

Proposed Rules
of the
Department of Revenue

Chapter 1320-05-01
State Sales and Use Tax Rules

Presented herein are proposed amendments and repeals of the Department of Revenue submitted pursuant to Tenn. Code Ann. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Revenue to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments and repeals are published. Such petition to be effective must be filed with the Department of Revenue, 6th Floor, Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, Tennessee 37242, and in the Department of State, 8th Floor, William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rules, contact David Gerregano, General Counsel, Department of Revenue, 6th Floor, Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, TN 37242, telephone 615-741-2348.

The text of the proposed amendments and repeals is as follows:

Amendments

Rule 1320-05-01-.22 Florists and Nurserymen is amended by deleting the language “, except that charges for long distance telephone calls and telegraph service which are separately stated and represent cost to the florist, without any mark up, are excluded from the tax base” from subparagraph (a) of paragraph (2), so that as amended the subparagraph shall read as follows:

(a) On all orders taken by a Tennessee florist and telegraphed to a second florist in Tennessee for delivery in the State, the sending florist will be liable for the tax. All service, relay and any other charges for the orders shall be considered to be part of the selling price subject to the sales tax.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71).

Rule 1320-05-01-.23 Federal Excise Taxes, When Deductible is amended by deleting paragraph (2) in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71).

Rule 1320-05-01-.50 Returned Merchandise, Credits, and Allowances is amended by deleting paragraph (2) in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71)(C).

Rule 1320-05-01-.61 Undertakers and Funeral Directors is amended by deleting the second, third, and fourth sentences from paragraph (1), so that as amended the paragraph shall read as follows:

(1) Undertakers and Funeral Directors are engaged in the business of selling tangible personal property, and shall report, collect, and pay the tax on their sales of caskets, grave vaults, clothing, flowers, and similar articles. Receipts from services rendered, such as embalming, hearse service, family cars, and the like, are not subject to the Sales or Use Tax.

Authority: T.C.A. § 67-1-102 and Chapter 602, § 93, of the Public Acts of 2007.

Rule 1320-05-01-.67 Printing Industry is amended by deleting the last sentence in paragraph (1), so that as amended the paragraph shall read as follows:

(1) Sales of advertising circulars, books, forms, tickets, and other like printed items of tangible personal property are subject to the Sales and Use Tax unless the printed matter is sold for resale purposes.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(23).

Rule 1320-05-01-.68 Resale Certificate is amended by deleting the first sentence in paragraph (4), so that as amended the paragraph shall read as follows:

(4) Provided, however, the Commissioner may extend special written permission to a registered dealer to make purchases for his own use under a certificate of resale, and to report separately his tax liability to the Department under exceptional circumstances or hardship upon the taxpayer. A certified or photostatic copy of such permission shall be filed with the wholesaler or dealer. This special written permission to remit the use tax shall in no wise alter or affect the test or criteria for determination of whether a transaction is taxable in this State.

Authority: T.C.A. §§ 67-1-102 and 67-6-409(b)(1).

Repeals

Rule 1320-05-01-.13 Computation of Tax is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71).

Rule 1320-05-01-.71 Freight and Delivery Charges is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(23) and (71).

Rule 1320-05-01-.77 Tax Applies to Total Purchases is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-504(i).

Rule 1320-05-01-.83 Bracket System is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-504(i).

Rule 1320-05-01-.87 Livestock-Feeders-Livestock and Poultry Feed is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-207.

Rule 1320-05-01-.109 Telephone and Telegraph Service is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102, 67-6-102 and 67-6-205.

Rule 1320-05-01-.111 Farm Equipment and Machinery is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-207.

The proposed rules set out herein were properly filed in the Department of State on the 31st day of March, 2008, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 29th day of July, 2008. (FS 03-21-08; DBID 2849-2850)

Addendum

Regulatory Flexibility Act Economic Impact Statement

Pursuant to Tenn. Code Ann. § 4-5-404, the Regulatory Flexibility Act does not apply to the proposed rules because the rules substantially codify existing state law set out in the Public Acts of 2007, Chapter 602, Sections 54 through 126 and in Tenn. Code Ann. §§ 67-6-101 et seq. The promulgation of these proposed rules is required in order to make the Sales and Use Tax Rules of the Department of Revenue consistent with recent amendments to the Retailers' Sales Tax Act, Tenn. Code Ann. §§ 67-6-101 et seq., enacted pursuant to Public Chapter 602 (2007), effective January 1, 2008. These proposed rules repeal various Sales and Use Tax Rules that are in direct conflict with the Retailers' Sales Tax Act, as amended. Other Sales and Use Tax Rules are amended to repeal specific language that is in direct conflict with the Retailers' Sales Tax Act, as amended. No new language is added by these proposed rules.