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Changes in the Rate and Distribution of the Business Tax Effective September 1, 2002

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Business Tax Rate Phase-in Period (Questions and Issues)

Note: The business tax rate phase-in period requires the filing of a “traditional” return and a “new” business tax return for the appropriate periods. The new or model business tax return is designed to be filed by individual taxpayers for a normal (full) filing period, (after the phase-in period on the new rates.) Consequently, the new return needs to be adjusted, temporary instructions issued, and/or special return handling will be required to address problems caused by the phase-in period of the new rates. Some commonly asked or anticipated questions are as follows:

Question 1: When should the two returns (traditional and new) be filed?

Answer: Always together on the same filing date. Hopefully, this date on or before the traditional statutory due date of the specific business tax class. If not, both returns should be considered delinquent.

Question 2: Is the taxpayer allowed a credit for the minimum tax (prepaid \$15) on both returns?

Answer: No, the taxpayer should be permitted to take credit for the prepaid \$15 minimum tax on the “traditional” return only. This may necessitate striking through or blacking out line 8a of the new return so taxpayers cannot enter an amount in this column. This would be a temporary action until the phase-in period is over.

Question 3: Does the minimum tax (\$15) for the next filing period apply to both the traditional return and the new business tax return?

Answer: No, the minimum tax for the next filing period should be collected on the traditional return only. This may necessitate striking through or blacking out line 14, 15 and 16 of the new return so taxpayers cannot enter an amount in this column. This would be a temporary action until the phase-in period is over.

Question 4: Are collecting or recording fees to be collected on both returns during the phase-in period?

Answer: No, collecting or recording fees should be collected only on the traditional return. This may necessitate striking through or blacking out line 13 of the new return so taxpayers/collectors cannot enter an amount in this column. This would be a temporary action until the phase-in period is over.

Question 5: If the taxpayer files delinquent returns (traditional and new) during the phase-in period, does penalty apply to both returns?

Answer: Yes, the applicable penalty rate should apply to the tax amounts on **both** returns. However, during the phase-in period, the language “Minimum Penalty \$15.00” on line 10a of the new return should be struck or blackened. The fifteen-dollar (\$15) minimum penalty provision should only be administered through the use of the traditional return.

Question 6: During the phase-in period, can a taxpayer use the wholesale tax rate on the new return but not the traditional return or visa versa?

Answer: No, careful attention should be given to both returns when wholesale rates are used in determining tax amounts. If applicable to the taxpayer’s class, wholesale rates may be used when at least 20% of total (combined-12 months) receipts as reported on both returns are wholesale sales/receipts. Wholesale rates should be used on both the traditional and the new returns if the 20+% qualification is applicable. This may necessitate the issuing of specific instructions.

Question 7: How is the personal property tax credit to be applied? Is it to be taken on the traditional return, on the new return or both?

Answer: The amount of personal property tax actually assessed and paid to the same tax jurisdiction, either during the 12-month period covered by both business tax returns or before the business tax delinquency date, can be taken as a credit. The credit should first be taken on the traditional return to the extent of the business tax as calculated. Any credit carry-over (unused personal property tax credit) should then be applied to the new return on line 8b. The design of the new return will limit the use of personal property credit to the local tax only and will not let the personal property credit offset the state tax amount as required by Public Chapter 856. This may necessitate the issuing of specific instructions.

Question 8: Is the new returned to be adopted by each city and county for using in administering the business tax law?

Answer: Yes, the new or model return is designed to promote general uniformity amount the business tax jurisdictions with respect to the administration of the business tax law. It is understandable that slight variances may need to made to the return to accommodate specific and unique needs of each governmental agency, i.e. computer print formatting, computer programming issues, reduced rates imposed by certain jurisdictions, etc. However, to the extent possible and feasible, the general layout of the model return should be adopted.

Question 9: How will revenues on the traditional and the new business tax returns be reported to the Tennessee Department of Revenue?

Answer: The Department of Revenue has amended form number 402-Business Tax Return for Counties and Cities to accommodate the new reporting methods. The following table maps lines from the traditional business tax return and the new business tax return to form 402-Business Tax Return for Counties and Cities.

Traditional Return	Reported on revised 402- <u>Business Tax Return for Counties and Cities</u>		New Return	Reported on revised 402- <u>Business Tax Return for Counties and Cities</u>
Total Tax (including minimum tax)	Line 1, Column A (Local)		Local Tax Line 9 (Local Column)	Line 1, Column A (Local)
			State Tax Line 9 (State Column)	Line 1, Column B (State)
Taxpayer Delinquency Penalties (including penalty on minimum)	Line 3, Column A (Local)		Taxpayer Delinquency Penalties –Line 10a (Local Column)	Line 3, Column A (Local)
			Taxpayer Delinquency Penalties –Line 10b (State Column)	Line 3, Column B (State)
Taxpayer Delinquency Interest (including interest on minimum)	Line 2, Column A (Local)		Taxpayer Delinquency Interest –Line 11 (Local Column)	Line 2 Column A (Local)
			Taxpayer Delinquency Interest –Line 11 (State Column)	Line 2, Column B (State)
Adjustments	Line 5, Columns A and B if applicable		Adjustments	Line 5, Columns A and B if applicable
County/City Delinquency Penalty	Line 9		County/City Delinquency Penalty	Line 9
County/City Delinquency Interest	Line 10		County/City Delinquency Interest	Line 10

Question 10: How does Public Chapter 856 affect counties and cities that have adopted business tax rates below the maximum rates?

Answer: The Department of Revenue will administer Public Chapter 856 in accordance with its intent to increase the business tax rates adopted by each county or municipality by fifty percent (50%) with the entire increase going to state, rather than local, government. Local governments will continue to collect business taxes at the rates that they have adopted. However, under the new law, the local governments must also collect an additional fifty percent (50%) of the rates that they have adopted and remit the entire increase collected to the Department of Revenue for state use.

Question 11: Do County clerks receive the 5% commission fee on the state portion (50% increase) of the business tax as imposed by Public Chapter 859?

Answer: Yes, Tennessee Code Annotated 8-21-701(55) authorizes County Clerks to receive five percent (5%) on the amount collected in local and state revenues.