

**Tennessee Department of Revenue
Business Tax
Frequently Asked Questions**

Licensing

1. Who will issue the business tax license and what is the fee for a new license?

The county clerks and city officials continue to be responsible for issuing the business tax license. There is a \$15 fee for the initial business tax license. A taxpayer is required to obtain two business tax licenses if the taxpayer is located within the limits of a Tennessee city, one from the city and one from the county. If the taxpayer is not located within a Tennessee city limits, or is located inside the limits of a city that has not enacted the business tax, the taxpayer is only required to obtain a business tax license from the county.

2. Who will send annual license renewals to the businesses?

County clerks and city officials will send business tax license renewals to businesses upon notification from the Department of Revenue that the return has been filed and taxes paid. There is no fee for the annual renewal of an existing license.

3. Who issues licenses to contractors that are doing business outside the county and/or city where they are domiciled?

The county clerks and/or city officials where the contractor is doing business is responsible for issuing business tax license.

4. Will out-of-state contractors submit escrow funds or bonds to the county clerks or city officials when issued a license? (Tenn. Code Ann. § 67-4-707)

Yes, businesses in Classification 4(A) (i.e., contractors) domiciled outside Tennessee, must, when applying for a business tax license, execute a bond or establish an escrow account with the county or municipality in which they are applying. The State may collect against the surety company up to the amount of the bond to satisfy a taxpayer's business tax liability in the event of failure by the taxpayer to pay its liability.

5. Will Classification 5 taxpayers need to register with the Department of Revenue in addition to registering with the Department of Financial Institutions as an industrial loan and thrift company?

Yes, Classification 5 taxpayers must also file an Application for Business Tax License form with the Department of Revenue in order to register. The company will then receive an account number to use when filing the annual business tax return with Department of Revenue.

6. If a business opens 1-2 months prior to their classification year end, will the business be required to file a return for those 1-2 months and renew its license or can the license be rolled over to the next period?

The business will be required to get a business tax license for the short period, file a tax return with the Department for the short period when it becomes due, and then the license will be renewed by the local government. There is no fee for the annual renewal of an existing license.

Tax return data

7. Will the tax rates change?

The tax rates will remain the same for each classification. However, taxpayers in Classifications 1, 2, and 3 will be classified as *either* a wholesaler or a retailer based on the taxpayer's primary sales activity. All sales by a wholesaler will be subject to tax at the wholesale tax rate for the wholesaler's designated classification. All sales by a retailer will be subject to tax at the retail tax rate for the retailer's designated classification.

8. How does a taxpayer determine if it is a wholesaler or a retailer?

Whether a taxpayer is a wholesaler or a retailer for business tax purposes is determined annually based on whether the taxpayer is primarily engaged in making retail sales or wholesale sales. If more than fifty percent (50%) of the taxpayer's sales for the tax year consist of wholesale sales, the taxpayer is classified as a wholesaler. If fifty percent (50%) or more of the taxpayer's sales for the tax year consist of retail sales,

the taxpayer is classified as a retailer. "Retail sale" and "wholesale sale" are defined by Tenn. Code Ann. § 67-4-702 (15) & (23).

9. Are businesses still classified based on their dominant business activity?

Yes, businesses continue to be classified according to their dominant business activity. "Dominant business activity" is defined as "the business activity that is the major and principal source of taxable gross sales of the business."

10. Will the minimum tax change?

The minimum tax for taxpayers in Classifications 1 through 4 will be \$22. The minimum tax for taxpayers in Classification 5 will be \$450, and the maximum tax for taxpayers in Classification 5 will be \$1,500. All entities registered to do business in Tennessee must pay at least the minimum tax.

11. How will refunds and amended returns be handled once the Department of Revenue takes over the administration of the tax returns?

Returns filed with the Department will be amended or refunded through the Department. Returns filed with the local governments will be amended or refunded through the local government as provided in the statute prior to the law change.

12. Will Classification 4 businesses still be allowed to deduct payments made to subcontractors?

Yes, in accordance with Tenn. Code Ann. § 67-4-711, contractors can deduct amounts paid to a subcontractor provided the subcontractor has a business tax license or a contractor's license. A contractor must submit to the State, on a designated form filed with the tax return, the license number of the subcontractor and must maintain a copy of the subcontractor's license in its records. The subcontractors are also required to file business tax returns with the Department of Revenue. The change applies to all contracts issued on or after October 1, 2009.

13. Will taxpayers continue to receive the personal property tax credit? If so, how is the credit reported on the return? Are receipts for payments made required to be attached to the return?

Yes, the credit for personal property tax paid will now be allowed to offset both the State and local portion of the business tax. However, the credit is limited to an amount that equals no more than fifty percent (50%) of the total business tax liability. The taxpayer will deduct personal property taxes paid to the city on the city business tax return and personal property taxes paid to the county on the county business tax return. The Department will not require receipts to be attached to the returns. However, the taxpayer is responsible for keeping records of its personal property tax payments for audit purposes.

14. How will the State handle returns that are incomplete or improperly filed?

Returns will be processed and the taxpayer will be notified of any errors, including being assessed for any tax, penalty or interest that might be due as a result of the error. The statute provides for penalty and interest due to the late filing of the tax return or late payment of the tax due.

15. Will the State issue a refund in the event of an overpayment?

The State will issue refunds of overpaid taxes if requested by the taxpayer. Otherwise, overpayments will be applied to the next tax year's liability.

Filing of returns

16. When will taxpayers begin filing returns with the Department of Revenue?

The first business tax returns to be filed with the State will be those due on February 28, 2010, for taxpayers in Classifications 1 and 5. Any returns due prior to this date are to be filed with the county clerk and/or city official, using the same forms and procedures used prior to the law change.

17. If a business closes on or after January 1, 2010, do they file the "final return" with the State or with the Local Government?

Businesses that close on or after January 1, 2010, regardless of Classification, should file their final business tax return with the State using the revised business tax forms. The State will close the business tax account and notify the appropriate county clerk and/or city official of the closure.

18. How many returns must a taxpayer file per location?

A business with a location within the limits of a Tennessee city that has enacted the business tax must file two business tax returns for that location – one return for the city and one return for the county. A business with a location outside the limits of any Tennessee city, or inside the limits of a city that has not enacted the business tax, is only required to file one business tax return for that location – one return for the county.

19. If a taxpayer has multiple locations in the same municipality, can it consolidate the locations into one return?

If a taxpayer has multiple locations in one jurisdiction, it must make a request to the Commissioner of Revenue to file a consolidated return.

20. If a contractor must file an additional return for a location outside of its domicile city and/or county, how will the Department of Revenue distinguish between the multiple returns?

If a contractor receives more than \$50,000 of compensation from contracts in a different county or city than the contractor's domicile, then the contractor must register for a business license in that location and file a business tax return for that location. The contractor will be required to identify the business location when making application for the business license. The contractor's account will be registered with the Department of Revenue based on that location. There will be a "jurisdiction" field on the business tax return that will be preprinted with the location so the contractor and the Department will know which location the contractor is filing for.

21. Will taxpayers continue to receive their return in the mail prior to the filing due date? What should a taxpayer do if it does not receive a return or needs an additional return for any other purpose?

The appropriate business tax returns will be sent to all taxpayers prior to the filing due date for the first year the Department of Revenue administers the business tax. After the first year, taxpayers that are required to file electronically will no longer receive a return in the mail; all other taxpayers will continue to receive their return in the mail each year. Failure of any person to receive a return from the Department does not relieve such person from the payment of the tax. Forms, categorized by classification, are available on the Department of Revenue's website at www.tn.gov/revenue.

22. Will any taxpayers be required to file business tax returns electronically?

Yes, businesses that are required to file sales and use tax returns and make tax payments electronically are also required to file the business tax return electronically and remit business tax payments electronically.

23. Are taxpayers required to pay any taxes due directly to the State?

Yes, taxpayers will remit the amount due together with the return directly to the Department of Revenue. Payments may be made electronically or by check.

24. If a taxpayer is going out of business or ceasing to exist, must it file a final return with the Department of Revenue?

Yes, a final return is required of any taxpayer ceasing to do business in the State. There will be a "final return" box to check on the return.

Transient vendors, antique malls, flea markets, craft shows, antique shows, gun shows and auto shows

25. Who is responsible for collecting transient vendors, antique malls, flea markets, etc., taxes and fees?

County clerks and city officials will continue to collect taxes and fees from transient vendors, antique malls, flea markets, craft shows, antique shows, gun shows, and auto shows.

Compliance Efforts by the Department of Revenue

26. How will the State know if a business has paid their local personal property tax?

The Department of Revenue will be responsible for auditing the tax returns and verifying all deductions and

credits. The department will be performing office and field audits, including matching tax return data with data from other State and local agencies.

27. Will the State be the party to generate tax notices/assessments for all the businesses?

Yes, the State will issue notices of assessment to businesses for underpayment of taxes and/or failure to file a tax return.

28. Can taxpayers enter into a voluntary disclosure agreement for business taxes?

Taxpayers not yet registered and filing business tax returns are strongly encouraged to request a voluntary disclosure agreement from the Department prior to December 31, 2009. The Department will be contacting business tax non-registered, non-filers prior to the first due date for business tax returns to be filed with the State.

29. What is the procedure to enter into a voluntary disclosure agreement?

The taxpayer, or its representative (if it wishes to remain anonymous,) must notify the Department in writing of the taxpayer's desire to enter into a voluntary disclosure agreement. Once the letter is received, the Department will draft an agreement and send it to the taxpayer or its representative for approval. The signed agreement will be sent to the taxpayer or its representative within 15 days from receipt of the original letter.

30. How does a taxpayer enter into an agreement?

To enter into the voluntary disclosure program, a letter must be written to:

Tennessee Department of Revenue
Discovery Unit – Business Tax
P.O. Box 190644
Nashville, TN 37219

31. What should be put in the letter?

The letter should state what activities the company has in Tennessee, and if the company is registered for any taxes in Tennessee. The letter should identify the taxpayer's dominant taxable business activity, a basic description of that activity, and the business tax classification the taxpayer believes applies. Every request must state that neither the State, the county clerk, or the municipal official has contacted the company.

32. What is the look-back period?

For business taxes, it will depend on the business' classification and reporting year. The look-back period is based on when the return is due. The Department is currently allowing businesses to provide a spreadsheet for the reporting periods that should have been filed within the last three years from December 31 plus the most currently completed reporting period, if applicable.

The look-back period for voluntary disclosure agreements requested in 2009 will be for periods covered by returns due or filed in 2006 through the most current completed reporting year. For example, a Classification 1 taxpayer's reporting period is January 1 – December 31, and the return is due by February 28. A voluntary disclosure request for a Classification 1 taxpayer should cover January 1, 2005 through December 31, 2008.

The look-back period may be extended to at least six years for those businesses that do not voluntarily come forward to register and file for business tax purposes. In addition, a mandatory penalty of up to twenty-five percent (25%) will be assessed on any tax due.

33. Does the Department waive penalty and interest?

For voluntary disclosure purposes, in most instances, we will agree to abate the penalty associated with the non-filing. However, interest cannot be waived.

34. Does the taxpayer have to file returns?

For voluntary disclosure purposes, the Department prefers a spreadsheet that includes gross sales from all sources, net sales subject to business tax, allowable deductions, and/or personal property tax credits broken down by each filing period. The taxpayer will also need to provide a breakdown of the amount of

both wholesale and retail sales. A standard schedule is available on the department's web site.

35. Who do I contact for further questions regarding voluntary disclosure agreements?

The Discovery Unit at (615) 741-8319.

The following table gives the tax rate, taxing period, and filing due date for each classification:

CLASSIFICATION	RETAIL	WHOLESALE	TAX PERIOD	DUE DATE
Class 1A	0.001	0.00025	January 1 – December 31	February 28
Class 1B & 1C	0.001	0.000375	January 1 – December 31	February 28
Class 1D – Fuel	0.0005	N/A	January 1 – December 31	February 28
Class 2	0.0015	0.000375	April 1 – March 31	May 31
Class 3	0.001875	0.000375	July 1 – June 30	August 31
Class 4	0.001	N/A	October 1 – September 30	November 30
Class 5	0.003	0.003	January 1 – December 31	February 28