

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF STATE  
DIVISION OF BUSINESS SERVICES**

**CHAPTER 1360-09-01  
WORKERS' COMPENSATION EXEMPTION REGISTRATION**

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**1360-09-01-.01 DEFINITIONS.**

- (1) The following terms shall have the respective meanings provided in this rule.
- (a) "Active and in good standing as reflected in the records of the secretary of state" means a corporation, limited liability company, or partnership that is in existence, registered or authorized to transact business in this state as reflected in the records of the secretary of state; and in the case of a corporation, limited liability company, limited liability partnership, or limited partnership, such entity is in good standing with the Tennessee department of revenue.
  - (b) "Board" means the state board for licensing contractors.
  - (c) "Commercial construction project" means any construction project that is not:
    - 1. The construction, erection, remodeling, repair, improvement, alteration or demolition of one, two, three or four family unit residences not exceeding three stories in height or accessory use structures in connection with the residences.
    - 2. The construction, erection, remodeling, repair, improvement, alteration or demolition of any building or structure for use and occupancy by the general public which, pursuant to T.C.A. §62-6-112(f)(2), a small commercial building contractor is authorized to bid on and contract for.
    - 3. Performed by any person, municipality, county, metropolitan government, cooperative, board, commission, district, or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste water services, telephone service, telecommunications service, cable service, or internet service or any combination thereof, for sale to consumers in any particular service area.
  - (d) "Construction project" means the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking; provided that if a general contractor contracts to erect, remodel, repair, improve, alter or demolish multiple buildings, structures or undertakings in one contract, all such buildings, structures or undertakings described in such contract shall constitute one construction project.
  - (e) "Construction services provider" or "provider" means any person or entity engaged in the construction industry.

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- (f) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation of a corporation that in the case of a domestic corporation is formed under the laws of this state pursuant to T.C.A. Title 48, Chapters 11 – 68 or in the case of a foreign corporation is authorized to transact business in this state pursuant to T.C.A. Title 48, Chapters 11 – 68; provided that a domestic or foreign corporation is active and in good standing as reflected in the records of the secretary of state.
- (g) "Direct labor" means the performance of any activity that would be assigned to the Contracting Group as those classifications are designated by the rate service organization designated by the commissioner of commerce and insurance as provided in T.C.A. §56-5-320, but does not include:
  - 1. Classification code 5604, or any subsequent classification code, for construction executives, supervisors, or foremen that are responsible only for the oversight of laborers.
  - 2. Classification code 5606, or any subsequent classification code, for project managers, construction executives, construction managers and construction superintendents having only administrative or managerial responsibilities for construction projects by exercising operational control indirectly through job supervisors or foremen.
- (h) "Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320; provided, where more than one (1) classification applies, the governing classification, as that term is defined by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, shall be used to determine whether the person or entity is engaged in the construction industry.
- (i) "Family owned business" means a business entity in which members of the same family of the applicant have an aggregate of at least ninety-five percent ownership of such business.
- (j) "General contractor" means the person or entity responsible to the owner or developer for the supervision or performance of substantially all of the work, labor, and the furnishing of materials in furtherance of the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking and who contracts directly with the owner or developer of the building, structure or other undertaking; "general contractor" includes a prime contractor.
- (k) "Good standing with the Tennessee department of revenue" means the secretary of state has received and verified through electronic confirmation or a certificate of tax clearance issued by the commissioner of revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner.
- (l) "Member of a limited liability company" means any member of a limited liability company formed pursuant to T.C.A. Title 48, Chapters 201 – 249 that is active and in good standing as reflected in the records of the secretary of state.
- (m) "Members of the same family of the applicant" means parents, children, siblings, grandparents, grandchildren, stepparents, stepchildren, stepsiblings, or spouses of such, and includes adoptive relationships.

(Rule 1360-09-01-.01, continued)

- (n) "Partner" means any person who is a member of an association that is formed by two (2) or more persons to carry on as co-owners of a business or other undertaking for profit and such association is active and in good standing as reflected in the records of the secretary of state.
- (o) "Person" means only a natural person and does not include a business entity.
- (p) "Registry" means the construction services provider workers' compensation exemption registry established pursuant to this part and maintained by the secretary of state.
- (q) "Sole proprietor" means one (1) person who owns a form of business in which that person owns all the assets of such business.

**Authority:** T.C.A. §§ 4-5-208, 50-6-901, 50-6-901(8), Tenn. Pub. Acts Ch. 422 (2011) and Tenn. Pub. Acts, Ch. 1149, §19(a). **Administrative History:** Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011. Emergency rule filed September 20, 2011; effective through March 18, 2012. Amendment filed December 14, 2011; effective March 13, 2012.

### 1360-09-01-.02 OFFICE HOURS.

- (1) Although the filing office maintains regular office hours of 8:00 a.m. to 4:30 p.m. Central time, Monday through Friday and is closed on legal holidays as pursuant to T.C.A. §15-1-101, it may receive transmissions electronically 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically (but no less often than once each day the filing office is open for business) on a batch basis.

**Authority:** Tenn. Pub. Acts, Ch. 1149, §19(a). **Administrative History:** Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011.

### 1360-09-01-.03 EXEMPTION APPLICATION DELIVERY.

- (1) Exemption applications may be tendered for filing as follows.
  - (a) Personal delivery, at the filing office's street address. The file time for an application delivered by this method is when delivery of the application is accepted and receipted by the filing office (even though the application may not yet have been accepted for filing and subsequently may be rejected).
  - (b) Courier delivery, at the filing office's street address. The file time for an application delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the application is receipted by the filing office (even though the application may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. An application delivered after regular business hours or on a day the filing office is not open for business will have a filing time at the earlier of the time the application is receipted by the filing office on the next day the office is open for business, or the close of business on the next day the filing office is open for business.
  - (c) Postal service delivery, to the filing office's mailing address. The file time for an application delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the application is receipted by the filing office (even though the application may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. An application delivered after regular business hours or on a day the filing office is not open for

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business will have a filing at the earlier of the time the application is received by the filing office on the next day the office is open for business, or the close of business on the next day the filing office is open for business.

- (d) Electronic mail (if and when operational), to the filing office's website address. The file time for an application delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the application is received (even though the application may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. An application delivered after regular business hours or on a day the filing office is not open for business will have a filing at the earlier of the time the application is received by the filing office on the next day the office is open for business, or the close of business on the next day the filing office is open for business.
- (e) Direct on-line and web page data entry (if and when operational). Exemption applications may be entered on-line. The file time for an application delivered by this method is the time that all required elements of the application have been entered into the filing office's direct on-line entry system in the proper format and such entry is acknowledged by such system.

**Authority:** T.C.A. § 50-6-904 and Tenn. Pub. Acts, Ch. 1149, §19(a). **Administrative History:** Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011.

#### **1360-09-01-.04 DOCUMENT FORM REQUIREMENTS.**

- (1) Exemption applications and amendment documents in written form shall conform to the forms designed by the secretary of state.
- (2) Exemption applications and amendment documents filed online (if and when operational) shall conform to the forms designed by the secretary of state.

**Authority:** T.C.A. §§ 50-6-904, 50-6-905 and Tenn. Pub. Acts, Ch. 1149, §19(a). **Administrative History:** Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 10, 2011; effective May 10, 2011.

#### **1360-09-01-.05 FEES.**

- (1) The following fees apply to documents issued or filed in writing or online:
  - (a) The fee for the issuance of a construction services provider registration to providers who have not been issued a license by the board is fifty dollars (\$50).
  - (b) The fee for the issuance of a construction services provider workers' compensation exemption is fifty dollars (\$50).
  - (c) The fee for the filing of correction information pursuant to T.C.A. §50-6-905(c) is twenty dollars (\$20).
  - (d) The fee for the filing of change of address information pursuant to T.C.A. §50-6-905(d) is twenty dollars (\$20).
  - (e) The fee for the filing of a construction services provider workers' compensation exemption renewal is fifty dollars (\$50).

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- (f) The fee for the filing of a construction services provider registration renewal to providers who have not been issued a license by the board is fifty dollars (\$50).
  - (g) The fee for the filing of a revocation pursuant to T.C.A. §50-6-908(a) is twenty dollars (\$20).
  - (h) The fee for the issuance of a copy of the notice issued pursuant to T.C.A. §50-6-905(a)(1) is twenty dollars (\$20).
  - (i) The fee for the issuance of a second or subsequent construction services provider workers' compensation exemption registration is twenty dollars (\$20) per registration.
  - (j) The fee for the filing of a second or subsequent construction services provider workers' compensation exemption renewal is twenty dollars (\$20) per renewal.
- (2) In addition to the fees authorized in subsection (1), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.
  - (3) To facilitate credit card payment and fee collection the Secretary of State may establish a merchant ID or may cause one to be established in the Department of Labor and Workforce Development specifically for the Employee Misclassification Education and Enforcement Fund. If the merchant ID is established in the Department of Labor and Workforce Development all transaction and other fees associated with credit card payments will be paid directly from the Employee Misclassification Education and Enforcement Fund.
  - (4) The fees authorized by Tenn. Pub. Acts ch. 1030 (2012) in subdivisions (1)(a), (1)(b), (1)(e) and (1)(f) are effective on January 1, 2013 and apply to registrations or renewals on or after that date.

**Authority:** T.C.A. §§ 4-5-208, 50-6-904, 50-6-905, 50-6-908, 50-6-912, 50-6-913, Tenn. Pub. Acts Ch. 422 (2011), Tenn. Pub. Acts, Ch. 1149, §19(a) and Tenn. Pub. Acts, ch. 1030 (2012). **Administrative History:** Emergency rule filed December 7, 2010; effective June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011. Emergency rule filed September 20, 2011; effective through March 18, 2012. Amendment filed December 14, 2011; effective March 13, 2012. Amendment filed September 4, 2012; effective December 3, 2012.

#### **1360-09-01-.06 METHODS OF PAYMENT.**

- (1) Filing fees and online transaction fees may be paid by the following methods:
  - (a) Cash. The filing office will only accept cash payment in person to the cashier in the Division of Accounting at the filing office.
  - (b) Cashier's Check. The filing office may accept a cashier's check that contains the name of the remitter. The cashier's check must be dated within three (3) months of the filing date and must be made payable to the Tennessee Secretary of State. The amount of the Cashier's check must be printed in numerals in dollars and cents, and the cashier's check must contain at least one signature of a person authorized at the financial institution to sign cashier's checks.
  - (c) Paper Check. The filing office may accept a paper check that contains the following information: the name and address of the remitter must be printed on the check; the check must be dated with the current date; the check must be made payable to the Tennessee Secretary of State; the amount of the check must be written in numerals in United States Dollars and Cents; the legal amount of the check must be written out in

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words; and the check must contain at least one signature of a person authorized to sign checks on the remitter's account. Paper checks presented for payment may be converted to The Check Clearing for the 21st Century Act standard.

- (d) Electronic Check (if and when operational). The filing office may accept an electronic check for payment that contains the following information: the name and address of the remitter, the remitter's ABA routing/transit number, the remitter's bank account number, the name of the remitter's bank account, the amount of the electronic check in united states dollars and cents.
- (e) Money Order. A money order that is made payable to the Tennessee Secretary of State and lists the filing office's street address, the name of the remitter, the address of the remitter, the date the money order was issued, and the amount of the money order in United States Dollars and Cents.
- (f) Electronic funds transfer (if and when operational). The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.
- (g) Debit card (if and when operational). The filing office may accept payment by debit cards issued by approved debit card issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued, the card security code, and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.
- (h) Credit card (if and when operational). The filing office may accept payment by the following credit cards issued by approved credit card issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued, the card security code, and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

**Authority:** *Tenn. Pub. Acts, Ch. 1149, §19(a).* **Administrative History:** *Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011.*

#### **1360-09-01-.07 OVERPAYMENT AND UNDERPAYMENT POLICIES.**

- (1) Overpayment. The filing officer shall submit a refund request to the Accounting Division who will process any overpayment to the remitter.
- (2) Underpayment. Upon receipt of a document with an insufficient payment, the filing officer shall return the document along with the original payment to the remitter.

**Authority:** *Tenn. Pub. Acts, Ch. 1149, §19(a).* **Administrative History:** *Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011.*

**1360-09-01-.08 RECORDS SERVICES.**

- (1) Construction services provider registration records and workers' compensation records other than records displayed on the registry do not constitute a public record as defined in T.C.A. §10-7-501 *et seq.* and shall not be open for public inspection.
- (2) Exemption applications that meet the requirements of T.C.A. Title 50, Chapter 6, Part 9 shall be published on the registry contained on the secretary of state's website.

**Authority:** T.C.A. §§ 50-6-904, 50-6-905 and 50-6-915 and Tenn. Pub. Acts, Ch. 1149, §19(a).

**Administrative History:** Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011.

**1360-09-01-.09 NEW PRACTICES AND TECHNOLOGIES.**

- (1) The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to filing data by means of electronic, voice, optical and/or other technologies, and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based filing system utilizing any of such technologies.

**Authority:** Tenn. Pub. Acts, Ch. 1149, §19(a). **Administrative History:** Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2010.

**1360-09-01-.10 EFFECTIVE DATE.**

- (1) The rules established in Chapter 1360-09-01 shall become effective on January 1, 2011.

**Authority:** Tenn. Pub. Acts, Ch. 1149, §19(a). **Administrative History:** Emergency rule filed December 7, 2010; effective through June 5, 2011. Original rule filed February 9, 2011; effective May 10, 2011.