



Department of
Revenue

Industry Specific Tax Manual - Contractors

June 2024

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The goal of this tax manual is to address Tennessee tax issues that contractors most commonly encounter in Tennessee. The Tennessee Department of Revenue (the “Department”) has several comprehensive tax manuals that contain additional information. Taxpayers may access the comprehensive manuals on the Department’s [website](#).

Sales and Use Tax

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., 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.

Registration

Contractors and contractor-dealers must register with the Department before performing any taxable services. These taxpayers may register with the Department electronically on the Department’s [INTAP](#) webpage. Once registered, the Department will issue contractor-dealers a Certificate of Registration and a Certificate of Resale.

Materials Used in Performance of Contract

Generally, contractors and subcontractors are considered the end-users/consumers of materials, supplies, and taxable services used in the performance of a contract to improve realty (also referred to as “real property”) in Tennessee. Therefore, contractors and subcontractors must either pay sales tax to the vendor from whom they purchase the supplies, or remit use tax to the Department based on the purchase price. Contractors should not charge sales tax to their customers on the materials used in a job where those materials become a part of real property. For example:

- A homeowner hires a contractor to install a new HVAC unit. HVAC units become real property upon installation. Therefore, the contractor is responsible for paying sales and use tax to the vendor from whom it purchases the HVAC unit.
- Alternatively, a homeowner hires a contractor to install a new window air conditioning unit at the beginning of summer. Because window air conditioning units remain tangible personal property upon installation, the contractor may purchase the window air conditioning unit using its resale certificate and collect sales tax on the sales price of the unit from the homeowner.

Improvement to Realty vs. Tangible Personal Property

The sale of tangible personal property is subject to the sales and use tax unless it is specifically exempt by law. “Tangible personal property” is defined as “personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.”¹ It includes electricity, water, gas, steam, and prewritten computer software, but it does not include signals broadcast over the airwaves, stocks, bonds, insurance, or other securities.²

Charges for installing, cleaning, or repairing tangible personal property are subject to sales tax.³ Although real property can be seen or touched, real property is not subject to sales tax in the same manner as tangible personal property. The sale, cleaning, or repair of real property or any installation of tangible personal property that becomes a fixture upon installation (i.e., property that becomes an integral part of the real property) is not subject to sales and use tax to the real property owner.⁴ Instead, the person or entity installing property that becomes a fixture, including any materials used in the installation, cleaning, or repair service, is subject to sales or use tax on said property and materials.⁵

Therefore, it is imperative that the contractor understand whether it is performing a taxable service on real property or tangible personal property. How to make this determination is explained more fully in the next section.

Distinguishing between Realty & Tangible Personal Property

Real property is that which is immovable, such as land, buildings, improvements to same, and even some firmly attached or integrated structures like light fixtures. There are times when it is difficult to determine whether an item is real property or tangible personal property. The issue of whether tangible personal property becomes part of realty depends upon the application of the common law (i.e., law that is created by court ruling rather than statute) concept of “fixtures.”⁶

1. Intent of the Parties

The question of when an item is considered a fixture is resolved by ascertaining the intent of the parties.⁷ The following questions aid in ascertaining the parties' intent:

- Do the parties intend the property to be moved at will or to remain in the same location for its useful life?
- How is the property depreciated on the owner's books?
- If a contract is involved, such as a financing agreement or a lease, does the contract indicate an intention for the property?

The Tennessee Supreme Court stated, “only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold.”⁸ Therefore, if the property is “intended to be removable at the pleasure of the owner, it is not a fixture.”⁹

However, when tangible personal property is installed upon real property pursuant to a non-ownership interest in the real property, such as a lease or easement, Tennessee courts have determined that the key question becomes whether the parties intend that the owner of the property being installed has the ability to remove the property from the land, asking

whether the installed property remains “separate and apart from the freehold.”¹⁰

If the property is intended to be removable at the pleasure of the owner, it is not a fixture.¹¹ Objective factors typically help illustrate such intent.¹²

2. Objective Factors

Contractors should consider the following objective factors to determine whether the property is tangible personal property or a fixture.

Use and Purpose of the Property

- Was the property designed and constructed to be permanently attached, or was it designed for temporary installation?
- Is the property custom made according to location?

How the Property is Attached or Affixed

- Is the property in question attached with a few screws, welded onto the structure, built into the structure, or cemented into the ground?
- How difficult is it to remove the property (consider time, cost, and ease of removal)?

How the Property is Removed

- If the property was removed, would there be significant damage to the remaining property, or would the remaining property stay intact?
- Would there be a hole in the ground that would require filling or a large hole in the building that would need to be repaired?
- Would the property being removed be damaged upon removal, and if so, to what extent?
- Would removal of the property destroy its essential character as personality?

Courts have found that tangible personal property becomes a part of realty if removing the property would seriously damage the building to which it is affixed.¹³ Further, courts have held that tangible personal property is more akin to a fixture if removal would destroy its essential character as tangible personal property.¹⁴

Whether property becomes part of the realty upon installation or remains tangible personal property must be made on a case-by-case basis. Inquiries as to intent and attachment must be made each time. There may also be instances when an actual inspection of the property in question is warranted.

Examples

The Department has administratively opined on whether the following items are tangible personal property or become realty upon installation. This list, however, should not be relied upon exclusively because, as mentioned above, this is a highly fact driven analysis.

- Air Conditioners
 - Window air conditioners can be removed or replaced easily and are tangible personal property. Central air conditioners/HVAC systems are not easily removed and become realty upon installation.
- Curtain Rods
 - Curtain rods purchased from the general inventory at stores remain tangible personal property upon installation. Window treatments that are custom made for a specific customer and installed by the seller of the custom-made window treatments become realty upon installation.¹⁵
- Custom Shutters,¹⁶ Custom Awnings,¹⁷ and Custom Carports and Garages
 - All these items become realty upon installation.
- Glass windows
 - Glass windows become realty upon installation.¹⁸

- Underground Storage
 - Underground gas storage tanks become realty upon installation.

- Swimming Pools
 - Above ground swimming pools installed 6-8 inches below ground on sand and concrete remain tangible personal property.¹⁹ In-ground swimming pools and spas become realty upon installation.²⁰ On-ground swimming pools, also known as semi in-ground swimming pools become realty upon installation.

- Fire Prevention Sprinkler Systems
 - These systems become realty upon installation.²¹

- Floating Boat Docks
 - These generally become realty upon installation.²² Both the TVA and the Army Corps of Engineers require owners of floating boat docks/slips to obtain a boat dock permit before it is built and installed. A dock permit never expires and is not renewable, indicating an intent of permanency. Although it is usually possible to move such docks, it is unusual given the regulations set out by the TVA and the Army Corps of Engineers.

- Big Screen Televisions or Movie Theaters
 - In *Green v. Harper*, 700 S.W.2d 565 (Tenn. App. Ct. 1985), the Tennessee Court held that a movie screen, theater marquee, and car speakers installed at a drive-in theater by the **lessee** of the realty remained personal property.

Security System and Alarm System Contractors

Security systems (also referred to as “alarm systems” or collectively “systems”) must be considered on a case-by-case basis to determine whether the systems become realty upon

installation or remain tangible personal property. Generally, if an alarm system becomes realty, then use tax is due on the parts of the system that become part of realty.

If the alarm system is a mix of tangible personal property and realty, then the company should separate these items on the invoice and charge sales tax on the items that remain tangible personal property. If the charges are not separated, then the total invoice charge is taxable.

1. Leased Security Systems

If an alarm company leases a security system, including monitoring, to a residential customer, and the system is considered tangible personal property, then sales tax is due on the gross proceeds of the lease. **The fact that the system is being leased, and the amount of the lease, must be clearly stated in the contract.** The monitoring service (as long as it is not a taxable telecommunication service) is not taxed if listed separately; otherwise, the total charge is taxable. If the system is considered realty, then no tax is due on either charge. However, the person installing the system owes use tax on the system when installed.

When dealing with lease agreements, taxpayers should review the lease agreement to determine whether the system is **intended** to remain tangible personal property or to become realty.

A lease agreement for a specific period of time where the alarm company expressly retains all rights to the property is often considered the sale or lease of tangible personal property. Therefore, the contractor should collect sales tax from its customer.

Security System Leased to a Church or Non-Taxable Entity

If an alarm company is leasing a security system, including monitoring, to a church or a non-taxable entity, and the security system is determined to be tangible personal property, then the alarm company should not charge sales tax. The sale is considered exempt pursuant to Tenn. Code Ann. § 67-6-322(a). If the system is tangible personal property, then the church may provide a valid exemption certificate for the security system installed in the church. The alarm company should also retain copy of the payment type (such as a check written from the church's account) to support the exemption.

Additionally, use tax is generally not owed by the alarm company on the installation charges if the security system remains tangible personal property.

2. Security Systems Sold to Customers

If an alarm company sells and installs a security system to a residential customer and the system becomes part of realty, then the alarm company pays use tax on the cost of the materials. No sales tax should be charged in general or to the customer on realty installation services.

If the system remains tangible personal property, then the alarm company should charge sales tax to the customer on the total sales price of the system including installation.

If the security system is determined to be part realty and part tangible personal property after installation, then the alarm company will owe use tax on the portion of the materials that become realty such as wiring, switches, conduit, and cabling. The alarm company should then charge its customer sales tax on the tangible personal property portion, such as alarm bells, cameras, viewing screens and electronic devices.

Security Systems Sold to a Church or Non-Taxable Entity

If an alarm company sells and installs a security system to a church or non-taxable entity, and if the system becomes part of realty, then the alarm company should pay use tax on the cost of the materials. Sales tax should not be charged on realty installation services in general or to the customer.

If the system is tangible personal property, the church or other non-taxable entity must provide the alarm company with a valid exemption certificate. If the sale is properly supported by an exemption certificate, then there is no sales tax due on the sale of the system or the installation charges.

If the alarm company only installs the system that the church or other non-taxable entity provides for installation, then use tax is owed on the cost of materials used to fulfill a contract pursuant to Tenn. Code Ann. § 67-6-209.

3. Installations and Inspections

Inspections to Smoke Detectors with No Parts Replaced

If a service technician performs an inspection of a smoke detector but does not replace any parts and the smoke detector is part of real property, then there is no sales tax charged on the labor.

If the smoke detector **is part of real property**, then there is no sales tax charged for the service. Smoke detectors that are wired into the electrical wiring of the home are generally considered realty unless there is a contrary intent, i.e., lease or contract.

If the smoke detector **is not part of real property**, then the service call would generally be considered a repair service even if no parts are replaced and the service would be subject to sales tax pursuant to Tenn. Code Ann. § 67-6-102(25)(A).

Inspections to Smoke Detectors with Parts Replaced

If a service technician performs an inspection of a smoke detector and replaces a part (e.g., a part that costs \$ 2.00), and if the smoke detector is considered tangible personal property, then the service charge and parts charge are both taxable.

If the smoke detector is realty, then no tax is due. However, the alarm company should have paid sales tax on the part when the company purchased the part. If it was purchased on a resale certificate, then the alarm company should report use tax on the part when removed from inventory.

Alarm System Installations

If a customer provides all the materials to complete an alarm installation and the alarm company solely supplies the labor, and the system becomes real property, the alarm company is responsible for the use tax on the cost of materials, **if the customer has not paid sales tax on the initial purchase of the materials**. Here, the alarm company is acting as a contractor, and no sales tax is charged to the customers for labor when the alarm system becomes a part of realty.

If the customer paid sales tax at a rate equal to or greater than Tennessee's rate of sales tax on the initial purchase of the materials, then the alarm company has no obligation to pay the

use tax on the cost of materials. The alarm company should retain documentation to support tax pay by the customer.

If the alarm system is to remain tangible property and the customer paid sales tax on the initial purchase, then the alarm company **must** charge sales tax on the installation charge.

4. Closed Circuit Television Systems

Closed Circuit Television (“CCTV”) systems are often intended to be removed and remain tangible personal property.

5. Examples

These examples are for general guidance as to whether a security or alarm system becomes realty or remains tangible personal property. These examples, however, should not be relied upon exclusively because this determination is a highly fact drive analysis and is made on a case-by-case basis.

Example 1

An alarm company installs an alarm control panel using wiring running through the walls, floor, and/or ceiling (many times in conduit for commercial applications) to the individual sensors or controls. The wires from the control panel are attached to the framing of the structure as per codes. Under the facts given, assuming that there is a sale of the system, the system is intended to become real property, and use tax is due on the cost of the materials. No sales tax is due on the labor.

Given the same set of facts as above:

- If the security system is leased, the terms of the lease would determine if the system is realty or tangible personal property and what is taxable.
- If some of the devices installed are wireless devices attached to the property by nails or screws, the devices attached to the property by nails or screws remain tangible personal property and are subject to sales tax.

- If all of the above devices are wireless devices that are attached to the property by nails or screws, then all of the devices remain tangible personal property. The alarm company should collect sales tax on all of the devices and installation charges.

Example 2

A camera system is installed with wiring through the walls, floor, and/or ceiling (many times in conduit) to the individual devices. Cameras are attached by brackets to the structure and the control unit and monitors are in a console. If this is a sale (as opposed to a lease), the transaction includes a mix of tangible personal property and realty. The wiring becomes realty, thus only the cost of those materials is subject to use tax. Tax is not charge on the labor for the wiring. However, the cameras attached by brackets and the monitors remain tangible personal property and sales tax is due on all of the cameras, monitors, and installation charges.

Given the same set of facts as above:

- If a VCR is included that is not attached to the console, the VCR would remain tangible personal property and be taxable to the customer.
- If the control unit and monitors are not attached to the console but are on a shelf or desk, the control unit and monitors would remain tangible personal property and would be taxable to the customer.

Restaurant Equipment

Restaurant equipment that is intended to be removable and capable of being relocated if a restaurant changes location remains tangible personal property after installation. Removal of restaurant equipment generally does not destroy the equipment or damage the realty. Common examples include free standing ovens, free standing refrigerators and freezers, deep fryers, microwaves, coffee machines, soda machines, warming equipment, mixers, bar coolers, ice cream freezers, etc. The sale, installation, and repair of this type of restaurant equipment is subject to sales and use tax.

The installation or repair of restaurant equipment that becomes realty upon installation is not subject to sales and use tax. The party installing or repairing the restaurant equipment must pay sales or use tax on its purchase of the property being installed or the repair parts.

Common examples include built-in pizza ovens, walk-in freezers, and coolers that are part of the building structure, exhaust fans, vent-a-hoods attached to the realty, etc.

Below is a non-exclusive list of common restaurant equipment and the general classification of each as tangible personal property or realty upon installation.

Items That Remain TPP Upon Installation	Items That Become Realty Upon Installation
Cooking Equipment	
<ul style="list-style-type: none"> • Char broiler • Coffee maker • Deep fryer • Griddle • Grill • Hot dog roller • Microwave • Oven (freestanding, countertop electric, convection, non-built-in pizza oven, conveyor style oven) • Range (freestanding) • Steamer • Toaster • Vent hood (removable; see Letter Ruling #99-33) • Waffle maker • Warming and holding equipment • Rice cooker 	<ul style="list-style-type: none"> • Built-in pizza oven (e.g., wood-fired brick, gas, and electric) • Built-in range (e.g., slide in) • Built-in exhaust fan (e.g., roof-mounted) (does not include filters)
Refrigeration Equipment	
<ul style="list-style-type: none"> • Bar refrigerators and coolers • Beverage dispenser • Ice cream machine • Reach-in freezer • Reach-in refrigerator • Refrigerated display cases (freestanding) • Salad and sandwich refrigerated 	<ul style="list-style-type: none"> • Built-in refrigerated display cases (e.g., walk-in glass door beer cooler) • Built-in walk-in coolers and freezers (e.g., beer cave, room in building)

<ul style="list-style-type: none"> prep table • Soda fountain machine • Under-counter and countertop refrigerators • Walk-in coolers and freezers (self-contained) 	
Other Restaurant Equipment	
<ul style="list-style-type: none"> • Blender • Booth seating • Chairs and bar stools • Cutlery and knives • Dining tables • Dish washer • Food processor • Juicer • Meat grinder • Mixer • Proofer cabinet • Slicer 	<ul style="list-style-type: none"> • Custom built-in booth seating

Pipeline and Railroad Components

Public Chapter 86 (2021), effective July 1, 2021, amended the sales and use tax definition of tangible personal property to specifically exclude certain pipeline and railroad components.²³

1. Installation of Pipelines

The installation of mains, pipes, pipelines, and tanks is exempt from sales and use tax. These items are considered realty once they have been attached to a building or other structure or after they are installed underground to conduct steam, heat, water, wastewater, oil, electricity, gas, or any other property, substance, or product that is capable of transportation or conveyance or protected as a result. While the installation of mains, pipes, pipelines, and

tanks is exempt from sales and use tax, the initial purchase of these materials remains subject to sales and use tax.

The installation of the following items that remain tangible personal property once installed is subject to sales and use tax: propane tanks for residential use and above-ground storage tanks that can be moved without disassembly and are not affixed to the land. Sales tax is due on the retail cost of these items plus the installation charges.

2. Installation of Railroads

Installation of railroads, railroad structures, substructures, superstructures, tracks, and the metal on these structures is exempt from sales and use tax. These items are considered realty once installed. Installing branches, switches, and other improvements made in, upon, or under public or private property are also exempt from sales and use tax as they are considered realty once installed.

3. Unattached Pipeline and Railroad Components

The purchase of pipeline and railroad components before the items are installed remain subject to sales and use tax. Additionally, a contractor that installs such components remains liable for contractor's use tax on the component if the contractor did not pay sales tax when purchasing said components.

Fiber-Optic Cable

For sales and use tax purposes, fiber-optic cable is not considered tangible personal property after it has been attached to a utility pole, building, or other structure or has been installed underground.²⁴

The installation of fiber-optic cable is also exempt from sales and use tax. The lease of fiber-optic cable is exempt from sales and use tax if the following criteria are met:

- The lease is for "dark" fiber-optic cable, meaning the lessor does not provide telecommunication services in connection with the lease: and
- The lease is for fiber-optic cable that has already been attached to a utility pole, building, or other structure or installed underground.

However, the purchase of fiber-optic cable before it is installed is subject to sales and use tax. Additionally, a contractor that installs fiber optic cable is liable for contractor's use tax on the cable if sales or use tax was not paid on the original purchase.

Government Contractors

Contractors that are doing work for the U.S. Government are not exempt from paying Tennessee sales and use tax on their purchases of tangible personal property.²⁵

Contracts with Tax-Exempt Entities

A contractor is still liable for sales and use tax on materials used to provide a contracted service to an exempt entity even if the exempt entity buys the materials and provides the contractor with the materials for the contractor to use.

Contracts with Churches

Under specific circumstances provided in the law, contractors or subcontractors are not liable for the sales or use tax on construction materials.²⁶ 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.²⁷
 - When determining if a structure qualifies as a church, the Department commonly looks at the facts and circumstances such as whether the building qualifies for an exemption from property taxes, whether it is used for commercial purposes, and whether it is used for commonly recognized church functions. For example, a gymnasium built next to a sanctuary would not be used for commonly recognized church functions.

Contracts with Nonprofit Colleges and Universities

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 option tax.**²⁸

Reporting Sales of Materials to Private, Nonprofit College or University

Sellers should report such sales that are exempt from state, but not local sales tax, on their sales and use tax return as follows:

- The seller reports gross sales to the contractor on Line 1.
- The seller reports the sales of the tangible personal property to the contractor for use on the private nonprofit college or university on Schedule A Line 9 – Other Deductions to exempt the sales from state tax.
- This amount must be added back in Schedule B Line 2 – Adjustments.

Sales of tangible personal property for the contractor’s use to fulfil its obligations under the contract with the private nonprofit college or university are subject to the single article local tax limitation. The purchases must be separated from other purchases that are fully taxed for local tax purposes.

- Amount of single article purchases in excess of the local tax limitation are reported on Schedule B Line 4 – Excess Amount Over Single Article Tax Base.
- The sale of tangible personal property to a contractor to fulfil an obligation under the contract with the private nonprofit college or university is not subject to the state single article tax and is not reported in Schedule C Line 1 – Taxable Single Article Sales from \$1,600 to \$3,200.

The contractor should obtain purchase invoices from nonprofit college or university for tangible personal property provided by the tax-exempt nonprofit for use/improvement to realty under the contract.

- The contractor reports the nonprofit college or university provided purchases on Line 2 – Cost of Personal Property Purchased on a Resale Certificate but Used (Line 3 if purchases are from out-of-state) on its sales and use tax return.

- The contractor reports this same amount on Schedule A Line 9 – Other Deductions to exempt the purchases from state tax.
- This amount must be added back in Schedule B Line 2 Adjustments. The nonprofit-provided tangible personal property is subject to the single article local tax limitation.

The single articles must be separated from other purchases that are fully taxed for local tax purposes.

- The amount of the single articles in excess of the local tax limitation (\$1,600) is reported on Schedule B Line 4 – Excess Amount Over Single Article Tax Base.
- The tangible personal property provided to the contractor to fulfil an obligation under the contract with the private nonprofit college or university is not subject to the state single article tax and is not reported on Schedule C Line 1 – Taxable Single Article Sales from \$1,600 to \$3,200.

Note, Tenn. Code Ann. § 67-6-601(a) requires each business location to be registered for sales and use tax. TENN. COMP. R & REGS. 1320-05-01-.08(2) (Rule 8) provides in part, “Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use, ***either in or out of the state.***”

Rule 8 explains the situation where the contractor/dealer has purchased items for resale and put them in inventory. Even if a contractor (not a contractor/dealer) uses tangible personal property or makes improvements to realty outside its registered location jurisdiction, the contractor reports and pays use tax on the return for its registered location. The contractor is not required to register for sales and use tax purposes in every jurisdiction where the contractor uses tangible personal property in the performance of a contract to make improvements to realty.

Contractor-Dealer

A contractor-dealer is one who improves realty and is also engaged in selling building materials and supplies to other contractors, consumers, or users.²⁹ Materials that may be sold at retail to other users can be purchased on a resale certificate; sales tax will be collected and remitted on the retail sales.³⁰

To further clarify, materials purchased by contractor-dealers may be purchased on a resale certificate. Materials sold by contractor-dealers to other contractors, consumers, or users without a resale certificate are subject to sales tax and the contractor-dealers must charge and remit sales tax on those materials. Contractor-dealers must report use tax on materials used to make improvements to real property,

Contractor-dealers who cannot separate the portions of their materials and supplies that they will consume in fulfillment of their contracts and those they will resell to other consumers may give a resale certificate to the seller of such materials and supplies.³¹ The contractor-dealer will then collect and report sales tax on the materials resold and use tax on the materials used in fulfillment of their contracts.³² **Suppliers making sales to contractor-dealers and delivering the materials to a job site for use, or tagging particular supplies for a particular job performed by the contractor-dealer, must collect the applicable sales tax on those sales, even if the contractor-dealer presents a certificate for resale.**

Tax on Fabricated Materials

Contractors fabricating raw materials for use in building construction are liable for the sales or use tax on the cost of the raw materials.³³ On the other hand, contractors fabricating materials for use in non-building projects, such as bridge steel, are liable for the sales or use tax on the fabricated fair market value of the materials.³⁴

Asphalt Fabricators³⁵

Asphalt fabricators must remit use tax based on the fair market value of asphalt they use in fulfilling their contracts. The tax amount must be computed on the amount the fabricator would charge for the asphalt if it were sold and delivered in an arm's length transaction. The Department will accept as fair market value \$5 per ton plus the cost of materials.

Asphalt fabricators that sell asphalt to other contractors or customers without performing installation and who also install asphalt may purchase their materials on a certificate of resale. The asphalt fabricator must collect sales tax on the total sales price of the asphalt fabricated and sold to other contractors. If the asphalt fabricator uses the asphalt rather than sells it, the asphalt fabricator will owe the use tax as previously indicated.

Use tax must be accrued and paid by the asphalt fabricator or installer when asphalt is installed as part of a contract with a government or other tax-exempt entity. Also, use tax must be accrued and paid by the asphalt installer even if the asphalt is provided to the installer by the government or tax-exempt entity. However, if the asphalt is sold directly to the exempt entity with no installation or use by the seller, the purchase is tax-exempt.

Installation of Industrial Machinery

Contractors installing qualified tax-exempt industrial machinery for qualified manufacturers must apply to the Department for their own industrial machinery authorization number for each project. This enables the contractor to purchase the industrial machinery and any installation supplies for the manufacturer's facility exempt from tax.

To apply, contractors should use the same application form used by manufacturers that is available on the Department's website and linked [here](#).

Contractors installing industrial machinery may not use the manufacturer's exemption certificate to make exempt purchases.

⚠ An industrial machinery authorization number is required for each project where the contractor is installing tax-exempt industrial machinery for qualified manufacturers.

Property Owned by the United States Government

An exemption from contractor's use tax is available for any tangible personal property that is owned by the United States and is provided to a contractor on a temporary basis to be tested, provided that the exemption applies only to contracts awarded under the Small Business Innovation Research Program and does not apply to equipment or other property used to conduct the test.³⁶

There is also an exemption from contractor's use tax for tangible personal property that is provided to a contractor on a temporary basis to be tested, provided that the testing facility is owned by the United States or any agency thereof. The exemption does not apply to property consumed or destroyed during the test. "Testing" is limited to diagnostic, analytical, and/or scientific testing in a controlled environment dedicated to such testing for the

purpose of providing information and findings supportive of the aerodynamic, hypersonic, aero propulsion, space, missile, aircraft, and aerospace technologies and/or industries.

Franchise and Excise Tax

Overview

Franchise and excise taxes are privilege taxes that are levied on taxable entities for the privilege of doing business in Tennessee. Taxable entities include corporations, S corporations, limited partnerships, and limited liability companies (including single member LLCs owned by an individual).

Individuals and general partnerships are not subject to franchise and excise tax.

A taxable entity is subject to franchise and excise tax if it is “doing business” and has a “substantial nexus” in Tennessee. Doing business is defined broadly as “any activity purposefully engaged in within Tennessee, by a person with the object of gain, benefit, or advantage.”³⁷ A taxpayer will establish a substantial nexus in Tennessee if the taxpayer has systematic and continuous business activity in this state or has a “bright-line presence” in this state, which results from a taxpayer having gross receipts attributable to this state in excess of \$500,000, or property or employee compensation attributable to this state in excess of \$50,000, during the tax period.³⁸ The tax applies whether the taxpayer is doing business solely within Tennessee or in multiple states including Tennessee, if the taxpayer has established a substantial nexus in Tennessee.

Apportionment

Apportionment refers to the apportioning of a taxpayer’s net worth and net earnings to Tennessee for purposes of calculating the franchise and excise tax. Taxpayers who are doing business in multiple states will apportion a percentage of their total net worth and net earnings to Tennessee, based on Tennessee’s apportionment formula. Taxpayers who are doing business solely within Tennessee do not apportion and are subject to franchise and excise tax on 100% of their net worth and net earnings.

Tennessee’s apportionment formula includes three factors: the property factor, the payroll factor, and the sales factor. Tennessee will be transitioning from this three-factor apportionment formula to a single sales factor apportionment formula over the next few years. **For tax years ending on or after December 31, 2025, the apportionment formula will consist of only the sales factor.**

Note, the property, payroll, and sales sourcing rules discussed below would also apply in determining whether a taxpayer has established a “bright-line presence” in this state. For instance, when a taxpayer is determining whether it has exceeded the \$500,000 gross receipts bright-line threshold in this state, the taxpayer would count sales that would be sourced to Tennessee under the sales factor sourcing rules.

1. Property Factor

- The property factor includes all owned or rented real and tangible property used during the tax period in the taxpayer’s trade or business. This includes property actually in use or available for use and property capable of being used.
- The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and outside this state during the tax period will be sourced to Tennessee for property factor purposes based on the total time within the state during the tax period.
- An automobile assigned to a traveling employee will be sourced to the state to which the employee’s compensation is assigned under the payroll factor or to the state in which the automobile is licensed.

2. Payroll Factor

- The payroll factor includes the total amount paid by the taxpayer to its employees for compensation during the tax period and includes wages, salaries, commissions, and any other form of payment to employees for their services.
- Only compensation paid to persons properly classifiable as employees is included in the payroll factor.
- Generally, a person will be considered an employee if the taxpayer withholds payroll (FICA) taxes for the person (i.e., a W-2 employee).
- Payments made to subcontractors and other persons who are not employees (i.e., Form 1099 recipients) are *excluded* from the payroll factor.

- Compensation is sourced to Tennessee if the employee's service is performed entirely within the state.³⁹
- Compensation is also sourced to Tennessee if the employee's services are performed both within and outside this state and the place from which the service is directed or controlled is in this state.⁴⁰
 - For example, an employer in Tennessee is a contractor. All employees are hired by, paid by, and receive instructions from the home office in Tennessee. The employees live in various states and work in Tennessee, Alabama, and Georgia. The employer would source the compensation paid to these workers to Tennessee since the employer's base of operations is in Tennessee and the employees performed some services in Tennessee.
- Note, a special rule applies to the sourcing of compensation associated with construction contracts, and this rule is discussed in the Construction Contractors section below.

3. Sales Factor

- The sales factor includes all gross receipts derived by the taxpayer from transactions and activity producing business earnings.
- Contractors who derive gross receipts from providing services will source such receipts for sales factor purposes in accordance with Tennessee's market-based sourcing rule.⁴¹
- Under the market-based sourcing rule, most contractor services will fall under the category of "in-person services" and the gross receipts derived from providing such services will be sourced to Tennessee if the service is received by a customer in Tennessee.
 - For example, if a contractor performs personal services for a customer or services with respect to a customer's real or tangible property, the gross receipts derived from providing the service is sourced to Tennessee if the customer or the customer's real or tangible property is located in Tennessee.

Construction Contractors

1. Construction in Progress – Property Factor

Construction contractors must determine whether the property they are constructing or improving is includable in the taxpayer's property factor for apportionment purposes. The treatment of such property primarily depends on whether the contractor/taxpayer will own the property at the completion of the project.

- If the construction contractor is performing construction on property owned by another person, pursuant to a contract, the property **is not included** in the contractor's property factor.
- If the construction contractor is performing construction on property that will be owned by the contractor at the completion of the project (either to hold for sale or rental, including property held as a speculative builder), the property **is included** in the contractor's property factor. The contractor would include the cost of all raw materials, work in progress, and finished goods inventories associated with the project in the property factor.

2. Sourcing of Apportionment Factors – Construction Contracts

For apportionment purposes, special rules apply to the sourcing of apportionment factors associated with construction contracts.⁴²

If the construction project is located partly within and partly outside Tennessee, the property, payroll, and sales factors attributable to Tennessee are based upon the ratio which construction costs for the project in Tennessee bear to the total of construction costs for the entire project or any other method, such as engineering cost estimates, which will provide a reasonable apportionment.⁴³

Property Factor

- Rents paid for the use of equipment are included in the property factor at eight times the net annual rental rate, even if such rental expense is capitalized into the costs of construction.

- “Rents paid” shall include rent expense in the income year for which it is deductible under the taxpayer’s method of accounting for federal income tax purposes.
- Rent expense that is capitalized or attributed to a particular construction project will be attributed to the state in which the construction project is located.

Payroll Factor

- Compensation paid to employees that is attributable to a particular construction project is included in the payroll factor, even if such compensation is capitalized into the costs of construction.
- The payroll factor is computed by including compensation in the income year for which it is deductible under the taxpayer’s method of accounting for federal income tax purposes.
- Compensation paid to employees that is capitalized or attributed to a particular construction project will be attributed to the state in which the construction project is located.

Sales Factor

- The sales factor is computed by including gross receipts in the income year for which it is includable under the taxpayer’s method of accounting for federal income tax purposes.
- Gross receipts derived from the performance of a contract are attributable to Tennessee if the construction project is located in Tennessee.

Business Tax

Overview

The business tax statutes are found in Tenn. Code Ann. § 67-4-701 through Tenn. Code Ann. § 67-4-730, and the business tax rules and regulations are found in TENN. COMP. R. & REGS. 1320-4-5-.01 through TENN. COMP. R. & REGS. 1320-4-5-.61. Additionally, for more detailed information on business tax and how it applies to contractors, please see the Department's Business Tax Manual available [here](#) and the Department's business tax for contractors webinar [here](#).

The business tax is a privilege tax on the privilege of doing business by making sales of tangible personal property and services within Tennessee and its local jurisdictions. While anyone doing business in the state is subject to the state-level business tax, unless specifically exempt, each municipality must adopt the tax to impose it within its city limits. Taxpayers should [go here](#) to check the location address for each job performed to see whether the municipality imposes a business tax.

The business tax applies to a taxpayer's gross sales. Taxpayers multiply the gross sales derived from taxable sales per location by the appropriate state and local tax rates to calculate the amount of tax owed per location. There are several different business tax rates. The rates are determined based on the taxpayer's "dominant business activity" and whether the taxpayer is a wholesaler or a retailer.

"Dominant business activity" is defined as "the business activity that is the major and principal source of taxable gross sales." In other words, the business classification is based on the activity that generates the largest portion of a business's taxable sales.

Definition of a Contractor

For business tax purposes, a contractor is defined as a person engaged in the business of contracting, performing a contract, or engaging in any of the following activities:

- Receiving compensation from rendering exterminating services, installing personal property, constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing, or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, air

conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, or any other improvement, structure, or part of thereof.

Contractors are Classification 4 taxpayers. Contractors are liable for business tax regardless of whether their contracts are performed on a lump sum or cost-plus basis.

Deemed Location

For tax years on or after December 31, 2023, for business tax purposes, a “deemed location” is a county and/or municipality where a contractor is not domiciled or located but where the contractor earns taxable receipts of more than \$100,000 for work performed in the jurisdiction.⁴⁴

Taxable receipts from contracts performed in each deemed location must be reported on the return for the county and/or municipality where the work was performed. The taxable receipts for a deemed location are not reported on the return for the county and/or municipality of domicile or location.

When the taxable receipts exceed \$100,000 for work performed in a deemed location, the contractor is required to register for the state business tax and pay the one-time standard business license fee of \$15 for that location. The contractor may be responsible for a one-time local (county and/or municipal) business license as well. Taxable receipts of more than \$100,000 received during the tax period will be reported on the return for the deemed location.

- ⚠ Taxable receipts of \$100,000 or less in compensation from contracts in a county and/or municipality other than the contractor’s place of domicile or location must be reported on the return for the county and/or municipality of domicile or location.**
- ⚠ Therefore, all taxable receipts for work done in any county will be subject to the state tax. However, where those receipts are sourced, and which county is apportioned the tax still depend on whether work is done in a deemed location.**

Registration and Licensing

1. Business Tax Registration

The Department registers businesses under *one consolidated business tax account*. For businesses with multiple locations, the Department will register each business location, both in state and out-of-state (if applicable) by assigning separate profile identifications under the consolidated account to reflect business tax activity at each location. Providing information for each location is necessary to account for variations in dominant business activity and to ensure the proper distribution of funds to cities and counties.

For example, a business set up as an LLC may have multiple subsidiaries that each have different dominant business activities. Taxpayers may review this account information by logging into their Tennessee Taxpayer Access Point (“TNTAP”) account.⁴⁵

In-State Businesses

Businesses with a Tennessee location may register for business tax directly with the Department or through the county clerk in the county where the business is located. Businesses located in a city that has enacted the municipal-level business tax may register directly with the Department or through the appropriate city official.⁴⁶

In-State Business with Multiple In-State Locations

Businesses with multiple locations must register and remit business tax for each location.⁴⁷ As stated above, the taxpayer will have one consolidated account with a specific identifier for each individual location. Taxpayers who extend operations into other counties or cities without establishing a location generally do not have to register in such counties.⁴⁸

Out-of-State Businesses

Businesses that do not have a Tennessee location but are still subject to the business tax must register directly with the Department through TNTAP.

2. Business Licensing Rules for Contractors

In addition to registering with the Department for business tax, generally every contractor operating in Tennessee that is subject to state-level or municipal-level business tax must also obtain a business license before engaging in business in this state.⁴⁹ Special registration and licensing rules apply to contractors. Each contractor must correctly determine the jurisdiction of each job to register and obtain a license in the correct city, county, or metropolitan government district. If the contractor's gross receipts exceed \$100,000 for work performed in a deemed location, during the tax period, the contractor is required to register for business tax in that jurisdiction and obtain a one-time, \$15 standard business license for that location.

⚠ The Department does not issue business licenses. These licenses are issued by the appropriate county clerk or city official. Contractors must contact their local county clerks and city officials if there are issues in obtaining a business license.

For example:

- A Tennessee contractor who normally works in Wilson County is hired to repave I-24 between downtown Nashville and Clarksville and completes the work in one calendar year. The contractor should register for business tax where the contractor is receiving gross income prior to beginning work. In this case, the contractor should register for business tax, obtain business licenses, and pay license fees in Metropolitan Nashville, Davidson County, Cheatham County, the City of Pleasant View, Robertson County, the City of Coopertown, Montgomery County, and the City of Clarksville. The revenue should be allocated to these jurisdictions in a manner that reflects the amount of work completed in each jurisdiction, e.g., revenue per number of paved miles.

The below sections provide an overview on registration and licensing for business tax purposes. For more detailed information on registration and licensing, please see Chapter 3 of the Department's Business Tax Manual.

In-State Contractors

State-Level Tax

In-state contractors with less than \$100,000 in taxable sales during a tax period are exempt from business tax and are not required to file a business tax return.⁵⁰ However, if a contractor has more than \$3,000 but less than \$100,000 in sales in the county of domicile, a contractor is required to obtain a minimal activity license in that county.

In-state contractors with less than \$100,000 in taxable sales in their county of domicile or taxable sales sourced to their county of domicile⁵¹, but with more than \$100,000 in taxable sales in another county are exempt from business tax in their county of domicile. However, these contractors are taxable in the county where they generated more than \$100,000 in taxable revenue. This other county is considered a “deemed location.” As such, the contractor should acquire a standard business license in the county where over \$100,000 in sales was generated and a minimal activity license in the county of domicile (if more than \$3,000 in sales in the domicile county).

Contractors with more than \$100,000 in taxable sales in their domicile county and more than \$100,000 in taxable sales in another county in the state are taxable in their domicile county and in the other counties where they had more than \$100,000 in taxable sales (“deemed locations”). These taxpayers should obtain standard business licenses in the domicile county and counties where they have established deemed locations.

Municipal-Level Tax

In-state contractors with less than \$100,000 in taxable sales within a municipality are exempt from business tax in that jurisdiction. Contractors with less than \$100,000 but more than \$3,000 in taxable sales within their domicile municipality should obtain a minimal activity license for their domicile municipality.

In-state contractors with less than \$100,000 in taxable sales in a domicile municipality but with more than \$100,000 in another municipality are exempt from business tax within their domicile municipality and subject to business tax in the other municipality where they generated more than \$100,000 in taxable sales. These taxpayers should obtain a standard business license in the municipalities where they have established deemed locations and a

minimal activity license in their domicile municipality (if more than \$3,000 in sales in the domicile municipality).

In-state contractors with \$100,000 or more in taxable sales within their domicile municipality or sourced to their domicile municipality and more than \$100,000 in taxable sales in another municipality are subject to business tax in both jurisdictions. These contractors should obtain standard business licenses in their domicile municipality and municipalities where they have established a deemed location.

Example 1

Johnson Erectors (“Johnson”)⁵² is domiciled in City of Clarksville in Montgomery County, Tennessee. For the period beginning January 1, 2023, and ending December 31, 2023, Johnson performed \$3,255,000 in total contracts. Johnson performed contracts totaling \$1,505,000 within its domicile jurisdiction (Clarksville/Montgomery County).

The following contracts were performed outside of Johnson’s domicile:

- City of Jackson/Madison County – \$ 110,000
- City of Springfield/Robertson County – \$35,000
- Shelby County (outside Memphis City limits) – \$1,500,000
- City of Oliver Springs/Morgan County – \$105,000

Johnson must obtain the following business licenses and report its gross taxable sales as follows:

Cities	Clarksville (domicile)	Springfield (no filing)	Jackson (deemed location)	Memphis (no filing)	Oliver Springs (deemed location)
Gross Taxable Sales Reported on Return	\$1,540,000	\$0	\$110,000	\$0	\$105,000

Type of Business License	Standard	N/A ⁵³	Standard	N/A	Standard
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Counties	Montgomery (domicile)	Robertson (no filing)	Madison (deemed location)	Shelby (deemed location)	Morgan (deemed location)
Gross Taxable Sales Reported on Return	\$1,540,000	\$0	\$110,000	\$1,500,000	\$105,000
Type of Business License	Standard	N/A	Standard	Standard	Standard

Johnson would report the \$35,000 in taxable gross sales earned in Springfield/Robertson County under its domicile location returns (Montgomery/Clarksville). This is because Johnson did not meet the \$100,000 threshold to have a deemed location in Springfield/Robertson County. Johnson would need standard business licenses in all jurisdictions except for Memphis, Springfield, and Robertson County. Johnson would not need a minimal activity license in either Springfield or Robertson County because it had less than \$100,000 in sales in those jurisdictions, therefore those sales would be sourced back to the domicile location (i.e., Johnson is not considered to have made sales within those jurisdictions for purposes of Tenn. Code Ann. § 67-4-723(b)).⁵⁴ But please note, local ordinances may require such a license for other reasons. Johnson did not have any sales in Memphis. Therefore, it would not be required to obtain a minimal activity license or a standard business license.

Example 2

Foundation Builders, (“Foundation”) is domiciled in the City of Lebanon in Wilson County, Tennessee. From the period beginning January 1, 2023, and ending December 31, 2023, Foundation performed contracts totaling \$2,040,000. Foundation performed contracts totaling \$1,930,000 in contracts within its domicile jurisdiction. Foundation has taxable receipts that are less than \$100,000 in each of two municipalities located in the same county all of which are outside of Foundation’s place of domicile. The total taxable receipts for the county are more than \$100,000.

The following contracts were performed outside of Foundation's domicile:

- City of Smyrna/Rutherford County – \$60,000
- City of Murfreesboro/Rutherford County – \$50,000

Foundation must obtain the following business licenses and report its gross taxable sales as follows:

Cities	Lebanon (domicile)	Smyrna (no filing)	Murfreesboro (no filing)
Gross Taxable Sales Reported on Return	\$2,040,000	\$0	\$0
Type of Business License	Standard	Minimal Activity	Minimal Activity

Counties	Wilson (domicile)	Rutherford (deemed location)
Gross Taxable Sales Reported on Return	\$1,930,000	\$110,000
Type of Business License	Standard	Standard

Foundation would need a minimal activity license in both Smyrna and Murfreesboro because it had more than \$3,000 but less than \$100,000 in gross receipts in those locations. For purposes of applying the exemption, deemed location analysis, and filing requirements, multiple locations in the same jurisdiction are combined. Because Smyrna and Murfreesboro are both located in Rutherford County, the receipts in both locations are combined. When combined, the total taxable sales in Rutherford County equal \$110,000.

Therefore, Foundation needs a standard business license in Rutherford County and must file a return and remit the tax under a Rutherford County location id. Because those sales are included on the Rutherford County location id, they are not reported on the corresponding

Wilson County location id. Additionally, they are included on the Lebanon location id (the Foundation's domiciled city location) because there is not a corresponding municipal-level return in Smyrna or Murfreesboro.

Example 3

Armstrong Home Improvements, ("Armstrong"), is domiciled in the city of Nashville/Davidson County. For the period beginning January 1, 2023, and ending December 31, 2023, Armstrong performed contracts totaling \$2,000,000. A portion of the contracts, totaling \$175,000, were performed in the city of Murfreesboro in Rutherford County, Tennessee.

Armstrong must obtain the following business licenses and report the following amounts:

Cities	Nashville (domicile)	Murfreesboro (deemed location)
Gross Taxable Sales Reported on Return	\$1,825,000	\$175,000
Business License	Standard	Standard

Counties	Davidson (domicile)	Rutherford (deemed location)
Gross Taxable Sales Reported on Return	\$1,825,000	\$175,000
Business License	Standard	Standard

Armstrong has more than \$100,000 in all jurisdictions in which it worked. Therefore, Armstrong must obtain a standard business license in all jurisdictions and must file a business tax return in all jurisdictions.

Out-of-State Contractors

A contractor that does not have a location or domicile in Tennessee and has taxable gross receipts in the state of less than \$100,000 per county is exempt from the business tax and does not need to register for business tax or obtain a business license.

A contractor that does not have a location or domicile in Tennessee and has taxable gross receipts in any county of \$100,000 or more is subject to the state business tax and should register and file a return with the Department.

The contractor with no location or domicile in Tennessee should total all its receipts for each county in which it has taxable sales of \$100,000 or more and pay the state tax on all such receipts, or at least the \$22 minimum tax. The contractor is not required to pay the minimum tax for each county in which it receives compensation. For example:

- Contractor A is domiciled in Kentucky but receives compensation of \$10,000 in Davidson County, \$121,000 in Williamson County, and \$5,000 in Sumner County during a tax period. Because he has receipts of \$100,000 or more in at least one Tennessee county, Contractor A should register and file one return with the Department. His total taxable receipts are \$121,000 (only the receipts from counties where he earns \$100,000 or more).

Deemed Location – For In-State and Out-of-State Contractors

If a contractor receives taxable compensation of more than \$100,000 during a tax period in any county and/or municipality, the contractor will be deemed to have a location in that county and/or municipality for business tax purposes.⁵⁵ Therefore, the contractor must register for and obtain a standard license in that county and/or municipality for that tax period.

The contractor should file a separate return for that county and/or municipality, and the compensation the contractor received in that county and/or municipality will be sourced to that county and/or municipality. The contractor should subtract this compensation from the remainder of the compensation it receives in the state which is filed on a separate return.

For example:

- Contractor B is domiciled in Georgia but receives compensation of:
 - \$162,000 in Hamilton County/Chattanooga,
 - \$112,000 in Bradley County (unincorporated area), and
 - \$123,000 in Polk County (unincorporated area).

- Because Contractor B performed a service in Tennessee and has receipts of \$100,000 or more in at least one Tennessee County, Contractor B should register with the Department. Further, because he received more than \$100,000 in Hamilton County/Chattanooga, Bradley County, and Polk County, he should also obtain standard business licenses from the Hamilton County Clerk, Polk County Clerk, Bradley County Clerk and the Chattanooga city official. Contractor B should file a return for Hamilton County reporting his receipts in that county of \$162,000 and should file a return for Chattanooga reporting his receipts in that municipality of \$162,000. He should also file separate returns reporting receipts of \$112,000 in Bradley and \$123,000 in Polk County.

Tenn. Code Ann. § 67-4-717(c)(3) provides that if a contractor does not have a domicile or location in the state and receives \$100,000 or less in compensation in a municipality during a taxable period (therefore does not have a deemed location), such compensation is not subject to the municipal-level business tax.

Installation Sales

Charges for the installation of tangible personal property in connection with a sale of tangible personal property are subject to business tax if the property continues to be personal property after installation.⁵⁶

Personal property is tangible personal property sold and attached to real property but ordinarily removed by the owner or tenant.⁵⁷

- Examples of personal property include:
 - Air conditioning window units;
 - Curtain and drapery rods; and
 - Gasoline pumps and tanks.

The person making the sale of personal property is responsible for the tax regardless of whether the property is installed by the person selling the property or if another person acting on his behalf installs the personal property.⁵⁸

- Tax should be computed based on the dominant business activity of the person making the sale of the personal property.
- Taxpayers with a dominant business activity of installing personal property that becomes real property apart from the sale of the tangible personal property shall be taxed under Classification 4 of the business tax. For example:
 - A taxpayer purchases flooring and the installation of flooring from a home improvement store. The home improvement store subcontracts with individuals to install the flooring. When the home improvement store pays business tax, the store may deduct the amounts paid to the subcontractors. The subcontractors must be licensed, and the home improvement store must provide the Department with the subcontractors' information on Schedule C.

Property Not Ordinarily Removed

Charges made for installing tangible personal property which becomes a part of real property, and which is not ordinarily removed by the owner or tenant, such as plumbing, electrical wiring, etc., are deemed to be made by a contractor, and the person installing such property should file and pay the business tax as a contractor.

Reporting Sales and Progress Payments

Contractors report sales on a cash basis. TENN. COMP. R. & REGS. 1320-04-05-.09(2) states that progress payment charges billed pursuant to a contract and received by a contractor and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the equipment is operated by the lessor are subject to business tax.

Subcontractor Deduction

Contractors may deduct payments made to subcontractors if:

- The contractor completes Schedule C of the business tax return listing each contractor license number or business license number, issuing county or city, date paid and amount paid;

- It keeps a copy of the subcontractor's business license or license issued by the board for licensing contractors; and
- The deductible amounts were made during the business tax period to subcontractors, or other persons holding a business license or who is licensed by a state board for licensing contractors for performing activities described in Tenn. Code Ann. § 67-4-708(4)(A), the classifications section of the business tax statute.⁵⁹

Contractors may not reduce their own gross receipts by deducting payments to subcontractors if the subcontractor is not licensed for business tax. Contractors are not required to determine whether their subcontractors have paid business tax. The contractor is only required to obtain a copy of a subcontractor's business license or contractor's license issued by the board for licensing contractors for performing contracting activities and report the required information on Schedule C of the business tax return (Payment to Subcontractor Worksheet).

For example:

- A contractor is building a new home for a client. The contractor entered into an agreement with a well driller whereby the contractor would pay the well driller to drill the well for the new home. Here, the contractor could complete Schedule C and deduct the payments made to the well driller as the well driller is making improvements to real property.

Services

Payments to subcontractors are deductible if:

- The payments are for Classification 4 services; and
- The taxpayer claiming the deduction actually sold those subcontracted services.

Contractors and subcontractors do not need to be primarily in the business of providing Classification 4 services to be eligible for the subcontractor payment deduction.

Taxpayers holding themselves out to their customers as the provider of a particular service for which the taxpayer then subcontracts with a third party to perform the labor, cannot take a deduction for the amount paid to the third-party subcontractor. For example:

- A business contracts to repair tangible personal property. The business holds itself out to its customers as the provider of the repair service. The business then subcontracts with a third party to perform the labor. That business is selling a repair service to consumers at retail and cannot deduct the amount paid to the third party.

Subcontractor Not Licensed in Deemed Location

A contractor that receives more than \$100,000 in taxable gross receipts from a contract outside of the county or city where they are domiciled is required to register in the county and/or city where the work is performed. If a taxpayer's subcontractors had \$100,000 or less in contracts in a particular county or city, the Department would allow the taxpayer to deduct payments to that subcontractor if the subcontractor held a business license or was licensed by the state board for licensing contractors for work described in Tenn. Code Ann. § 67-4-708(4)(A).

Speculative Builders

Persons that build houses or other structures on their own property from their own plans and that offer the structures for sale are not subject to business tax provided no structural changes are made to the initial building plans to suit the contracted buyer.⁶⁰ Cosmetic changes such as paint, flooring, counter tops, etc., are not considered structural changes.

If, while constructing a house or other structure, a builder agrees to sell the property and alters the plans to the specifications of the buyer (e.g., extends a room, removes a wall, etc.), the builder will be considered a contractor and liable for business tax on the total receipts above the price that the property would otherwise be sold (value of the land).

A builder is subject to business tax in this manner if the builder:

- Contracts to sell a building and lot prior to completion of the construction of the building, and
- Alters the building plans to the specifications of the buyer.

For example, while constructing a home, a builder decides to sell the property and adds an additional bathroom to the main floor of the home at the request of the buyer. The builder sells the home for \$360,000, and the value of the land is \$60,000. The builder would owe business tax on the \$300,000 structure.

Filing a Business Tax Return

Business tax returns must be filed electronically through the Tennessee Taxpayer Access Point (“TNTAP”), and the appropriate taxes must be paid to the Department of Revenue (the “Department”).⁶¹

To file a business tax return online, follow the steps below:

- Login to TNTAP.
- Select the “Business Tax” link. *(Note: If you do not see your account, you can gain access to your account by contacting the [Department's Taxpayer Services Division](#)*
- Click “File Return.”
- Upload a CSV file on this first screen. Detailed instructions on uploading CSV files are available [here](#). If you do not use CSV files, click “Next.”
- Upload any supporting documents. Click “Next.”
- You will see all locations available to file along with their respective city and county.
- Select the location ID and enter gross sales at that location.
- Note: If you are a Class 4, or Class 3 cable provider, your location may only be for the city tax and you will enter your sales on line 7, not line 1.
- Enter in your sales for all locations and then click “Next.”
- Finally, make a payment and submit your return.

For more information on filing a business tax return, filing with multiple locations, filing periods, and due dates, please see Chapter 6 of the Department's Business Tax Manual.

Closing a Business

Any person liable for any tax, penalty, or interest levied under the business tax who:

- Sells the person's business or stock of goods;
- Changes the legal structure of the business (i.e., from sole proprietor to corporation, corporation to limited liability company, etc.); or
- Closes the business.

must file a final return and payment within **15 days** of selling or closing the business.⁶²

For example:

- If a contractor finishes a job in a city with no prospect of another job in the same city and would like to close the business tax account in that jurisdiction, the contractor should notify the Department and file a final return.

⚠ A taxpayer who ceases business activity but does not properly terminate their business tax account(s) will still be liable for the applicable minimal business tax.

Businesses holding a minimal activity license should contact the county clerk and city recorder's office to advise them the business is no longer operational.

Taxpayers closing their account should also contact the Department. Most account closures can be handled by calling the Department at (800) 342-1003 (Nashville-area and out-of-state: (615) 253-0600).

Vehicle Title and Registration

Commercial License Plates

Vehicles that are registered to or used mainly for a contractor's business endeavors should generally have commercial plates or (H-plates). H-Plates are commercial license plates available to persons, firms, or corporations operating freight motor vehicles on state roads for commercial purposes.⁶³



For hire plates for apportioned vehicles are issued through the Department of Revenue Motor Carrier Division. The below chart outlines the different for hire and non-apportioned commercial plates available along with the class code and issue year.

Plate		Class Code / Issue Year
H/1 Plate	For Hire 9,000 lbs GVW	4201/2000
H/2 Plate	For Hire 16,000 lbs GVW	4203/2000
H/3 Plate	For Hire 20,000 lbs GVW	4205/2000
H/4 Plate	For Hire 26,000 lbs GVW	4207/2000
H/5 Plate	For Hire 32,000 lbs GVW	4209/2000
H/6 Plate	For Hire 38,000 lbs GVW	4211/2000
H/7 Plate	For Hire 44,000 lbs GVW	4213/2000
H/8 Plate	For Hire 55,000 lbs GVW	4215/2021
H/9 Plate	For Hire 66,000 lbs GVW	4217/2000
H/10 Plate	For Hire 74,000 lbs GVW	4219/2000
H/11 Plate	For Hire 80,000 lbs GVW	4221/2000

H/8, H/9, H/10, and H/11 plates have an HVUT requirement. Vehicles under 55,000 pounds do not require an HVUT.

Trailers

Contractors may use trailers in the course of their business. Certain types of trailers are required to be registered with the Department of Revenue.⁶⁴ Generally, trailers that are used in the furtherance of a business are required to be registered in Tennessee. The table below provides a list of trailer types and plates that are required for each trailer type.

Trailer Type	Registration Required?	Type of Plate
Privately owned trailers under 8' wide and 20' long (excluding tongue) and including boat trailers	Not Required	Trailer E
Privately owned trailers over 8' wide and 20' long (excluding tongue) and including boat trailers	Not Required	Semi-Trailer
Campers, Tag-a-long (bumper-pull), Fifth Wheel (Personal campers do not qualify for a semi-trailer plate)	Required	Trailer E
Commercial Trailer (any trailers used in the furtherance of a business, except for rental trailers)	Required	Semi-Trailer
Homemade Trailer (Applicant must request an inspection by the Department of Safety Commercial Vehicle Enforcement for safety inspection)	Not Required	Trailer E or Semi-Trailer (depending on the length of the trailer)
Trailers used by farmers or for agricultural purposes or hauling livestock between farm and market, depending on length and width, including horse trailers and gooseneck trailers	Not Required	Trailer E or Semi-Trailer (depending on the length of the trailer)
Pole Trailers	Required	Semi-Trailer

Rental Trailers	Required	Trailer E (10 year)
Tow Dolly	Not Required	Trailer E
Utility Trailer	Not Required	Trailer E

1. Trailer Taxation

An applicant desiring to title and register a trailer will be required to pay sales tax unless otherwise exempted.

- **Common or Contract Carrier Trailers** may be exempt from sales tax under the following conditions:

 - Owner must be a common or contract carrier.
 - Tow vehicle gross weight must exceed 16,000 lbs.
 - Trailer must be used more than 50% in Interstate commerce.
 - Trailer must be classified as “trailer”, “semi-trailer” or “pole trailer.”
 - Trailer must be used to transport livestock or for other agricultural purposes (proof of Agricultural Sales and Use Tax Certificate of Exemption required)
For more information, please see important notice [19-09 - Agricultural Trailers](#)
- **A copy of the “Application for Sales Tax Exemption for Interstate Commerce Motor Vehicles and Trailers”** must be prepared in triplicate at the time of sale by the dealer and such exemption must be claimed on the Sales and Use Tax Return.
- **Commercial trailers used as lease or rental trailers** are not tax exempt since the owner is not a common or contract carrier.

2. Trailers that are not Eligible for Registration

Trailers that are not eligible for registration include:

- Trailer converters (A converter is meant to tie or combine two trailers in tandem)
- Mobile homes / Manufactured housing
- Slide-In Campers

3. Trailers that do not Require Registration

The following types of trailers do not require registration with the Department of Revenue. However, these vehicles can be registered if the owner so chooses and are eligible for personalized license plates:

- Boat trailers
- Fold down, pop up, or collapsible trailers
- Livestock or farming trailers that are owned by farmers and used for transporting goods or livestock to market
- Homemade trailers
- Horse trailers
- Utility trailers, open or enclosed, for personal use only

The below photos are examples of trailers in each of the above categories. Please note that the below photos are not the only photo examples of trailers within the category. To determine if your trailer fits within a specific category, please see the Department's guidance, or contact the Vehicle Services Division of the Department of Revenue.



Boat Trailer



Fold Down/Pop Up/Collapsible Trailer



Livestock/Farming Trailer



Homemade



Horse

Utility-Open or Enclosed

4. Trailers that Require Registration

The following types of trailers are required to be registered with the Department of Revenue. These types of trailers are not eligible for personalized trailer plates:

- Fifth wheel camping trailer
- Pole trailer
- Camping trailer
- Public rental trailer

- Utility trailers, open or enclosed, that are used in any conveyance of business other than a farmer-owned trailer used for transporting goods to market.
- Semi-trailer

Please note that the below photos are not the only photo examples of trailers within the category. To determine if your trailer fits within a specific category, please see the Department of Revenue's guidance, or contact the Vehicle Services Division of the Department.



Fifth Wheel/Camping Trailer



Pole Trailer



Camping Trailer



Rental (Public)



Utility-Open or Enclosed Trailer



Semi-Trailer

For more information on trailers, please see the [Vehicle Services County Clerk Guide](#) on the Department's website.

¹ Tenn Code Ann. § 67-4-102.

² Tenn. Code Ann. § 67-6-102(95); TENN. COMP. R. & REGS. 1320-05-01-.107, .108, and .110.

³ Tenn. Code Ann. § 67-6-205(c)(6).

⁴ TENN. COMP. R. & REGS. 1320-05-01-.54(2) and 1320-05-01-.53(2).

⁵ TENN. COMP. R. & REGS. 1320-05-01-.27(4).

⁶ See, e.g., *Gen. Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241 (Tenn. 1974) (holding that for sales and use tax purposes, the dispositive issue regarding whether a contractor is improving realty is whether the property being installed becomes a fixture to the realty).

⁷ *Id.* at 242-43.

⁸ *Magnavox Consumer Electronics v. King*, 707 S.W.2d 504, 507 (Tenn. 1986) (quoting *Hickman v. Booth*, 173 S.W. 438 (Tenn. 1914)).

⁹ *Id.*

¹⁰ *ANR Pipeline Co., et al. v. Tenn. Bd. of Equalization*, Nos. M2001-01098-COA-R12-CV, M2001-01117-COA-R12-CV, M2001-01119-COA-R12-CV, 2002 WL 31840689, at *3 (Tenn. Ct. App. Dec. 19, 2002), *perm. app. denied*, June 30, 2003.

¹¹ *Id.*

¹² *Hubbard v. Hardeman Cnty. Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993).

¹³ See *Process Sys., Inc. v. Huddleston*, No. 101801-I, 1996 WL 614526, at *3 (Tenn. Ct. App. Oct. 25, 1996) (citing *Memphis Hous. Auth. v. Memphis Steam Laundry-Cleaner, Inc.*, 463 S.W.2d 677, 679 (Tenn. 1971)).

¹⁴ See *id.* (finding that conveyor system's essential character would be destroyed upon removal, which required cutting system components into pieces with an acetylene torch) (citing *Green v. Harper*, 700 S.W.2d 565, 567 (Tenn. Ct. App. 1985)).

¹⁵ See Letter Ruling 11-48.

¹⁶ See Letter Ruling 96-31.

¹⁷ See Letter Ruling 96-20.

¹⁸ See Letter Ruling 00-20.

¹⁹ See Letter Ruling 08-18.

²⁰ See Letter Ruling 01-21.

²¹ See Letter Ruling 03-08.

²² See Letter Ruling 97-32.

²³ Tenn. Code Ann. § 67-6-102(95). Public Chapter 86 (2021).

²⁴ Public Chapter 501 (2019). Tenn. Code Ann. § 67-6-102(97). Important Notice #19-17.

²⁵ Tenn. Comp. R. & Regs. 1320-05-01-.58(2). [Letter Ruling 13-20](#).

²⁶ Tenn. Code Ann. §§ 67-6-102, 209, and 384.

²⁷ Tenn. Code Ann. § 67-6-209(b).

²⁸ *Id.*

²⁹ TENN. COMP. R. & REGS. 1320-05-01-.08(1).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ TENN. COMP. R. & REGS. 1320-05-01-.103(2).

³⁴ TENN. COMP. R. & REGS. 1320-05-01-.103(3).

³⁵ Tenn. Code Ann. § 67-6-209. TENN. COMP. R. & REGS. 1320-05-01-.103.

³⁶ Tenn. Code Ann. § 67-6-209.

³⁷ Tenn. Code Ann. § 67-4-2004(14).

³⁸ Tenn. Code Ann. § 67-4-2004(47)(A).

³⁹ TENN. COMP. R. & REGS. 1320-06-01-.31.

⁴⁰ *Id.*

⁴¹ TENN. COMP. R. & REGS. 1320-06-01-.42.

⁴² TENN. COMP. R. & REGS. 1320-06-01-.38.

⁴³ *Id.*

⁴⁴ Tenn. Code Ann. § 67-4-709(4)(A)(ii). The Tennessee Works Tax Reform Act of 2023 raised the “deemed location” threshold for contractors from \$50,000 to \$100,000 for tax years ending on or after December 31, 2023.

⁴⁵ TNTAP may be accessed at <https://tntap.tn.gov/eservices/> /

⁴⁶ Tenn. Code Ann. § 67-4-706(a).

⁴⁷ TENN. COMP. R. & REGS. 1320-04-05-.28(1).

⁴⁸ TENN. COMP. R. & REGS. 1320-04-05-.28(2).

⁴⁹ Tenn. Code Ann. § 67-4-723(a).

⁵⁰ Tenn. Code Ann. § 67-4-712(d)(1).

⁵¹ Taxpayers with receipts outside of their domicile that do not reach the \$100,000 threshold to establish a deemed location should include these receipts in their domicile filing. Please see the examples below.

⁵² All company names contained in the examples are fictional.

⁵³ Please note, the business tax statutes do not require a minimal activity license in this instance, however, local ordinances may require such a license for other purposes (such as to obtain a building permit).

⁵⁴ Tenn. Code Ann. § 67-4-717(b)(3).

⁵⁵ Tenn. Code Ann. § 67-4-709(4)(A)(ii).

⁵⁶ TENN. COMP. R. & REGS. 1320-04-05-.21(1).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Tenn. Code Ann. § 67-4-711(a)(5)(A).

⁶⁰ TENN. COMP. R. & REGS. 1320-04-05-.51.

⁶¹ Tenn. Code Ann. § 67-4-715. TENN. COMP. R. & REGS. 1320-04-05-.53.

⁶² Tenn. Code Ann. § 67-4-721(a).

⁶³ Tenn. Code Ann. §§ 55-4-112 and 55-4-113(a)(2).

⁶⁴ Tenn. Code Ann. §§ 55-4-111, 55-4-113(a)(5), and 67-6-331.