its tax by means of its own officers and employees; promulgate rules and regulations which are not inconsistent with the state and sales and use tax law or the rules and regulations promulgated thereunder; adopt the state rules and regulations as they may be promulgated or changed from time to time; adopt provisions imposing penalty and interest; and use the same powers that are available to the Commissioner to administer the state sales tax law, make refunds for tax, penalty and/or interest collected improperly, and enforce payment by means of distress warrants, liens, injunction, etc. Provided, however, that no local government collection its own tax may prescribe or require a bracket system for the shifting of the tax burden to the consumer of tangible personal property or services, such bracket system being calculated to include the amount of the state tax in addition to the local tax, unless such bracket system shall be approved specifically by the Commissioner.
- (2) The Commissioner and the Department shall deem it feasible to collect, and shall collect any local sales tax under the following conditions.
 - (a) The resolution or ordinance imposing the local sales tax shall provide that:
 1. The Department shall collect the sales or use tax, penalty and interest.
 2. Penalty and interest shall be imposed and collected in the same manner as the penalty and interest is imposed and collected by and for the state.
 3. The state rules and regulations as promulgated and as may be amended, changed, added or rescinded by the Commissioner for the state sales tax shall apply to the local sales tax and the administration of the local tax.
 4. A local official shall be designated to receive any notice of a payment made under protest to the Commissioner, which the Commissioner will give to the county, city or town, and be the official against whom suit, if any, may be brought for recovery of any tax, penalty and interest which the Commissioner has collected and which is alleged by the taxpayer to be illegal or improper.

(Rule 1320-5-2-.02, continued)

- (b) The Commissioner shall have the right to, and shall proceed to do all things necessary to collect the tax, penalty and interest, enforce payment by any means available now and later available to the state to collect the state sales tax, make any necessary adjustments and refunds of the locally imposed tax, penalty and interest as may be necessary, and file any claims necessary in any court involving delinquent, insolvent, or bankrupt taxpayers, for the locally imposed tax, penalty and interest.
- (c) The Commissioner shall undertake to defend any locally imposed tax insofar as a determination of the state tax will govern liability for a local sales tax, in the courts of Davidson County, Tennessee, only. Where there is no determination of a state tax to be made, and there is an alleged illegal payment to the Commissioner and suit is brought to recover the payment, the officer designated in the resolution or ordinance imposing the tax shall be named as the defendant, and shall do all things necessary to defend the action; such action shall be brought in the courts of the county where the tax is imposed.
- (d) The county, city, or town imposing the local sales tax shall agree to pay a sufficient amount to the Commissioner to reimburse the Department for any costs involved in administering the local sales tax.
- (e) The combined state and local tax rate must be a multiple of .25. Example: 7.75% but not 7.875%.

Authority: T.C.A. §§67-1-101, 67-6-402 and 67-3045. **Administrative History:** Original rule certified June 7, 1974. Amendment filed February 14, 1990; effective April 1, 1990.

1320-5-2-.03 DEFINITIONS. The following terms wherever used in these rules and regulations shall have the following meanings:

- (a) "Commissioner" shall mean the Commissioner of Revenue of the State of Tennessee, or any of his duly authorized assistants.
- (b) "Department" shall mean the Department of Revenue of the State of Tennessee.
- (c) "Local government" shall mean any county, city, or town authorized by the "1963 Local Option Revenue Act" to impose a local sales tax within its jurisdiction.
- (d) "Local officer" or "local official" shall mean the responsible person acting in an official capacity, who is designated in the resolution or ordinance imposing the local sales tax to whom official payments, notices, etc., shall be given by the Commissioner, and against whom suit may be brought by a taxpayer who claims that any payment which he may be required to make is illegal or improper.
- (e) "Local rules and regulations" shall mean the rules and regulations as promulgated by the Commissioner from time to time in accordance with the provisions of the state sales tax law, and the "1963 Local Option Revenue Act."
- (f) "Local sales tax" shall mean any locally imposed tax pursuant to the provisions of the "1963 Local Option Revenue Act."
- (g) "Local sales tax law" shall mean the resolution or ordinance lawfully adopting a locally imposed tax.

(Rule 1320-5-2-.03, continued)

- (h) "Locally imposed tax" shall mean any lawfully imposed sales and use tax, including any applicable penalty and interest, by a local government pursuant to, and in accordance with the provisions of the state sales tax law and the "1963 Local Option Act".
- (i) "State" shall mean the State of Tennessee.
- (j) "State rules and regulations" shall mean the Tennessee rules and regulations as promulgated from time to time by the Commissioner pursuant to the state sales tax law.
- (k) "State sales tax" shall mean the Tennessee Sales and Use Tax, and penalty and interest where applicable, as provided for in the state sales tax law.
- (l) "State sales tax law" shall mean the Tennessee sales and use tax law as provided for in the "Retailers' Sales Tax Act" in Sections 67-6-101 to 67-6-607, inclusive, of the Tennessee Code Annotated.
- (m) "Tax" shall mean and include any penalty and interest, when applicable.
- (n) "Taxpayer" shall mean any dealer or any person as defined in the state sales tax law.

Authority: T.C.A. §§67-3045, 67-101 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed February 14, 1990; effective April 1, 1990.

1320-5-2-.04 ENERGY FUEL AND WATER. The locally imposed tax applies to any sales of water for use and consumption. Any sales of water, however to a manufacturer, are subject to tax at the rate applicable under T.C.A. 67-6-702(b). If a manufacturer has been exempted by the Commissioner from paying the state sales tax to the vendor because of his use of the water, the manufacturer shall not pay any local sales tax to the vendor, but shall report and pay the applicable tax on that portion of the water used which is not entirely exempt from the tax, as provided for in the state sales tax law, direct to the local government if it is collecting its own tax, or to the Commissioner if he is collecting the locally imposed tax for the local government. Where the Commissioner collects the tax for a local government, the authorizations given a manufacturer to purchase water at the state rate of one percent (1%) tax, or to be entirely exempt from the tax on a portion of the water because of the way it is used by the manufacturer, shall be deemed sufficient to authorize the manufacturer to be entitled to the reduced rate applicable under T.C.A. 67-6-702(b) or entirely exempt from the locally imposed tax.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-701. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-2-.05 LIABILITY FOR THE LOCALLY IMPOSED TAX.

- (1) Dealers shall be liable for sales tax on any sales which are made from any place of business within the physical limits of a local government imposing a local sales tax where delivery is made by the dealer to a user or consumer anywhere within the physical limits of the state, or to a carrier or the U.S. Post Office for delivery to a place within the physical limits of the state. The place where a user or consumer may take or use tangible personal property or taxable services has no bearing on whether a sales tax is due. A dealer making sales from a place of business within the physical limits of a local government imposing a local sales tax shall not be liable for any sales tax where he delivers possession of the tangible personal property or taxable services either to a place outside the physical limits of the state, or to a common carrier for delivery to a place outside the physical limits of the state, provided the transaction is bona fide, and the dealer has no reason to believe that the property or service sold is to be brought back immediately into the state for use.

(Rule 1320-5-2-.05, continued)

- (2) Out of state vendors subject to the jurisdiction of the state and making sales of tangible personal property or taxable services to persons within the physical limits of a local government imposing a local sales tax, for use and consumption, and who are subject to the jurisdiction of that local government, shall be liable for the local tax. Users and consumers within the physical limits of a local government imposing a local sales tax importing tangible personal property for use or consumption therein shall be liable for any use tax on purchases of tangible personal property and taxable services from dealers outside the state when the is not paid to such dealers for the local government.

Authority: T.C.A. §§67-3045 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-5-2-.06 REPEALED.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-701. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-2-.07 REGISTRATION.

- (1) Where the Commissioner is collecting a locally imposed tax, the Certificate of Registration which dealers have for the collection and paying of the state sales tax shall, except as provided for therein, be sufficient evidence of their registration with the Department t for the purpose of collection and paying the locally imposed tax, and no additional Certificate of Registration shall be required.
- (2) In those cases where a dealer has no separate State Certificate of Registration for a place of business within a county, city or town imposing a local sales tax, and the Commissioner is collecting the locally imposed tax, the dealer shall apply for and receive a separate Certificate of Registration form the Commissioner for each unit of local government imposing a local sales tax at the time the local tax becomes operative. This shall not apply to state use tax registrants, but such dealers (vendors or consumers) shall designate on a separate schedule what sales are made and what use tax is due to each local government imposing a local sales tax, and pay any tax due as indicated thereon to the Commissioner with the State Use Tax Return(s).

Authority: T.C.A. §§67-3045 and 67-101. **Administrative History:** Original rule certified June 7, 1974