



Department of
Revenue

Tennessee Taxation of Nonprofit Organizations

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Chapter 1: Introduction & Brief Overview of Tennessee Taxes

There are over 1.6 million nonprofit organizations in the United States. Nonprofit organizations are generally created to serve the public interest; thus, they are unique in how they are taxed at the state and federal level. The goal of this manual is to provide nonprofit organizations operating in Tennessee with a central resource regarding Tennessee state and local taxes. This manual provides information on sales and use tax, business tax, franchise and excise tax, and other miscellaneous taxes.

Please note that this manual is not all encompassing. Please see the Department of Revenue's (the "Department") in-depth [manuals](#) on sales and use tax, business tax, franchise and excise tax, and alcohol tax for additional information. It is always a good idea to consult with a tax professional regarding any tax questions specific to your situation.

Sales and Use Tax

Sales and use taxes are transactional taxes applied to the sale or use of tangible personal property or specific services in Tennessee. Sales tax generally applies to the retail sales of any business, organization, or person engaged in making retail sales, including selling, leasing, or renting tangible personal property and selling certain taxable services, amusements, software, and digital products specified in the law.¹ Use tax applies to all items otherwise subject to sales tax except for services and amusements.²

Sales and use taxes contain a state tax (the rate of which is 7%) and a local tax (the rates vary by jurisdiction, generally between 2.25% and 2.75%). These rates are combined to establish the total sales and use tax rate, generally between 9.25% and 9.75%. As further discussed below, there are several sales and use tax exemptions that apply to nonprofit organizations.

Business Tax

The Tennessee business tax is a privilege tax on the privilege of doing business by making sales of tangible personal property or services in Tennessee. The business tax applies to a taxpayer's gross sales, including nonprofit organizations. However, as discussed in more

detail in Chapter 3 below, there are several exemptions that apply to nonprofit organizations. This tax is distinct from and applies in addition to Tennessee's franchise and excise tax.

Franchise and Excise Tax

Franchise and excise taxes are two separate taxes that are administered together. Franchise and excise taxes only apply to taxable entities such as corporations, limited partnerships, limited liability companies, or business trusts chartered/organized in Tennessee or doing business in the state. The franchise tax is based on the greater of the taxpayer's net worth or the book value of the real and tangible personal property owned or used in Tennessee by the taxpayer. The excise tax is based on the taxpayer's net earnings for the tax year. Nonprofit organizations³ are generally exempt from franchise and excise tax.⁴ However, as discussed further in Chapter 4, a nonprofit organization will be subject to the tax if it has unrelated trades or businesses from which it derives unrelated business taxable income, or if it is otherwise subject to federal income tax.⁵

Individuals and general partnerships⁶ are not subject to franchise and excise tax. In addition, an otherwise taxable LLC or LP that has become an obligated member entity⁷ or qualifies as a family owned non corporate entity⁸ (FONCE) is exempt from the tax. See Chapter 2 of the Franchise and Excise Tax Manual for a full discussion on franchise and excise tax exemptions. It can be accessed [here](#).

Chapter 2: Sales and Use Taxes

Overview

Tennessee imposes a sales tax on the privilege of engaging in the business of selling tangible personal property and providing certain services. Tennessee also imposes a complementary use tax that applies when a taxable product is used, consumed, distributed, or stored in this state and the seller did not collect sales tax on the product at the time of sale.

Tennessee sales and use tax (while two separate taxes they are often referred to singularly) serves as the primary source of state tax revenue and makes up approximately 60% of all state tax collections. Sales and use tax has two parts: a state portion and a local option portion. The local option portion is imposed by city and/or county governments, but it is still administered by the Department.

Current sales and use tax laws are found in Tenn. Code Ann. §§ 67-6-101 *et seq.*,⁹ and the local option sales and use tax laws are found in Tenn. Code Ann. §§ 67-6-701 *et seq.* Rules and regulations may be found in TENN. COMP. R. & REGS. 1320-05-01-.01 *et seq.* and TENN. COMP. R. & REGS. 1320-05-02-.01 *et seq.* Links to the Tennessee code and rules may be found on the Department's [website](#) on the Tax Resources page.

Sales Made to Religious, Educational, and Charitable Institutions

Generally, religious, educational, and charitable institutions (collectively, “nonprofit organizations”) are exempt from paying sales or use tax on their purchases of property and services.¹⁰ The tax exemption provided under state law for nonprofit organizations applies to products and services that the nonprofit organization purchases for its use and consumption or to give away.

Sales and donations of tangible personal property, computer software, specified digital products, or taxable services are exempt from sales tax when sold or donated to one of the following organizations that are not organized or operated for profit and have applied and received a Certificate of Exemption from the Department of Revenue:¹¹

- Church, temple, synagogue, or mosque
- University, including the Agricultural Foundation for Tennessee Tech, Inc.

- College
- School
- Orphanage
- Institution organized for the principal purpose of placing homeless children in foster homes
- Home for the aged (nursing home)
- Hospital
- Organ and blood banks
- Boys-girls clubs
- Volunteer fire department
- IRC § 501(c)(3) nonprofit corporations
- IRC § 501(c)(5) labor organizations
- IRC § 501(c)(13) nonprofit cemetery companies
- IRC § 501(c)(19) – war veterans’ organizations (but does not include bingo cards or equipment)

The exemption applies only to sales and donations made **directly** to the tax-exempt organization.¹² For example:

- A tax-exempt hospital employee leases a vehicle that the employee will use in performing official hospital business. The tax-exempt hospital is not a co-signer or otherwise part of the sale. However, the hospital reimburses the employee for its monthly lease payments. Although the sale is for official hospital business, the sale is not directly to the hospital, thus it is subject to sales tax.¹³
- The titling and registration of personal vehicles of employees of tax-exempt organizations are subject to sales and use tax. The employees are not considered tax-exempt entities. This includes, for example, the leader of a religious institution such as the pastor of a church.

An organization may not claim this exemption until it has been issued the Certificate of Exemption by the Department. Every exempt sale made to a nonprofit organization must be

supported by an exemption certificate issued by the Department or a completed Streamlined sales tax certificate that includes the organization's Tennessee exemption number. An out-of-state 501(c)(3) organization may use its federal authorization to make exempt purchases in Tennessee.

If the sale is a cash sale, then the supporting sales receipt must include the purchaser's name and the amount of the sale. If the sale is a non-cash sale, then it must be made with the exempt organization's check or credit card. The credit card must list the exempt organization's name or the organization's name and a signor, and the credit card must be billed directly to the exempt organization. For example:

- A tax-exempt 501(c)(3) organization needs a new computer. An employee at the 501(c)(3) goes to a local electronics store to purchase the new computer. The employee presents the 501(c)(3)'s exemption certificate but pays for the computer using her personal credit card. The 501(c)(3) later reimburses the employee for the purchase. This sale is subject to sales tax at the time of purchase.
- Same facts as above but the employee pays for the computer using a credit card in the name of the 501(c)(3). In this circumstance, the sale is made directly to the tax-exempt organization and qualifies for the sales and use tax exemption.

⚠ A purchase made with a personal check or personal credit card is not an exempt sale even if the purchaser is an employee of the exempt organization and the purchaser will be reimbursed by the organization.

The same organizations are also exempt from paying any Tennessee use tax. **However, as further discussed below, the exemption does not apply to regular sales of taxable products or services made by the qualified organization unless specifically provided by law.**¹⁴

1. Contractor Use of Nonprofit Customer's Exemption

Contractors or subcontractors who improve realty, or otherwise use personal property in the performance of a contract, are considered the users and consumers of the materials that are used or installed as part of the real property.¹⁵ If sales tax is not paid on the materials when the materials are purchased, the contractor or subcontractor will owe use tax on the cost of their materials.

Generally, the contractor or subcontractor remains liable for the sales or use tax on materials used in providing the contracted service even when the contractor's client is an otherwise exempt entity, such as nonprofit organizations. This is true even when the tax-exempt entity buys the materials and provides them to the contractor or subcontractor for use.

Under specific, limited circumstances provided in the law, however, contractors or subcontractors are not liable for the sales or use tax on construction materials.¹⁶ These specific exemptions are:

- If materials are purchased by a church and are used in *church* construction, the materials are exempt from both state and local sales or use tax. Similarly, carpet installed by a contractor for church construction is exempt.¹⁷
 - It is important to note that the materials must be used in *church* construction. This exemption does not extend to other buildings or improvements to real property, even though it may be for a church supported hospital, school, or orphanage.¹⁸ For example, materials purchased for construction of a chapel are exempt, but materials purchased for construction of a gymnasium on the church campus are taxable.
- If materials are purchased by a private, nonprofit college or university and are used in college or university construction, they are exempt from the state sales or use tax but not from the local tax.¹⁹
 - For purposes of this exemption, private nonprofit college or university includes a nonprofit academic medical center and teaching hospital that operates as a separate nonprofit corporation, but which, when founded, was operated as a division of a private nonprofit college or university and that continues to provide education and training of physicians, nurses, and other allied healthcare professionals.²⁰

Natural or Artificial Gas

A dealer of natural or artificial gas that installs pipes, fittings, etc., which he sold to a customer is considered a contractor.²¹ If the customer is a church or a nonprofit college or university, and the pipes, fittings, etc., are used for the church or private nonprofit college or

university construction, maintenance, etc., then the dealer is not liable for sales or use tax on the tangible personal property.²²

Sales Made by Religious, Educational, and Charitable Institutions

As stated above, when a person is engaged in the business of selling tangible personal property or taxable services in Tennessee, sales and use tax applies to such sales.²³

“Business” is defined as “any activity engaged in by *any* person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect.”²⁴

“Person” is very broadly defined and includes individuals, corporations, estates, trusts, and several other organization types. Nonprofit organizations fall under the definition of “person” for sales and use tax purposes. **Therefore, nonprofit organizations that make regular sales of taxable products or services must register for and collect sales tax.**

However, there are exclusions from the “business” definition.

1. Occasional and Isolated Sales

“Business” does not include occasional and isolated sales or transactions by a person not regularly engaged in business. “Business” also does not include the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services. Finally, “business” does not include sales from a vendor that is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transactions. Because these types of sales are not included in the definition of “business,” any gross receipts from occasional and isolated sales are not subject to sales tax.

The Tennessee code does not define “occasional and isolated sales or transactions.” Sales tax Rule 9,²⁵ however, provides guidance. Rule 9(4) states that “irregular sales of tangible personal property or regular sales of tangible personal property made only during a temporary sales period occurring on a semiannual or less frequent basis are casual and isolated sales not subject to tax.”

⚠ Rule 9(4) states that a temporary sales period is a period of 30 consecutive days or less.

The rule goes on to state that “if a person other than a public or private school, grades K-12, or school group has or conducts more than two (2) sales periods during the calendar year, such person shall be liable for sales tax on all sales during that calendar year.”

Therefore, if the nonprofit organization only sells goods or services during two (2) or fewer temporary selling periods per year, with each period lasting 30 days or less, then it is not required to register to collect sales tax on its sales. However, if more than two (2) temporary selling periods take place during a year, or if a sales period extends beyond 30 consecutive days, then all sales for the year are subject to sales tax. The nonprofit organization may use its nonprofit certificate of exemption, or a resale certificate, to make tax-exempt purchases of goods that it will sell during two or fewer temporary sales periods.

2. Girl Scouts, County Fairs, and Volunteer Fire Departments

“Business” does not include any sales or use of tangible personal property of any type sold directly to consumers by the Girl Scouts or at county fairs; provided, however, that the tangible personal property is not regularly sold or is regularly sold only during a temporary sales period that occurs no more two (2) times per calendar year, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year.²⁶

3. Charitable Organization Supporting a Library System

For charitable organizations whose primary purpose is fundraising in support of a city, county, or metropolitan library system, “business” does not include sales, including online sales, that the charitable organization elects to make in lieu of two (2) semiannual temporary sales periods; provided, that the sales do not exceed three hundred thousand dollars (\$300,000) per calendar year; and provided further, that the election by the charitable organization remains in effect for no less than four (4) years.

4. Community Foundation

Community foundations are generally trusts or corporate organizations that provide charitable support to their local communities. They build endowments with contributions from local residents, the funds of which are administered for the benefit of the community.²⁷ For a community foundation,²⁸ “business” does not include sales that the community foundation elects to make in lieu of two (2) semiannual temporary sales periods; provided, that in any calendar year, the sales shall take place during no more than two (2) auctions, which last no more than twenty-four (24) hours, in each county designated to receive

charitable support from a fund or trust that comprises a component part of the community foundation.

5. Purchases Made by Schools for Resale

Public and private schools' offering grades kindergarten through twelve (K-12) and school support groups must pay tax to their vendors on the purchase price of products or services that are intended for resale by the school or school support group. The resale of such products and services are not subject to sales tax.²⁹ Examples of school support groups include parent teacher associations, booster clubs, and student organizations.

6. Vending Machines Operated for Benefit of Charitable Nonprofit Organization

Persons operating any vending machine for the benefit of a charitable nonprofit organization, by which the merchandise being sold is worth 25¢ or less, may opt to pay a gross receipts tax in lieu of sales tax.³⁰ Please see Chapter 5 of this manual for a full discussion of the gross receipts tax.

7. Continuing Education Courses Offered by Nonprofits

Tenn. Code Ann. § 67-6-329(a) exempts from sales and use tax online access to continuing education courses that:

- Meet regulatory requirements for licensed individuals; and
- Are offered by organizations exempt by the Internal Revenue Service (IRS) under 26 U.S.C. § 501(c)(3) or (c)(6).

Organizations that are not exempt federally under the above provisions must continue to collect sales and use tax on the provision of taxable online continuing education courses.

Amusement Tax

Sales tax applies to the sale of amusements furnished in Tennessee.³¹ Such taxable amusements include membership to sports and recreation clubs and admissions to places of amusement, sports, entertainment, or other recreational events. The amusement tax applies at the same state and local tax rate imposed on the sale of tangible personal property at retail.³²

There are, however, numerous exemptions from the amusement tax, many of which are found in Tenn. Code Ann. § 67-6-330. Below is a general overview of such exemptions.

1. Dues, Fees, and Memberships

Exempt from the amusement tax are dues or fees to:

- Facilities run by nonprofit organizations or municipalities/counties³³
- Institutions and organizations that are exempt pursuant to I.R.C. § 501(c)(3), (8) and (19) and that are currently operating under such exemption.³⁴
- Organizations such as business and professional organizations in Major Group 86 of the Standard Industrial Classification Index,^{35 36 37} including:
 - Professional membership organizations – bar associations, dental associations, engineering associations, medical associations
 - Labor unions
 - Civic, social, fraternal-alumni clubs, booster clubs, civic organizations, fraternal lodges, fraternities, sororities, homeowners’ organizations, university clubs, veterans’ organizations, youth associations
 - Political organizations
 - Religious organizations
- Any person principally engaged in offering services or facilities for the development or preservation of physical fitness through exercise or other active physical fitness conditioning.³⁸
- The fee paid by an establishment operated primarily for the sale of prepared food to one or more persons for the purpose of providing live entertainment to the patrons of such establishment.³⁹
- Fees in any form resulting from the production of television, film, radio, or theatrical presentations. This exemption does not include any dues, fees or other charges made on or for the admission of the public to such presentations.⁴⁰

2. Admission Charges to Entertainment Facilities, Activities, or Events

Examples of exempt admissions charges to entertainment facilities, activities, or events include, but are not limited to:

- Events or activities held for or sponsored by public or private schools, K-12.⁴¹
- Athletic events for participants under eighteen years of age sponsored by civic or nonprofit organizations.⁴²
- County or agriculture fairs.⁴³
 - Includes any charges to let the entrant engage in any otherwise taxable amusement activity held there, including games, rides, shows, contests, or grandstand events.
- Events or activities produced and controlled by employers for their employees.⁴⁴
- Amusements or recreational activities such as swimming pools, ice skating rinks, and greens fees to golf courses conducted and controlled by counties or municipalities.⁴⁵

Also, admission charges are exempt if certain organizations listed below promote, produce, and control the entire production or function.⁴⁶ The organizations are:

- Nonprofit museums, nonprofit organizations that operate historical sites, and nonprofit historical societies, organizations, or associations.
- Nonprofit community group associations that promote, produce, and control musical concerts.⁴⁷
- Organizations that have received and currently hold a determination of exemption from the internal revenue service, pursuant to 26 U.S.C. § 501(c).⁴⁸
- Organizations listed in Major Group No. 86 of the Standard Industrial Classification Index.^{49 50}
- Tennessee historic property preservation or rehabilitation organizations.⁵¹

For example:

- A 501(c)(3) organization has a charity golf tournament. The organization promotes the tournament, produces the tournament, and otherwise maintains control over

the entire tournament. The entry fee to play golf in the tournament is not subject to sales tax.

3. Nonprofit College and University Events

Campus Room Rentals

Campus facility rentals including, but not limited to, outdoor spaces, building space, conference rooms, and banquet spaces are not considered taxable rentals because colleges and universities are generally not in the business of providing accommodations.⁵² However, if the space is rented to dealers that are going to be engaged in making sales from the rental space, the amount charged for renting the space is subject to sales tax (e.g., booth rentals).⁵³

Instructional Workshops and Camps

Registration fees for instructional workshops and camps held by institutions of higher education (e.g., leadership camps, science camps, cheerleading camps, ball girl/boy instructional workshops for sports games, etc.) are not considered taxable.⁵⁴ Additionally, if an institution of higher education provides a camp t-shirt or another item of de minimis value along with the registration fee, then the item is also not considered taxable.

Fundraising Events

Admission Tickets to Events

Admission tickets to fundraising events such as galas where wine and food are served are taxable when hosted by a nonprofit college or university unless the college or university is a 501(c)(3). However, event admissions that are mainly donations are not taxable to the attendee of the event regardless of the college or university's federal tax status.

Furthermore, if the college or university is not a 501(c)(3), but the fundraising event is promoted, hosted, and operated by an interdependent foundation that is a 501(c), then admission to the event is tax exempt.

Auction Items

Sales of auction items that are donated for nonprofit auction events are considered occasional and isolated sales, during a specific tax year, if they meet the following requirements⁵⁵:

- Sales must be made directly to consumers;

- Sales must be made during temporary sales periods that year;
- The taxpayer must have no more than two temporary sales periods during that year; and
- No single sales period can exceed thirty consecutive days in duration.

Occasional and isolated sales are not included in the definition of “business” for sales tax purposes and are therefore not taxable.

Registration and Exemption Certificates

1. Must Apply for Exemption

A nonprofit organization must apply for and receive the Sales and Use Tax Certificate of Exemption from the Department before making tax-exempt purchases. The nonprofit organization may complete the Department’s [Application for Exempt Organizations or Institutions Sales and Use Tax Exemption](#) and mail it to the Department or submit it via email to revenue.support@tn.gov. Applicants should ensure they carefully review documentation requirements and submit the required documents along with their application.

2. Renewal of Exemption Certificates

Every fourth year, the Department reissues nonprofit certificates of exemption to all current exemption holders.

Renewed certificates are mailed before the current exemption certificates expire. Holders of nonprofit exemption certificate should ensure the Department has the correct mailing address on file at all times. If there is a change in the location address, a new application must be submitted with the proper supporting documentation before a new certificate will be issued.

Taxpayers that have not received renewed certificates in a timely manner should contact the Department’s Taxpayer Services Division at 615-253-0600 and choose option number seven.

3. Exemption Certificates for Each Location

Unless otherwise advised by the Department, a nonprofit organization that has multiple locations in Tennessee should have a separate certificate of exemption for each location to make purchases exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. § 67-6-322. If a nonprofit organization operates one site or campus that has buildings that span multiple streets, it is only necessary for it to obtain one certificate of exemption that lists the physical address of its main office. Please note, however, that the Department may request additional information from nonprofit organizations with campuses or multiple sites. See Letter Ruling 17-10 on the Department's website for a specific example.

Chapter 3: Business Tax

Overview

The Tennessee business tax is a privilege tax on the privilege of doing business by making sales of tangible personal property or taxable services in Tennessee. Anyone doing business in the state is subject to the state-level business tax, unless specifically exempt. However, each municipality must adopt the business tax to impose it within its city limits. When a municipality adopts the business tax the municipal-level business tax applies *in addition to* the state-level business tax.

The business tax applies to a taxpayer's gross sales at a tax rate determined by a taxpayer's "dominant business activity" and whether the taxpayer is a wholesaler or a retailer. A taxpayer's "dominant business activity" is the activity that produces the most taxable income for the business location.⁵⁶ Whether a taxpayer is a wholesaler or retailer depends on whether more than 50% of its sales are wholesale sales or retail sales, as defined in the Tennessee code.

Taxpayers with less than \$100,000 in taxable sales are exempt from the business tax. However, these exempt businesses still are required to obtain a local license if their sales exceed \$3,000. For more information on business tax rates, classifications, and business tax in general, please see the Department's [Business Tax Manual](#).

Certain nonprofit organizations, corporations, and institutions are not subject to business tax based on the nature of their activities while other nonprofit groups are exempt from business tax on sales of specific goods or services.

Nonprofit Exemptions

1. Entities Whose Only Taxable Business Activity is Conducted at the Tennessee State Fair or a County Fair

Business tax does not apply to any person residing or located in this state or any governmental entity, nonprofit corporation, institution, or organization which has received, and is currently operating under, a I.R.C. § 501(c)(3) or (4) exemption from the Internal Revenue Service whose only taxable business activity during the tax period is conducted at the Tennessee state fair or at only one county fair and their affiliates.

2. Persons Conducting Shows, Displays, or Exhibits Sponsored by Any Nonprofit Organization of Gun Collectors

Business tax does not apply to persons conducting shows, displays, or exhibits sponsored by any nonprofit organization of gun collectors. A person who regularly engages in business as a dealer in guns or who sells guns for future delivery is not exempt.

3. Services Rendered and Sales Made by Nonprofit Membership Organizations

Services rendered by nonprofit membership organizations operating on a nonprofit membership basis for the promotion of the interest of the members are not subject to business tax.⁵⁷ If nonprofit membership organizations make sales of food, beverages, or other tangible personal property, these sales are subject to business tax.⁵⁸

Nonprofit membership organizations are defined by federal law and include:

- Business associations
- Professional membership organizations
- Labor unions
- Civil, social, and fraternal associations
- Political organizations
- Religious organizations

4. Nonprofit Educational and Research Agencies

Services furnished by nonprofit educational and research agencies are exempt from business tax.⁵⁹ According to the Standard Industrial Classification (SIC) Index, educational and research agencies are organizations performing noncommercial research that operate primarily on funds from endowments, contributions, and grants. These services are classified in Industry 8733 titled Noncommercial Research Organizations within Industry Group 873 titled Research, Development, and Educational Research in the SIC Index.⁶⁰

The following research activities are exempt from business tax as nonprofit educational and research agencies:

- Archeological expeditions
- Biological research
- Economic research
- Medical research
- Scientific research
- Sociological research

Services furnished by organizations that perform commercial research are not exempt from the business tax.

5. Services by Religious and Charitable Organizations

Neither the SIC Index, the Tennessee Code, nor the Tennessee courts have defined the term “charitable organization” for the purposes of Tennessee business tax. The Tennessee Supreme Court stated that when a statute does not define a term, it is proper to look to common usage to determine the term’s meaning.⁶¹ Black’s Law Dictionary (8th ed. 2004) defines the term “charitable organization” as a “tax-exempt organization that:

- Is organized and operated exclusively for religious, scientific, literary, educational, athletic, public-safety, or community-service purposes;
- Does not distribute earnings for the benefit of private individuals; and
- Does not participate in any way in political candidate campaigns or engage in substantial lobbying.”

The Department may use the above criteria to determine whether a taxpayer is classified as a charitable organization and exempt from business tax.

Nonprofit corporations that are deemed to be charitable organizations qualify for exemption.⁶²

Antique Malls, Antique Shows, Flea Markets, Gun Shows, Auto Shows, and Craft Shows

Exhibitors at antique malls, antique shows, flea markets, gun shows, auto shows, and craft shows that are registered for Tennessee sales and use tax and those who register annually pursuant to Tenn. Code Ann. § 67-6-220 (dealers who make retail sales at flea markets) have the option of either:

- Obtaining a business tax license and remitting the business tax in accordance with the provisions of Tenn. Code Ann. § 67-4-709; or
- Remitting a \$1 fee per day per booth for each jurisdiction to the flea market operator.

The owner, manager, operator, or promoter of an antique mall, flea market, craft show, antique show, gun show, or auto show at a location that is not a continuing business, must obtain a business license and collect and submit fees to local tax officials with the supporting documents required by those officials, within 72 hours after the closing of the event.

However, the preceding licensing requirement does not apply to promotions conducted by nonprofit associations, corporations, or organizations.

For more information on how business tax applies to nonprofit entities, please see Chapter 11 of the Department of Revenue's [Business Tax Manual](#).

Qualified Amusement Activities

Gross proceeds from admissions to amusement or recreational activities conducted, produced, or provided by the following organizations are exempt⁶³ from business tax:

- Nonprofit museums;
- Nonprofit entities which operate historical sites and nonprofit historical societies, organizations, or associations;

- Organizations which have received and currently hold a 26 U.S.C. § 501(c) exemption from the Internal Revenue Service; or
- Organizations listed in Major Group No. 86 of the SIC Index.

This exemption does not apply unless such entities, societies, associations, or organizations promote, produce, and control the entire amusement or recreational activity.

Calculating Business Tax

1. Classifying Sales for Business Tax

Sales of tangible personal property to the State, or other governmental agencies, and institutions that are exempt from paying sales and use tax under Tenn. Code Ann. § 67-6-322 are considered wholesale sales.⁶⁴

Entities that are exempt from sales and use tax under Tenn. Code Ann. § 67-6-322 include:

- Churches, temples, synagogues, or mosques;
- Universities, including the Agricultural Foundation for Tennessee Tech, Inc.;
- Colleges;
- Schools;
- Orphanages;
- Institutions organized for the principal purpose of placing homeless children in foster homes;
- Homes for the aged;
- Hospitals;
- Girls' clubs;
- Boys' clubs;
- Community health councils;
- Volunteer fire departments;
- Organ banks for transplantable tissue;
- Organizations whose primary objective is to promote the spiritual and recreational environment of members of the armed services of the United States, such as the United Service Organization as it is presently conducted;
- Historical property owned by the state and operated by the historical commission or under the jurisdiction of the commission as authorized by § 4-11-108;
- Nonprofit community blood banks;
- Senior citizen service centers that meet the standards set by the Tennessee commission on aging and disability for eligibility to receive state funds; or

- Nonprofit corporations whose primary function involves the annual organization, promotion, and sponsorship of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by such

nonprofit corporation, as well as for the opportunity of being Tennessee's representative and contestant in an annual nationwide talent and beauty pageant with which such nonprofit corporation is affiliated.

Chapter 4: Franchise and Excise Tax

Overview

Franchise and excise taxes are privilege taxes that are levied on taxable entities for the privilege of doing business (or registering to do business) in Tennessee.⁶⁵ Taxable entities include: corporations, S corporations, limited liability companies, limited partnerships, and business trusts.⁶⁶ Nonprofits are generally exempt from franchise and excise taxes, except to the extent that they have unrelated trades or businesses from which they derive unrelated business taxable income, pursuant to I.R.C. § 512, or are otherwise subject to federal income tax under Subtitle A of the Internal Revenue Code.⁶⁷

An entity's status as a nonprofit for Tennessee franchise and excise tax purposes is tied directly to its federal tax-exempt status. For franchise and excise tax purposes, Tennessee defines "nonprofit" (or, "not-for-profit") as any person described in § 401, § 408, § 408A, § 409, § 501, § 526, § 527, § 528, § 529 or § 530 of the Internal Revenue Code.⁶⁸

Application of Tax to Nonprofits

1. Doing Business & Substantial Nexus

A taxable entity, including a nonprofit conducting an unrelated trade or business, will be subject to Tennessee franchise and excise taxes if the entity: 1) is doing business in this state and 2) has a substantial nexus in this state.⁶⁹ "Doing business" means any activity purposefully engaged in within Tennessee, by a person with the object of gain, benefit, or advantage.⁷⁰ "Substantial nexus" means any direct or indirect connection of the taxpayer to this state that would require the taxpayer to remit franchise and excise taxes; such connection includes, but is not limited to, the following:⁷¹

- The taxpayer is organized or commercially domiciled in this state;
- The taxpayer owns or uses its capital in this state;
- The taxpayer has systematic and continuous business activity in this state that has produced gross receipts attributable to customers in this state; or
- The taxpayer licenses intangible property for use by another party in this state and derives income from that use of intangible property in this state.

A taxpayer may also have a substantial nexus if it has a "bright-line presence" in this state, which is established if any of the following apply for a given tax period:⁷²

- The taxpayer's total **receipts** in this state during the tax period, as determined under Tenn. Code Ann. § 67-4-2012, exceed the *lesser* of **\$500,000** or 25% of the taxpayer's total receipts everywhere during the tax period;
- The average value of the taxpayer's **real and tangible personal property** owned or rented and used in this state during the tax period, as determined under Tenn. Code Ann. § 67-4-2012, exceeds the *lesser* of **\$50,000** or 25% of the average value of all the taxpayer's total real and tangible personal property; or
- The total amount paid in this state during the tax period by the taxpayer for **compensation**, determined under Tenn. Code Ann. § 67-4-2012, exceeds the *lesser* of **\$50,000** or 25% of the total compensation paid by the taxpayer.

Nonprofits should only take into account property, payroll, and sales that are attributable to the nonprofit's unrelated trades or businesses for the purpose of determining whether the nonprofit has a bright-line presence in this state.

2. Filing Requirements

A nonprofit that is subject to franchise and excise tax must register with the Department via [TNTAP](#) and obtain a franchise and excise tax account ID. The taxpayer must register within 15 days after the date the taxpayer becomes subject to the tax.⁷³ The franchise and excise tax return ([Form FAE170](#)) must be filed with the Department on or before the 15th day of the fourth month following the close of the taxpayer's taxable year.^{74, 75} Taxpayers may request an [extension](#) of time of seven months in which to file the return (this does not extend the due date for payment of tax).⁷⁶ Taxpayers with a combined franchise and excise tax liability of \$5,000 or more – for *both* the current *and* immediately preceding tax year – must remit [quarterly estimated tax payments](#).⁷⁷

For additional information regarding filing requirements, please see Chapter 5 in the [Franchise and Excise Tax Manual](#).

Nonprofit Subsidiaries & Disregarded Entities

Tennessee is a separate entity reporting state for franchise and excise tax purposes. Taxable entities are classified as corporations, partnerships, or other types of business entities, consistent with the way they are classified for federal income tax purposes. However, entities that are disregarded for federal income tax purposes, *except for limited liability companies whose single member is a corporation*, are **not** disregarded for Tennessee franchise and excise tax purposes.⁷⁸

If a taxable entity is disregarded for federal income tax purposes to an entity meeting Tennessee's definition of a nonprofit,⁷⁹ then the federally disregarded entity also meets Tennessee's definition of a nonprofit and will generally be exempt from franchise and excise taxes to the extent provided by Tenn. Code Ann. §§ 67-4-2007 and 67-4-2105, *regardless of whether the entity is treated as a separate or disregarded entity for franchise and excise tax purposes*.⁸⁰ However, an otherwise taxable entity that meets Tennessee's definition of a nonprofit by virtue of being disregarded federally to a nonprofit, must still evaluate whether such entity has income that constitutes unrelated business taxable income or is otherwise subject to federal income tax, and the entity will be subject to Tennessee franchise and excise taxes accordingly (unless the entity qualifies for another Tennessee tax exemption⁸¹).⁸²

3. Excise Tax

The excise tax rate is 6.5%. Excise tax is based on the taxpayer's net earnings or net loss for the taxable year.⁸³ "Net earnings" or "net loss" is defined as a taxpayer's federal taxable income or loss before the operating loss deduction and special deductions,⁸⁴ with certain adjustments that are required under Tennessee excise tax law.⁸⁵

Unrelated Business Taxable Income (Not-for-Profits)

A nonprofit reports its unrelated business taxable income (UBTI) that is subject to Tennessee excise tax on Schedule J4, Line 3 of [Form FAE170](#) (2022 form). Entities having a not-for-profit status generally are not subject to the Tennessee excise tax. However, to the extent a nonprofit has Tennessee net earnings that constitute UBTI, as defined under IRC § 512, for federal income tax purposes, such net earnings *are subject* to the Tennessee excise tax.⁸⁶

Nonprofits that do not engage in an unrelated trade or business activity are not required to register for franchise and excise taxes. However, these non-profits may still have registration and reporting requirements with the Tennessee Secretary of State, the Internal Revenue Service, and may be required to remit other Tennessee taxes.

The amount reported on Schedule J4, Line 3 should be the UBTI reported on federal Form 990-T, Part I, Line 5 – total UBTI before net operating losses (NOL).⁸⁷ **Net losses should not** be reported on Form FAE170, Schedule J4, Line 3. For Tennessee excise tax purposes, if a nonprofit has a UBTI net operating loss for the tax year, the nonprofit should enter zero on Schedule J4, Line 3; the loss will be suspended in the same manner as it is for federal income tax purposes and applied in a future tax year for which the nonprofit has positive UBTI. The nonprofit is responsible for tracking and maintaining record of any suspended UBTI net operating losses for Tennessee excise tax purposes. Also, a nonprofit with more than one

unrelated trade or business may not offset a net loss of one unrelated trade or business against income or gain of another in determining reportable UBTI for Tennessee excise tax purposes.⁸⁸ In this case, the nonprofit should report on Schedule J4, Line 3 the sum of the positive amounts from all Schedules A (Form 990-T), Part II, Line 18, less any applicable charitable contributions deduction from Form 990-T, Part I, Line 4. For example:

- Nonprofit ABC has only one unrelated trade or business.
 - For the 2018 tax year, Nonprofit ABC calculates a UBTI *net loss* of \$5,000 on federal Form 990-T, Schedule A.
 - Nonprofit ABC should report zero on its 2018 Form FAE170, Schedule J4, Line 3 and maintain record of the UBTI net loss in its records.
 - In 2019, Nonprofit ABC calculates UBTI *net earnings* of \$12,000 before applying any NOL carryovers.
 - Nonprofit ABC should apply the 2018 UBTI NOL carryover of \$5,000 against its 2019 UBTI net earnings of \$12,000 and report \$7,000 on its 2019 Form FAE170, Schedule J4, Line 3.
 - Nonprofit ABC should maintain detailed records of any UBTI NOLs generated and utilized for Tennessee excise tax purposes.

- Nonprofit DEF has two unrelated businesses, Activity X and Activity Y.
 - For the 2019 tax year, Activity X results in UBTI *net earnings* of \$10,000 and Activity Y results in a UBTI *net loss* of \$3,000 (as calculated on each activity's respective federal Form 990-T, Schedule A).
 - Nonprofit DEF will report the \$10,000 of UBTI net earnings from Activity X on its 2019 Form FAE170, Schedule J4, Line 3.
 - The \$3,000 UBTI loss from Activity Y is suspended for Tennessee excise tax purposes.
 - In 2020, Activity X results in UBTI *net earnings* of \$6,000 and Activity Y results in UBTI *net earnings* of \$5,000.
 - Nonprofit DEF will apply the 2019 suspended UBTI loss of \$3,000 from Activity Y against the activity's 2020 UBTI net earnings of \$5,000, resulting in net earnings subject to excise tax of \$2,000 attributable to Activity Y.

- Nonprofit DEF will combine Activity Y's net earnings of \$2,000 with Activity X's of \$6,000 and will report total net earnings of \$8,000 on its 2020 Form FAE170, Schedule J4, Line 3.
- Nonprofit DEF should maintain detailed records for each of its unrelated businesses of any UBTI NOLs generated and utilized by such businesses for Tennessee excise tax purposes.

Recent Excise Tax Changes

Nonprofits that have a Tennessee excise tax filing requirement should be aware of recent changes to the excise tax that have resulted from the recently enacted Tennessee Works Tax Act.⁸⁹ Notably, this legislation conforms Tennessee excise tax law with the federal bonus depreciation provisions in effect under the Tax Cuts and Jobs Act of 2017. Also, this legislation creates a new "standard deduction" for Tennessee excise tax purposes. See the following sections for additional information.

Federal Bonus Depreciation

The starting point in calculating net earnings or loss for Tennessee excise tax purposes is federal taxable income (on Schedule J4). However, Tennessee excise tax law requires certain adjustment to be made to federal taxable income to arrive at net earnings subject to excise tax (on Schedule J). One of these adjustments relates to federal bonus depreciation.

Previously, Tennessee had decoupled from federal bonus depreciation. However, effective for assets *purchased on or after* January 1, 2023, for purposes of computing net earnings or loss subject to excise tax, Tennessee conforms to the federal bonus depreciation provisions, under Internal Revenue Code §168, as applied under the federal Tax Cuts and Jobs Act of 2017. (Note, for assets *purchased on or before* December 31, 2022, bonus depreciation deductions continue to be disallowed for excise tax purposes.)

Therefore, nonprofits that have purchased depreciable property *on or before* December 31, 2022, and have taken federal bonus depreciation deductions on such property in calculating UBTI, must make certain adjustments on Schedule J of the excise tax return to reverse these deductions. However, beginning with depreciable property purchased *on or after* January 1, 2023, no adjustments are required for bonus depreciation deductions taken with respect to depreciable property purchased on or after that date.

Excise Tax Standard Deduction

Effective for tax years ending on or after December 31, 2024, a new “standard deduction” is available for deduction from a taxpayer’s net earnings subject to excise tax, which is equal to the lesser of the taxpayer’s net earnings (computed without the standard deduction) or \$50,000. This deduction exempts up to \$50,000 of a taxpayer’s net earnings from excise tax. This deduction cannot create or increase a net loss. For nonprofits with multiple unrelated businesses, only one instance of the excise tax standard deduction is allowed per return, regardless of the number of unrelated businesses in which the nonprofit is engaged.

4. Franchise Tax

The franchise tax rate is 0.25% and the tax is based on the *greater* of the taxpayer’s “*net worth*,” which is defined as the difference between a taxpayer’s total assets less its total liabilities computed in accordance with generally accepted accounting principles,⁹⁰ or the book value of *real and tangible property* owned or used in Tennessee (commonly referred to as the “minimum measure”).⁹¹ For tax years ending on or after December 31, 2024, the minimum measure of the franchise tax will exclude up to \$500,000 of a taxpayer’s aggregate property value. The franchise tax base is determined at the close of the tax year covered by the required return. The minimum franchise tax payable is \$100.⁹²

Property owned by the taxpayer is valued at cost less accumulated depreciation (book value), in accordance with generally accepted accounting principles.⁹³ Property rented by the taxpayer is valued by multiplying the *net annual rental* (gross annual rental paid by the taxpayer, less any sub-rents⁹⁴ received by the taxpayer, for use of the property) by the following multiples:⁹⁵

<u>Property Type</u>	<u>Rent Multiple</u>
Real property.....	8
Machinery & equipment (manufacturing and processing).....	3
Furniture, office machinery and equipment.....	2
Delivery or mobile equipment	1

Examples – Franchise Tax Computation

- For the tax year ended December 31, 2024, Nonprofit ABC (“ABC”) has total assets of \$1,500,000 and total liabilities of \$375,000, as determined at the close of ABC’s tax year. Included in these totals are assets in the amount of \$225,000 and liabilities of \$56,250, which are attributable to multiple unrelated trades or businesses that ABC carries on in multiple states, including Tennessee. ABC will report the net worth (total

- assets less total liabilities) attributable to its unrelated trades or businesses, \$168,750, on Schedule F1, Line 1 of Form FAE170. Because ABC is doing business in multiple states, ABC will apportion its net worth to Tennessee by computing its apportionment ratio on Schedule N and multiplying the net worth amount by this ratio. ABC will report on the applicable lines of Schedule G its real and tangible property owned or used in Tennessee, which totals \$135,000. However, because the first \$500,000 of property reportable on Schedule G is exempted, the adjusted property value on this schedule is zero. ABC will owe franchise tax based on its apportioned net worth computed on Schedule F1.
- For the tax year ended December 31, 2024, Nonprofit DEF (“DEF”) carries on a single *unrelated business*, and DEF does business solely within Tennessee. DEF reports a net worth amount of \$187,500, which is attributable to its unrelated business, on Schedule F1, Line 1 of Form FAE170. DEF may not apportion its net worth. DEF owns real property consisting of land and buildings that it utilizes in its unrelated business. The original cost of this property is \$150,000 (land) and \$450,000 (buildings), and the accumulated depreciation associated with the buildings is \$75,000. DEF will report the book values for the land and buildings of \$150,000 and \$375,000 on Schedule G, Lines 1 and 2, respectively. In addition, DEF rents furniture and office machinery and equipment that it utilizes in its unrelated business. DEF pays monthly rent of \$1,200 for use of this property, resulting in a net annual rental of \$14,400. DEF will multiply the net annual rental by the statutory multiple of 2 and will report \$28,800 on Schedule G, Line 13.
 - DEF’s franchise tax base is determined at the close of its tax year. DEF’s net worth tax base, as indicated above, is \$187,500. DEF’s real and tangible property tax base, as determined above, is \$553,800 (\$525,000 book value of property owned plus \$28,800 rental value of property used). Applying the \$500,000 minimum measure exclusion, DEF’s adjusted real and tangible property tax base equals \$53,800. DEF’s franchise tax for the tax year will be based on its *greater* net worth tax base of \$187,500.

5. Apportionment

Taxpayers conducting business activities that are taxable both inside and outside this state will apportion their net worth and net earnings for Tennessee franchise and excise tax purposes. A taxpayer is considered taxable in another state only if the taxpayer is conducting activities in that state that, if conducted in Tennessee, would constitute doing

business in Tennessee and would subject the taxpayer to either Tennessee's franchise tax or excise tax.⁹⁶

A taxpayer that is eligible to apportion calculates its apportionment ratio on Schedule N of Form FAE170. Tennessee's standard apportionment formula includes a property factor, a payroll factor, and a triple-weighted sales factor.⁹⁷ Nonprofits should only take into account property, payroll, and sales that are attributable to the nonprofit's unrelated trades or businesses in calculating its apportionment ratio.

Single Sales Factor Apportionment

Tennessee will be transitioning from a three-factor property/payroll/sales apportionment formula to a single sales factor apportionment formula over the next few years. Single sales factor will be phased in by gradually increasing the weighting of the sales factor in the three-factor apportionment formula as follows:

- For tax years ending on or after December 31, 2023, but before December 31, 2024, the sales factor of the standard, three-factor apportionment formula will be weighted five (5) times, and the total of the property, payroll, and sales factors will be divided by seven (7).
- For tax years ending on or after December 31, 2024, but before December 31, 2025, the sales factor of the standard, three-factor apportionment formula will be weighted eleven (11) times, and the total of the property, payroll, and sales factors will be divided by thirteen (13).
- For tax years ending on or after December 31, 2025, the standard apportionment formula will consist of the sales factor only.

Taxpayers will be given the option to continue using the property/payroll/3x sales factor apportionment formula, *but only if* the application of this formula results in a *higher* apportionment ratio for the tax year (as compared to the ratio derived from the applicable apportionment formula indicated above for the tax year) *and* the taxpayer has net earnings, rather than a net loss, for the tax year, as computed under Tenn. Code Ann. § 67-4-2006.

For additional information regarding apportionment, please see Chapter 14 in the [Franchise and Excise Tax Manual](#).

Charitable Giving Incentives

Tennessee provides certain incentives in the form of excise tax deductions to encourage charitable giving to eligible entities.

1. Federal Charitable Contributions Deduction

Tennessee generally conforms to the federal charitable contributions deduction,⁹⁸ with two major exceptions:

- Tennessee permits the taxpayer to deduct all bona fide contributions expensed and paid in a given year without regard to any percentage limitations imposed under federal law;⁹⁹ and
- Tennessee permits only the *book basis* of property donated to charity as a deduction in determining net earnings for the purpose of computing the excise tax.¹⁰⁰

For additional information regarding Tennessee's conformity to the federal charitable contributions deduction, please see Chapter 11 in the [Franchise and Excise Tax Manual](#).

2. Tennessee Monetary Donations Deduction

In addition to any federal charitable contributions deduction permitted, Tennessee also provides an excise tax deduction equal to 75% of the value of monetary donations made to certain eligible entities.¹⁰¹ Therefore, in certain instances, a taxpayer may be able to deduct 175% of the value of a monetary donation for Tennessee excise tax purposes.

The following are eligible entities for purposes of this deduction:¹⁰²

- nonprofit corporations, associations, and organizations exempt from federal income tax under 26 U.S.C. § 501(c)(3);
- not-for-profit civic leagues or organizations that are exempt from federal income tax under 26 U.S.C. § 501(c)(4); and
- associations and organizations that are exempt from federal income tax under 26 U.S.C. § 501(c)(5).¹⁰³

All of the following requirements must be met for purposes of this deduction:¹⁰⁴

- The deduction applies only in the tax year in which the eligible entity certifies to the taxpayer making the donation that the eligible entity has spent the donation to purchase goods or services that are subject to Tennessee sales and use tax;
 - The eligible entity must actually pay the sales or use tax due on such purchases.
 - The eligible entity must complete a [certification form](#) and provide it to the taxpayer making the donation.
 - The taxpayer making the donation must maintain a copy of such certification to establish entitlement to the deduction.
- Donations that are eligible for this deduction must be monetary donations and not donations of goods and services;
- The taxpayer making the donation cannot designate a specific purpose for the donation;
- The eligible entity receiving the donation must maintain adequate records, in the form of invoices or other documentation, to prove that the donation was used to purchase goods or services subject to Tennessee sales and use tax, and that the eligible entity actually paid the sales or use tax due on such purchases; and
- If the eligible entity falsely certifies to the taxpayer making the donation that the donation has been spent and tax paid in the manner required for purposes of this deduction, the eligible entity will be liable for Tennessee sales and use tax, including applicable penalties and interest, as if the donation had been spent on items subject to the tax.

Chapter 5: Miscellaneous Taxes

Alcohol Taxes

Nonprofit organizations may occasionally host fundraisers or other events where they serve alcoholic beverages, wine, and beer. Selling alcoholic beverages is highly regulated and requires certain licenses that are issued by the Alcoholic Beverage Commission (ABC). Selling alcoholic beverages may also be subject to various tax provisions. Certain specific provisions that apply to nonprofit organizations are outlined in this section.

1. Special Occasion Licenses

ABC may issue a special occasion license to a nonprofit organization to sell alcoholic beverages at fundraising events it produces. If the event is produced by another entity, the event will not qualify for a license even if the proceeds are later donated to a nonprofit organization. The license is only valid for one twenty-four (24) hour period and a nonprofit organization is eligible for a maximum of 12 licenses per calendar year. There are several additional restrictions and requirements that apply to special occasion licenses issued by the ABC. Please see the ABC's website for more information on [special occasion licenses and to learn how to apply](#).

Special occasion licensees may not purchase alcoholic beverages at wholesale. They can either accept donated alcoholic beverages or purchase said beverages at retail. Purchases from retailers are not considered wholesale sales and are not subject to the gallonage tax.¹⁰⁵

Liquor-by-the-Drink Tax

Tennessee has authorized the sale of alcoholic beverages, wine, and high alcohol content beer for consumption on the premises of certain types of businesses.¹⁰⁶ Sales of such alcoholic beverages for consumption on the premises are subject to Tennessee's liquor-by-the-drink tax. If a business sells, at retail, alcoholic beverages, wine, or high alcohol content beer for consumption on the premises, it must pay the liquor-by-the-drink tax on those sales. The tax rate is 15% of the sales price of all alcoholic beverages sold for consumption on the premises. The liquor-by-the-drink licensee collects the tax from the consumer at the time of sale and remits it to the Department.¹⁰⁷

However, nonprofit organizations that hold a special occasion license and sell alcoholic beverages pursuant to that license do not owe the liquor-by-the-drink tax on those sales.¹⁰⁸

Sales of Alcohol for Consumption on the Premises to Nonprofit and Government Entities

As stated in the previous section, generally, sellers of alcoholic beverages for consumption on the premises must collect and remit both liquor-by-the-drink tax as well as sales tax on those sales.

However, nonprofit organizations and government entities are generally exempt from paying the sales tax on their purchases of tangible personal property. Therefore, a person who sells alcoholic beverages directly to a nonprofit organization or government entity for its own consumption on the premises must collect and remit liquor-by-the-drink tax on the sale, but the person will not collect sales tax on the sale.

If the price on the menu includes both liquor-by-the-drink and sales tax, the seller must reduce the sales price of a drink by the sales tax, otherwise, the seller is still collecting the tax and must remit it. For example,

- If a drink, including sales tax and liquor-by-the-drink tax, is listed for \$10 on the menu, the price to an exempt organization, assuming a 9.5% sales tax rate, is \$9.24. $((\$10/1.245)*1.15) = \$9.24.$

For more information, see [Important Notice # 15-20](#).

Gross Receipts Vending Tax

Operators of a qualifying vending machine have the option of paying gross receipts tax instead of sales tax on their sales.¹⁰⁹ The gross receipts tax rate is 1.5% of the gross receipts from the machines, except for sales of tobacco items, which are subject to a 2.5% rate.

A qualifying vending machine¹¹⁰ is one that:

- is operated for the benefit of a charitable nonprofit organization,
- dispenses merchandise with a market value of 25¢ or less, and

- is built so that only a fixed, predetermined price can be paid for the item dispensed by the machine (i.e., the machine must not be capable of making change or being adjusted to change the price).

Operators that qualify for and opt to pay the vending gross receipts tax must register each organization for which such machines are operated and obtain a machine decal for every machine operated.

Any vending machine that does not meet the above qualifications is subject to the full rate of state and appropriate local sales and use tax instead of the gross receipts tax.

Tire Environmental Fee Applies to Nonprofits

The tire environmental fee is imposed on the purchase of new motor vehicles that are titled and registered in Tennessee. The fee varies based on the number of wheels on the vehicle, not including any spare:

- \$5 for a motor vehicle with four or fewer wheels
- \$10 for a motor vehicle with more than four but fewer than 11 wheels
- \$15 for a motor vehicle with 11 or more wheels¹¹¹

The law does not exempt nonprofit organizations. Therefore, dealers must collect the fee on all purchases by nonprofit organizations even if the organization is exempt from sales and use tax.

Tire Pre-Disposal Fee Imposed on Dealer - Can Pass Fee Along to All Customers Including Government Entities and Nonprofits

The tire pre-disposal fee is imposed on the tire dealers for the privilege of selling tires in Tennessee.¹¹² The fee is \$1.35 per tire.¹¹³ Because the tire pre-disposal fee is levied on the dealer and not the customer, the dealer may pass this fee along to any customer, regardless of whether the customer is a governmental entity or nonprofit organization.

¹ Tenn. Code Ann. § 67-6-201.

² Tenn. Code Ann. § 67-6-203. Effective July 1, 2024, use tax will apply to certain services under SB275/HB323 (2023).

³ Tenn. Code Ann. § 67-4-2004(32).

⁴ Tenn. Code Ann. §§ 67-4-2007(a) and 67-4-2105(a).

⁵ *Id.*

⁶ Tenn. Code Ann. § 67-4-2004(19). "General partnership" means a partnership in which all partners, as defined by state law, are fully liable for the debts of, or the claims against, the partnership. Partners may be "fully liable" even though one (1) or more persons or individuals dealing with the partnership have by contract agreed to limit their claims against one (1) or more partners or against the partnership as a whole.

⁷ "Obligated member entity" means a limited liability company, limited partnership or limited liability partnership, all of whose members or partners are fully liable for the debts, obligations, and liabilities of the entity, as provided in § 67-4-2008(b)-(d), and that have filed appropriate documentation to that effect with the secretary of state.

⁸ Tenn. Code Ann. § 67-4-2008(a)(11).

⁹ "*Et seq.*" is Latin and generally means "and what follows."

¹⁰ Tenn. Code Ann. § 67-6-322(a).

¹¹ Tenn. Code Ann. § 67-6-322.

¹² TENN. COMP. R. & REGS. 1320-05-01-.51(1).

¹³ See *Car Services Inc. d/b/a Budget Rent-a-Car v. Tidwell*, unreported, (Tenn. 1976).

¹⁴ TENN. COMP. R. & REGS. 1320-05-01-.51(2); [Letter Ruling 10-37](#).

¹⁵ Tenn. Code Ann. § 209.

¹⁶ Tenn. Code Ann. §§ 67-6-102, 209, and 384.

¹⁷ Tenn. Code Ann. § 67-6-209(b).

¹⁸ TENN. COMP. R. & REGS. 1320-05-01-.101.

¹⁹ *Id.*

²⁰ *Id.*

²¹ TENN. COMP. R. & REGS. 1320-05-01-.108(3).

²² *Id.*

²³ Tenn. Code Ann. § 67-6-201.

²⁴ Tenn. Code Ann. § 67-6-102.

²⁵ TENN. COMP. R. & REGS. 1320-05-01-.09.

²⁶ Tenn. Code Ann. § 67-6-102(8)(B).

²⁷ [Community Foundations](#). Johnson, George & Jones David. <https://www.irs.gov/pub/irs-tege/eotopick94.pdf> (Last visited November 22, 2022).

²⁸ As described in 26 U.S.C. § 170(c)(2).

²⁹ Tenn. Code Ann. § 67-6-229.

³⁰ Tenn. Code Ann. § 67-4-506.

³¹ Tenn. Code Ann. § 67-6-212.

³² *Id.*

³³ Tenn. Code Ann. § 67-6-330(a)(3).

³⁴ *Id.*

³⁵ Prepared by the office of management and budget of the federal government

³⁶ Tenn. Code Ann. § 67-6-330(a)(4).

³⁷ Important Notice 08-08 Membership Dues & Fees; Important Notice 19-11 – Physical Fitness Facilities Exemption.

³⁸ Tenn. Code Ann. § 67-6-330(a)(16).

³⁹ Tenn. Code Ann. § 67-6-330(a)(19).

⁴⁰ Tenn. Code Ann. § 67-6-330(a)(6).

⁴¹ Tenn. Code Ann. § 67-6-330(a)(1).

⁴² Tenn. Code Ann. § 67-6-330(a)(9).

⁴³ Tenn. Code Ann. § 67-6-330(a)(2).

⁴⁴ Tenn. Code Ann. § 67-6-330(a)(14).

⁴⁵ Tenn. Code Ann. § 67-6-330(a)(10).

⁴⁶ Tenn. Code Ann. § 67-6-330(a)(5).

⁴⁷ Tenn. Code Ann. § 67-6-330(a)(13).

⁴⁸ Tenn. Code Ann. § 67-6-330(a)(3).

⁴⁹ Prepared by the office of management and budget of the federal government

⁵⁰ Tenn. Code Ann. § 67-6-330(a)(4).

⁵¹ Defined in Tenn. Code Ann. § 67-4-2004.

⁵² Tenn. Code Ann. § 67-6-205(c)(1).

⁵³ Tenn. Code Ann. § 67-6-205(c)(8).

⁵⁴ TENN. COMP. R. & REGS. 1320-05-01-.122

⁵⁵ See Ruling 11-51 and Rule 9(4).

⁵⁶ Tenn. Code Ann. § 67-4-702(a)(5).

⁵⁷ Tenn. Code Ann. § 67-4-708(C)(iv).

⁵⁸ TENN. COMP. R. & REGS. 1320-04-05-.12(1)(g).

⁵⁹ Tenn. Code Ann. § 67-4-708(C)(vi).

⁶⁰ These services are classified in Industry 8733 titled Noncommercial Research Organizations within Industry Group 873 titled Research, Development, and Educational Research in the SIC Index.

⁶¹ See, e.g., *Tennessee Farmers Assur. v. Chumley*, 197 S.W.3d 767, 782-83 (Tenn. 2006); *Bearé Co. v. Tennessee Dept. of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993).

⁶² See Letter Ruling 08-33.

⁶³ Tenn. Code Ann. § 67-4-712(e).

⁶⁴ TENN. COMP. R. & REGS. 1320-04-05-.50.

⁶⁵ Tenn. Code Ann. §§ 67-4-2005 and 67-4-2104.

⁶⁶ These are the most common entity types subject to these taxes. The complete list of taxable entities is defined at Tenn. Code Ann. § 67-4-2004(36).

⁶⁷ Tenn. Code Ann. §§ 67-4-2007(a) and 67-4-2105(a).

⁶⁸ Tenn. Code Ann. § 67-4-2004(32).

⁶⁹ Tenn. Code Ann. §§ 67-4-2007(a) and 67-4-2105(a).

⁷⁰ Tenn. Code Ann. § 67-4-2004(14)(A). Certain, limited activities are not considered to be “doing business” in this state; see Tenn. Code Ann. § 67-4-2004(14)(E) for a list of such activities.

⁷¹ Tenn. Code Ann. § 67-4-2004(47)(A)(i)-(iv).

⁷² Tenn. Code Ann. § 67-4-2004(47)(A)(v).

⁷³ Tenn. Code Ann. §§ 67-4-2003(c) and 67-4-2103(c).

⁷⁴ Tenn. Code Ann. § 67-4-2015(a).

⁷⁵ This form must be filed electronically via the Department’s [TNTAP](#) portal, unless the taxpayer obtains an [exemption](#) from e-filing.

⁷⁶ Tenn. Code Ann. § 67-4-2015(h).

⁷⁷ Tenn. Code Ann. § 67-4-2015(b)-(g).

⁷⁸ Tenn. Code Ann. §§ 67-4-2007(d) and 67-4-2106(c).

⁷⁹ Tenn. Code Ann. § 67-4-2004(32).

⁸⁰ TENN. COMP. R. & REGS. 1320-06-01-.40(4).

⁸¹ See Tenn. Code Ann. § 67-4-2008.

⁸² Tenn. Code Ann. §§ 67-4-2007(a) and 67-4-2105(a); [Letter Ruling # 12-26](#).

⁸³ Tenn. Code Ann. § 67-4-2007.

⁸⁴ Tenn. Code Ann. § 67-4-2006(a).

⁸⁵ Tenn. Code Ann. § 67-4-2006(b).

⁸⁶ Tenn. Code Ann. § 67-4-2007(a).

⁸⁷ Nonprofits are generally classified as corporations for federal income tax purposes; Tenn. Code Ann. § 67-4-2006(a)(1), which defines “net earnings” or “net loss” for corporations, provides that the net earnings of a corporation for Tennessee excise tax purposes is federal taxable income *before* the federal net operating loss deduction and special deductions.

⁸⁸ Tennessee conforms to the federal UBTI law under IRC §512 and accompanying regulations. Therefore, Tennessee conforms to the UBTI “silo” provisions enacted under the federal Tax Cuts and Jobs Act of 2017.

⁸⁹ Tennessee Works Tax Act (2023).

⁹⁰ Tenn. Code Ann. § 67-4-2106.

⁹¹ Tenn. Code Ann. § 67-4-2108.

⁹² Tenn. Code Ann. § 67-4-2119.

⁹³ Tenn. Code Ann. § 67-4-2108(a)(3). If the taxpayer does not maintain GAAP books and records, the taxpayer may value its property in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the property’s value.

⁹⁴ To qualify as a subrental, the sublessee must have the same rights as the lessee with respect to use of the property. TENN. COMP. R. & REGS. 1320-06-01-.18.

⁹⁵ Tenn. Code Ann. §§ 67-4-2108(a)(3) and (a)(6)(D).

⁹⁶ Tenn. Code Ann. §§ 67-4-2010 and -2110.

⁹⁷ Tenn. Code Ann. §§ 67-4-2012 and -2111.

⁹⁸ 26 U.S.C. § 170.

⁹⁹ TENN. COMP. R. & REGS. 1320-06-01-.20.

¹⁰⁰ *Id.*

¹⁰¹ Tenn. Code Ann. § 67-4-2006(b)(2)(P).

¹⁰² Tenn. Code Ann. § 67-4-2006(b)(2)(P)(i).

¹⁰³ The legislation that introduced this deduction – [Public Chapter 98 \(2005\)](#) – included associations and organizations that are exempt from federal income tax under 26 U.S.C. § 501(c)(6). However, 501(c)(6) associations and organizations were subsequently removed from the list of eligible entities for purposes of this deduction, pursuant to [Public Chapter 1019 \(2006\)](#).

¹⁰⁴ Tenn. Code Ann. § 67-4-2006(b)(2)(P)(ii)-(vi); [Important Notice #05-04](#).

¹⁰⁵ Tenn. Code Ann. § 57-3-101(23).

¹⁰⁶ Tenn. Code Ann. § 57-4-101.

¹⁰⁷ Tenn. Code Ann. § 57-4-302.

¹⁰⁸ Tenn. Code Ann. § 57-4-301(e).

¹⁰⁹ Tenn. Code Ann. § 67-4-506(a)(1).

¹¹⁰ Tenn. Code Ann. § 67-4-506(a)(2).

¹¹¹ Tenn. Code Ann. § 68-211-303(a)

¹¹² Tenn. Code Ann. § 67-4-1603.

¹¹³ *Id.*