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

Dick Phebus
Municipal Technical Advisory Service

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INSTRUCTIONS FOR COMPLETING BUSINESS TAX LICENSE
AND TAX REPORT, INCLUDING SHORT PERIOD FILING
FOR PHASE-IN PERIOD
(SALES ON OR AFTER SEPTEMBER 1, 2002)

Important note: Business tax rates and distribution were changed by Chapter 856, Public Acts of 2002 (the act) of the Tennessee General Assembly. Rates generally were increased by 50 percent, effective September 1, 2002, with all of the increase being designated for state general purposes. As a result of the new rates, effective date and distribution requirements, a new business tax form has been designed to properly account for the tax and its distribution. The effective date of the act also required a phase-in period that will affect all classifications until the tax period ending on or after September 1, 2003. During this phase-in period, all classifications will be required to file two (2) reporting forms. The first, or traditional, form using tax rates in effect prior to September 1, 2002, will be used to report sales and tax due for the period beginning for that classification and ending on August 31, 2002. The second, or short-period, return using new tax rates effective September 1, 2002, will report sales and tax due for the period beginning September 1, 2002, through the end of the entity’s tax period.

Businesses need to be aware of several important factors when completing their business tax returns during this phase-in period. First, the minimum business tax paid for the prior year can be taken as a credit on only one form. It is recommended that businesses take this credit on the first traditional reporting form. Second, the credit for personal property tax paid should be used to the extent allowed on the first traditional form with the excess, if any, used to the extent allowed on the new short-period return. These credits may not be used against any business tax due as a result of the increase imposed by the act. As a result, businesses should expect to see an increase in the amount of business tax due. Third, the recording fee and minimum tax due for the next period should be reported on only one form. It is recommended that the recording fee and minimum tax for the next period be reported on the new short-period form. Other items to consider are presented in the instructions below. These instructions relate to the new business tax reporting form, with notations throughout regarding the completion of both forms during the phase-in period.

Line 1 ............. Report gross sales for the tax period (less sales tax collected). During the phase-in period described above, report only gross sales from September 1, 2002, through the end of the filing period. (For example, Class 4 businesses should report sales from September 1 through September 30, 2002. Class 1 businesses should report sales from September 1 through December 31, 2002, etc).

Note: Total gross sales includes all income before taxes, including commissions, fees and personal services. Personal services are taxable at the retail rate of business tax.
Line 2 ........... All deductions taken on this line must be itemized on Schedule A on the back of the tax form. Failure to itemize will result in this deduction being disallowed.  (Note: Schedule A on the back of the business tax form is different from Schedule A on the Tennessee Sales and Use Tax Return.)

Line 3 .......... Taxable gross sales (Line 1 less Line 2). The result should be entered on Line 3.

Line 3a ......... Enter percentage and amount of taxable sales on Line 3 that is subject to the retail rate of business tax.

Line 3b ......... Enter percentage and amount of taxable sales on Line 3 that is subject to the wholesale rate of business tax.

Important: During the phase-in period, businesses are required to file two reports. The first report (the traditional report) should include gross sales, deductions, tax and penalty for the entity’s beginning date for its classification through August 31, 2002. The short-period report (the new form) should report gross sales, deductions, tax and penalty for the period beginning September 1, 2002, and ending on the entity’s ending date for its classification. When reporting taxable sales subject to the retail and/or wholesale rate of business tax on BOTH forms, the entity should take into consideration taxable sales for the entire one-year reporting period to determine if they meet the statutory requirements for reporting taxable sales on both Lines 3a and 3b.

The following excerpt is taken from Business Tax Rules and Regulations, published by the Tennessee Secretary of State and should be used as guidance for businesses that engage in both retail and wholesale sales:

1320-4-5-.37 PERSONS MAKING WHOLESALE AND RETAIL SALES. (1) A person whose business is primarily that of making wholesale sales but who makes more than 20% of his sales at retail is liable for both the wholesale and retail Business Tax at the appropriate rates on each category of such sales. If the person makes 20% or less of his sales at retail, he is liable for the Business Tax at the appropriate wholesale rate on all of his sales, both wholesale and retail. (Either category shall be based on net taxable sales after allowable deductions.) (2) A person whose business is primarily that of making retail sales but who makes more than 20% of his sales at wholesale is liable for the Business Tax at the appropriate retail rate on the retail sales, and at the appropriate wholesale rate on the wholesale sales. If the person makes 20% or less of his sales at wholesale, he is liable for the Business Tax at the appropriate retail rate on all of his sales, both retail and wholesale. Authority: Tennessee Code Annotated 67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974.

Line 4 .......... Multiply the amount reported on Line 3a by the retail rate of tax. Enter the result on Line 4.

Line 5 .......... Multiply the amount reported on Line 3b by the wholesale rate of tax. Enter the result on Line 5.

Line 6 .......... Add Lines 4 and 5. Enter the result on Line 6.

Line 7a .......... Multiply the gross business tax reported on Line 6 by 66.67 percent. Enter the result on Line 7a – “local” column. (Explanation: The act increased the tax rates in effect prior to September 1, 2002, by 50 percent. All of the increase is allocated exclusively for state general fund purposes. As a result, the local portion is now two-thirds (66.67 percent) of the new total tax, and the state portion is now one-third (33.33 percent) of the new total tax).

Important: The amount on Line 7a should not be less than $15, even if Line 6 x 66.67 percent
yields a lower amount. The taxpayer is allowed to use prior year minimum tax paid to its full extent prior to any calculation of tax due the state.

Line 7b .......... Subtract the amount entered on Line 7a from the amount on Line 6. Enter the result on Line 7b – “state” column. Do not enter less than zero. If the result of line 6 minus line 7a is negative, then enter zero on line 7b.

Line 8a .......... Enter the minimum business tax paid for the prior year. Note: The minimum business tax paid for the previous year can be taken as a credit against current year business tax due. During the phase-in period described above, the credit may be taken on either the traditional form or the new revised form. If a business uses the full amount of $15 on the traditional return, it cannot be used again on the short-period return. If the full amount is used on the traditional return, enter $0 on Line 8a. Otherwise, enter the amount paid.

Important: If the minimum business tax from the prior year is not used fully on the traditional return, the balance can be used as a credit on the new revised form. (Example: The gross business tax due on the traditional form is $10. The minimum business tax from the prior period is used as a credit on the traditional return, leaving a balance of $5 to be used on the new revised form. Enter $5 on Line 8a.)

Line 8b .......... Enter any personal property tax paid during the full reporting period on Line 8b. Businesses are allowed to use the entire amount of personal property tax paid, up to the statutory limit, for the full reporting period. During the phase-in period, businesses should use the personal property tax credit, to the extent allowed, on the first traditional return. The excess, if any, may be used up, to the extent allowed, on the second, short-period return as a credit against the local tax on Line 7a. Enter any allowed amount of personal property tax on Line 8b. (Note: The personal property tax credit cannot be used to reduce any amount entered on Line 7b.)

Line 9 .......... Add Lines 8a and 8b and subtract the result from Line 7a (“local” column). Enter the result, but not less than $0, on Line 9 (“local” column). Bring down the amount from Line 7b (“state” column), and enter it on Line 9 (“state” column).

Reminder: Minimum tax paid for a prior period and personal property tax paid may not be used to reduce the amount on Line 7b.

Line 10a .......... A penalty is calculated at the rate of five percent for each 30-day period or portion thereof. Multiply the tax due on Line 9–“local” column by the rate and number of 30-day periods delinquent. Enter the result on Line 10a. The minimum local penalty is $15 for the reporting period.

Line 10b .......... Determining the penalty for the “state” column is a two-step process. Add together the amounts on Line 9–“local” and “state” columns. Apply the rate and the number of 30-day periods to this sum to get the total penalty (TOPEN). Subtract Line 10a from the result and enter the difference on Line 10b. [Note: If the total penalty is $15 or less, enter $0 on Line 10b].

Important: During the phase-in period, the taxpayer is required to file two reports as described at the beginning of these instructions. The taxpayer should consider the two returns together to determine if the minimum penalty applies. If the calculation of the penalty amount (using the tax due from both returns) results in an amount of $15 or less, the taxpayer may enter the minimum $15 on either the first traditional return or on the second short-period return on Line 10a, but not on both
returns. In this case, it is recommended that the taxpayer enter the $15 minimum penalty on the short-period return on Line 10a. If the calculated penalty is more than $15 for the entire period (using the tax due from both returns), the penalty amounts may be entered on both forms. Care should be taken to ensure that the penalty associated with the local tax due (both forms) is no less than $15. The difference between the total penalty and the penalty on the local tax due should be reported on the short-period return on Line 10b—“state” column.

Line 11 ............ Calculate the interest due at the effective rate on the amounts on Line 9—“local” and “state” columns. This is computed daily from the delinquent date until paid. (The interest rate for returns filed late after July 1, 2003, is 8.75 percent.)

Line 12 ............ Add Lines 9, 10a, 10b, and 11 from both columns, and enter the results on Line 12.

Line 13 ............ Enter the collecting and recording fee for your jurisdiction on Line 13. The amount generally is $5. There is no exception to this entry.

   Note: During the phase-in period described at the beginning of these instructions, the collecting and recording fee for the next period should be entered only once for the entire reporting period. If it is entered on the first traditional return, do not enter the amount again on the second short-period return.

Line 14 ............ The minimum tax due for the next period is $15. This amount is due regardless of amounts reported on Line 9. (If you have closed, sold or moved your business out of this jurisdiction, you must still fill out this form to report sales for the period and to finalize your business tax license. If you fall into this category, do not enter the $15 on this line.)

   Note: During the phase-in period described at the beginning of these instructions, the minimum business tax for the next period should be entered only once for the entire reporting period. If it is entered on the first traditional return, do not enter the amount again on the second short-period return.

Line 15 ............ Calculate the penalty due on the minimum tax if delinquent. The rate is five percent of Line 14 for each 30-day period or portion thereof. The maximum penalty is 25 percent of Line 14.

Line 16 ............ Calculate the interest on the minimum tax due at the effective rate. The amount is computed daily until paid.

Line 17 ............ Total minimum tax and business tax due. Add Lines 12 (both columns), 13, 14, 15 and 16, and enter result on Line 17.

Make a check or money order payable to your jurisdiction. Note: During the phase-in period, be sure to include all tax, penalties and interest due from both returns. The returns should be filed together.

Instructions for the back side (page 2) of the business tax return are not included in these instructions. The instructions for page 2 are the same as in previous years. Be sure to sign and date the back of the original form. During the phase-in period, sign and date the back of both forms.

We understand the complexity of the new reporting form, especially during the phase-in period. If you have questions regarding completion of this form, please contact your city hall for assistance.