

BUSINESS AFFAIRS SUB-COUNCIL

April 27, 2016

MINUTES

The meeting began at 9:00 a.m. in the TBR Board Room. Present were Ms. Cynthia Brooks (TSU); Mr. Steve Campbell (NeSCC); Dr. David Collins (ETSU); Ms. Beth Cooksey (VSCC); Ms. Mary Cross (NaSCC); Ms. Alisha Fox (ClSCC); Mr. Danny Gibbs (RSCC); Mr. Lowell Hoffman (DSCC); Mr. Ken Horner (CoSCC); Dr. Rosemary Jackson (WSCC); Mr. Ron Kesterson (PSCC); Ms. Renee Moore (PSCC); Ms. Chrystal Pittman (JSCC); Mr. Mitch Robinson (APSU); Mr. Stanley Robinson (STCC); Ms. Jeannie Smith (UOM); Ms. Sonja Stewart (APSU); Dr. Claire Stinson (TTU); Ms. Tammy Swenson (ChSCC); Ms. Kathy Thurman (MTSU); Ms. Hilda Tunstill (MSCC); Mr. Greg Wilgocki (ETSU); Mr. Jeff Young (TTU); Mr. David Zettergren (UOM); Ms. Tammy Birchett, Ms. Angela Flynn, Ms. Alicia Gillespie, Ms. Deanna Hall, Ms. Pat Massey, Ms. April Preston, Mr. Wayne Pugh, Ms. Brooke Shelton, Mr. Dale Sims, and Mr. Stephen Vieira (TBR).

1. Report of the Committees

A. Council of Buyers

Ms. Flynn highlighted the following issues from the March 24, 2016 Council of Buyers meeting:

- Proposed/Revised Policies and Guidelines

Ms. Flynn updated the committee on the revised Approval Policy as well as the New Contracts Policy and revised Contracts Guideline. There were a few material changes to the Contracts Guideline such as language incorporating flexibility in contract terms, as well as including a maximum liability clause. The new guideline also removes the need for an attestation form, with the exception of contracts that will go before Fiscal Review.

The policies and guideline will be submitted to the other sub-councils for review. (Attachments A, B and C)

- DocuSign

The committee was updated on the status of the DocuSign implementation. There have already been some training/work sessions with System Office staff. Ms. Flynn indicated that some test institutions and TBR departments will be engaged first, with a completed roll-out for purchasing and contract routing/approvals by the end of this calendar year.

The TBR System Office has entered into an enterprise-wide agreement with DocuSign. Institutions are required to enter into individual agreements, but are permitted to use the negotiated terms and conditions by the System Office. TBR

was able to negotiate an \$0.80/envelope fee for any institution which chooses to contract for an enterprise-wide license.

- **TSM**

Ms. Flynn updated the committee on the status of the TSM project. They have identified some new problems which will delay the project further. Ellucian has also informed us that it will cost additional money to fix these issues. As of now, Ms. Flynn does not have a projected completion date.

The Council of Buyers minutes, with the policy and guideline changes, were approved.

B. Internal Audit

Ms. Birchett highlighted the following issue from the April 6, 2016 Internal Audit Directors meeting:

- **Fraud, Waste and Abuse Awareness**

Ms. Birchett discussed a letter from Audit Committee Chair, Tom Griscom, directed to the presidents and TCAT directors. The intent of the letter is to provide a reminder to the institutional leaders of the importance of a strong internal control structure as well as the importance and responsibility for reporting matters of fraud, waste or abuse or information system breaches, should these issues occur. (Attachment D)

The Internal Audit Directors minutes were approved.

C. Finance Committee

Dr. Collins highlighted the following issues from the April 5, 2016 Finance Committee meeting:

- **Parking Services and Sales Tax**

The committee was updated on recent conversations between internal audit staff and the Department of Revenue regarding whether motor vehicle registration fees are subject to sales tax. According to the Department of Revenue, we are not subject to taxes on motor vehicle registration. Any institution that is still collecting taxes should stop collecting them and remit any taxes that have been collected.

Verification of this information can be found on page 38 of the attached Sales and Use Tax Guide, as well as the email from the TN Department of Revenue. (Attachments E and F)

- Guidance on Textbooks and Materials Fee

The committee discussed the Department of Education regulations that impact under what conditions the cost of providing books and materials may be included in fees. An institution may include the cost of books and supplies as tuition and fees if they can provide them at a cost below competitive market rates, can provide for delivery of them by the seventh day of a payment period and have a policy that allows a student to opt out of the institution's mandated system. The regulations provide an exception to these rules for demonstrated health or safety reasons which must be reviewed annually.

Language was added to the Miscellaneous Course Fee section in guideline B-060 to address these conditions. (Attachment G)

- Policy 4:01:01:20 Debt Management

The committee discussed revisions to the debt management policy to be in compliance with the recently updated debt policy from TSSBA. Most of the changes were housekeeping. Other changes are described below. (Attachment H)

Section 4 Types of Debt, A. Bonds

The descriptions of the four different types of bonds were added. These include fixed interest rate bonds, variable interest rate bonds, capital appreciation bonds and refunding bonds.

Section 4 Types of Debt, B. Short Term Debt

Language was added to describe short term debt issuance of commercial paper, fixed rate notes, variable notes and revolving credit facility.

Section 5 Debt Management Structure

Language was added for call provisions and original issuance discount/premium.

Section 7 Reserve Funds

Language was added for liquidity facility.

Section 9 Transparency

Language was added for material events which include issuer counsel, bond counsel and financial advisor.

- Study Abroad Policy/Guideline Draft

The committee discussed the language for the proposed study abroad policy/guideline. A Study Abroad Committee was formed to draft this

policy/guideline. The Study Abroad Committee reviewed this topic at institutions outside TBR and determined that most campuses account for these funds in an agency account.

The Finance Committee discussed whether an agency fund is the appropriate account for these funds and whether there are appropriate controls in place. If these funds are kept in an agency fund, it was discussed that there will need to be stricter controls. The committee also discussed whether the funds should be accounted for in E&G unrestricted accounts.

This was the first draft of the policy/guideline. Business officers were asked to review the document and send any comments to Alicia Gillespie. (Attachment I)

- **Cyber Incident Response Plan**

The committee discussed the Cyber Incident Response Plan developed by Treasury Risk Management. This plan is recommended to be used as a structured guide in the event an institution experiences a cyber incident. The plan was distributed to the committee for institutions to become familiar with the plan and let appropriate campus personnel be aware of the plan. Each campus will be required to have a Cyber Incident Response Plan.

There are several items in the Cyber Incident Response Plan that need to be reviewed and edited by TBR. TBR staff will review the plan and distribute to the business officers at a later date. (Attachment J)

The Finance Committee minutes, with the policy and guideline changes, were approved.

D. Human Resources

Ms. Preston highlighted the following issue from the March 22-23, 2016 Human Resource Officers meeting:

- **DocuSign**

Ms. Preston informed the committee that as DocuSign is implemented, institutions will begin to submit H/R documents to TBR Central Office through DocuSign. She expects the first forms available for submission to be Approval to Interview and Approval to Hire, and then they will work on forms for salary increase requests, etc.

The Human Resources Officers minutes were approved.

2. Discount Rate for Summer Terms

Based on a recent survey, it appears that some schools are discounting summer semester

hours enrolled above 12, while others are not. According to Guideline B-060, institutions “may” assess maintenance fees and tuition with no maximum amount for total credit hours enrolled for summer sessions. After much discussion, the committee decided to take no action on the matter at this time. TBR Central Office staff will request information from the institutions to determine what impact any change would have before proceeding.

3. Restricted Federal Funds and Hybrid Retirement Plan

The committee discussed the hybrid retirement plan. New employees hired after July 2014 that have chosen the TCRS plan are required to be enrolled in the hybrid retirement plan. The employer contribution is a two-part contribution. One part is the contribution to the stabilization reserve (SR) in which Treasury has set the contribution at 1.87%. The second part is the actuarially determined contribution (ADC) which is currently set at 2%.

The federal government has determined that they will not participate in the stabilization reserve. The State has asked that we and UT only contribute the ADC (2%) through the payroll process and contribute the SR amount (1.87%) through a manual process until such time Treasury is able to electronically accept the different rate for employers paid by federal grants. The State wants TBR and UT to make this change at the same time. UT has already looked at this and is ready to implement. TBR will use May 1, 2016 as the effective date to change the contribution rate in the payroll system. TBR IT is working on a script that should be ready no later than May 15th. (Attachment K)

4. Election of BASC Chair, Finance Committee Member and IT Sub-Council Representative

The committee elected Mr. Bud Hoffman as the BASC chair.

The committee elected Ms. Hilda Tunstill as a Finance Committee member.

The committee elected Mr. Jeff Young and Ms. Beth Cooksey to serve as representatives on the IT Sub-Council.

There being no further business, the meeting was adjourned at 10:30 a.m.

1= Governance, Organization, and General Policies

1-03-02-10

Approvals of Procurements and Contracts

Purpose

The following policy on approvals is adopted by the Tennessee Board of Regents (TBR) to delineate the approval process for procurements and agreements to be entered into by institutions governed by the TBR.

Applies to

All Institutions governed by the Tennessee Board of Regents.

Definitions

Contract – An agreement between parties which obliges each party to take or not take certain actions. Contracts may be called, but are not limited to, agreement, memorandum of understanding, memorandum of agreement, purchase order, and terms and conditions.

Institution – means any of the universities, community colleges, colleges of applied technology and System Office departments within the Tennessee Board of Regents.

System Office – the administrative offices of the Tennessee Board of Regents.

Policy/Guideline

I. Approval By Presidents of Universities and Community Colleges

- A. All agreements and contracts affecting a Community College or University must be approved and executed by the President or the President's designee.
- B. Each Community College / University shall develop written policies and procedures which are in addition to TBR's policies and guidelines and which will further ensure that no contract or agreement is entered into without the approval of the President or the President's designee.

II. Tennessee College of Applied Technology Approvals

All agreements and contracts affecting a Tennessee College of Applied Technology must be approved and executed by the Vice Chancellor for the Tennessee Colleges of Applied Technology, who for purposes of this policy shall have the authority and responsibilities of the presidents of other institutions. The Vice Chancellor for the Tennessee Colleges of Applied Technology may delegate the authority to approve and execute agreements to directors in writing.

III. Approval By Chancellor

- A. The following agreements, contracts or procurements, in addition to being approved as set out above, shall be submitted to the System Office for approval by the Chancellor or the Chancellor's designee:
1. Agreements and contracts involving or related to the purchase or disposal of real property, insurance, and capital outlay projects.
 2. Agreements involving or related to the leasing (institution as lessee or lessor) of real property for more than five (5) years or more than \$150,000 per year.
 3. Any agreement, including purchase orders, for two hundred fifty thousand dollars (\$250,000) or more in annual revenue or expense.
 4. Agreements and contracts involving insurance or other benefits.
 5. Agreements in which the TBR is a named party.
 6. The primary operating agreement between an institution and its foundation and any other agreement between the institution and its foundation which does not conform to the requirements of TBR Guideline G-030;
 7. Contracts, including grant agreements, which do not conform to the requirements of TBR Guideline G-030 (Contracts Guideline);
 8. Banking, procurement card and other financial services agreements;
 9. Any agreement between a TBR institution and any other institution, agency, organization or entity which provides for the coordinated or cooperative offering of any credit or non-credit programs or activities or in which certificate or degree requirements are met or credit is given for coursework or activities offered by another institution.
 - a. Examples of such agreements include provisions for either credit or non-credit academic programs or public service activities to private or state agencies and institutions in the fulfillment of that agency's responsibility for state-wide services or governmental training, and
 - b. Agreements which require consortia or cooperative arrangements with other institutions, agencies, or associations.
 11. Any noncompetitive contract with a potential term of more than one (1) year and a cumulative value of two hundred fifty thousand dollars (\$250,000) or more. Institutions shall not enter into multiple one-year

contracts, involving the same vendor for the same service, to circumvent this requirement.

- B. Renewals of the above agreements do not require approval by the Chancellor or the Chancellor's designee if no changes have been made. However, a copy of the executed renewal shall be provided to the System Office.
- C. Purchase orders issued pursuant to purchase orders and/or contracts which have already been approved by the Chancellor or the Chancellor's designee do not require additional approval to the System Office.
- D. The Chancellor may direct that certain or all agreements of any Institution be submitted for prior System Office review and approval.

IV. Other Approvals

Certain agreements may be subject to additional review and/or approval processes as set out in TBR policies, i.e. Fiscal Review, State Building Commission, etc.

V. Exceptions

The Chancellor or designee may approve exceptions to the requirements of this policy in appropriate circumstances. Requests for exceptions must be signed by the President or Director and include sufficient justification documentation.

1= Governance, Organization, and General Policies

1:10:00:00

Contracts

Purpose

The purpose of this policy is to establish the framework for contracts of the Institutions governed by the Tennessee Board of Regents.

Applies To

All Institutions governed by the Tennessee Board of Regents.

Definitions

Institution – means any of the universities, community colleges, colleges of applied technology or central offices within the Tennessee Board of Regents system.

State – means state of Tennessee.

Policy/Guideline

I. Applicable Documents

Whether the document is called an agreement, contract, memorandum of agreement, memorandum of understanding, terms and conditions, purchase order or other similar name, it is subject to the requirements of this policy. The purpose of a written contract is to embody the complete agreement in writing. No relevant terms should be left to an unwritten understanding or verbal agreement. The document should be explicit and clearly state the rights and duties of each party and clearly identify all parties.

II. Approval/Authority

The authority to approve contracts is delineated in TBR Policy 1-03-02-10 (Approval of Procurements and Contracts).

III. Prohibited Contracts

- A. Institutions shall not knowingly contract for the procurement of any merchandise, equipment or material with an individual who is, or within the past six months has been, a State employee. An individual shall be deemed a State

employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

- B. Institutions shall not knowingly contract with a company or corporation in which a controlling interest is held by any State employee or the employee's spouse.
- C. Institutions shall not knowingly contract with any person in violation of Federal or State law.

IV. Contracts Guideline

The System Office shall maintain, with input from the Institutions, a written Contracts Guideline, which may be in electronic format, to ensure that all contracts comply with federal and state laws and regulations. All Institutional contracts shall comply with the Contracts Guideline.

V. Exceptions

The Chancellor or designee may approve exceptions to the requirements of this policy in appropriate circumstances. Requests for exceptions must be signed by the President or Director and include sufficient justification documentation.

Contracts Guideline: G-030

Guideline Area

General Guidelines

Applicable Divisions

TCATs, Community Colleges, Universities, System Office

Purpose

The purpose of this guideline is to establish the criteria and processes for contracts as applied to the Institutions governed by the Tennessee Board of Regents. It is not intended to cover all of the Tennessee Board of Regents policies and guidelines or all possible issues that may arise while reviewing contracts; rather, it is intended to give you a general guideline for how to address contract issues. You are responsible for complying with all other relevant policies. This Guideline is subject to regular update, revision and improvement.

Guideline

I. General Contract Provisions Applicable to All Contract

Each Institution is a public institution of higher education within the State University and Community College System established by T.C.A. § 49-8-101. As such, it possesses certain rights and privileges and is subject to certain limitations and restrictions. As an instrumentality of the State of Tennessee, each Institution has sovereign immunity under Article I, Section 17 of the Tennessee Constitution and the Eleventh Amendment to the Constitution of the United States. Only the Tennessee General Assembly has the authority to waive sovereign immunity; no official within the State University and Community College System has this authority. An Institution has limited contracting authority and can agree only to contract terms that are consistent with Tennessee law. A free un-annotated version of the Tennessee Code may be found at <http://www.lexisnexis.com/hottopics/michie>

A. Purpose of a Written Contract

The purpose of a written contract is to embody the complete agreement in writing. The title of a document is irrelevant. Whether the document is called an agreement, contract, memorandum of agreement, memorandum of understanding, purchase order, or other similar name, it is subject to the requirements of this Guideline. No relevant terms should be left to an unwritten understanding or verbal agreement between the parties. The document should clearly identify all parties and be explicit in setting forth the rights and duties of each party.

B. Approval/Authority

The authority to approve contracts is delineated in TBR Policy 1-03-02-10 (Approvals).

C. Negotiation

1. Generally, it is the Institution's responsibility to negotiate with the other party to bring an agreement into conformity with this Guideline and to determine that the terms are acceptable to the contractor before the agreement is sent to the System Office for approval.
2. The System Office Department of Purchasing and Contracts and the Office of General Counsel are available for assistance in negotiating

modifications with the contractor when the Institution has been unable to secure agreement of the contractor.

D. Required Contract Provisions

1. Form Contracts

Whenever possible, one of the form contracts in the Exhibit Section should be utilized in order to assure that an agreement conforms to the requirements of TBR policy and this Guideline.

2. Vendor Generated Contracts

If necessary to use a vendor generated contract, these provisions should be included when applicable.

3. Purpose/Duties/Scope

Every contract must contain language regarding its purpose and the duties of the parties.

4. Term of Agreement

a. A contract shall be entered into for a period of time sufficient to adequately accomplish the Institution's objectives.

b. Expenditure contract terms shall not exceed a total term of sixty (60) months. Revenue contracts shall not exceed a total of one hundred and twenty (120) months. Any exceptions may be submitted to the System Office for consideration and approval prior to contracting activities with the contracting party.

c. Expenditure and revenue agreements must provide a beginning and ending date or must include clear language as to how these dates will be determined.

d. Contracts executed or proposed to be executed for periods of time of more than twelve (12) months:

i. should contain a provision giving the Institution the right of cancellation for convenience; (See T. C. A. § 12-3-305(c)(1))

ii. shall contain a provision giving the Institution the right of cancellation at the end of any fiscal year without notice, in

the event that funds to support the contract become unavailable.(See T. C. A. § 12-3-305(c)(2))

e. A contract may provide for automatic renewal if it:

- requires no expenditure of state funds; or
- contains language that allows for cancellation at the end of any fiscal year for lack of funding

In the event of automatic renewal, the maximum term of the contract is subject to Section 4 above.

5. Payments

a. Contracts requiring payments for goods or services, or the purchase order/order form/statement of work issued pursuant to such Contracts, must include specific rates and prices for the goods or services being procured as well as any payment conditions.

b. Payments are to be made only upon the submittal of an invoice by the contractor after the goods are received or the services performed; however, advance payments may be made under the following types of contracts:

- i. Licensing
- ii. Preventive maintenance/service
- iii. Subscriptions
- iv. Memberships
- v. In other instances, only if approved in accordance with TBR Policy 1-03-02-10 (Approvals).

b. All contracts shall contain a provision that the Contractor's performance shall be subject to monitoring and evaluation by the Institution and/or other appropriate parties.

c. If the Contractor is not a US citizen, or Permanent U. S. resident, payment of any portion of the contract from any source will not be made until the Contractor has provided proof of tax status to the Institution. The payment is contingent upon Contractor's eligibility for payment and tax status and the contract should specify that appropriate withholding may be deducted from the Contractor's payment.

6. Maximum Liability

Contracts requiring payment(s) by the Institution must specify the maximum dollar amount or must include clear language on how expenditures will be tracked (i.e. purchase orders against master terms, order forms, etc.) that may be paid under the contract.

7. Conflict of Interest

Contracts should contain the following provision:

The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee

(This provision is not applicable and should be omitted from agreements between TBR Institutions or between a TBR Institution and another state entity.)

8. Non-discrimination

Contracts should contain the following provision or a similar provision in which the parties agree not to discriminate.

Non-discrimination. The Contractor shall abide by all applicable Federal and State law pertaining to discrimination and hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of classifications protected by Federal or State law.

9. Audit and Documentation

a. Except as noted in b and c below, the following provision must be included in contracts which require any payment to be made by the Institution:

“The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. Any financial statements required by this Contract shall be prepared in accordance with generally accepted accounting principles.” (Reference T.C.A Code 12-3-602(c))

b. See Section V herein on Grant Contracts for audit language for grants.

c. The audit clause is not required for a one time, fixed payment contract.

10. Payment for Travel, Meals, Lodging

If a contractor is to be paid/reimbursed for travel, meals or lodging, such payment shall be in the amount of actual cost/per diem, and shall be expressly subject to the limits and provisions of TBR Policy 4:03:03:00 (General Travel).

11. Governing Law

Contracts shall contain a provision that the contract is to be governed by and construed in accordance with the laws of the State of Tennessee. The contract may be silent as to the governing law if the other party will not accept the governing law of the State of Tennessee.

12. Sales and Use Tax

The following provision shall be included in all contracts for the acquisition of goods or services:

Sales and Use Tax

“The Contractor shall be registered with or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this

Contract. The Contractor shall comply, and shall require any subcontractor to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the Contractor, or the Contractor's subcontractor."

13. Debarment

The following provision shall be included in all contracts for the acquisition of goods or services:

Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with, obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

14. Illegal Immigrants

The following provision shall be used in all contracts for the acquisition of goods or services:

"T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of the contract and by signing this Contract, the Contactor attests that the Contractor shall not knowingly utilize the services of illegal immigrants in the performance of the Contract and will not knowingly utilize the services of any

subcontractor, if permitted under the Contract, who will utilize the services of illegal immigrants in the performance of the Contract. **The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.** (For contracts that require Fiscal Review Committee approval, the original language with the signed Attestation Form incorporated as an Attachment to the Agreement must be used)

15. Data Privacy and Security.

For contracts in which the Contractor will have access to Institutional student or customer data and will be maintaining the Institution's data on the Contractor's computer network or servers, the following clause should be included in the contract:

"Data Privacy. "Personal Information" means information provided to Contractor by or at the direction of Institution, or to which access was provided to Contractor by or at the direction of Institution, in the course of Contractor's performance under this Agreement that: (i) identifies or can be used to identify an individual (including , without limitation , names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers.

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information complies with all applicable federal and state privacy and data protection laws, including without limitation, the Gramm-Leach-Bliley Act ("GLBA"); the Health Information Portability and Accountability Act ("HIPAA"); the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C.1232g), the FTC's Red Flag Rules and any applicable federal or state laws, as amended ,together with regulations promulgated thereunder .

Some Personal Information provided by Institution to Contractor is subject to FERPA. Contractor acknowledges that its improper disclosure

or re-disclosure of Personal Information covered by FERPA may, under certain circumstances, result in Contractor's exclusion from eligibility to contract with Customer for at least five (5) years and agrees to become a "school official" as defined in the applicable Federal Regulations for the purposes of this Agreement.

Data Security. Contractor represents and warrants that Contractor will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Contractor deems necessary to maintain compliance with SSAE16.

Incident Response. "Security Incident" means any reasonably suspected breach of information security, unauthorized access to any system, server or database, or any other unauthorized access, use, or disclosure of Personal Information or Highly-Sensitive Personal Information occurring on systems under Contractor's control. Contractor shall: (i) provide Institution with the name and contact information for an employee of Contractor who shall serve as Customer's primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident; (ii) notify Institution of a Security Incident as soon as practicable, but no later than forty eight (48) hours after Contractor becomes aware of it, except where disclosure is prohibited by law; and (iii) notify Institution of any such Security Incident as follows: **(insert applicable IT or other staff contact information specific to the Institution here)**

Contact:
Contact Email:
Contact Phone:

and

a copy by e-mail to Contractor's primary business contact at the Institution.

Contractor shall use best efforts to immediately mitigate or resolve any Security Incident, at Contractor's expense and in accordance with applicable privacy rights, laws, regulations and standards. Contractor shall reimburse Institution for actual costs incurred by Institution in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation incurred under all applicable laws as a result of the Security Incident.

Return of Personal Information. At any time during the term of this Agreement, at the Institution's written request or upon the termination or expiration of this Agreement, Contractor shall return to the Institution all copies, whether in written, electronic or other form or media, of Confidential, Highly-Sensitive, or Personal Information in its possession, or at Customer's direction, securely dispose of all such copies."

16. Gramm Leach Bliley Act (GLBA) Language

If the contract does not require the Data Privacy and Security Clause found in Section 15 above, a contract in which the Contractor provides a service requiring the Contractor to have access to an Institution's customers' non-public financial information for the purpose of providing a financial product or service, such as a student loan, must include the following clause:

"Throughout the term of this Agreement, Contractor shall implement an Information Security Program ('the Program') and maintain 'appropriate safeguards,' as required by 16 C.F.R. § 314, for all 'customer information,' (as that term is defined in 16 C.F.R § 314.2(b)) obtained by or provided to Contractor pursuant to this Agreement. Contractor shall promptly notify the Institution, in writing, of each instance of (a) unauthorized access to or use of that nonpublic financial customer information that could result in substantial harm or inconvenience to a customer of the Institution or (b) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic financial customer information.

Contractor shall forever defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Contractor's failure to meet any of its obligations under this provision.

Contractor shall further agree to reimburse the Institution for its direct damages (e.g., costs to reconstruct lost or altered information) resulting from any security breach, loss, or alteration of nonpublic financial customer information caused by the Contractor or its subcontractors or agents.

Contractor grants Institution the right to conduct on-site audits, as deemed necessary by the Institution, of the Contractor's Program to ensure the integrity of the Contractor's safeguarding of the Institution's customers' nonpublic financial information.

Institution retains the right to unilaterally terminate the Agreement, without prior notice, if Contractor has allowed a material breach of the Program in violation of its obligations under the Gramm-Leach-Bliley Act, if Contractor has lost or materially altered nonpublic financial customer information, or if the Institution reasonably determines that Contractor's Program is inadequate. Within thirty (30) days of the termination or expiration of this Agreement, Contractor shall, at the election of Institution, either:

- 1) return to the Institution all records, electronic or otherwise, in its or its agent's possession that contain such nonpublic financial customer information; or
- (2) destroy (and shall cause each of its agents to destroy) all records, electronic or otherwise, in its or its agent's possession that contain such nonpublic financial customer information all such records and shall deliver to the Institution a written certification of the destruction.

17. Red Flags Language

- a. The Federal Trade Commission rules concerning the prevention of identity theft (16 CFR Part 681 – Identity Theft Rules) require that Institutions monitor the activities of its contractors performing activities in connection with one or more covered accounts. Covered accounts are those that a creditor offers or maintains, primarily for personal, family or household purposes such as credit card accounts. The activities of the contractor can include such activities as opening or managing accounts, billing, providing customer service or collecting debts. In these situations, the contractor must apply the same standards as the Institution would if the Institution were performing those tasks.
- b. Pursuant to TBR Policy 4:01:05:60 (Identity Theft Prevention), Institutions must require, by contract, that the contractor either:
 - i. Have policies and procedures in place to comply with the Rule; or
 - ii. Review the Institutional policy and report any red flags to the Program Administrator.

The following language should be included in contracts as described in subsection a. above wherein the contractor will be performing any of the listed services:

“Red Flags and Identity Theft. The Service Provider shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Service Provider's activities under the Agreement, or review the Institution's Red Flags identity theft program and report any Red Flags to Institution.”

- c. If the contractor maintains its own identity theft prevention program consistent with the guidance of the Red Flag Rules and validated by due diligence by the Institution's Program Administrator (see TBR Policy 4:01:05:60 (Identity Theft Prevention)), the contractor shall have met the requirements of the first paragraph of this Section.

18. FERPA Language

If the contract will involve sharing student educational records with the contractor, the contract must contain a clause requiring the contractor to comply with the Family Educational Rights and Privacy Act (FERPA). If the contract does not require the Data Privacy and Security Clause found in Section 15 above, the following clauses, or one substantially similar to them, should be included in the contract:

The parties acknowledge that students' education records are protected by the Family Educational Rights and Privacy Act (FERPA), and that Contractor will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA. Student education records will only be used for the purposes of carrying out this agreement. Student permission must be obtained before releasing specific data to anyone other than University and Contractor employees who have a legitimate educational purpose.

OR

Because the Contractor is performing an institutional service or function that has been outsourced by the Institution and for which the Institution would otherwise use its employees and is under the direct control of the Institution with respect to the use of the education records, as defined by FERPA, the Contractor recognizes it is subject to all FERPA requirements governing the use and redisclosure of personally identifiable information from education records, including without limitation the requirements of 34 CFR §99.33(a). Furthermore, the Contractor may not disclose or redisclose personally identifiable

information unless the Institution has first authorized in writing such disclosure or redisclosure; will not use any personally identifiable information acquired from the Institution for any purpose other than performing the service or function that is the subject of this Agreement; and agrees to return to the Institution (or, if not feasible, to destroy) education records in whatever form or medium that the Contractor received such records from or created them on behalf of the Institution.

19. Click-Wrap Agreements

Contracts which may require individual Institutional users to accept online terms and conditions should contain the following clause:

Click-Wrap Agreements. The Contractor agrees that click-wrap or click -through agreements shall not be binding upon the Institution. No employee has the actual or apparent authority to enter into click-wrap or click -through agreements on behalf of the Institution without the approval of the Institution's Procurement and/or Contracts Office. No employee has the authority to modify, amend, or supplement this Agreement through a click-wrap or click -through agreement. This Agreement can only be modified, amended, or supplemented under these terms through a written amendment in accordance with the Institution's and TBR's procedures, policies, and guidelines.

20. Contractor Commitment to Diversity

The Governor's Office of Diversity Business Enterprises requires all contracts contain the following clause:

Contractor Commitment to Diversity. The Contractor shall assist the Institution in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the Institution in form and substance as required by Institution.

21. Service and Software Accessibility Standards

If the contract will require either that employees or students of the Institution access the Contractor's software or website, the contract should contain the following clause:

"The Contractor warrants and represents that the service and software, including any updates, provided to the Institution will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3 and Section 508 of the Vocational Rehabilitation Act. To the extent that the Products fail to meet the WCAG 2.0 AA, EPub 3 and Section 508 standards, the Contractor will provide Institution with a fully completed Accessibility Statement and Conformance and Remediation forms (Attachment 6.11 & 6.12). The Contractor shall indemnify and hold the Institution harmless in the event of claims arising from inaccessibility related to the Contractor's products/services."

E. Impermissible Provisions

The provisions listed under this section are not to be included in any contract:

Clauses that are similar to those identified below as an Example may be replaced by the alternative language (as indicated in red) without consulting with Institutional or TBR legal counsel, as long as it is used exactly as it is written below. If the contractor will not accept the proposed alternative, or if the proposed alternative does not suit the Institution's needs, please consult with Institutional or TBR legal counsel regarding other possible alternatives.

1. Provisions requiring the Institution to pay taxes.

As State agencies, TBR institutions are not liable for the payment of Tennessee property tax or sales or use taxes. (TCA §§ 67-5-203 and 67-6-322.) As there are a great many other taxes (federal, foreign, other states) that may come into play, the preferred language would be to limit the school's liability for taxes to those "required by law".

EXAMPLE:

Taxes. It is the Customer's responsibility to pay all taxes or other government charges relating to the Services, transfer, use, ownership, service, or possession of any equipment relating to this Agreement.

ALTERNATIVE:

Taxes. **To the extent required by law**, it is the Customer's responsibility to pay all taxes or other government charges relating to the Services, transfer, use, ownership, service, or possession of any equipment relating to this Agreement.

2. Provisions requiring the Institution to pay punitive damages or costs of litigation other than court costs (T.C.A. § 9-8-307(d)).

The extent to which the state can be held liable for contract damages is strictly defined by statute. T.C.A. § 9-8-307(d) provides that the state shall be liable for actual damages only. It prohibits the payment of attorneys' fees and litigation expenses, punitive damages and penalties.

EXAMPLE:

Institution shall promptly reimburse Contractor for any and all of Contractor's costs and expenses including, without limitation, court costs and attorneys' fees in connection with Contractor's collection of Institution's obligations, including interest thereon at the rate of eighteen percent (18%) per annum.

ALTERNATIVE:

The best alternative is to delete the language, but if the Contractor objects to deleting it, substitute the following:

Any and all monetary claims against the State of Tennessee, its officers, agents, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee and shall be limited as provided in T.C.A. § 9-8-307.

3. Provisions for the payment of travel/per diem expenses in excess of maximum limitations set forth in TBR Policy 4:03:03:00 (General Travel Policies and Procedures).

Contracts must provide that any reimbursable travel expenses be in compliance with TBR policy.

EXAMPLE:

Reimbursable Expenses. Client agrees to reimburse Contractor for the following travel expenses incurred by Contractor in its performance of services: (a) air travel, not to exceed the coach class rate; (b) auto rentals; (c) lodging and miscellaneous expenses, such as parking, taxi fares, fuel;

and (d) a per diem rate for meals, as published and updated by the U.S. General Services Administration. Further, Contractor shall provide itemized receipts for all travel-related expenses. The Institution will not reimburse Contractor for any travel-related expenses that lack an itemized receipt.

ALTERNATIVE:

Reimbursable Expenses. Client agrees to reimburse Contractor for the following travel expenses incurred by Contractor in its performance of services: (a) air travel, not to exceed the coach class rate; (b) auto rentals; (c) lodging and miscellaneous expenses, such as parking, taxi fares, fuel; and (d) a per diem rate for meals. **Reimbursement for all travel-related expenses will be in accordance with The Tennessee Board of Regents travel policies.** Further, Contractor shall provide itemized receipts for all travel-related expenses. The Institution will not reimburse Contractor for any travel-related expenses that lack an itemized receipt.

4. Provisions designating the governing law of a state other than Tennessee or consenting to jurisdiction in courts outside Tennessee.

Such a provision would be considered a waiver of sovereign immunity, which we have no legal authority to do. If the other party won't agree to Tennessee State law, the only alternative is to delete the language entirely and let the contract remain silent as to which law governs

EXAMPLE:

11.8 Governing Law. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.

ALTERNATIVE:

11.8 Governing Law. Deleted

5. Provisions requiring the Institution to make deposits or payments before goods are received or services are performed; provided, however, for those circumstances specified in Section I. D. 5. e. above, such provisions may be acceptable.
6. Provisions requiring the Institution to purchase or obtain liability, property or other insurance or a performance bond.

The State of Tennessee self-insures its exposures in general liability, automobile liability, professional malpractice and workers' compensation. The State's self-insurance program insures all liability created under Title 9, Chapter 8 of the Tennessee Code Annotated, for all State departments, agencies and institutions, including State institutions of higher education.

EXAMPLE:

Insurance: During the term of this Agreement and except as otherwise provided by applicable law, Institution will maintain a Commercial Liability Insurance policy in such amounts as are customary and reasonable in the jurisdiction of the location of the Test Center. Notwithstanding the foregoing, Operator shall make commercially reasonable efforts to obtain a policy with a combined limit of US\$1,000,000.00 for each occurrence.

ALTERNATIVE:

The State of Tennessee is self-insured and does not carry or maintain commercial general liability insurance or medical, professional or hospital liability insurance. Any and all claims against the State of Tennessee, including the Institution or its employees, shall be heard and determined by the Tennessee Claims Commission in the manner prescribed by law. Damages recoverable against the Institution shall be expressly limited to claims paid by the Claims Commission pursuant to T.C.A. Section 9-8-301 et seq.

7. Provisions requiring the Institution to insure, guarantee, or indemnify or hold harmless any party from claims which may arise out of the agreement or be brought by third parties.

Institutions are subject to the direction of the Tennessee Attorney General pursuant to Article VI, Section 5 of the Tenn. Constitution and T.C.A. §8-6-301. The Attorney General, in Tenn. Op. Atty. Gen. No. 78-71, 1978 WL 27014 (Tenn. A.G.) directed that such clauses be deleted. As such, the only alternative is to delete the language entirely.

ALTERNATIVE:

Neither party shall be responsible for personal injury or property damage or other loss except that resulting from its own negligence or the negligence of its employees or others for whom the party is legally responsible. Any and all claims against the state shall be submitted to the Tennessee Board of Claims or the Tennessee Claims Commission.”

8. Provisions requiring the Institution to obtain or pay for outside labor of persons not employed by the Institution (for example, union stage-hands, teamsters, etc.) are prohibited unless such cost is included as part of the total contract price.
9. Provisions requiring the Institution to consent to binding arbitration by a third party for claims arising out of or relating to the agreement.

Only the Attorney General can enter into a settlement agreement that is binding upon the State. (See TCA §§ 8-6-301 and 20-13-103.) The preferred method of handling such provisions would be to delete them. If the contractor will not agree to delete the provision entirely, the Institution may substitute the alternative language provided below.

EXAMPLE:

Conflict Resolution. Except with respect to controversies or claims regarding either party's Confidential Information or proprietary rights under this Agreement, any controversy or claim arises in connection with any provision of this Agreement shall be settled by arbitration administered by the American Arbitration Association. Notwithstanding the foregoing, nothing in this Section 15.3 will be construed to limit either party's rights under Sections 9 and 15.7.

ALTERNATIVE:

Conflict Resolution. Except with respect to controversies or claims regarding either party's Confidential Information or proprietary rights under this Agreement, **in the event any controversy or claim arises in connection with any provision of this Agreement, the parties shall try to settle their differences amicably between themselves by referring the disputed matter to their respective designated representatives for discussion and resolution. Either party may initiate such informal dispute resolution by sending written notice of the dispute to the other party, and if such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either party may seek the remedies available to such party under law.** Notwithstanding the foregoing, nothing in this Section 15.3 will be construed to limit either party's rights under Sections 9 and 15.7. **The provisions of this section are subject to the requirements of T.C.A. §8-6-301 and T.C.A. § 20-13-103.**

10. Provisions passing risk of loss or title to the Institution before delivery and/or installation of products unless vendor provides shipment protection in the Institution's interest.
11. Provisions allowing a contractor to enter Institution's premises without notice to remove equipment or product upon alleged default by Institution.
12. Provisions requiring the Institution to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (T.C.A. § 12-4-701 et seq.).
13. Provisions permitting the vendor to take a secured interest in personal property under the agreement.
14. Provisions providing for a limitation of time in which the Institution may bring suit. (T.C.A. § 28-1-113).

The contractor may try to limit the time within which the state may bring suit under the contract. Limiting the time within which the State may bring suit is an impermissible waiver of sovereignty; only the legislature can say how and when the State shall sue or be sued. Pursuant to T.C.A. § 28-1-113, statutes of limitation, which limit the time in which a party has to file a legal action, do not apply to actions brought by the state of Tennessee. There is no alternative for this clause. It must be deleted.

15. Provisions requiring confidentiality and nondisclosure that potentially violate the Tennessee law regarding public records. (T.C.A. Title 10, Chapter 7). Records cannot be kept confidential if an Institution is required by law to disclose them. T.C.A. § 10-7-504(7) provides that all proposals, evaluations and related records pertaining to personal, professional and consultant contracts are open for public inspection once the evaluation by the State is complete. T.C.A. § 12-3-510 provides that procurement records shall be open for inspection by the public during the Institution's regular office hours.

EXAMPLE:

11. CONFIDENTIALITY

11.1 Nondisclosure and Nonuse. Each party will keep the other party's Confidential Information confidential. Specifically, each party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each party acknowledges that it has all requisite authority under applicable laws to provide the other party with access to Confidential Information. Each party receiving Confidential Information further agrees that

it will not use such Confidential Information except for the purposes set forth in this Agreement. Each party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.

11.2 Notice. The receiving party will promptly notify the disclosing party in the event the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party's expense, in any litigation against any third parties to protect the disclosing party's rights with respect to the Confidential Information.

11.3 Terms of Agreement. Except as otherwise provided by law, neither party shall disclose the terms of the Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set out in this Section 11 to keep such terms confidential.

11.4 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 11 will not apply to information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing party without restriction. Each party may disclose Confidential Information to the limited extent necessary: (a) to comply with the order of a court of competent jurisdiction or other governmental body having authority over such party, provided that the party making the disclosure pursuant to the order will first have given notice to the other party and made a reasonable effort to obtain a protective order; (b) to comply with applicable law or regulation requiring such disclosure; or (c) to make such court filings as may be required to establish a party's rights under this Agreement. Further, if the Company is required by applicable law, legal process or government action to produce information, files, documents or personnel as witnesses with respect to these TOS or the Services provided to you by the Company, you shall reimburse the Company for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless the Company is a party to the proceeding or the subject of the investigation.

ALTERNATIVE:

11. CONFIDENTIALITY

11.1 Nondisclosure and Nonuse. Each party will keep the other party's Confidential Information confidential. Specifically, each party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each party acknowledges that it has all requisite authority under applicable laws to provide the other party with access to Confidential Information. Each party receiving Confidential Information further agrees that

it will not use such Confidential Information except for the purposes set forth in this Agreement. Each party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.

11.2 Notice. The receiving party will promptly notify the disclosing party in the event the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request in any litigation against any third parties to protect the disclosing party's rights with respect to the Confidential Information.

(Original 11.3 was deleted entirely and 11.4 renumbered)

11.3 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 11 are subject to the requirements of T.C.A. Title 10, Chapter 7 and any other provisions of law pertaining to disclosure of state records. Further, the preceding provisions will not apply to information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing party without restriction. Each party may disclose Confidential Information to the limited extent necessary: (a) to comply with the order of a court of competent jurisdiction or other governmental body having authority over such party

16. "Belt and suspenders" provision

Whenever an agreement includes several uses of the phrase "to the extent permitted by law" or some version thereof, the best practice is to add the following language at the end of the contract, as a separate numbered paragraph.

____(Institution)_____ is a public institution of higher learning. As an entity of the State of Tennessee, under the Constitution and laws of the State of Tennessee it possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Tennessee.

Notwithstanding any other provision to the contrary, nothing in this Agreement is intended to be, nor shall it be construed to be, a waiver of the sovereign immunity of the State of Tennessee or a prospective waiver or restriction of any of the rights, remedies, claims and privileges of the State of Tennessee. Moreover, notwithstanding the generality or specificity of any provision herein, the provisions of this Agreement as they pertain to ____ (Institution) _____ are enforceable only to the extent authorized by the Constitution and laws of the State of Tennessee.

17. Limitation of Liability

1. Except as provided in paragraphs 3 and 4 below, pursuant to T. C. A. §§ 12-3-701 and 12-3-1210 an Institution shall not agree to limitation the liability of a contractor for less than two (2) times the maximum liability, estimated liability or maximum revenue of the contract unless the Chancellor, or the Chancellor's designee, determines and approves, that:
 - a. Allowing the limitation of liability is necessary to prevent harm to the Institution from failing to obtain the goods or services sought, or from obtaining the goods or services at a higher price if the Chancellor refused to allow a limitation of liability as long as all respondents are offered the same opportunity as provided in the solicitation;
 - b. The limitations and any alternative contract language are commercially reasonable in light of the risks to the Institution created by the type of goods or services purchased and the purposes for which they will be used.
2. Except as provided in paragraphs 3 and 4 below, pursuant to T. C. A. §§ 12-3-701 and 12-3-1210 an Institution shall not agree to limit the liability of any contractor for claims for infringement of intellectual property rights, intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.
3. Institutions may purchase software for use restricted solely to academic teaching or research upon terms that limit the contractor's liability or warranties less than two (2) times the value of the contract; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct; and
4. Institutions may acquire software or services, materials, supplies and equipment free or at nominal cost upon terms that limit the contractor's liability or warranties less than two (2) times the value of the contract; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct.
5. Examples of limitation of liability clauses that may be proposed by a vendor and the necessary revisions thereto are shown below:

EXAMPLE:

12.2 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY OR ITS LICENSORS BE LIABLE TO YOU OR ANY OF YOUR AUTHORIZED USERS FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, OR ASP SERVICES, WHETHER OR NOT THE COMPANY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA; OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). IN NO EVENT SHALL THE COMPANY'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID BY YOU UNDER THIS AGREEMENT FOR THE PARTICULAR SOFTWARE, AND/OR ASP SERVICE WITH RESPECT TO WHICH THE RELEVANT CLAIM AROSE DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES THE COMPANY'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

ALTERNATIVE:

12.2 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY OR ITS LICENSORS BE LIABLE TO YOU OR ANY OF YOUR AUTHORIZED USERS FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, OR ASP SERVICES, WHETHER OR NOT THE COMPANY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS,

GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA; OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). IN NO EVENT SHALL THE COMPANY'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF **TWO (2) TIMES** THE FEES PAYABLE BY YOU UNDER THIS AGREEMENT THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES THE COMPANY'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. **IN NO EVENT SHALL THIS LIMITATION OF LIABILITY APPLY TO CLAIMS FOR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, INTENTIONAL TORTS, CRIMINAL ACTS, FRAUDULENT CONDUCT OR ACTS OR OMISSIONS THAT RESULT IN PERSONAL INJURIES OR DEATH.**

EXAMPLE:

12.1 Disclaimer of Warranty. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ATTACHED ORDER FORM(S): (A) THE SOFTWARE AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT; (B) NEITHER THE COMPANY NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE OR ASP SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE SOFTWARE OR ASP SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE OR ASP SERVICES WILL BE CORRECTED, OR THAT THE SOFTWARE OR ASP SERVICES

IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) THE COMPANY AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE SOFTWARE OR ASP SERVICES. WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT THE ASP SERVICES AND/OR THE SOFTWARE ARE NOT DESIGNED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS (INCLUDING, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION/COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, SURGICAL OR MEDICAL FACILITIES, LIFE SUPPORT OR WEAPONS SYSTEMS) AND THAT THE COMPANY SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION, WARRANTY OR CONDITION OF FITNESS FOR SUCH PURPOSES.

ALTERNATIVE:

12.1 Disclaimer of Warranty. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ATTACHED ORDER FORM(S): (A) THE SOFTWARE AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT; (B) NEITHER THE COMPANY NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE OR ASP SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE SOFTWARE OR ASP SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE OR ASP SERVICES WILL BE CORRECTED, OR THAT THE SOFTWARE OR ASP SERVICES IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) THE COMPANY AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE SOFTWARE OR ASP SERVICES. **HOWEVER, IN NO EVENT SHALL THE COMPANY'S LIABILITY BE LESS THAN TWO (2) TIMES THE FEES PAYABLE BY**

YOU UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT THE ASP SERVICES AND/OR THE SOFTWARE ARE NOT DESIGNED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS (INCLUDING, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION/COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, SURGICAL OR MEDICAL FACILITIES, LIFE SUPPORT OR WEAPONS SYSTEMS) AND THAT THE COMPANY SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION, WARRANTY OR CONDITION OF FITNESS FOR SUCH PURPOSES. **IN NO EVENT SHALL THIS LIMITATION OF LIABILITY APPLY TO CLAIMS FOR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, INTENTIONAL TORTS, CRIMINAL ACTS, FRAUDULENT CONDUCT OR ACTS OR OMISSIONS THAT RESULT IN PERSONAL INJURIES OR DEATH.**

F. Contract Documents

1. All relevant documents containing information pertinent to the transaction, or additional terms or conditions not included within the body of the contract should be incorporated by reference, with the order of interpretation clearly set forth.
2. If the contract is a result of a competitive process pursuant to TBR Policy 4:02:10:00 (Purchasing Policy), it should contain a clause in substantially the following form:

Contract Documents. This Contract consists of the following documents:

- a. This Contract document, its attachments and amendments/addenda, the latest of which having priority;
- b. The Request for Quotation/Request for Proposal/Invitation to Bid number and its associated amendments; and
- d. The Contractor's Bid dated (**add date**), including any clarifications and addenda thereof, the latest of which having priority;

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in the order of precedence detailed above.

3. Amendments and addenda to existing contracts shall clearly state the additions, deletions and/or modifications to the contract including whether the new terms are in substitution of, or in addition to, the terms expressed in the original contract.

G. Fiscal Review

Agreements must be processed in compliance with applicable legislative fiscal review requirements, as may be amended from time to time. See Section 16 of the Purchasing Guideline, B-120.

H. Electronic Signatures

For contracts not requiring System Office approval and for which the other party is agreeable to the use of electronic signatures, Institutions may use electronic signatures as permitted under the Institution's rules and procedures which have been adopted pursuant to Guideline B-095.

I. Contract Procedures and Routing Requirements

1. All necessary signature approval lines, including that for the TBR, should be prepared by the Institution.
 - a. If the party with whom the institution is contracting is a corporation, its name must be stated in the contract exactly as it appears in its charter or as listed with the Tennessee Secretary of State's office. The person signing on behalf of the corporation must have legal authority to do so, and his/her title/position should be shown on the signature page.
 - b. If the other party is a state agency, the contract must include appropriate signature line(s) for the agency's Commissioner, or official(s) of equivalent rank, or their designee.
 - c. The President/Director or his or her designee must sign all Institution contracts that do not require System Office approval.
 - d. The President/Director or his or her designee must sign all Institution contracts required to be submitted to the System Office. If the President/Director or designee's signature has been omitted from contracts prepared and delivered to the System Office, such contracts may be returned to the Institution.

- e. When approval by the Chancellor is not required, that signature blank should be marked "not applicable" or should be deleted.
2. A completed Contract Summary Sheet as well as all relevant attachments must accompany all agreements or amendments submitted to the System Office for review. Contract Summary Sheets must be signed by an Institution official verifying compliance with all applicable policies and guidelines. If applicable, a Justification of Non-competitive Purchase Form must be completed and submitted along with the Contract Summary Sheet.
3. For Contracts that require TBR System Office approval, Institutions should prepare the contract as desired/required by the parties, the Contract Routing Form and Contract Summary Sheet and transmit to the System Office, along with all required supporting documentation. The System Office shall initiate all contract approvals/signatures via DocuSign or other electronic delivery system.
4. Agreements containing blank spaces or omitting required contract provisions will be returned to the Institution for correction and must be resubmitted to the System Office for approval.
5. All contracts required to be submitted to the System Office should be submitted prior to the beginning of the contract's original term or renewal. A contract cannot be extended or amended after the original term has expired.
6. Amendments forwarded to the System Office for approval must be accompanied by a copy of the original agreement and any prior amendment or addendum.
7. All contracts from the colleges of applied technology which require System Office approval shall be first submitted to the Office of the Vice Chancellor for Tennessee Colleges of Applied Technology.
8. Institutions are responsible for monitoring the Title VI compliance of sub-recipients of federal funds.
9. Sufficient documentation (may be in electronic format) must be maintained as evidence of compliance with all TBR/Institution policies, guidelines and

procedures applicable to the actions taken. Such documentation shall be retained for the time period specified in TBR Guideline G-070.

J. Contract Monitoring

Monitoring. All service contracts shall contain a provision that states that the contractor's activities shall be subject to monitoring by the Institution and/or state officials. These contract types include, but are not limited to:

- a) Personal Service
- b) Professional Service
- c) Software Related Agreements
- d) Grants, including subcontracts
- e) Memorandums of Understanding

Monitoring Plan. Institutions shall maintain a monitoring plan ([See Exhibit 10](#)) for all service contracts to ensure the following:

- a) Contract performance in terms of progress and compliance with contract provisions;
- b) Communication with Contractor to ensure maximum performance and intended results;
- c) Financial obligations of the Institution do not exceed the contract pricing;
- d) Deliverables are received;
- e) Appropriate approval and remittance of payments for acceptable work are in accordance with contract provisions and applicable law;
- f) Maintenance of records for each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
- g) Evaluation of contract results in terms of the achievement of organizational objectives

K. Contract Manual

Each Institution shall maintain a written contracts manual, which may be in electronic format, setting forth any procedures of the Institution in addition to or necessary to comply with the procedures outlined in this Guideline. These procedures shall outline the institution's process for routing and execution of agreements not requiring System Office approval.

L. Conflicts of Interest

1. Pursuant to T.C.A. § 12-4-103 it is unlawful for any state official or employee to "bid on, sell, or offer for sale, any merchandise, equipment

or material, or similar commodity, to the state of Tennessee” or “to have any interest in the selling of the same to the state” during that person’s term of employment and for six months thereafter. Institutions are not allowed to contract with an individual who is, or within the past six months has been, a state employee in violation of the statute.

2. An individual shall be deemed a state employee until such time as all compensation and terminal leave has been paid.
3. Institutions shall not knowingly enter into contracts with a company or corporation which would constitute a violation of TBR Policy 1:02:03:10 (Conflict of Interest)

II. Contracts of Adhesion

A. In order for a contract to be considered an adhesion contract all the following criteria must be met:

1. The proposed contract must be a standard form contract or license;
2. It is offered to the Institution on a ‘take it or leave it’ basis;
3. The Institution has no realistic opportunity to negotiate different terms; and
4. The desired product or service cannot be obtained except by agreeing to the form contract.

B. The procedures necessary to enter into a contract of adhesion are:

1. The initiating department must route the contract through the Institutional procurement and/or contracts office. The Institution must document the following:
 - a. The Institution’s attempts to negotiate needed changes in the contract and the vendor’s refusal to agree to any changes (i.e., despite the fact they were given statutory language that governs certain situations or that contradicts contract language);
 - b. The need for the item or service(s);
 - c. The fact that the vendor is the sole source (or that all vendors require the impermissible language).

2. Approval for contracts of adhesion shall be as follows:

a. The Institutional procurement and/or contracts office may approve contracts of adhesion up to not greater than \$5,000 annually if an appropriate risk assessment has been performed.

See [Exhibit X](#) for a sample risk assessment form.

b. The President or President’s designee may approve contracts of adhesion greater than \$5,000 annually but less than \$25,000 in total. Presidents or the President’s designee may, after consultation with Institution or TBR Legal Counsel as appropriate, approve contracts of adhesion which have a value of less than \$25,000.

c. Except as stated above, the Chancellor or the Chancellor’s designee will approve contracts of adhesion which have a value of \$25,000 or more annually.

3. A letter stating that the institution regards the agreement as a contract of adhesion shall be sent with the executed contract when it is sent to the Contractor. A copy of the letter shall be maintained in the Institution’s records. See [Exhibit X](#) for sample letter.

4. The purchasing officer, contract officer, or other designated official at each Institution must maintain a record of all software and other acquisitions over \$5,000, and those under \$5,000 requiring signature, contracts of adhesion entered into pursuant to this manual and supply the record, upon request, to the TBR System Office.

5. In appropriate instances, the President or President’s designee, or the Chancellor or Chancellor’s designee, as applicable, may approve a contract as a contract of adhesion when the vendor has agreed to some change(s), but the contract still contains impermissible language; documentation as required above must be maintained.

III. Form Contracts

DESCRIPTION	LAST UPDATED
Clinical Affiliation/Field Experience Agreement	

Pro Forma Agreement	
Grant Agreement	
Agreement for Workshop/Seminar	
Agreement for Workshop/Seminar Participation	
Dual Services Agreement	
Facilities Use Agreement	
Mutual Use Agreement	
Transient Use Agreement	
Tenant Use Agreement	
Invention Disclosure Form	
Copyrightable Works Disclosure Form	
Intellectual Property Agreement	
Employee Work for Hire Agreement	
Copyright License Agreement	
Partial Assignment of Copyright Ownership Agreement	
Joint Ownership of Copyright Agreement	
Intellectual Property/Research Agreement	
Banking Agreement	
Non-Credit Instruction Agreement (up to \$50,000)	
Non-Credit Instruction Agreement (\$50,000 and over)	

IV. Clinical Affiliation/Field Experience Contracts

A Clinical affiliation agreement is an agreement between an Institution and another entity (Affiliate) for the provision of practical clinical experience to the Institution's students.

A. General Rules

1. Generally, these agreements do not provide for monetary compensation to either the Institution, Affiliate or student.
2. Health Records and Insurance
 - a. The Institution may provide health records of students and faculty upon request by the Affiliate. The Institution must give students/faculty prior written notice when they will be required by the Affiliate to obtain and provide health records in order to participate in clinical experience. Each student will be required to execute proper release forms for FERPA purposes.
 - b. The Affiliate may require written evidence of professional liability insurance coverage for students and faculty participating in the experience.

c. The Institution shall notify students of Affiliate's requirement(s) regarding professional liability insurance, the minimum amount of coverage that is required by the Affiliate. The Institution may notify the student of available options to obtain such coverage.

Criminal Background Checks and/or Drug Screening

a. If criminal background checks and/or drug screening of students are required by the Affiliate, the Institution shall notify students of this requirement prior to enrollment in the program or as soon as the requirement is known.

b. The Institution shall inform students that the check and/or screen must be completed prior to the student's initial clinical placement.

c. Each student is responsible for making timely arrangements for a background check and/or drug screening and paying all costs associated with such checks/screens.

d. If criminal background checks and/or drug screenings are required for Institutional faculty or staff, the Institution shall arrange for the background check/drug screens, pay all costs associated with such checks, and provide the results to the Affiliate.

e. At a minimum, the Affiliate shall be responsible for setting the eligibility standards for clinical participation at its facility, and if there is any question as to whether the standard has been met, to evaluate the results of the background check/drug screen to determine if the student or faculty /staff member shall be allowed to participate at its facility. The Institution shall take steps to ensure that any individual not clearly meeting the Affiliate's eligibility standards does not participate in the clinical program at the Affiliate's facility.

f. A Clinical Affiliation Agreement which requires background checks should also include a provision that if an Institutional faculty/staff member or student is also an employee of Affiliate, the Affiliate will allow the faculty/staff member or student to participate in its clinical program without undergoing an additional background check.

g. Recognizing that students enrolled in certain programs at the Institution will potentially participate in multiple clinical placements

at multiple facilities, clinical agreements should include a provision that the Affiliate will accept the results of the background check done prior to the student's initial clinical placement if the student maintains continuous enrollment in the institution's program and the background check agency maintains the results of the background check.

h. Institutions shall inform students or faculty/staff members excluded from clinical placement on the basis of a criminal background check/drug screen of any review or appeal process available pursuant to the Fair Credit Reporting Act or any other law or policy.

3. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Compliance

Although HIPAA language is included in the form contract, this language may be omitted upon the request of the Affiliate.

For purposes of HIPAA, students are trainees and are, by definition, considered to be the "workforce" of the Affiliate (at the same time, it should be noted that students are employees of neither the Institution nor the Affiliate). Therefore, entering into business associate agreements is not permitted.

4. Agreements which comply with this guideline and do not deviate substantially from the form template or which have been reviewed and approved by the Institution's Contracts Department or TBR System Office, do not require further System Office approval. Agreements previously approved by the System Office may be renewed without System Office approval if no changes are made.
5. Institutions are encouraged to seek terms of longer than one year for clinical affiliation agreements.

B. Clinical Affiliation Forms

Exhibit 3 - Clinical Affiliation Agreement

Exhibit 4 – Student Records Release Form

IV. Pro Forma Contract

This Section details the instructions on how to complete the Pro Forma Contract where the Contractor is providing a good/service to the Institution which will usually continue for some specified length of time.

A. General Rules

1. The description of the goods/services should be detailed enough to enable a party unfamiliar with the subject matter to determine exactly what good(s)/service(s) the Contractor will be providing/performing for the Institution.
2. In most cases, the description of services should provide qualitative and quantitative measures. For example, a custodial services contract might provide for the Contractor to provide the cleaning solutions, that a facility's floors to be mopped on a nightly basis and stripped and waxed on a biannual basis.
3. This type of Agreement must not create an employer/employee relationship. An individual must meet all of the following conditions to be classified as an independent contractor:
 - a. The Institution controls only the results of the work, not how it gets done.
 - b. The individual assumes a business risk (assumes all expenses for personnel, equipment and materials) as a result of this association with the Institution.
 - c. The individual is responsible for paying and reporting applicable self-employment tax.
 - d. The individual is free to complete the assigned task without control or direction from the Institution.
 - e. The individual's association with the Institution normally ceases upon completion of a specified project.
 - f. The individual is free to work for other entities.

- g. The individual has declared himself/herself to be an independent contractor when providing similar services to the general public.
- 4. In appropriate cases, the Institution should require the contractor to demonstrate proof of appropriate forms of insurance, and/or to provide a performance bond.
- 5. When appropriate, language regarding intellectual property rights should be included in a contract. (See TBR Policy 5:01:06:00, Financial Exigency.)
- 6. All contracts for legal services which are subject to T.C.A. §§ 8-6-106 and 8-6-301 must originate in the Office of General Counsel prior to any action being taken to retain any legal or legally related services;
- 7. Contracts for services required to be approved by the State Building Commission must be coordinated with the Office for Facilities Development;
- 8. State law prohibits an Institution from either establishing a vending or food services operations contract for new or existing facilities or from performing such services itself, without first notifying the Division of Blind Services for the State of Tennessee. (T.C.A. §§ 49-8-118 & 71-4-503)
- 1. Exhibit 1 Pro Forma Contract - This contract may be used to procure goods or services as the need dictates. It is included in the approved RFP format as the pro forma contract and should be used in the following instances:
 - a. For personal service contracts that result from an RFP process;
 - b. For personal service contracts which require System Office approval;
 - c. For personal service contracts which require Fiscal Review approval;and

- d. For all other contracts, in which the Institution's procurement and/or contracts office determines this form is appropriate.
2. Exhibit 2 - This Purchase Order may be used to procure goods or, in limited circumstances, services (Refer to Section 3.a.(2)(b) of Purchasing Guideline B-120, Classification and Operation of Auxiliary Enterprises, for services applicability).

V. Grant Agreements

A. General Rules

1. The President or designee of an Institution is authorized to approve applications for grants from agencies or organizations; provided that, when matching funds or services in lieu of funds are required by the Institution, no application shall be made unless the operating budget provides the funds and/or resources necessary for the project.
2. The President is further authorized to accept the award of a grant and enter into agreements confirming grants, provided that agreements confirming the award of grants shall be subject to the requirements of this guideline.
3. The following procedures shall govern expenditures for personal, professional or consulting services pursuant to grant contracts:

a. Procedures

- (1) The Institution shall negotiate when possible to ensure that payments are appropriate to support the activity contemplated.
- (2) A written budget and work program shall be prepared and included in the grant agreement.

b. Contracts Representing Grants.

- (1) Grant contracts not involving federal money must include the following provision:
 - (a) "The contractor shall cause to be performed, in accordance with auditing standards prescribed by the Comptroller of the Treasury of the State of Tennessee, an audit of all its program(s) funded by

this contract; provided, however, that any contract for such audit shall be subject to prior approval of the Comptroller of the Treasury of the State of Tennessee, and must be submitted on the standard contract to audit accounts' form published by the Comptroller of the Treasury. The audit may include and be combined with an audit of other programs of the contractor, and the existence of more than one contract between the contractor and any agency of the State of Tennessee shall not necessitate more than one (1) audit of the contractor's programs to be performed every two years."

(2) Grant contracts involving Federal money must include the following provision:

(a) "The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this grant to the commissioner or head of the granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives \$300,000.00 or more in aggregate federal and/or state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the

Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the State Granting Department, the Tennessee Comptroller of the Treasury, the Department of Finance and Administration, and shall be made available to the public.”

c. Grant Contracts

(1) Procurement by grantee--grant contracts which provide for reimbursement for the cost of procuring goods, materials, supplies, equipment or services shall contain the following provision:

(a) “If the terms of this contract allow reimbursement for the cost of procuring goods, materials, supplies, equipment or services, such procurement shall be made on a competitive basis (including the use of competitive bidding procedures), when practicable.”

d. Federally Funded Grant Contracts

(1) Procurement by contractor--when a grant contract provides that the contractor may make purchases and be reimbursed for its cost with funds derived wholly or partially from federal sources, the following clause or one of substantially the same effect should be included:

(a) "Reimbursement for the cost of procuring goods, materials or services shall be subject to the contractor's compliance with applicable federal procurement requirements."

e. Federally Funded Contracts

(1) Compliance with federal regulations--if federal funds are used to support the contract, the following clause must be included:

(a) "The contractor shall comply with all applicable federal regulations in the performance of duties under this contract."

VI. Dual Services Agreements

A. Scope

1. This section applies to agreements whereby an Institution/state agency is procuring the services of a full-time employee of another Institution/state agency.

B. General Rules

1. Job priorities/Rate of Compensation

a. Tennessee Board of Regents policy requires that full-time employees of an Institution must devote their full working time to their position; therefore, any agreement which diminishes an employee's availability for the performance of his/her duties will not be approved, except as provided herein.

b. In general, the services performed pursuant to a dual services agreement are to be of an infrequent or short term nature. (See TBR Policy 5:01:05:00, Outside Employment and Extra Compensation).

c. The rate of payment under a dual services agreement must not exceed the rate the procuring institution/agency normally pays for such services, shall conform to the Fair Labor Standards Act and be coordinated with the employee's primary Human Resource and/or Payroll Department.

d. Dual service agreements must avoid conflicts of interest.

2. Payment.

a. Any payment for employee services shall be between the Institution and the state agency or other Institution. An Institution

may not pay an employee of another Institution or State Agency directly for services of any nature.

b. Payment shall only be made after performance of services is completed and upon receipt of invoice from the vendor institution.

3. Approvals. Dual services agreements require the written approval of:

a. An authorized official of the state agency/Institution procuring the services (Procuring Party) and the Institution whose employee is to provide the service (Vendor Party).

b. The System Office when:

- TBR is a party to the agreement, or
- the agreement does not conform to this guideline; or
- the Chancellor's approval is otherwise required pursuant to applicable approval policy(ies).

c. If compensation exceeds \$1,500 to any state agency employee (not including TBR or UT institutions), the Department of Finance and Administration must approve the agreement.

4. Blanket Dual Services Agreements. If a Procuring Party contracts for the services of multiple employees of a Vendor Party, one blanket dual service agreement may be processed that includes the names and rates of compensation for each employee

C. Form Agreement

1. The form agreement below contains all required elements; however, as a minimum, every agreement must contain the following:

a. A brief description of the services being provided;

b. The name of the employee providing the services.

c. The rate and means of compensation, including when payment will be made and to what address invoices are to be sent.

d. A provision that an invoice from the vendor party is required prior to payment to an Institution for services rendered by its employee.

[Exhibit 7](#) - Sample Dual Services Agreement

Source and Authority: TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation); Section 36 of Chapter 732 of the Public Acts of 1976, and the rules of the Department of Finance and Administration.

VII. Agreements for Short-term Access to and Use of Campus Property and Facilities

A. Scope

1. This section deals with agreements for short-term use of campus facilities for activities which include, but are not limited to, those for musical performances, speakers, conventions, exhibits, etc. where control of the Institutional space is being retained by the Institution.
2. This Section does not apply to leases of property for residential use and/or commercial leases of property. Real property and lease agreements are covered by separate procedures found in TBR Guidelines B-025 (Acquisition & Disposal of Real Property) and B-026 (Lease Procedures and Guidelines).

B. General Rules

1. All use of campus facilities and agreements providing for such use must comply fully with TBR Policy No. 1:03:02:50 (Access to and Use of Campus Property and Facilities).
2. Agreements which deviate from the standard agreements included as Exhibits to this manual must be submitted to the System Office or the Institution's Legal Office for approval.
3. In the event that an affiliated or non-affiliated group wishes to perform or sponsor a performance of copyrighted musical compositions, the following provisions must be included in the contract:
 - a. The Contractor certifies that Contractor has obtained all necessary copyright and royalty licenses from ASCAP, BMI, SESAC, any other performing rights organization or the copyright owner for the performance(s) presented under the terms of this agreement.
 - b. The Contractor agrees to indemnify, hold harmless, and defend the Institution and the State of Tennessee from and against any and all claims, demands or suits which may be brought for copyright infringement allegedly arising in the course of the

performance(s) presented under the terms of this agreement. Such indemnification shall extend to both criminal and civil actions and shall include any loss, damage, penalty, court costs or attorneys' fees incurred by the Institution.

c. The Institution/State shall promptly notify the Contractor of any such claim brought against the state. The settlement or compromise of any claim brought against the state shall be subject to the approval of the appropriate state officials, as required by T.C.A. § 20-13-103.

C. Form Use of Facilities Contracts

Typical form contracts for use of TBR or non-TBR facilities include:

1. Transient Use Agreements

(1) Provides short-term, continuing, non-exclusive use of facilities, such as evening use of high school space as a teaching extension site for a semester.

(2) Can be for TBR use of non-TBR facilities, or non-TBR use of TBR facilities.

2. Mutual Use Agreements

a. Provides short-term, continuing, non-exclusive mutual use of both parties' facilities.

b. Between two TBR Institutions or one TBR Institution and a non-TBR entity.

c. Mutual use of each other's facilities may be substituted for financial compensation.

[Exhibit 8](#) - Facilities Use Agreement

[Exhibit 9](#) - Mutual Use Agreement - Involving a Tennessee Board of Regents Institution

[Exhibit 10](#) - Transient Use Agreement - Involving a Tennessee Board of Regents Institution

[Exhibit 11](#) - Tenant Use Agreement - Between Two Tennessee Board of Regents Institutions

[Exhibit 12](#) - Mutual or Transient Use - Terms and Conditions for an Agreement Involving a Tennessee Board of Regents Institution

[Exhibit 13](#) - Tenant Use - Terms and Conditions for an Agreement between Two Tennessee Board of Regents Institutions

[Exhibit 14](#) - Instructions - for filling out Use Agreements

VIII. Contracts for Hardware, Software and Related Services

A. Scope

This section applies to contracts for hardware, software and related services.

B. General Rules

1. The legal right to use software is typically obtained in the form of a license agreement, which is usually provided by the vendor during the procurement process.
2. It is the responsibility of the Institution to negotiate changes in all vendor provided agreements, or incorporate vendor terms in a TBR template agreement, so that such agreements comply with this Guideline.
3. If vendor does not provide an agreement, the attached standard agreement may be used for software licenses and, with appropriate adaptation, for related equipment purchases.
4. Piloting/Testing of Hardware, Software or Related services
 - a. Agreements authorizing the Institution to conduct experimentation or testing of hardware, software or related services should follow the appropriate approval process.
 - b. Although the initial cost to the Institution may be minimal, full consideration of the cost to continue use such product/service shall be evaluated up front with no guarantee for the Institution to continue to license. Use of the product/service, beyond the initial pilot period, must follow the appropriate policies and guidelines, and the execution of a pilot process does not warrant a non-competitive justification for continued use of the product/service.

c. These agreements shall not contain a renewal option and must contain a provision that at the end of the pilot term the appropriate procurement process shall be followed.

C. Form Contracts

[Exhibit 15](#) - Sample Software License Agreement

IX. Intellectual Property Agreements

A. Scope

1. TBR Policy 5:01:06:00, Intellectual Property, sets out the approved procedures governing TBR intellectual property issues.
2. In addition, resource information and approved form/sample agreements are provided at the TBR web site in the General Counsel section.

B. Form Contracts

1. Form/Sample contracts provided in the General Counsel section of the TBR website can be found at the following links:

[Exhibit 16](#) - Invention Disclosure Form

[Exhibit 17](#) - Copyrightable Works Disclosure Form

[Exhibit 18](#) - IP Agreement

[Exhibit 19](#) - Employee Work for Hire Agreement

[Exhibit 20](#) - Copyright License Agreement

[Exhibit 21](#) - Partial Assignment of Copyright Ownership Agreement

[Exhibit 22](#) - Joint Ownership of Copyright Agreement

C. Form Research Agreement

[Exhibit 23](#) - Sample Intellectual Property/Research Agreement

Source: TBR Policy 5:01:06:00 (Intellectual Property)

X. Banking and Related Financial Services Agreements

A. Scope

This section deals with agreements for the deposit and investment of all funds, regardless of source, which are received by an Institution. Agreements of this nature shall be in conformance with TBR Policy 4:01:01:10 (Deposit & Investment of Funds).

B. Form Contract

[Exhibit 24](#) - Sample Banking Agreement

XI. Non-credit Instruction Agreement

A. Scope

This section is applicable to revenue-generating agreements whereby an Institution provides non-credit instruction/training for business and industry.

B. General Rules

The Institution is responsible for the administration of fees, charges, and refunds in accordance with TBR Guideline B-060 (Fees, Charges, Refunds, and Fee Adjustments).

C. Essential Contents of the Agreement

The form agreements at the end of this section contain all required elements; however, a few elements are described below:

The program title name, a brief description of the program, Continuing education Units (CEUs) awarded, if applicable, the name of the instructor, if applicable, conducting the course, and the dates, times, and location of the course.

2. The minimum and maximum number of participants and the program fee that will be invoiced to company.

3. Other provisions should be specific to include such elements as deliverables by the Institution including textbooks, instructional materials, CEU records/transcripts for participants, and/or certificates awarded, etc.

4. Specific requirements of the company should be included such as safety and security of Institutional equipment, additional fee assessments outside of the instructional costs, documents/information necessary for instruction, etc.

C. Form Contracts

[Exhibit 25](#) - Sample Non-Credit Instruction Agreement up to \$50,000

[Exhibit 26](#) - Sample Non-Credit Instruction Agreement above \$50,000

XIII. Academic Agreements

Articulation/transfer, dual credit and dual enrollment agreements should be developed in compliance with instructions or guidance from the System Office, Office of Academic Affairs.

XIV. Workshop Agreements

A. This section provides sample contracts which may be used for two purposes.

1. The first sample agreement may be used when the institution contracts with a service provider to provide a workshop or seminar and the payment to the service provider will not exceed \$5,000.00.
2. The second sample agreement may be used when the institution contracts with an individual to make a payment to that individual for attending a specific workshop or seminar (for example, a grant may provide for such payments to be made out of grant funds).

B. These forms are provided for use ONLY as described above and may be used instead of the personal services agreement or Pro Forma, for the specified purposes, or the personal services agreement form or Pro Forma agreement may be used for these purposes.

C. Form Contracts

[Exhibit 27](#) - Sample Contract for Workshop/Seminar up to \$5,000

[Exhibit 28](#) - Sample Workshop/Seminar Participation Agreement

XIV. Exceptions

Any exceptions to the procedures outlined in this Guideline shall be subject to the approval of the Chancellor or designee and shall be requested in writing by the

President or Director or his/her designee. Exceptions shall be made on a case-by-case basis. If an exception is made, a written determination signed by the Chancellor or designee shall be included in the contract file.

EXHIBITS:

Clinical Affiliation Agreement
Pro Forma Agreement
Grant Agreements
Agreement for Workshop/Seminar
Agreement for Workshop/Seminar Participation Agreement
Dual Service Agreement
Use of Campus Facilities Agreement
Mutual Use Agreement
Transient Use Agreement
Tenant Use Agreement
Software License Agreement
Intellectual Property Agreement
Employee Work for Hire Agreement
Copyright License Agreement
Joint Ownership of Copyright Agreement
Intellectual Property/Research Agreement
Banking Agreement
Non-Credit Instruction Agreement up to \$50,000
Non-Credit Instruction Agreement above \$50,000
Articulation/Transfer Agreement
Dual Credit Agreement
Dual enrollment Agreement

Attestation Form
Contract Monitoring Plan Form
Sample Risk Assessment Form
Contract of Adhesion Sample Letter
Invention Disclosure Form
Copyrightable Works Disclosure Form



TENNESSEE BOARD OF REGENTS

1415 Murfreesboro Road, Suite 340 | Nashville, TN 37217-2833 | Phone 615.366.4403 | Fax 615.366.3922 | www.tbr.edu

MEMORANDUM

To: David Gregory, Acting Chancellor
TBR Presidents
TCAT Directors

From: Tom Griscom, Audit Committee Chair

CC: Members of the Tennessee Board of Regents

Date: March 30, 2016

Subject: Effective Management Control Structure

The Tennessee Board of Regents appreciates the leadership and progressive action taken on your campus to ensure the success of the students in our system. We value your role and the work of the faculty and staff on your campuses in preparing our students and helping to meet the State's higher education goals. Your achievements will enhance the lives of our students and others in our communities well into the future.

All of us working for higher education in Tennessee are experiencing first-hand the exciting and challenging opportunities in meeting our goals. We recognize that each campus has numerous demands and requirements, frequently resulting in difficult choices about the use of limited resources. However, it is vital that each institution maintain a management control and oversight structure that provides accountability and compliance. An effective and managed structure will help to ensure the best and most effective use of resources, maintain the public trust in our institutions, and enable you to provide assurance regarding the use of resources entrusted to you to the public, the Board, the legislature and others.

As you and your team work to achieve the goals and objectives you've established, it is expected that the structure in place will include:

- A culture of accountability and compliance at every level of the institution, including the leadership's demonstration and emphasis of the importance of integrity, ethical values and expected conduct.
- Ongoing consideration and evaluation of potential internal and external risks to operations, compliance and reporting requirements that could impede the achievement of goals and objectives, including the risks of fraud, waste or abuse.
- Implementation of effective internal controls carried out by qualified and trained staff with clear lines of responsibility over financial, technology and programmatic activities to adhere to established policies, laws and other requirements and to reduce risks to acceptable levels.
- Management's continuing oversight and evaluation of controls through supervisory, periodic monitoring and internal auditing activities, to determine their effectiveness and to timely implement needed improvements.
- Development and appropriate internal and external communication of relevant, quality information necessary to support the achievement of goals and objectives by informing decisions of management and others.

When controls are not working effectively or individuals intentionally bypass controls, the structure is weakened and errors, fraud, waste or abuse may occur. If fraud, waste or abuse matters or data or data system breaches are identified at your institution, it is your responsibility to ensure that this information is reported timely and properly to the system office for reporting to the Comptroller of the Treasury.

Tennessee Code Annotated, Section 8-4-119(a) requires that officials of state entities report information when it is determined that any "theft, forgery, credit card fraud or any other intentional act of unlawful or unauthorized taking, or abuse of public money, property, or services" has occurred. Additionally, *Section 8-4-119(c)(1)* requires that state entities report "any confirmed or suspected unauthorized acquisition of computerized data and any confirmed or suspected breach of a computer information system or related security system established to safeguard the data and computer information system." Information in the TBR Policy 4:01:05:50, *Preventing and Reporting Fraud, Waste or Abuse*, will be helpful in administering these requirements.

Please assist us in ensuring the integrity of our system's and each institution's operations by making all of your employees aware of the importance of an effective control structure and compliance with laws, regulations and the established policies of the Tennessee Board of Regents and your own institution. It is also important that employees understand the risks and types of failures that may result in data or system breaches or fraud, waste or abuse of institutional resources and ways to report such matters when suspected or detected.

Tennessee Sales and Use Tax Guide



November 2015

SALES AND USE TAX

Dear Tennessee Taxpayer,

This sales and use tax guide is intended as an informal reference for taxpayers who wish to gain a better understanding of Tennessee sales and use tax requirements. It is not an all-inclusive document or a substitute for Tennessee sales or use tax statutes or rules and regulations. The information in this guide is current as of the date of publication. Tax laws, their interpretation, and their application can change due to legislative action, reviews, and court decisions.

Periodically, registered taxpayers are mailed information letters with updates on tax laws and policies. Be sure to read any letter you receive carefully; this information may save you time and money. Informational publications are also available for specific industries. Contact the Taxpayer Services Division to obtain these publications.

The Department of Revenue offers a toll-free tax information line for Tennessee residents. The number is (800) 342-1003. If calling from Nashville or outside Tennessee, you may call (615) 253-0600. The Department of Revenue also offers a telecommunications device for the deaf (TDD) line at (615) 741-7398.

If you have questions, please do not hesitate to contact any of the offices listed below.

Sincerely,

Taxpayer Services Division

Tennessee Department of Revenue
Taxpayer Services Division
Andrew Jackson Building
500 Deaderick Street
Nashville, Tennessee 37242-1099

Toll-Free: (800) 342-1003
Out-of-State: (615) 253-0600
TDD: (615) 741-7398

Regional Offices

Memphis:
3150 Appling Road
Bartlett, TN 38133
(901) 213-1400

Chattanooga:
1301 Riverfront Parkway
Suite 203
Chattanooga, TN 37402
(423) 634-6266

Jackson:
Lowell Thomas State Office Bldg.
225 Dr. Martin L. King Jr. Drive
Suite 340
Jackson, TN 38301
(731) 423-5747

SALES AND USE TAX

Regional Offices (continued)

Johnson City:
204 High Point Drive
Johnson City, TN 37601
(423) 854-5321

Knoxville:
7175 Strawberry Plains Pike
Suite 209
Knoxville, TN 37914
(865) 594-6100

SALES AND USE TAX

Table of Contents

Sales or Use Tax	10
Sales or Use Tax	10
Local Option Sales or Use Tax	12
Sales Tax Application to the Lease or Rental of Tangible Personal Property	13
Who Must Register for Sales or Use Tax?	14
Who is Liable for Sales Tax?	14
Who is Liable for Use Tax?	15
How to Register	15
Tennessee Retailers	15
Out-of-state Retailers	16
Revocation of Certificate of Registration	17
Changes in Ownership, Address, or Business	17
Additional References	18
Definitions	19
Business and Occasional and Isolated Sales	19
Computer Software	19
Prewritten and Custom Computer Software	19
Computer Software Maintenance Contract	20
Single Article	20
Motor Vehicles	20
Boats	21
Manufactured Homes	21
State Tax on Purchases of Single Article	21
Computing Sales Tax Due on Single Articles	21
Specified Digital Products	22
Digital Audio-visual Works	22
Digital Audio Works	22
Digital Books	22
Tangible Personal Property	22
Third Party Drop Shipment	22
Video Game Digital Products	23
Food and Food Ingredients	24
What Are "Food and Food Ingredients?"	24
Examples of "Food and Food Ingredients"	24
Meal Substitutes	24
Items Not Taxable at the 5.00% Food Rate	25
Candy	25
Dietary Supplements	25
Prepared Food	25
Tax Credits	28
Returned Merchandise	28
Repossession	28
Pollution Control	28

SALES AND USE TAX

Table of Contents

Tax Credits <i>(continued)</i>	
Bad Debt	28
Sales or Use Tax Paid in Another State	29
Fuel or Petroleum Products Sold to Air Common Carriers	29
Headquarters Facility Tax Credit	29
Taxable and Non-taxable Property and Services	31
Taxable Tangible Personal Property	31
Computer Software	31
Modifications to Computer Software	32
Services to Computer Software	32
Remotely Accessed Computer Software	33
Video Game Digital Products	34
Application of Single Article Taxation to Software	35
Websites and Computer Software	35
In-House Computer Software	35
Affiliate Computer Software	36
Computer Software Maintenance Contract	36
Support Services to Software	36
Specified Digital Products	37
Services	37
Taxable Services	37
Taxable Amusements	39
Warranty or Service Contracts	39
Nontaxable Services	39
Exemptions Requiring Certificates	41
Documenting Exemptions	41
Blanket Certificate of Resale	41
Direct Pay Permits	43
Government Certificate of Exemption	43
Certificate of Exemption for Nonprofit Organizations	43
Certificate of Exemption for Call Centers	45
Dyed Diesel Tax Payments for Commercial Carriers	45
Authorization for Payment of Reduced Sales Tax for Common Carriers	45
Agricultural Exemption Certificate	46
Exemptions Requiring Documentation	47
Removal from Tennessee by Buyer	47
Exemption for Railroad Track Materials and Locomotive Radiators	47
Exemption for Rural Electric Cooperatives, Community Service Cooperatives and Governmental Utility Districts	47
Exemption for Electric Generating and Distribution Systems, Resource Recovery Facilities, or Coal Gasification Plants	47
Agricultural Exemptions	48
Agricultural Exemption Certificate	48

SALES AND USE TAX

Table of Contents

Agricultural Exemptions <i>(continued)</i>	
Agricultural Exemptions	48
Sales by Farmers and Nursery Operators	50
Purchases of Livestock Drugs by Veterinarians	51
Community Gardens	51
Exemptions and Reduced Rates for Qualified Manufacturers	52
Industrial Machinery	52
Pollution Control Equipment	53
Industrial Machinery Authorization	53
Energy Fuel and Water	53
Industrial Materials	53
Qualified Data Center	54
Warehouse and Distribution Facility	54
County or Municipality Water Pollution Control and Sewage Systems	54
Research and Development Machinery	55
Authorized Large Aircraft Service Facility	55
Exempt Products and Services	56
Aircraft Parts and Supplies	56
Amusements	56
Automobiles	56
Design Professionals	57
Display Property	57
Energy	58
Exemptions for Tennessee Sales for Out-of-state Consumer Use	58
Films	60
Food	60
Fuel	60
Leased Vehicles	60
Medical Equipment and Supplies	60
Miscellaneous Nonprofit Sales	62
Motor Vehicles Used by Common Carriers	62
Natural Disasters	63
Packaging	63
Pollution Control	63
Preservation of Historic Property	63
Publications	63
Railroad Cars	64
Sales in Interstate Commerce	64
Sales Tax Holiday	64
Specified Digital Products or Video Game Digital Products	65
Telephone Cooperatives	65
Telecommunications	65
Transactions between Parent Companies and Wholly Owned Subsidiaries	65
Time-share Accommodations	65

SALES AND USE TAX

Table of Contents

Exempt Products and Services <i>(continued)</i>	
Used Property	65
Utility Poles	66
Vending Items	66
Warranty Services	66
Watershed Districts	66
Flea Markets	67
Flea Market Registration	67
Sales on Less than Permanent Basis	67
Submission of Flea Market Returns	67
Dealers Registering Annually	67
Dealers Registering Quarterly or Monthly	67
Penalty for Late Filing	68
Contractors	69
Contractors as Consumers	69
Liability for the Sales or Use Tax	69
Exemptions	69
Tax on Fabricated Materials	70
Asphalt Fabricators	70
Installation of Industrial Machinery	70
Lump Sum or Unit Price Contracts on Realty in Effect on July 15, 2002	70
Property Owned by the United States Government	71
Qualified Disaster Restoration	72
Returns and Payments	74
Returns and Payment	74
Electronic Data Interchange (EDI)	74
Electronic Funds Transfer (EFT)	75
Online Filing	76
Filing Date	76
Penalty and Interest	76
Audits and Assessments	76
Right to a Conference	77
Keeping Records	77
Tennessee Taxpayer Bill of Rights	79

SALES AND USE TAX

Changes to the Sales or Use Tax Guide for July 2015

- (1) Limitation on the total amount of the 4.5% sales and use tax imposed and remitted on any one person's purchase use, consumption, or storage of aviation fuel for a single calendar year. (Page 11)
- (2) Creation of a rebuttable presumption of nexus for an out-of-state dealer if the dealer pays an instate party a fee or commission to route customers to the dealer and generates more than \$10,000 over the past twelve months from the referred customers. (Page 16)
- (3) Imposition of Tennessee sales and use tax on the sale of, license of, or use of computer software that remains in the possession of the seller and is remotely accessed and used by a customer or the customer's users from a location in Tennessee. (Page 33)
- (4) Clarification that "business" does not include community foundation sales made during biannual auctions. Such sales must take place during no more than two auctions, lasting up to 24 hours each, in any calendar year in each county designated to receive charitable support from a fund or trust that comprises a component part of the community foundation. (Page 19)
- (5) Imposition of the Tennessee sales and use tax on charges for access and use of video game digital products by a purchaser with a residential or primary business address in Tennessee. (Page 39)
- (6) Clarification for when the sale of, use of, or subscription to a warranty or service contract covering the repair and maintenance of tangible personal property in Tennessee is subject to Tennessee sales or use tax. (Page 39)
- (7) Clarification that the definition of industrial machinery includes certain co-generation equipment that a qualified manufacturing facility purchases or leases, and that is used for generating, producing, and distributing utility service directly to the qualified manufacturing facility under certain conditions. (Page 52)
- (8) Clarification in the definition of industrial machinery specifying use in water or pollution control or sewage systems by county and municipality also includes use by a water or wastewater treatment authority created by private act or pursuant the Water and Wastewater Treatment Authority Act. (Page 54)
- (9) New sales and use tax exemption for machinery and equipment, all associated parts and appurtenances to the machinery and equipment and repair parts and labor and installation labor for the machinery and equipment that is necessary to and primarily for research and development. (Page 55)

SALES AND USE TAX

Changes to the Sales or Use Tax Guide for July 2015 *(continued)*

(10) Exemption for the sale, use, storage, or consumption of parts, components, software, systems, accessories, materials, equipment and supplies that are sold to or sold by an authorized large aircraft service facility or affiliate. Also exempts certain repair and refurbishment service labor performed by an authorized large aircraft service facility. (Page 55)

(11) Extension from 15 to 30 days the period of time within which a helicopter, airplane, or related equipment that a non-resident purchases and removes from Tennessee may be purchased without the payment of tax. (Page 58)

(12) Extension from 15 to 30 days the period of time within which an airplane or airplane component that a non-resident has repaired either pursuant to and by the registered owner of one (1) or more "supplemental type certificates" issued by the federal aviation administration or pursuant to and by an authorized service facility designated by an original equipment manufacturer for such service with respect to aircraft qualifying as "transport category aircraft" under 14 CFR, parts 25, 29, 91 and 121 and removes from Tennessee may be purchased without the payment of tax. (Page 58)

(13) Exempts diabetic testing supplies from sales and use tax. Such supplies include lancets, test strips for blood glucose monitors, visual read test strips, and urine test strips. (Page 61)

SALES AND USE TAX

Sales Or Use Tax

[Tenn. Code Ann. Sections 67-6-102, 67-6-202]

Sales or Use Tax

The sales or use tax is a combination of a state tax (7%) and a local option tax (which varies from 1.50% to 2.75%) imposed by city and/or county governments. This tax is generally applied to the retail sales of any business, organization, or person engaged in making retail sales, including the selling, leasing, or renting of tangible personal property and the selling of certain taxable services, amusements, and digital products specified in the law. In addition, there is a state single article tax rate of 2.75%, which is discussed later in this text.

Tangible personal property, taxable services, amusements, and digital products specifically intended for resale are not subject to tax. Retail sales to the federal government or its agencies and the State of Tennessee or a county or municipality within Tennessee are not subject to tax. In addition, there are exemptions for retail sales to certain entities that have qualified for tax exemption.

The “sales price” of an item of tangible personal property is the total amount of consideration (including cash, credit, property, and services) for which property or services are sold, including:

- + Cost of the property sold;
- + Cost of materials, labor, or service cost;
- + Costs of transportation or delivery to the seller;
- + All taxes imposed on the seller;
- + Expenses, interest, losses, and overhead;

- + Charges by the seller for services necessary to complete the sale;
- + Delivery charges made by the seller;
- + Installation charges, and
- + Exempt property given to the purchaser where taxable and nontaxable products are bundled and sold as a single product for one price.

The tax is imposed on the sales price of sales, leases, and rentals of tangible personal property and the sales price for taxable services, amusements, and certain digital products. It is the total amount of consideration for which products that are subject to tax are sold. For example: A consumer buying four automobile tires subject to the sales or use tax is charged a fee for mounting the tires. The fee for mounting the tires is also subject to the sales or use tax.

The term “sales price” does not include:

- + Dealer cash discounts allowed on property or services purchased. Manufacturer rebates are included in the tax base.
- + Interest charges on purchases bought on an installment plan.
- + Any tax legally imposed on the consumer and separately stated on the invoice, bill of sale, or similar document given to the consumer.
- + The value of items taken as “trade-ins” on purchases of similar new or used items. The trade-in item must be listed by model and serial number, when applicable, on the customer’s invoice. [Tenn. Code Ann. Section 67-6-510]

SALES AND USE TAX

Sales Or Use Tax (continued)

There are some exceptions to the 7% general state sales or use tax rate:

- + Sales of food and food ingredients as defined in the law. These items are taxed at a state rate of 5.00% effective July 1, 2013. What constitutes food and food ingredients is addressed later in this text. [Tenn. Code Ann. Section 67-6-228]
- + Aviation fuel actually used in the operation of aircraft motors is taxed at 4.5%. Effective May 18, 2015, the total amount of the 4.5% sales and use tax imposed and remitted on any one person's purchase, use, consumption, or storage of aviation fuel is limited to the following amounts: (a) for July 2015 – June 2016 - \$21,375,000; (b) for July 2016 – June 2017 - \$17,750,000; for July 2017 – June 2018 - \$14-125,000; and (d) for any year occurring on or after July 2018 - \$10,500,000. [Tenn. Code Ann. Section 67-6-217 as amended by Public Chapter 462, Acts of 2015]
- + Sales of property to common carriers for use outside Tennessee are taxed at the rate of 3.75%. [Tenn. Code Ann. Section 67-6-219]
- + When sold to or used by manufacturers, water is taxed at 1%, and gas, electricity, fuel oil, and other energy fuels is taxed at a rate of 1.5%. [Tenn. Code Ann. Section 67-6-206]
- + Interstate or international telecommunications services sold to businesses are taxed at a rate of 7.5%. [Tenn. Code Ann. Section 67-6-221]
- + Gross receipts from the sale of manufactured homes, including accessories, furnishings, and delivery or installation fees, are taxed at half the current rate of state tax. [Tenn. Code Ann. Section 67-6-216]
- + Property of a sole proprietorship that becomes property of a corporation as a result of incorporation of the sole proprietorship is not subject to tax. [Tenn. Code Ann. Section 67-6-223]
- + Cable and wireless cable television services are taxed at a state rate of 8.25% on all charges of \$15.01 - \$27.50. Charges of \$27.51 and higher are taxed at the regular state and local sales or use tax rates. Charges of \$15 or less are exempt from tax. [Tenn. Code Ann. Sections 67-6-103(f), 67-6-226]
- + Sales of direct-to-home satellite television programming or television services are taxed at a state rate of 8.25% only. [Tenn. Code Ann. Section 67-6-228(7)]
- + Electricity sold to or used by a qualified data center is taxed at a state rate of 1.5%. [Tenn. Code Ann. Section 67-6-206(c)]

Tennessee vendors must indicate in specific ways whether customers are paying sales or use tax. If the purchase price of a product includes the tax, it must be indicated in writing on the invoice, on a sign posted in the business, or in a manner that is assured to make the customer aware of that fact. [Tenn. Code Ann. Section 67-6-503]

SALES AND USE TAX

Sales Or Use Tax (continued)

Local Option Sales or Use Tax

Any county or incorporated city may levy a tax on the same privileges that are subject to the state's sales or use tax; all counties and some incorporated cities have adopted a local option tax of up to 2.75%. The tax is imposed in the locality of the seller's location in Tennessee from which the sale is made. If a sale is made from an out-of-state location by a seller with locations in Tennessee, the local tax is imposed based on the purchaser's location of receipt. The seller with no locations in Tennessee may opt to collect the local tax at a standard 2.25% local rate instead of the rate at the purchaser's location of receipt. The sale of water services is subject to the local tax rate for the locality where water services are delivered to the consumer. [Tenn. Code Ann. Section 67-6-702(a-f)]

The law limits some local option tax rates:

There is no local option tax on electric power or energy, natural or artificial gas, coal, or fuel oil. [Tenn. Code Ann. Section 67-6-704]

The local tax rate for water sold to manufacturers is 0.5%. [Tenn. Code Ann. Section 67-6-702(b)]

The local tax rate for sales of tangible property to common carriers for use outside Tennessee is 1.5%. [Tenn. Code Ann. Section 67-6-702(e)]

Intrastate telecommunications services are taxed at the state rate of 7% and a flat 2.5% local tax rate regardless of the local tax rate levied by the local

jurisdiction. [Tenn. Code Ann. Section 67-6-702(g)(2)]

Interstate or international telecommunications services sold to businesses are subject to the state tax rate of 7.5% and exempt from local tax. [Tenn. Code Ann. Section 67-6-702(g)(1)]

Interstate and international telecommunications services sold to persons other than businesses are subject to a state tax rate of 7% and a flat 1.5% local tax rate regardless of the local tax rate levied by the local jurisdiction. [Tenn. Code Ann. Section 67-6-702(g)(1)]

Video programming services including cable television, wireless cable television, and video services provided through wireline facilities that are offered for public consumption are exempt from local tax up to an amount of \$27.50. [Tenn. Code Ann. Section 67-6-714]

Vending machine sales of both food and non-food items are taxed at a flat rate of 2.25% local tax on all sales regardless of the local tax rate levied by the local jurisdiction. [Tenn. Code Ann. Section 67-6-702(h)]

Specified digital products (digital audio-visual works, digital audio works, and digital books) are subject to a standard local tax rate of 2.50% regardless of the local tax rate levied by the local jurisdiction. [Tenn. Code Ann. Section 67-6-702(g)(4)]

SALES AND USE TAX

Sales Or Use Tax *(continued)*

Sales Tax Application to the Lease or Rental of Tangible Personal Property

For leases under which the lessee will make periodic (e.g., weekly or monthly) payments, sales tax is to be collected on each lease payment at the time the payment is due. For leases under which the lessee will make a lump sum payment up front, tax is due with that payment.

For lease contracts entered into on or after January 1, 2008, contracts for transfers of property that require the transfer of title upon completion of all payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total payments under the contract is a financing contract and not a lease. Sales tax is due at the time of sale, and the periodic payments, including interest and financing charges made under the agreement are not subject to tax.

Sales tax law assesses sales tax on the "sales price" of the lease or rental. Generally, the total amount received from the customer becomes the base for state sales tax. However, charges that are optional to the purchaser and separately stated are not part of the sales price that is subject to tax for the lease of the property. Interest charges associated with the lease or rental are included in the sales price upon which sales tax is to be collected.

For sales and use tax purposes, insurance policies such as accident, collision, and GAP on motor vehicles and charges for fuel used in motor vehicles are not included in the sales price of a lease or rental when the charges are separately stated on the invoice and the purchaser

has the option of leasing the property without purchasing the insurance policy or fuel from the lessor.

Extended warranties or repair and maintenance agreements covering tangible personal property in this state are subject to sales tax and, effective October 1, 2015 subject to use tax.

The state general sales tax rate of 7% is collected for the entire length of the lease contract. Tenn. Code Ann. Section 67-6-702 defines a "single article" for purposes of the local option tax. Generally, the local option tax is required only on the first \$1,600 of the cost of statutorily defined single articles of tangible personal property.

The state single article tax rate of 2.75% is levied on the sales price of single articles of tangible personal property beginning at \$1,600.01 and continuing up to and including \$3,200. On a lease or rental, this basically means the local tax applies to the first \$1,600 of lease or rental income on each single article, then the state 2.75% begins and continues up to and including \$3,200 on the single article lease price. Tenn. Code Ann. Section 67-6-204(b)(3) allows for a lump sum payment of the local option tax due on the cost price to the lessee; this can be remitted to the Department on the sales tax return for the tax period in which the tax for the first periodic lease payment is due. [Tenn. Code Ann. Section 67-6-204 and Revenue Rule 1320-5-1-.32]

SALES AND USE TAX

Sales Or Use Tax *(continued)*

When leased property is relocated to Tennessee from another state during the lease period, Tennessee use tax applies to each lease payment for periods during which the property is located in Tennessee. The lessor is required to register with the Department to collect and remit the use tax. If the lessor does not collect the tax, the lessee must remit the tax directly to the Department. If the lessor properly collects and remits sales tax to another state with respect to the lease payments, such sales tax will be a credit against the Tennessee use tax liability.

Who Must Register for Sales or Use Tax [Tenn. Code Ann. Sections 67-6-102, 67-6-201, 67-6-210, and 67-6-602]

Any entity wishing to manufacture, distribute, sell, rent, or lease tangible personal property, or provide taxable services, in this state must hold a Certificate of Registration to conduct business in Tennessee. Business may be conducted by:

- + Selling, renting, or leasing, even by a transient vendor, any type of tangible personal property.
- + Selling any type of taxable service in the state.
- + Furnishing property or services that are subject to the sales or use tax.
- + Charging admission, dues, or fees that are subject to the sales or use tax.
- + Using tangible personal property, computer software, specified digital products, or warranty or maintenance contracts not previously taxed.

- + Selling any item from a vending machine or device in which merchandise is provided upon deposit of money, other than certain vending machines operated for the benefit of tax-exempt organizations, is taxable under the sales or use tax law. A separate registration is required for vending sales.

This requirement applies whether your business is a sole proprietorship, partnership, LLC, corporation, or any other type of organization including those that are not for profit. Retailers from other states that maintain a physical location in Tennessee, whether temporary or permanent, must also hold a Certificate of Registration. A business having more than one location must hold a certificate for each business location. For example: A clothing business with locations in two malls must hold a certificate for each location.

Dealers having average monthly gross sales of \$400 of tangible personal property or less and taxable services of \$100 or less, may, at the discretion of the Commissioner, be required to pay tax to their suppliers on purchases in lieu of registering for sales or use tax purposes. For these taxpayers, the Department's cost of administering the account would exceed the taxes reported.

Who is Liable for Sales Tax?

[Tenn. Code Ann. Sections 67-6-501, 67-6-502]

In Tennessee, the responsibility for sales tax rests on the dealer that provides the taxable product or service. The law requires that the dealer pass the tax to the customer; failure to do so does not relieve the dealer of the responsibility to

SALES AND USE TAX

Sales Or Use Tax *(continued)*

timely remit the tax to the state. In the case of a property management company hired to manage vacation lodging for an individual property owner, the sales tax will be imposed on the gross charge for rental and will be remitted by the property management company.

Tax will be reported and paid each month based on the gross sales, or purchases, from all taxable sales and purchases during the preceding month. The tax will be paid on the return for the month in which the taxable event occurs, even if the tax is not collected from the customer during that month. For example: A charge sale is made during the month of June. The dealer must pay the tax on the June return even though the customer may not pay the account until July.

Who is Liable for Use Tax?

[Tenn. Code Ann. Section 67-6-203]

When a user of tangible personal property, computer software, computer software maintenance contracts, warranty or maintenance contracts covering tangible personal property located in this state, and specified digital property does not pay sales tax to a dealer, the user becomes personally liable for the tax. This generally occurs when a user purchases articles from an out-of-state dealer not registered for Tennessee tax. It also occurs when a dealer withdraws inventory items purchased on a resale certificate for business or personal use. For example: A clothing store owner purchases clothing on a resale certificate then takes items from inventory for personal use. Use tax is then due on that clothing.

The use tax rate is equal to the sales tax rate on both the state and local level. Use

tax is due even when a citizen imports tangible personal property into Tennessee for use. For example: A business relocating to Tennessee brings property purchased in a state with no sales or use tax. The dealer would be liable for use tax on this property. [Tenn. Code Ann. Section 67-6-210]

Use tax is normally incurred when:

- + Purchasing a product in another state without paying sales or use tax and bringing it into Tennessee for use here. [Tenn. Code Ann. Section 67-6-210]
- + Purchasing a product from a mail-order catalog or on the Internet and paying no sales or use tax. [Tenn. Code Ann. Section 67-6-210]
- + Purchasing a product from a transient business that does not collect sales or use tax. [Tenn. Code Ann. Section 67-6-210]
- + Consuming or using a product that was purchased without paying sales or use tax. [Tenn. Code Ann. Section 67-6-203]
- + Consuming, as a service provider, tangible products in the performance of a service. [Tenn. Code Ann. Section 67-6-102(75)]

How to Register

[Tenn. Code Ann. Sections 67-6-601, 67-6-602]

Tennessee Retailers

You may apply for the certificate of registration online. The website address for the application is <https://apps.tn.gov/bizreg/>. You may also visit one of the Department of Revenue offices listed on the inside front cover of

SALES AND USE TAX

Sales Or Use Tax *(continued)*

this publication. Trained personnel are available to explain Tennessee's tax system and answer any of your questions.

Whether registering online, in person, or by mail, you must have the following information to complete your application:

- + The name, address, and phone number of the business, all owners, officers, or partners, and the person making the application.
- + The Social Security Number(s) of the owner(s), partners, or officers.
- + The Federal Employer Identification Number (FEIN) issued by the U.S. Internal Revenue Service if you have one.
- + A description of the business, the type of ownership, a brief explanation of the nature of the business, and, if the business is a corporation, the date of incorporation.
- + If you have purchased your business, the name and address of the previous owner.
- + The signature, on the application, of the sole proprietor, a partner, or an officer of a corporation.

Out-of-State Retailers

Out-of-state retailers must register with the Department of Revenue and obtain a certificate of registration for payment of the sales or use tax if they have "nexus" in Tennessee. Retailers are considered to have nexus if they:

- + Have an office, distribution point, sales room, warehouse, or any other temporary or permanent place of business in Tennessee.

- + Have an agent, salesperson, canvasser, or solicitor operating in Tennessee for the purpose of making sales or taking orders for sales.
- + Furnish any property or services subject to the sales or use tax while in Tennessee.
- + Are the lessors of tangible personal property located in Tennessee.
- + Are construction contractors performing jobs in Tennessee.
- + Have any other physical presence in Tennessee.

This requirement applies even though the sale of the product or its delivery is in interstate commerce. For example: An out-of-state computer company sells computer systems to Tennessee businesses through a salesperson that travels in this state. This business is required to obtain a certificate of registration and collect sales or use tax on the price of the system.

A business having a physical presence in Tennessee must collect and remit sales or use tax on all sales whether orders are taken in person, by phone, or by mail.

Effective July 1, 2015, sales or use tax law creates a rebuttable presumption that out-of-state dealers have nexus and must collect Tennessee sales and use tax from Tennessee customers if the dealer pays an in-state party a fee or commission to route customers to the dealer, and such dealer derives more than \$10,000 over the past 12 months from the referred customers. [Tenn. Code Ann. Title 67, Chapter 6, Part 5 as amended by Public Chapter 514, Acts of 2015]

SALES AND USE TAX

Sales Or Use Tax *(continued)*

Out-of-state retailers can voluntarily register to collect the tax for their customers. Out-of-state sellers who are not registered to collect and remit tax in Tennessee and wish to volunteer to collect tax for Streamlined states may register through the Streamlined Sales and Use Tax Central Registration System to collect tax on sales in this state. However, if sellers do not collect and remit the sales or use tax to the state, then the consumer is responsible for reporting and paying the tax. Use tax is due on use or consumption of tangible personal property, computer software, computer software maintenance contracts, warranty or maintenance contracts covering tangible personal property in this state, and certain digital products purchased from companies not registered to collect the Tennessee tax.

Revocation of Certificate of Registration [Tenn. Code Ann. Sections 67-6-603, 67-6-604]

Any taxpayer violating the provisions of the sales or use tax law may have the certificate of registration revoked by the Commissioner after an opportunity for a due process hearing has been afforded. If the certificate is revoked, that person will not be eligible to apply for another certificate for 12 months. The taxpayer is entitled to a hearing with the Department to determine if revocation was justified. The taxpayer will receive a 10-day notice of the hearing and be allowed to present evidence as to why the certificate should not be revoked.

Any person engaging in business as a dealer in Tennessee without a certificate of registration from the Department is

guilty of a Class C misdemeanor. [Tenn. Code Ann. Section 67-6-606]

Changes in Ownership, Address, or Business [Tenn. Code Ann. Section 67-6-602]

You must notify the Department of Revenue if the business ownership changes in any manner. This change could be selling or closing the business, transferring or changing the ownership of the business, adding or changing partners, or changing corporate structure requiring a new charter or certificate of authority. You must also notify the Department of Revenue if the business location changes.

If any of the changes mentioned should occur, answer the questions on the back of the business's certificate of registration and mail it to the Department of Revenue. The new owners or officers, if applicable, must then apply for a new Certificate of Registration.

Taxpayers may make changes in their mailing address through the Department's website.

If you sell your business or go out of business, you must file a final sales or use tax return and pay all sales or use tax due within 15 days after the date you sold or quit the business. If you sold the business, the purchaser must apply for a certificate of registration in his or her own name. [Tenn. Code Ann. Section 67-6-513]

SALES AND USE TAX

Sales Or Use Tax *(continued)*

Additional References

For additional information, or to view actual documents pertaining to Tennessee's tax laws, we invite you to visit these Internet Web sites:

For the Tennessee Code, as well as information or changes to the Sales or Use Tax law, Revenue Rulings, Important Notices, Answers to Frequently Asked Questions, and Tax Forms, visit the Department of Revenue's Web site:
<http://tn.gov/revenue>.

Sales and Use Tax Rules and Regulations are available on the Secretary of State's web site at
<http://www.state.tn.us/sos/rules/1320/1320-05/1320-05.htm>.

SALES AND USE TAX

Definitions

Business and Occasional and Isolated Sales

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

Business is defined in the law to exclude occasional and isolated sales, also known as casual and isolated sales. Occasional and isolated sales are sales made by persons not engaged in business or that does not regularly sell the type of property being sold. These sales are not subject to sales tax.

Occasional and isolated sales are also sales of tangible personal property taking place only during temporary sales periods of 30 days or less and occurring no more than twice per year. Volunteer fire departments are allowed to have such temporary sales periods which occur no more than four times per calendar year.

For example: The sale of a piece of furniture in a yard sale and the sale of Girl Scout cookies are both considered occasional and isolated sales. If more than two temporary selling periods take place during a year, or if a sales period extends beyond 30 consecutive days, then all sales for the year are subject to sales tax.

Charitable organizations whose primary purpose is fundraising in support of a county, municipal, or metropolitan library system may elect to make sales on a continuing basis in lieu of the two semi-annual sales periods. These sales will be exempt from tax as long as they do not exceed \$100,000 per calendar year. The election, once made, must remain in

effect for at least four years. An election form is available on the Department of Revenue’s website.

Effective July 1, 2015, community foundations, as defined in 26 US Code Section 170(c)(2), may elect to make sales during biannual auctions in lieu of the two semi-annual sales periods. Such sales must take place in no more than two auctions, lasting up to 24 hours, in any calendar year in each county designated to receive charitable support from a fund or trust that comprises a component part of the community foundation. [Tenn. Code Ann. Section 67-6-102(8)(B) as amended by Public Chapter 52, Acts of 2015]

Churches or similar organizations that regularly sell goods or taxable services are considered dealers and generally will be liable for tax on those sales. Sales of motor vehicles, boats, and airplanes are not considered occasional and isolated sales in sales tax law.

Computer Software

Computer software is defined in sales tax law to mean a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. Tennessee imposes state and local sales and use tax on the retail sale, lease, licensing, or use of computer software in this state.

Prewritten and Custom Computer Software

Computer software developed by the author to the specifications of a specific purchaser is considered to be customized computer software.

SALES AND USE TAX

Definitions *(continued)*

Prewritten computer software is computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

Prewritten computer software includes: the combination of two or more prewritten computer software programs or portions; subsequent sales of computer software initially sold as customized computer software; and prewritten upgrades designed to modify or enhance previously purchased prewritten computer software.

When a person who was not the original creator or author modifies or enhances a portion of prewritten computer software, that person is deemed the author of only those modifications and enhancements. Prewritten computer software that is modified or enhanced to the specifications of a specific purchaser remains "prewritten computer software." However, if a separately stated reasonable charge is made for the modification or enhancement, the modification or enhancement will be considered customized computer software, not "prewritten computer software."

Computer Software Maintenance Contract

A computer software maintenance contract is defined to mean a contract that obligates a person to provide a computer with future updates or upgrades to computer software, support

services with respect to computer software, or both.

A computer software maintenance contract does not include telephone or other support services that are optional purchases by the customer, that are sold separately and invoiced separately, and that do not involve any transfer, repair, or maintenance of computer software on the part of the seller.

Single Article

[Tenn. Code Ann. Section 67-6-702(d)]

The term "single article" refers to any item that is considered, by common understanding, to be a separate unit, apart from any accessories, extra parts, etc., and capable of being sold as an independent item or as a common unit of measure. Independent units sold in sets, lots, suites, or such groupings, are not considered to be single articles. The local option tax rate cannot exceed 2.75% and may be assessed only on the first \$1,600 of the purchase price of any single item of tangible personal property.

Sales of taxable services, amusements, custom computer software, computer software maintenance contracts, and warranty or maintenance contracts are subject to the full local option tax.

Applications of "single article" taxation include:

Motor Vehicles

Parts and accessories for motor vehicles installed at the factory and delivered as original equipment will be treated as part of the unit. Parts and accessories that are installed by the dealer or distributor prior

SALES AND USE TAX

Definitions *(continued)*

to, or at the time of, sale and are included in the sale price are also considered as part of the unit. This also applies to parts or equipment required to be installed prior to the sale because of state or federal law.

Boats

Boat motors and any dealer installed accessories that are installed prior to the sale, freight, and labor, excluding trailers, will be treated as part of the boat unit in the same manner as parts and accessories for motor vehicles are treated for purposes of the single article local tax limitation. Items such as skis, ski ropes, personal flotation devices, and similar items are not considered part of the single item. Boat trailers will be taxed as a separate single item. The state tax rate applies to the total bill of sale.

Manufactured Homes

Parts, accessories, furniture, appliances, and other items that are part of a manufactured home at the time of sale are treated as parts of the single unit for purposes of the single article local tax liability. Also included as part of the single article price are delivery fees, installation fees, and other incidental items that are part of the sale. Installation includes charges made for setup, plumbing hookup, and electrical hookup.

State Tax on Purchases of Single Articles

Effective July 15, 2002, an additional state sales or use tax at the rate of 2.75% is levied on the portion of the sales price, from \$1,600.01 up to and including \$3,200, of any single article sold.

This is a state tax only. This portion of the single article sales price is not subject to local tax.

Computing Sales Tax Due on Single Articles

Assume that the total sales price, including all associated charges, of a single article is \$20,000. Tax computation would be calculated as follows:

- (a) The general state sales tax rate of 7% applies to the total \$20,000 sales price. $\$20,000 \times 7\% = \$1,400$.
- (b) The local option sales tax applies to the first \$1,600 of the sales price. The local option sales tax rate in Davidson County is 2.25%. $\$1,600 \times 2.25\% = \36 .
- (c) The state single article sales tax applies to the sales price from \$1,600.01 up to and including \$3,200 (the second \$1,600 of the sales price). The state single article rate is 2.75%. $\$1,600 \times 2.75\% = \44 .
- (d) In this example, the total sales tax is \$1,480.

If a single article with a total sales price of \$20,000 has \$5,000 in manufacturer's rebates applied, making the total amount the consumer pays only \$15,000, the consumer still owes sales and use tax on the full \$20,000 sales price before application of the rebates. The sales price of \$20,000 has not changed, even though the consumer received a payment break because a portion of the sales price is rebated to the dealer by the manufacturer.

SALES AND USE TAX

Definitions *(continued)*

If a consumer purchases an extended warranty plan on a single article, the warranty plan is also taxable, and tax must be computed separately on the single article and the warranty. Failure to separately state the price and compute the tax may result in assessment of the full local tax from the consumer. And, because an extended warranty contract does not qualify as a single article of tangible personal property, the local option tax rate applies to the entire purchase price, even if it exceeds \$1,600. There would be no state single article tax application to the purchase price of the warranty contract.

Specified Digital Products

Specified digital products are products that are electronically transferred to the purchaser or accessed electronically by the purchaser. Products that are defined as specified digital products include the following products:

Digital Audio-visual Works

A series of related images which, when shown in succession, impart an impression of motion, together with any accompanying sounds, that are transferred electronically. Examples include motion pictures, musical videos, entertainment and news programs, and live events.

Not included are video greeting cards sent by electronic mail, video or electronic games, and individual digital photographs that do not impart an impression of motion when viewed successively.

Digital Audio Works

Works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recordings.

Not included are audio greeting cards sent by electronic mail.

Digital books

Works generally recognized in the ordinary and usual sense as “books” that are transferred electronically, including works of fiction and nonfiction and short stories.

Not included are newspapers, magazines, periodicals, web blogs, and chat room discussions.

Tangible Personal Property

“Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses, and includes electricity, steam, water, gas, and prewritten computer software.

Tangible personal property does not include stocks, bonds, notes, insurance, and other securities. It does not include signals broadcast over the airwaves.

Third Party Drop Shipments

[Sales or Use Tax Rule 1320-5-1-.96]

Third party drop shipment transactions typically involve a dealer registered for

SALES AND USE TAX

Definitions *(continued)*

Tennessee tax (Dealer A), selling to an out-of-state dealer not registered for Tennessee tax (Dealer B). Dealer A drop ships the product to Customer C (Dealer B's customer) in Tennessee.

If Customer C is a dealer buying for resale, a nonprofit entity issued a Tennessee exemption certificate, or if the transaction is exempt from the Tennessee tax in any way, Dealer B may provide its home state resale certificate in conjunction with Customer C's Tennessee exemption and relieve Dealer A of the Tennessee sales tax obligation.

If the transaction is a transfer of taxable merchandise to a non-exempt consumer, the only relief for Dealer A is a Tennessee resale certificate with a Tennessee registration number issued to Dealer B. Neither Dealer B's home state resale certificate nor Customer C's declaration that it will pay use tax is of any value in exempting Dealer A. That Dealer B may not have a physical presence in Tennessee is not material in this situation.

Dealer B's home state resale certificate is not acceptable in this scenario because there is never a transfer of ownership or possession outside Tennessee. Because the shipment begins with a Tennessee-registered dealer and ends with a Tennessee customer, the shipment is an instate sale for purposes of determining sales tax liability.

Video Game Digital Products

[Tenn. Code Ann. Section 67-6-102 as amended by Public Chapter 514, Sections (21)(23) Acts of 2015]

A video game digital product is the permanent or temporary right to access

and use computer software that facilitates human interaction with a user interface to generate visual feedback for amusement purposes. The video game software remains in the possession of the seller or a third party. In other words, a video game digital product cannot be loaded onto the user's own computer. However, the sale of video game software that is loaded onto or downloaded onto the purchaser's computer in Tennessee is subject to state and local sales and use taxes as the sale of computer software.

SALES AND USE TAX

Food And Food Ingredients

[Tenn. Code Ann. Sections 67-6-102, 67-6-228]

Tennessee sales or use tax law provides that sales of food and food ingredients are subject to a state rate of 5.00% plus the applicable local tax rate. [Tenn. Code Ann. Section 67-6-228]

What Are “Food or Food Ingredients?”

In specifying that food and food ingredients are taxed at the 5.00% state rate, the law defines “food and food ingredients” to mean “substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.”

Examples of “Food or Food Ingredients”

The following is a partial listing of items that meet the requirements to be considered food and food ingredients and are subject to the 5.00% state rate, if not prepared by the seller. This list is not all-inclusive.

Baby food, baking powder, baking soda, beverage powders (other than dietary supplements), biscuit mix, bottled water (carbonated, flavored, sweetened, or unsweetened), bouillon cubes, bread, butter, cake mixes, cakes, canned foods, cereal, cheese, chip dip, chips (potato, corn, etc.), chocolate (unsweetened) and cocoa (powdered), coffee, condiments (ketchup, mustard, mayonnaise, etc.), cookies, cooking oil, dairy products, eggs, fish and meats, flavoring extracts, flour, food colorings, frostings, frozen meals, fruit (fresh or unsweetened dried), fruit juices, gelatin, granola and breakfast bars containing flour, gravies and sauces,

herbs and spices, honey, ice cream, jams and jellies, luncheon meats, margarine, meat extracts, meat tenderizers, nuts (unsweetened or salted), olives, pasta, pastries, peanut butter, pepper, pickles, pies, popcorn, popsicles, poultry, pretzels, pumpkins, raisins, relishes, salad dressing and mixes, salad oil, salt (granular), seasonings, sherbet, shortening, soft drinks, sugar and sugar substitutes, sweeteners, tea (bags, leaves, bottled), trail mix, vegetable juices, vegetables (fresh, frozen, dried, etc.), vinegar, yeast, yogurt.

The following is a partial list of items that are not considered food or food ingredients and are taxed at the 7% rate. This list is not all-inclusive.

Alcoholic beverages, baking chips and baking bars (sweet and semi-sweet), beer, breath mints, breath sprays, breath strips, cake decorations, candy-coated items, cigarettes and other tobacco items, cough drops and lozenges, dried fruit with sweeteners, gum, herbal supplements, honey roasted or coated nuts, marshmallows, party trays, vitamins, and minerals.

Meal Substitutes

Meal substitutes are taxable at the 5.00% state rate and applicable local rate. Meal substitutes are labeled with “Nutrition Facts” and include unsweetened breakfast bars or those containing flour; unsweetened dried fruit smacks; drinks such as Ensure or Boost; pop tarts; and soup mixes. This list is also not all-inclusive.

SALES AND USE TAX

Food And Food Ingredients *(continued)*

Items Not Taxable at the 5.00% Food Rate

The law specifies that the 7.00% state rate and not the 5.00% rate applies to candy, dietary supplements, prepared food, alcoholic beverages, and tobacco products.

Candy

“Candy” is defined as a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and must require no refrigeration. If an item requires refrigeration or has the word “flour” as an ingredient on the label, it is not candy.

Examples of items that are considered to be candy (the list is not all-inclusive) are baking bars (sweet or semi-sweet), beer nuts, breath mints, candy bars (no flour listed), candy-coated items, caramel or candy-coated apples, caramel or candy-coated popcorn, cereal bars (no flour listed), chewing gum, chocolate chips and other sweet or semi-sweet baking chips, chocolate covered nuts or seeds, chocolate covered potato chips, chocolate or carob-covered raisins, dried fruit with sweeteners, fruit roll-ups with sweeteners, honey-roasted or sweetened nuts, marshmallows, peanut brittle, sugarless candy (no flour listed), yogurt-covered raisins or nuts.

Dietary Supplements

In order to be considered a dietary supplement, a substance must meet all of the following criteria:

1. “Dietary supplements” contain one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of the ingredients listed.

2. Dietary supplements are also intended for ingestion as a tablet, capsule, powder, softgel, gelcap, or liquid form. Dietary supplements are not represented as conventional food and are not represented to be the sole item of a meal or diet.

3. Dietary supplements must be labeled as a dietary supplement, identifiable by the “Supplement Facts” box found on the label and required by federal regulations. Any item that is required to have a “Supplement Facts” label is taxable at the full 7% state rate plus the applicable local rate.

These items include amino acids; antioxidants; bee pollen; enzymes; garlic capsules; ginseng; herbal supplements; immune supports; lecithin; metabolic supplements; vitamins and minerals; and zinc lozenges. This list is not all-inclusive.

Prepared Food

“Prepared food” means food that is sold in a heated state or that is heated by the seller; food where two more food ingredients are mixed or combined by the seller for sale as a single item; or food sold with eating utensils, provided by the seller, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws.

SALES AND USE TAX

Food And Food Ingredients *(continued)*

The seller may prepare the item where the food is sold or at another location.

Food that is only repackaged, pasteurized, or sliced by the seller is not considered to be prepared food. Serving size or quantity does not affect the taxability of a food item.

On January 1, 2008, the definition of prepared food was amended to clarify: (1) tax application when utensils are provided by the seller, and (2) that food ingredients mixed or combined by the seller that contain raw animal foods (e.g., eggs, fish, meat, poultry) requiring cooking by the consumer are no longer defined as prepared food. Examples include: marinated raw meats, uncooked meatloaf, marinated raw seafood, combined raw meats, and cookie dough containing raw eggs.

The term "seller" means the legal entity that sells the product at retail. If the seller prepares and sells the food item, the item is taxed at the 7% state rate plus the local option rate. If the seller contracts with another legal entity to prepare the food, the food is not prepared by the seller and is taxed at the 5.00% state rate plus the local option rate, unless the legal entity preparing the food is an agent of the seller.

Examples of prepared food items taxable at the 7% state plus local rate if prepared by the seller are any food item sold in a heated state, bakery goods made by the seller; cold or frozen meals and soups prepared by the seller that are ready to heat and eat; fruit trays, coffee or tea prepared by the seller; ice cream in cones, sundaes, or such preparations; party

trays; ready to eat meats, poultry, or fish (cooked, smoked, or dried such as summer sausage, beef or venison sticks, and smoked fish); rotisserie chicken; salad greens mixed by the seller; salads and other deli dishes; sandwiches; soups, casseroles, or meals sold warm and ready to eat; warmed or honey roasted nuts.

Food that is not prepared by the seller, but is sold with eating utensils provided by the seller, is prepared food and is taxable at the 7% state rate plus the applicable local rate. Eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, napkins, cups, and straws. A plate does not include a container or packaging used to transport the food. An example is a container or tray that is packaging for a frozen dinner and also serves as a plate.

Box lunches with straws, napkins, plastic forks, and other utensils are considered prepared food. If the manufacturer, rather than the seller, provides an eating utensil with the food, that food is not considered prepared food and is taxable at the 5.00% state rate plus the applicable local rate. For example, a box of crackers with cheese spread that comes with a plastic spreader is subject to the 5.00% state tax plus the applicable local tax because the spreader is not provided by the seller.

Eating utensils other than plates, bowls, glasses, or cups necessary for the purchaser to receive the product are "provided by the seller" if the seller's practice is to: (1) physically give or hand the utensils to the purchaser, or (2) make the utensils, such as napkins or straws, available out on counters, and the seller's percentage of food that is otherwise

SALES AND USE TAX

Food And Food Ingredients *(continued)*

considered prepared food is greater than 75% of all food sales.

SALES AND USE TAX

Tax Credits

Returned Merchandise

[Tenn. Code Ann. Section 67-6-507]

If a consumer voluntarily returns articles of property to a dealer after the sales or use tax has been collected and remitted, the dealer may deduct the sales price of that property from the taxable transactions shown for the current month's return. The dealer must maintain records clearly indicating that the price of the item plus the sales or use tax was refunded to the consumer.

Repossession

[Tenn. Code Ann. Section 67-6-507]

A dealer who repossesses, or enforces a lien against, property the dealer has sold, on which there is an unpaid balance of greater than \$500, may deduct on the current report an amount equal to the unpaid balance minus \$500. The amount of unpaid balance does not include interest, carrying charges, or other similar charges. The dealer must document the credit by maintaining records on the parties and items involved, dates of the sale and the repossession, the original purchase price, and the amount of the unpaid balance.

Pollution Control

[Tenn. Code Ann. Section 67-6-507]

Auto body paint shops may take a credit of 100% of the cost of equipment purchased to comply with governmentally imposed pollution control standards. Dry cleaners may take a credit of 50% on replacement equipment purchased to comply with governmentally imposed pollution control standards. Application must be made to, and approval received from, the Department of Revenue. Those

businesses taking either credit will provide documentation that the equipment was necessary for compliance with current standards.

A credit or refund is also available to anyone purchasing pollution control equipment required by law that is used to treat pollution created by the taxpayer. The credit does not apply to taxpayers that primarily treat pollution created by others.

The pollution control equipment credit also applies to machinery and equipment used to produce electricity in a certified green energy production facility, as defined in Tenn. Code Ann. Section 67-4-2004. A copy of the Certification issued by the Department of Environment and Conservation must be furnished to the Commissioner of Revenue by the taxpayer to establish entitlement to the credit.

[Tenn. Code Ann. Section 67-6-346]

Bad Debt

A dealer who has paid the sales or use tax on a sale to an account that later becomes a bad debt and the debt qualifies as a bad debt that may be charged off for federal income tax purposes may take that sale amount as a credit on the current report. If that account is then paid to the dealer, the dealer will report amounts paid in the next regular return and the tax amount due.

There is a credit of the amount of any special contractor tax paid in another state for the sale of materials used by fire protection sprinkler contractors for fabrication of pipe and pipe fittings or use valves and pipe fittings in the

SALES AND USE TAX

Tax Credits *(continued)*

performance of out-of-state contracts. The credit will be limited to the tax on the value of the materials. [Tenn. Code Ann. Section 67-6-355]

Sales or Use Tax Paid in Another State [Tenn. Code Ann. Section 67-6-507]

Persons having paid a legally imposed sales or use tax to another state on tangible personal property, computer software, computer software maintenance contracts, warranty or maintenance contracts covering tangible personal property, and taxable digital products used or consumed in Tennessee may claim that payment as a credit against any use tax liability in this state. If the tax paid was less than what is due in Tennessee, the taxpayer will be liable for the difference.

Residents of other states who move to Tennessee and import their automobiles, personal effects, and household goods into the state are not liable for use tax on these goods purchased prior to the relocation. This does not apply to property imported for business purposes or to aircraft. However, effective July 1, 2014, for boats imported solely for personal use by persons moving to Tennessee, if the boat has a fair market value of \$10,000 or less and the boat was properly registered in the previous state, the boat is not subject to use tax.

[Tenn. Code Ann. Section 67-6-210]

Fuel or Petroleum Products Sold to Air Common Carriers

[Tenn. Code Ann. Section 67-6-349]

A dealer selling fuel or other petroleum products to air common carriers on which Tennessee sales tax was collected, and

the product is subsequently used by the air common carrier in a manner exempt under Tenn. Code Ann. Section 67-6-349(a), may, upon meeting certain criteria, take a credit equal to the amount of tax previously remitted to the Department.

The dealer must provide a credit/refund to the common carrier, obtain documentation sufficient to establish that the fuel was used in an exempt manner, and must take the credit on a tax return filed within one year of the date the tax was initially remitted to the Department of Revenue.

Headquarters Facility Tax Credit

Eligibility exists for a credit for all Tennessee state sales and use tax paid, except tax at the rate of .5% on qualified tangible personal property for construction of a new, expanded, or remodeled headquarters facility. To be eligible for this credit, the taxpayer and, if applicable, the lessor must submit an application with a business plan and receive an authorization letter from the Department of Revenue.

Taxpayers eligible for the headquarters sales and use tax credit are those taxpayers who are subject to the Tennessee franchise and excise taxes, insurance companies as defined in Tenn. Code Ann. Section 56-1-102(2) and, effective with business plans filed on or after January 1, 2008, general partnerships entitled to compute a jobs tax credit under Tenn. Code Ann. Section 67-4-2109(b)(3)(H). [Tenn. Code Ann. Section 67-6-224]

SALES AND USE TAX

Tax Credits *(continued)*

A headquarters facility is a facility in this state that houses the international or national headquarters of a taxpayer where headquarters staff employees are located and employed and where primary headquarters related functions and services are performed.

Qualified tangible personal property includes: building materials, machinery and equipment, furniture and fixtures, and computer software used in the qualifying facility and such property must be directly related to the creation of the qualifying new full-time employee jobs to qualify for exemption.

The taxpayer or lessor to the taxpayer must invest a minimum of \$10 million in a building or buildings, either newly constructed, expanded, or remodeled along with the creation of not less than 100 new full-time employee jobs, created during the investment period with average wages or salaries equal to, or greater than, 150% of the average wage in the county or metropolitan statistical area in which the taxpayer is located.

The minimum investment may include the purchase price of existing buildings, costs of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities, and landscaping, but not land or inventory.

To receive the credit, the taxpayer must submit a claim for credit along with documentation as required. The Department will notify the taxpayer of the approved amount of the tax credit along with instructions for taking the credit.

A taxpayer that has qualified for the headquarters tax credit or an affiliate of such taxpayer can enjoy a sales tax exemption for "private communication services" used for communication with a computer or telecommunications center located in Tennessee. To make purchases of private communication services without the payment of sales tax, the taxpayer must provide sellers a copy of an exemption certificate issued by the Department of Revenue. [Tenn. Code Ann. Section 67-6-389]

Taxpayers moving tangible personal property into Tennessee in conjunction with establishing a qualified headquarters are exempt from any sales and use tax that arises as a result of moving property into Tennessee as long as that property was previously used in the operation of the taxpayer's business. [Tenn. Code Ann. Section 67-6-389(e)]

SALES AND USE TAX

Taxable And Non-Taxable Property And Services

Taxable Tangible Personal Property [Tenn. Code Ann. Sections 67-6-102, 212]

The sale, lease, or rental of tangible personal property is taxable under Tennessee sales and use tax law. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses, and includes electricity, steam, water, gas, and prewritten computer software. Examples are:

- + Items sold by grocers to consumers at retail.
- + Clothing and other items of personal apparel.
- + Motor vehicles and marine vessels including repair parts and accessories.
- + Watches, rings, and other items of jewelry.
- + Building materials sold at retail or to realty contractors.
- + Supplies sold to and used or consumed by physicians, dentists and veterinarians.
- + Furniture, appliances, and home furnishings.
- + Electronic equipment and supplies.
- + Computer hardware, and peripherals.
- + Souvenirs, gifts, and novelty items.
- + Books, magazines, and other periodicals.
- + Cellular phones and pagers.
- + Prepared meals and beverages purchased from restaurants.
- + Water, gas, and electricity.

This list is not all-inclusive. Many other items of tangible personal property are subject to the sales or use tax.

Some items of tangible personal property are specifically exempted from sales or use tax either by Tennessee law or when purchased by specific entities or for specific purposes. These items and entities are discussed later in this publication.

Computer Software

Computer software subject to tax includes both custom and prewritten computer software.

The sale, lease, license, and use of computer software is subject to tax when:

- + Provided to the customer in this state on tapes, discs, cards or other tangible materials;
- + Provided to the customer by loading and leaving on the customer's (or the customer's designee's) computer in Tennessee;
- + Provided to the customer by electronic delivery (e.g., download) to the customer's (or the customer's designee's) computer in Tennessee;
- + Provided to the customer by programming in the customer's (or the customer's designee's) computer in Tennessee; or
- + As of July 1, 2015, remotely accessed by the customer from a location(s) in Tennessee. [Public Chapter 514, Sections (21-23) Acts of 2015]

Computer software provided to a customer that is installed, downloaded or programmed into the customer's (or the customer's designee's) computer located

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

outside Tennessee is not subject to Tennessee sales or use tax.

Modifications to Computer Software

Modifications, enhancements, updates, upgrades and customizations of both customized and prewritten computer software is subject to sales and use tax. It is the sale of computer software.

Modifications, enhancements, updates, upgrades and customizations downloaded or programmed into the customer's (or the customer's designee's) computer located inside Tennessee is subject to tax. Software programmed, downloaded, or installed on computers outside Tennessee is not subject to Tennessee sales or use tax.

Services to Computer Software

Services to computer software enumerated in the law that are subject to tax include installation, and repair/maintenance of computer software.

Installing or loading computer software on a computer located in this state is subject to sales tax. When provided by the software seller, the installation is part of the sales price of the computer software, even if separately itemized or invoiced. In addition, stand-alone installation of computer software furnished by a third party to install or load computer software on a computer located in this state is also subject to sales tax.

[Tenn. Code Ann. Section 67-6-205(c)(6)]

Maintenance and repair to computer software installed on computers located

in this state is subject to sales tax. Repair or maintenance services performed on computer software installed on computers located outside Tennessee is not subject to sales tax. [Tenn. Code Ann. Section 67-6-205(c)(4)]

Other services that are not enumerated in the law may be subject to tax where the charges for the services are considered a part of the sales price of computer software. The sales price of computer software includes labor and service costs and expenses of the seller as well as services necessary to complete the sale. [Tenn. Code Ann. Section 67-6-102]

Reimbursable travel expenses (e.g., hotel, per diem) are costs or expenses of the seller and are a part of the sales price of the computer software, even if separately itemized or invoiced.

Consulting or professional services that include creating, designing, developing, fabricating, programming, altering, or modifying software furnished in conjunction with the sale of the computer software is part of the sales price of the computer software even if separately itemized or invoiced as consulting or professional services. If the computer software is subject to tax then these services are also subject to tax.

Software configuration services are those that activate features already coded within the existing software, configuring the software to optimize its functionality. They may include the act of setting pre-defined software toggles or switches or building tables that give direction within the standard delivered application software. Software configuration services

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

do not include development, modification or creation of software code.

Sales of software configuration services, when optional and sold independently from sales of software (or customization of software) or sales of software installation or repair are not subject to the sales tax. However, if the configuration services are sold as part of the sale of the software (i.e., are not optional), or if the configuration services are sold with software, installation, and/or repair for one lump price (i.e. not separately itemized), then the configuration services are subject to the sales tax as part of the sale price for the taxable software, installation and/or repair services.

Unlike installation or repair services which are enumerated in the law as taxable services; training services are not enumerated as a taxable service. Computer software training services included in the price and not separately itemized are subject to tax as part of the sales price of the computer software. Even if separately itemized from the price of the computer software, training services may be taxable as a part of the sales price of the software if the purchase of the training services is not optional and sold independently from the software.

Remotely Accessed Computer Software
[Tenn. Code Ann. Section 67-6-231 as amended by Public Chapter 514, Section (22) Acts of 2015]

To address changes in technology and ways in which purchasers obtain and use software, Tennessee sales and use tax law provides effective July 1, 2015 the taxable use of computer software in Tennessee

includes the access and use of software that remains in possession of the seller and is remotely accessed by a customer for use in this state. This provision ensures that software remains subject to sales and use tax regardless of a customer's method of use.

The seller must collect tax at the 7% state tax rate, plus the applicable local tax rate, on the sales price for the use of remotely accessed software during billing periods that begin on or after July 1, 2015. For example: A license of remotely accessed software requires payment of an annual license fee due each April 1st. Tax must be paid on the fee for the license period beginning April 1, 2016.

The tax applies to access and use of the software from a location in Tennessee, and it applies whether the charge for the software is on a per use, per user, per license, subscription, or any other basis. The software is accessed from a location in Tennessee if a customer's residential or primary business address is in this state.

If the seller does not have nexus in Tennessee or otherwise does not collect the tax, purchasers in this state who remotely access and use software must report and pay use tax to the Department on the purchase price for the use in this state of the remotely accessed software.

If the purchaser pays for access to software that will be used by individuals who are located in this state, and other individuals who are located outside this state (for example, the purchaser's employees), then the price paid by the purchaser may be allocated based on the percentage of users located in Tennessee

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

to determine the amount subject to Tennessee tax.

The seller must obtain a fully completed Streamlined certificate (available on the Department's website) from a Tennessee customer to document an exemption claimed for the portion of the price that corresponds to the percentage of users located outside Tennessee. The seller must collect tax from the Tennessee customer on the percentage of the price that is allocated to Tennessee.

The Streamlined certificate must include the customer's Tennessee sales and use tax registration number. In addition, on Line 5, "Reason for Exemption," the customer should circle "Other" with an explanation such as, "remotely accessed software used by employees located in multiple states" and specify the percentage of users located outside of Tennessee.

A dealer that purchases software exclusively for the purpose of providing remote access and use of that software to its customers may purchase the software without tax using a resale certificate.

Remote access and use of software by the purchaser exclusively for fabricating other software that is owned and used only by that person is exempt from sales and use tax. [Tenn. Code Ann. Section 67-6-387(b) as amended by Public Chapter 514 Section 24 Acts of 2015]

Services that are not subject to tax under state law but may be remotely accessed and utilized or received by a purchaser are not considered remotely accessed

software and continue to be nontaxable services. Some examples include but not limited to:

- + Information services or data processing services (including the capability of the customer to analyze such information or data provided by the dealer);
- + Payment or transaction processing services;
- + Payroll processing services;
- + Billing and collection services;
- + Internet access;
- + Storage of data, digital codes, or software; or
- + The service of converting, managing, and distributing digital products.

Video Game Digital Products

Effective July 1, 2015, the sales and use tax also applies to remotely accessed software that is charges for the permanent or temporary right to access video game digital products, whether the charge is on a per use, per user, per license, subscription, or any other basis.

The right to access a video game digital product may be through use of a digital code. Sales of digital codes to obtain access to video game digital products are subject to tax at the time of the sale of the digital code, and no additional tax is due when the purchaser or subscriber enters the code and accesses the video game digital product.

The state rate of 7% plus the applicable local tax rate (up to 2.75%) applies to sales of digital video game products.

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

The sales or use of video game digital products is taxable in Tennessee if the residential or primary business address of the purchaser who accesses the digital video game product is in Tennessee.

Application of Single Article Taxation to Software

The single article tax laws do apply to prewritten computer software. A separate prewritten computer software application or module that is sold without any other software applications or modules bundled with it for one price will qualify as a single article of prewritten computer software. This applies regardless of how the software is delivered, whether downloaded or remotely accessed.

Single articles of prewritten computer software are taxed on the first \$1,600 of the sales price for each single article and are subject to the 2.75% additional state tax from \$1,600.01 up to and including \$3,200 of the sales price of each single article. Beyond \$3,200, no local tax or additional state single article tax is due on a single article of prewritten computer software.

Single article taxation does not apply to custom computer software or separate itemized charges for customization of prewritten computer software. Customized computer software does not qualify as a "single article" as defined in Tenn. Code Ann. Section 67-6-702 and the full sales price is subject to the local sales tax, but not the 2.75% additional state tax on a single article.

Websites and Computer Software

Additionally, a web site is considered computer software, so the sale of web site development and design are taxable under state law. If a web site is created in Tennessee for hosting outside of Tennessee, the sale is in interstate commerce and not subject to sales tax. However, if a web site is hosted in Tennessee, the sale of the computer software that is the web site is subject to sales tax. A dealer is liable for sales or use tax on any type of tangible personal property or computer software used in the conduct of business. Therefore, if a Tennessee seller creates a web site for an out-of-state customer and hosts the web site in Tennessee, the out-of-state customer is liable for tax if title to the computer software transfers to the out-of-state customer. Generally, a charge for merely hosting a web site is not taxable.

In-house Computer Software

When a seller does not collect tax on the sale of computer software, Tennessee purchasers must report and pay use tax to the Department on the purchase price of the software. A use tax exemption is available for computer software fabricated by a person or its direct employees (W-2 employees) for such person's own use, referred to as in-house computer software. The use tax exemption does not apply computer software fabricated or programmed by independent contractors or employees of an entity that is not the user and consumer of the computer software.

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

Affiliate Computer Software

Tenn. Code Ann. Section 67-6-395 exempts, from the sales and use tax, the use of computer software that is developed and fabricated by an affiliated company, or the repair of computer software if the repair is performed by an affiliated company. This exemption applies regardless of whether such software is remotely accessed and used or delivered by other means. For these purposes the term affiliated company requires 100% ownership between the two companies or a 100% ownership by a common parent.

Computer Software Maintenance Contract

Sales of, use of, or subscription to computer software maintenance contracts are subject to sales and use tax at the time of the sale. If tax is paid on the computer software maintenance contract, then no additional tax will be owed on any updates or upgrades to the software covered by the software maintenance contract. The total sales price of the software maintenance contract is subject to the state and local tax rate. The local single article tax limitation and the additional state single article tax do not apply to computer software maintenance contracts.

Computer software maintenance contracts are subject to Tennessee sales and use tax if:

- + The computer software maintenance contract is sold as part of or in connection with the sale of computer software that is

subject to Tennessee sales or use tax;

- + The computer software maintenance contract applies to computer software installed on computers located within Tennessee; or
- + The location of the computer software covered by the computer software maintenance contract is not known to the seller but the purchaser's residential street address or primary business address is located in Tennessee.

If a computer software maintenance contract applies to computer software installed on computers both in Tennessee and located outside Tennessee, sellers or users may allocate to Tennessee a percentage of the sales price or purchase price of the contract that equals the percentage of computer software installed on computers located in Tennessee.

Support Services to Software

In general, support services agreements provide help desk and customer service support, basic usability of the software and Q&A assistance with software functionality. Sales of support service agreements that meet all three of the following conditions would not be taxable as part of the software maintenance contract.

- + the support services are sold separately from the sale of the computer software maintenance contract;

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

- + the purchaser is not required to purchase the support services in order to purchase software or the software maintenance contract;
- + the support services do not include transfer of, installation of, or repair or maintenance of computer software.
- + Sales of digital codes that are to be used by the purchaser to download or access specified digital products.

Digital codes may be obtained in a tangible form such as a card or through an e-mail. By entering the code, the purchaser can download or access the specified digital products.

Specified Digital Products

The retail sale, licensing, lease, or use of specified digital products to purchasers with a residential or business address in Tennessee are subject to sales and use tax. The combined state and local sales and use tax rate for specified digital products is 9.50% (7% state plus 2.50% local) state-wide.

Specified digital products are electronically transferred (e.g., downloaded or accessed on-line) to purchasers or subscribers and are not provided on tangible storage media such as tapes, CDs, or DVDs. Specified digital products include digital audio-visual works (e.g., movie and music videos), digital audio works (e.g., music, ringtones), and digital books, as defined in the law.

Taxable retail sales of specified digital products include:

- + Obtaining the specified digital products by download or access online;
- + Subscription fees (monthly, yearly, etc.) for access to or downloads of specified digital products;
- + Sales in which the seller limited the time a purchaser has access to or can download the specified digital products; and

Services

Most services are not subject to the sales tax. However, some services are specifically named in the law as being subject to the tax. The following examples are services that are taxable under Tennessee law. While not necessarily all-inclusive, this list may assist you in determining if your type of service is taxable. Please contact the Department of Revenue if you have questions about any specific service.

Taxable Services

[Tenn. Code Ann. Sections 67-6-205, 67-6-212, 67-6-226, 67-6-227]

Charges for the use of rooms or accommodations furnished for periods of less than 90 days by hotels, motels, inns, or other tourist lodgings are subject to tax. The tax does not apply to accommodations or rooms furnished to the same person for 90 or more continuous days.

Charges for the use of or the value of any time-share estate and any charges for the use of or the value of the use of a perpetual interest in specified entities whose substantial purpose is the ownership and control of real property are not subject to the sales and use tax.

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

Amounts paid as a standard fee for the service of facilitating the exchange of one timeshare interval for another or for the service of making a reservation for a time share interval via a reservation system are not subject to the sales and use tax. For this purpose, a "time-share estate" is an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and time-share lease.

Charges for services rendered in the operation of parking or vehicle storage facilities are subject to tax. The tax does not apply for parking in state and local government facilities or on the street where the fees are collected by state or local government parking meters. The storage of property other than motor vehicles is not a taxable service.

Charges for repair services, both parts and labor, of tangible personal property such as automobiles, business machines, and appliances, and charges for repairs to computer software are subject to tax.

Charges for installation of items of tangible personal property that remain tangible personal property after installation and installation of computer software are subject to tax. An example is the charge made by a retailer to set up computer hardware in the buyer's home.

Charges for laundry and dry-cleaning of tangible personal property except for coin-operated facilities are subject to tax.

Charges for bathing and grooming animals are taxable. This service is taxable on the total charge if both the bathing and

grooming are performed for a single charge. Bathing charges billed separately are 100% taxable. There is no tax applied to bathing performed for a medical purpose by a licensed veterinarian as a part of the practice of veterinary medicine. There is no tax on grooming services billed separately.

Furnishing intrastate, interstate, or international telecommunications services or ancillary services for a consideration are subject to tax.

The sale of a prepaid calling service and prepaid wireless calling service is subject to the state and local tax at the time of the sale or the recharging of the calling card or authorization code to use the calling card. No additional tax is due when the telecommunications service is accessed or received by the user of the calling card or authorization code. [Tenn Code Ann. Section 67-6-230(a)]

Enriching uranium materials, compounds, or products performed on a cost-plus or "toll enrichment fee" basis.

Charges for renting space to a dealer with no permanent location in Tennessee or to a dealer registered for sales in another part of Tennessee but making sales at this location on a temporary basis. This does not include space rental at flea markets, craft fairs, or antique malls. This does not include gun shows or book fairs sponsored by nonprofit organizations. This also does not include conventions, trade shows, or expositions that do not allow the general public to make sales in the exhibit area.

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

Charges or subscriptions for access to or use of television programming that is provided by a video programming services provider; and charges or subscriptions to access or use direct-to-home satellite services are subject to tax.

Taxable Amusements

Also taxable under Tenn. Code Ann. Section 67-6-212 are charges for a variety of amusement, recreation, and entertainment activities such as:

- + Membership dues and fees to sports and recreation clubs or health spas, including complimentary dues and fees made in connection with a valuable contribution.
- + Admissions to sporting events, musical and theatrical performances, and other amusements except as exempted by law.
- + Charges for entering or engaging in any kind of recreational activity.
- + Charges for using tangible personal property for amusements, sports, entertainment, or recreational activities such as golf carts, tennis courts, or bowling shoes.

Warranty or Service Contracts

[Tenn. Code Title 67, Chapter 6, Part 2, as enacted by Public Chapter 273, Acts of 2015]

Effective October 1, 2015, charges for warranty or service contracts, warranting the repair or maintenance of tangible personal property are subject to Tennessee sales tax when:

- + The warranty or service contract is sold as part of, or in connection with, the sale of tangible personal property that is subject to sales tax, or
- + The warranty or service contract applies to tangible personal property located in Tennessee.
- + The warranty or service contract is for tangible personal property where the location of the property is unknown and the purchaser has a Tennessee address.

If the warranty or service contract applies to tangible personal property located both inside and outside Tennessee, dealers or users may allocate to Tennessee a percentage of the sales price or purchase price of the warranty or service contract that equals the percentage of tangible personal property located inside the state.

Repairs performed under such contracts are not also subject to tax.

Nontaxable Services

Examples of non-taxable services are:

- + Furniture moving.
- + Barber and beauty shop services.
- + Hospital, physician, and dental services.
- + Carpet cleaning and window washing.
- + Taxidermy services.
- + Use of recording studios and television studios.
- + Furnishing of equipment when the owner provides a person, or crew, to operate it. Continuous supervision and control are required.

SALES AND USE TAX

Taxable And Non-Taxable Property And Services *(continued)*

- + Carpentry, painting, and carpet installing.
- + Lawn mowing.

Sales of goods or property to these providers that are consumed or used in the performance of their services are subject to the sales or use tax. Any items of tangible personal property sold by these providers, separately from their services are also subject to the sales or use tax.

These property and services listings are not necessarily all inclusive. Tennessee laws are also amended from time to time. Any questions concerning the taxability of tangible personal property or services should be directed to the Taxpayer Services Division.

SALES AND USE TAX

Exemptions Requiring Certificates

Three general types of exemptions are provided in Tennessee sales or use tax law. These are exempt entities, exempt items, and exempt transactions. Many exempt transactions and sales to exempt entities require that the purchaser claiming the exemption provide specific documentation to the dealer. The dealer is required to keep the exemption documentation on file to support the exempt sales for audit purposes.

Documenting Exemptions

Certificates are used to document authorization for purchasing tangible personal property and taxable services free of tax. These certificates are issued directly to the specific taxpayer upon application to and verification by the Department of Revenue. A copy of the certificate is then given to the seller by the taxpayer wishing to purchase free of tax.

In lieu of obtaining copies of certificates, sellers may obtain a fully completed Streamlined Sales Tax Certificate of Exemption form which must include the exemption number appearing on the certificate issued to the purchaser by the Department of Revenue. Sellers may obtain the certificates claiming exemptions in an electronic format or medium. Sellers are liable for tax on sales where the seller failed to obtain and keep exemption certificates authorizing the tax-free sales.

Blanket Certificate of Resale

[Tenn. Code Ann. Sections 67-6-102, 602; Sales or Use Tax Rule 1320-5-1-.68]

Sellers shall require certificates of resale for all tangible personal property sold, or services rendered in this state, for the

purpose of resale. These certificates must be available for audit. A person duly registered under the provisions of the sales tax law, and continually engaged in the business of selling tangible personal property or taxable services at retail shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of the business operation and the purchases are of tangible personal property or taxable services of the kind usually purchased by the purchaser for resale. This certificate remains valid until revoked in writing by the issuer.

A "sale for resale" does not include a sale of tangible personal property or computer software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services will be considered the end user and consumer of property used in the selling, performing, or furnishing of the services sold.

"Sale for resale" does include:

- + Repair parts or other property sold to a dealer if the property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services.
- + Installation parts or other property sold to a dealer if the property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible property after installation.

SALES AND USE TAX

Exemptions Requiring Certificates

(continued)

- + Mobile telephones and similar devices sold to a dealer if the property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services.
- + Food or beverages sold to a hotel, motel, inn, or other provider of lodging accommodations if such food and beverages are subsequently transferred to the customer in conjunction with the sale of lodging accommodations to the customer.

Whether or not the dealer makes a separately stated charge for the property is not material.

“Sale for resale” also does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental.

A dealer that sells, leases, or rents tangible personal property or computer software is considered the end user and consumer of the services used in conducting such business. [Tenn. Code Ann. Section 67-6-102]

All sales for resale that are not supported by resale certificates or a fully completed Streamlined Sales Tax Certificate of Exemption indicating the purchases are for resale shall be deemed retail sales; the seller will be held liable for the tax.

Certificates of resale may not be used to obtain tangible personal property or taxable services that would be used by the purchaser, not resold.

Such use will be grounds for the Commissioner to revoke the registration certificate of the purchaser wrongfully making use of the certificate of resale. In addition to this penalty, it is a misdemeanor to misuse the certificate of registration and resale certificate for the purpose of obtaining tangible personal property or taxable services without the payment of the sales or use tax when due.

Purchasers providing sellers with certificates of resale for property or services that are used and not resold will be held liable for the tax. Sellers that fraudulently fail to collect tax or that solicit a purchaser to participate in the unlawful claim of an exemption will be held liable for the tax.

For example, it would be proper use of a resale certificate for a candy wholesaler to accept a resale certificate for candy purchased by a grocery store. It is reasonable for the wholesaler to believe the candy will be resold by the grocery store; the sales or use tax will be collected on the final sale to the customers.

However, it would be improper for an automobile dealer to issue a resale certificate for its purchase of office furniture from a furniture dealer. The automobile dealer will be held liable for the tax not paid as a result of issuing a resale certificate for the furniture purchased for use and not resold. If it is determined that the furniture dealer unlawfully solicited the automobile dealer to issue the resale certificate to purchase

SALES AND USE TAX

Exemptions Requiring Certificates

(continued)

the furniture tax free, the furniture dealer will be held liable for the tax.

If a buyer purchases for resale and later uses the product rather than reselling it, the buyer is responsible for reporting and paying sales or use tax on the items used. This must be done on the sales or use tax return for the period in which the goods were used.

Direct Pay Permits

A direct pay permit is special written permission granted to a registered taxpayer by the Commissioner to make all purchases free of tax. The taxpayer must then report all sales or use taxes due directly to the Department of Revenue. Tennessee will not accept direct pay permits issued by other states. This permission may be extended only under exceptional circumstances or hardship to the taxpayer. A copy of the direct pay permit issued by the Department of Revenue shall be filed with the wholesalers or retailers. This special written permission to remit the sales or use tax shall in no way alter or affect the criteria for determining whether a transaction is taxable in Tennessee.

In lieu of obtaining a copy of the direct pay permit, sellers may obtain a copy of a fully completed Streamlined Sales Tax Certificate of Exemption form, which must include the account number appearing on the direct pay permit issued to the purchaser by the Department of Revenue. [Tenn. Code Ann. Section 67-6-102; Sales or Use Tax Rule 1320-5-1-.68(4)]

Government Certificate of Exemption

This exemption is valid for sales directly to entities of the United States government, the state of Tennessee, and counties and municipalities in Tennessee. Sales to other state governments or to cities and counties outside this state are not exempt from tax. This exemption form is generic in nature and is not issued to a specifically named government entity. The government entity must enter its name in the block provided on the exemption form. The completed form is valid for purchases made by the governing entity. Employees traveling on paid expense accounts or paying with personal funds (checks or credit cards) cannot use the government exemption for purchases. The government exemption certificate form has no expiration date.

In lieu of obtaining a government exemption form, sellers may obtain a fully completed Streamlined Sales Tax Certificate of Exemption form. On Line 4 of the Streamlined form, the purchaser should circle Item 18 for government organizations and on Line 5, circle Item B, and include the name of the government entity claiming the government exemption.

Certificate of Exemption for Nonprofit Organizations

[Tenn. Code Ann. Section 67-6-322]

This certificate is used by non-governmental organizations, that have been issued a certificate of exemption by the Commissioner of Revenue to purchase free of tax, to buy goods and taxable services that the organization will use, consume, or give away. The certificate will contain an exemption

SALES AND USE TAX

Exemptions Requiring Certificates

(continued)

number that is unique to the organization receiving the letter.

The seller making a sale to one of these organizations must maintain a copy of the exemption certificate in the entity's files for audit purposes.

In lieu of obtaining a nonprofit organization exemption certificate, sellers may obtain a fully completed Streamlined Sales Tax Certificate of Exemption form. On Line 4 of the Streamlined form, the purchaser should circle either item 16 for education or health care services or item 17 for religious or educational organizations. On Line 5, the purchaser should circle either item E for charitable organizations or item F for religious or educational organizations. The Streamlined form must include the exemption number appearing on the nonprofit exemption certificate issued to the organization by the Department of Revenue.

When accepting an exemption, the seller must ensure that the purchase is billed to the exempt organization and is paid for with checks or credit cards of the organization. Members and employees of the organization may not use the exempt organization's exemption certificate to make tax-free purchases that will be reimbursed by the exempt organization or that is for the member or employee's own use.

Sellers that have obtained a copy of the nonprofit exemption certificate or a fully completed Streamlined exemption form at the time of the sale and ensured billing to and payment by the exempt

organization are not liable for the tax if the purchaser improperly claimed the exemption for the purchases. The purchaser will be liable for the tax.

These organizations include churches, temples, synagogues, mosques, boys' and girls' clubs, universities, colleges, schools, orphanages, foster home institutions, homes for the aged, hospitals, community health councils, volunteer fire Departments, organ banks, organizations primarily for the spiritual and recreational environment of the armed forces, state-owned historical properties, nonprofit community blood banks, senior citizen centers, certain nonprofit talent and beauty contest corporations, and 26 USC Section 501(c)(3) organizations, (c)(5) labor organizations, (c)(13) nonprofit cemeteries, and (c)(19) wartime veterans' organizations.

Out-of-state organizations that hold a federal tax exemption under 26 USC Section 501(c)(3) must submit a copy of their federal exemption letter in lieu of a certificate of exemption from the Commissioner of Revenue. Instate Section 501(c)(3) entities require a certificate of exemption issued by the Commissioner of Revenue or a properly completed Streamlined Sales Tax Certificate of Exemption. A properly completed Streamlined Sales Tax Certificate of Exemption must include the nonprofit tax number issued to the entity by the Department of Revenue.

Other than out-of-state 501(c)(3) letters, Tennessee does not accept nonprofit or charitable exemption documents issued by other states.

SALES AND USE TAX

Exemptions Requiring Certificates (continued)

Certificate of Exemption for Qualified Call Centers

[Tenn. Code Ann. Section 67-6-356]

Sales of interstate telecommunications services to businesses for operation of one or more call centers are exempt upon presentation of an appropriate exemption certificate. Call centers are single locations having at least 250 employee jobs and utilizing telecommunications services in one or more of the following activities:

- + Customer services.
- + Soliciting sales.
- + Reactivating dormant accounts.
- + Fund raising.
- + Conducting surveys or research.
- + Collection of receivables.
- + Receiving or taking orders.
- + Receiving reservations.

Dyed Diesel Tax Payments for Commercial Carriers

Commercial carriers are required to report and pay Tennessee the Tennessee diesel tax quarterly on each gallon of dyed diesel fuel it uses to produce power for a means of transportation in Tennessee, as defined in the Transportation Fuel Equity Act.

Such commercial carriers are granted authority by the Department of Revenue to make purchases of dyed diesel fuel without payment of sales or use tax or diesel tax to suppliers at the time of purchase. A commercial carrier is responsible for payment of the sales or use tax on purchases of dyed diesel that is not used to produce power for a means of transportation in this state.

Commercial carriers must apply for and receive a certificate to present to their suppliers at time of purchase. [Tenn. Code Ann. Section 67-3-1401]

Authorization for Payment of Reduced Sales Tax for Common Carriers

Tenn. Code Ann. Sections 676-219 and 67-6-702(e) grant common carriers the authority to pay sales tax at a reduced state rate of 3.75% and a reduced local rate of 1.5% on purchases of tangible personal property made in the State of Tennessee but that will be used outside the State of Tennessee.

Common carriers must apply for and receive a certificate from the Department of Revenue that can be presented to Tennessee suppliers when making such purchases. The certificate will allow common carriers to make qualifying purchases without payment of the sales tax to the supplier at time of purchase.

Common carriers will be responsible for payment of the Tennessee state and local sales tax on qualifying purchases directly to the Tennessee Department of Revenue.

This authorization to pay a reduced rate of sales tax does not apply to purchases of food or fuel.

If a common carrier pays the reduced rate of state and local sales tax on qualifying purchases of property but subsequently uses the property inside Tennessee, the common carrier will be liable for Tennessee state and local sales tax at the full rates provided by statute. A common carrier will also be required to pay the full rates of state and local taxes if the common carrier fails to maintain records

SALES AND USE TAX

Exemptions Requiring Certificates

(continued)

to document that the purchases were not used inside the State of Tennessee but was removed from and used outside of Tennessee.

Agricultural Exemption Certificate

[Tenn. Code Ann. Section 67-6-207]

A discussion of this certificate is found later in this Sales or Use Tax Guide.

SALES AND USE TAX

Exemptions Requiring Documentation

Under sales or use tax law, some sales are tax-exempt without the necessity of a certificate issued by the Department but do require documentation between the seller and buyer. Examples of the many exemptions that fall under this category are shown below, but this list is not all-inclusive. Dealers should contact the Department for more information on the types of exemptions available.

Removal from Tennessee by Buyer

Tennessee law allows a buyer to purchase a motor vehicle in Tennessee and have up to three days to remove the motor vehicle to another state without having to pay sales or use tax on the purchase. This exemption applies to all motor vehicles that would be subject to registration and titling in Tennessee were the vehicle to remain in-state. This also includes all off-highway motor vehicles as defined in Tenn. Code Ann. Section 55-3-101(c)(2).

There is also a provision under Tennessee law that exempts, from the sales or use tax, the retail sale of boats, motorboats, and other vessels that are subject to registration in this state that are removed from Tennessee to another state within three days after purchase.

When purchasing these items under this privilege, the buyer presents the seller with the Seller/Purchaser Affidavit of Exemption for Motor Vehicles, Boats, and Vessels Sold For Removal From Tennessee Within Three Days indicating the city and state to which the item will be delivered. This form is available on the website. [Tenn. Code Ann. Sections 67-6-313, 343, 345]

Exemption for Railroad Track Materials and Locomotive Radiators

This exemption is for railroads seeking to purchase railroad track materials and locomotive radiators for use outside the state of Tennessee as provided in Tenn. Code Ann. Section 67-6-340. If the railroad fails to keep records sufficient to prove these materials were used out-of-state and not within Tennessee, then the railroad will be liable for the sales or use tax on these items. [Tenn. Code Ann. Section 67-6-529]

Exemption for Rural Electric Cooperatives, Community Service Cooperatives, and Governmental Utility Districts – for entities organized under Tenn. Code Ann. Sections 65-25-201, et seq., and Tenn. Code Ann. Sections 7-82-101, et seq.

Exemption for Electric Generating and Distribution Systems, Resource Recovery Facilities, or Coal Gasification Plants – for entities created by the federal, state, or local governments under the Electric Membership Corporation or the Electric Cooperative Laws.

SALES AND USE TAX

Agricultural Exemptions

Agricultural Exemption Certificate

Farmers, timber harvesters, and nursery operators must qualify for and receive an Agricultural Sales and Use Tax Certificate of Exemption from the Department of Revenue to make agricultural purchases exempt from tax. A qualified farmer, logger, or nursery operator must present a copy of the agricultural exemption certificate issued by the Commissioner of Revenue to the seller. The copy of the certificate is the seller's documentation of tax-exempt sales of goods and services to qualified farmers, loggers, and nursery operators.

Also, in lieu of providing the seller with a copy of the agricultural exemption certificate, qualified persons making exempt agricultural purchases can also provide a fully completed Streamlined Sales Tax Certificate of Exemption which must include the exemption number included on the agricultural exemption certificate issued by the Commissioner.

The buyer is obligated to ensure that all goods and services purchased under this certificate are actually purchased for the production of agricultural or nursery products. The buyer is also liable if he or she allows others to use his or her exemption certificate or number to make tax-exempt purchases. Sellers may refuse acceptance of the agricultural certificate to make tax-free sales of items that obviously do not qualify for agricultural exemption. Sellers remain liable for the tax if they do not maintain copies of the agricultural certificate or card in their records or if the invoice or bill does not contain the name and address of the buyer and a description of the products sold. [Tenn. Code Ann. Section 67-6-207]

Agricultural Exemptions

[Tenn. Code Ann. Sections 67-6-207 and 301]

The retail sale, lease, rental, use, consumption, distribution, repair, or storage for use or consumption of the following items may be purchased tax-exempt when sold to a qualified farmer, logger, or nursery that provides the seller with a copy of the agricultural exemption certificate or card. Exempt items include:

- + Farm equipment or machinery including all-terrain vehicles used directly and principally for producing agricultural and nursery products for sale.
- + Hay wagons, silage wagons, and trailers used directly and principally in producing agricultural and nursery products for sale.
- + Grain bins and attachments thereto.
- + Aircraft designed and used for crop dusting.
- + Equipment used solely for harvesting timber.
- + Trailers used for transporting livestock.
- + Self-propelled fertilizer or chemical spreading equipment used to spread fertilizer or chemicals to aid in production of food and fiber for human consumption.
- + Tender beds and spreader beds, even if mounted on a truck.
- + Systems for poultry environmental control, feeding and watering, and conveying eggs.
- + Parts and labor used in the repair of exempt farm machinery.

SALES AND USE TAX

Agricultural Exemptions *(continued)*

- + Gasoline or diesel fuel used for “agriculture purposes” as defined in Tenn. Code Ann. Section 67-6-102, including dyed diesel fuel used in cutting and harvesting trees by qualified timber harvesters.
- + Containers for farm products or plastic and canvas used in the care of plants or as a protective covering for agricultural products.
- + Livestock and poultry feeds, drugs used for livestock, and instruments used for the administration of such drugs.
- + Seeds, seedlings, and cuttings that will produce food, fiber, or tobacco.
- + Fertilizer and pesticides used to aid the growth and development of seeds, seedlings, or plants. Also included are solutions specifically for mixture with pesticides or for use as a soil conditioner.
- + Any substance used in the reproduction of livestock, including embryos and semen.
- + Agri-sawdust – sawdust, wood shavings, chips, and slabs.
- + Electricity, natural and liquified gas, including propane and butane, used directly for producing food or fiber for human or animal consumption or to aid in growing horticultural products for sale.
- + Coal, wood, wood products, or wood by-products or fuel oil used as energy fuel to produce food or fiber or nursery or greenhouse crops.
[Tenn. Code Ann. Section 67-6-207]

These items are only exempt when purchased by persons that have qualified for and have received the Agricultural Certificate of Exemption issued by the Department of Revenue.

While not an all-inclusive list, items that do not qualify for the agricultural exemption include but are not limited to:

- + Clothing items
- + Automobiles and trucks and repair parts and repair services for automobiles and trucks.
- + Water for any use or purpose.
- + Materials that become real property when installed, including gravel, concrete, building materials (excluding temporary fencing such as corral panels and gates).
- + Trucks, flat-bed trailers, and semi-trailers that are used to transport farm products over the road to market, to transport machinery over the road between farms, or to pick up and carry supplies over the road to the farm.
- + Lawn mowers.

Straw purchased from a supplier other than the agricultural producer does not qualify for exemption when presenting the certificate. Straw is not one of the items specified in the statute as tax-exempt even when purchased by a farmer, logger, or nursery operator.

A farmer, logger, or nursery operator is qualified for issuance of the exemption certificate if one or more of the following criteria are met.

- + Is the owner or lessee of agricultural land from which one thousand dollars or more of agricultural products were produced and sold during the year, including payments from government sources;

SALES AND USE TAX

Agricultural Exemptions *(continued)*

- + Provides for-hire custom agricultural services of plowing, planting, harvesting, growing, raising, or processing agricultural products or the maintenance of agricultural land;
- + Is the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976;
- + The person's federal income tax return contains one or more of the following: (a) Business activity on IRS schedule F (Profit or Loss From Farming); or (b) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or Schedule E (Supplemental Income and Loss);
- + The person otherwise establishes to the satisfaction of the Commissioner that the person is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in Tenn. Code Ann. Section 67-6-301(c)(2).
- + Persons qualifying as manufacturers cannot also qualify for the agricultural exemption certificate. [Tenn. Code Ann. Section 67-6-207(f)]

To receive an agricultural certificate of exemption, persons who qualify for the exemption must apply to the Department of Revenue using the farmer, logger, and nursery operator's application for exemption. The exemption application form is available on the Department's web site.

If the Commissioner of Revenue determines that the applicant is entitled to be a qualified farmer, logger, or nursery

operator, the Commissioner will issue a certificate granting the exemption for a period of four years. The exemption must be renewed by the farmer, logger, or nursery operator by submitting a renewal application every four years.

Sales by Farmers and Nursery Operators

Proceeds from the sale of livestock, poultry, nursery stock, or other farm products by the farmer or nursery operator are exempt from the tax. A person does not have to qualify for the agricultural exemption certificate to make tax-exempt sales of agricultural products grown or produced by that person. If the farmer or nursery operator produced at least 50% of the agricultural products sold, then 100% of the proceeds from agricultural or horticultural products are tax-exempt. If the farmer or nursery operator produced less than 50%, then the proceeds from products produced by them are tax-exempt. The 50% test is applied per calendar year. [Tenn. Code Ann. Section 67-6-301]

Sales made directly from a farmer to a consumer through an online nonprofit farmers' market are exempt from sales or use tax providing that:

- + An amount equal to the consumer's full purchase price is transmitted by the consumer or the online farmers' market to the farmer; and
- + The cooperative or other organizing body of the online farmers' market charges no fee or other charge for facilitating the sales other than "virtual booth" rental fees assessed to participating farmers to cover actual costs incurred in operating the online farmers' market. [Tenn. Code Ann. Section 67-6-301(a)]

SALES AND USE TAX

Agricultural Exemptions *(continued)*

Purchase of Livestock Drugs by Veterinarians

Veterinarians are the users and consumers of all drugs purchased for use in their veterinary practice. Veterinarians may not purchase drugs without tax using a resale certificate. Veterinarians who wish to make tax-exempt purchases of livestock drugs and instruments to administer livestock drugs must present a completed Streamlined Sales Tax Certificate of Exemption to the drug supplier.

This form is a multi-purpose exemption and is found on the Department's web site at <http://www.TN.gov/revenue/streamlined/exemptioncertificate.pdf>.

On Line 4 for the Streamlined Exemption form, the veterinarian should circle "Other" with the explanation "veterinarian." On Line 5 of the form, the veterinarian should circle "Other" with the explanation "purchasing livestock drugs and/or administration instruments."

Veterinarian services are not subject to sales tax.

Veterinarians who are not registered for sales and use tax purposes because they do not make taxable sales do not need to register with the Department of Revenue to receive a sales and use tax account number.

If the veterinarian is not registered for sales and use, he or she can include some other identification number, such as a Federal Employers Identification Number (FEIN), and/or some other state identifying account number, such as a driver's license

number on the Streamlined exemption form to claim exemption for purchase of livestock drugs and instruments for the administration of livestock drugs.

Community Gardens

Effective March 21, 2014, the sale of products that are grown or produced in a community garden in any calendar year are exempt from sales tax when sold by a representative of the community garden.

A "community garden" is defined in Tenn. Code Ann. Section 43-24-102 as a piece of real property, either on vacant public land or private land, cultivated by residents of a neighborhood or community, or members of a homeowners or condominium owners association, for purposes of providing vegetables, nuts, herbs, fruit, or flowers, whether by means of cultivating annual, biennial, or perennial plants or trees, for use of the residents of the neighborhood or community or members of the homeowners or condominium owners association.

SALES AND USE TAX

Exemptions And Reduced Rates For Qualified Manufacturers

A manufacturer is a business whose principal activity (more than 50%) at a specific location is fabricating and processing tangible personal property for resale and consumption off the premises. A qualified manufacturer enjoys substantial tax benefits. Before receiving eligibility for these exemptions, a manufacturer must file an application with the Department of Revenue and receive an authorization letter with a unique Industrial Machinery Number assigned to each specific manufacturing location. [Tenn. Code Ann. Section 67-6-206]

Fabricating or processing tangible personal property for resale includes providing fabrication and repair services of aircraft for unrelated commercial or governmental entities provided the dealer engaged in such business qualifies for the jobs tax credit in Tenn. Code Ann. Section 67-4-2109(b). Dealers meeting these requirements may qualify for sales and use tax manufacturing exemptions. [Tenn. Code Ann. Section 67-6-102]

The term "manufacturer" does not include any entity whose principal business is the preparation of food for immediate retail sale.

Industrial Machinery

Industrial machinery is machinery necessary to, and primarily for, fabricating or processing tangible personal property for resale and consumption off the premises. The purchase, lease, or rental of qualified machinery and accessories and attachments, and repair and replacement parts, are exempt from the sales or use

tax. The oils and lubricants used in the machinery are also tax exempt.

Exempt qualified machinery generally includes the machines that transfer raw materials from inventory and begin the processing cycle, process the product through the various phases of manufacture, and transfer the finished product from the final processing step to inventory. [Tenn. Code Ann. Sections 67-6-102, 206]

Exempt qualified machinery also includes machinery used for generating, producing, and distributing utilities (e.g., electricity, steam, and water) at the qualified manufacturing location. In addition, it includes co-generating research equipment purchased or leased for use at a manufacturing facility when such facilities are located in a non-attainment area and a minimum capital investment exceeding \$30 million is made. [Tenn. Code Ann. Section 67-4-101(44) as added by Public Chapter 420, Acts of 2015]

Machinery used to package manufactured items that is used at the qualified manufacturing facility may qualify as tax-exempt industrial machinery.

Any computer, including software, which is primarily used to control the manufacturing process or perform quality control or testing of the product during the manufacturing process may qualify as tax-exempt industrial machinery.

The definition of industrial machinery also includes machinery and equipment necessary to and primarily for conversion of tangible personal property into taxable

SALES AND USE TAX

Exemptions And Reduced Rates For Qualified Manufacturers *(continued)*

specified digital products for resale and consumption off the premises. The exemption does not include machinery and equipment used primarily for the storage or distribution of specified digital products after conversion. [Tenn. Code Ann. Section 67-6-102]

Pollution Control Equipment

Pollution control facilities used by a qualified manufacturer that are needed to control or eliminate air and water pollutants resulting from manufacturing are considered industrial machinery. As such, they are tax-exempt to the qualified manufacturer. [Tenn. Code Ann. Section 67-6-102]

Industrial Machinery Authorization

To be eligible for this exemption, a manufacturer must file an application with the Department of Revenue and receive an authorization letter with a unique industrial machinery number. [Tenn. Code Ann. Section 67-6-206]

Once the Department approves this authorization, the manufacturer may be entitled to tax-exempt purchases and service of qualified industrial machinery as well as reduced tax rates or tax-exempt purchases of electricity and water as provided under the law.

A fully-completed Streamlined Sales Tax Certificate of Exemption can be accepted for industrial machinery and material exemption purchases provided the certificate contains the manufacturer's exemption authorization number issued by the Commissioner. [Tenn. Code Ann. Section 67-6-206(b)]

Energy Fuel and Water

Qualified manufacturers are authorized to make purchases at a reduced 1.5% state tax rate on all forms of energy used in any manner on the manufacturing site. This includes electricity, natural gas, coal, firewood, fuel oil, and propane and butane gases. These energy sources are not subject to a local option tax. Any energy fuel that comes into direct contact with the product during manufacturing, is expended in the course of the contact, and is metered separately is tax-exempt. [Tenn. Code Ann. Section 67-6-206]

There is also available a tax exemption for the natural gas used to generate heat for the production of aluminum sheet foil.

There is also a tax exemption for electricity used to generate radiant heat for production of heat-treated glass.

Manufacturers are also entitled to a reduced state tax rate of 1% and a local tax rate of 0.33% to 0.5% on water used within the manufacturing site. Water wetting the product during the manufacturing process that is separately metered is tax-exempt. [Tenn. Code Ann. Sections 67-6-206, 702]

Industrial Materials

Chemicals, solvents, greases, and similar items coming into direct contact with the product, becoming a part of the finished product, or being rapidly used in production of the finished product are tax-exempt. Once removed from inventory, these items must be totally used or consumed within 25 days to qualify for exemption. [Tenn. Code Ann.

SALES AND USE TAX

Exemptions And Reduced Rates For Qualified Manufacturers *(continued)*

Section 67-6-206(b)(3) and Revenue Rule 1320-5-1.40(2)]

Also exempt are industrial materials and explosives for future processing, manufacturing, or conversion into articles of tangible personal property for resale where such industrial materials or explosives become a component part of the finished product or are used directly in fabricating, dislodging, or sizing. [Tenn. Code Ann. Section 67-6-329(12)]

Qualified Data Center

A qualified data center is defined as a data center that has made a required capital investment in excess of \$250 million and that creates at least 25 new full-time employee jobs paying at 150% of the state's average occupational wage as defined in Tenn. Code Ann. Section 67-4-2004 during an investment period of three years.

Any computer, computer network, computer software, or computer system, as defined in Tenn. Code Ann. Section 39-14-601, and any peripheral devices including hardware such as printers, plotters, external disc drives, modems, and telephone units, including repair parts, warranty or service contracts, and any necessary repair or taxable installation labor, when the equipment is used in the operation of a qualified data center is tax exempt.

Electricity sold to and used by a qualified data center is subject to a reduced state tax rate of 1.50%.

Warehouse and Distribution Facility

Material handling and racking systems equipment used directly and primarily for the storage or handling and movement of tangible personal property in a qualified warehouse or distribution facility, purchased beginning one year prior to the start of, and ending one year after the substantial completion of, the construction or expansion of the facility, not to exceed three years, qualifies for tax exemption.

Such qualifying facility must be used for the storage or distribution of finished tangible personal property and shall not include a building where tangible personal property is fabricated, processed, or assembled. An investment of more than \$10 million is required. A taxpayer must submit an application with a business plan describing the investment to be made, to the Department of Revenue. If approved, the taxpayer will receive a Warehouse and Distribution Facility Material Handling and Racking System Sales and Use Tax Exemption Certificate, which includes an exemption number and expiration date for the exemption. [Tenn. Code Ann. Sections 67-6-102]

County or Municipality Water Pollution Control and Sewage Systems

Machinery used by counties or municipalities or their contractors for water pollution control or sewage systems is exempt from sales and use tax. The exemption also applies to use of such machinery by a water or wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act.

SALES AND USE TAX

Exemptions And Reduced Rates For Qualified Manufacturers *(continued)*

Research and Development Machinery [Tenn. Code Ann. Section 67-6-102(44) as added by Public Chapter 504, Acts of 2015]

Effective July 1, 2015, a new sales and use tax exemption is available for machinery and equipment, all associated parts and appurtenances to the machinery and equipment, and repair parts and labor and installation labor for the machinery and equipment that is necessary to and primarily for research and development.

Taxpayers are not required to be engaged in any business of fabricating or processing tangible personal property for resale to qualify for the research and development machinery and equipment tax exemption. Taxpayers that have received an industrial machinery authorization will be required submit a separate application for authorization to make tax exempt purchases for research and development machinery and equipment.

The Department is preparing information and an application for the new exemption for research and development machinery and equipment.

Authorized Large Aircraft Service Facility

[Tenn. Code Ann. Section 67-6-302 as amended by Public Chapter 506, Acts of 2015]

Effective July 1, 2015, the sale, use, storage, or consumption of parts, components, software, systems, accessories, materials, equipment and supplies that are sold to or sold by an authorized large aircraft service facility or affiliate. Also exempted are certain repair

and refurbishment service labor performed by an authorized large aircraft service facility. These exemptions do not apply to fuel and other petroleum products or to shop equipment and tools.

An "authorized large aircraft service facility" means a repair station located in Tennessee that is engaged in repair and refurbishment services of large aircraft mainframes, large aircraft engine equipment, and large aircraft accessories under a valid air agency certificate issued by the Federal Aviation Administration in accordance with 14 CFR Part 145 of the federal aviation regulations, with an authorized class rating of Air Frame Class IV, and organization designation authority, or similar, or successor certificate, rating, and authority as the Federal Aviation Administration may provide for from time to time.

SALES AND USE TAX

Exempt Products and Services

Many products and services are identified as exempt in the sales or use tax law. The sale of these items or services requires no special documentation between the seller and buyer. A number of them are identified below. If you have questions about specific exemptions, please contact the Taxpayer Services Division.

Aircraft, Parts, and Supplies

[Tenn. Code Ann. Sections 67-6-302, 329]

- + Charges for the sale, use, or storage of aircraft owned or leased by commercial air carriers primarily for use in interstate or international commerce and parts and supplies for servicing them. This does not apply to fuel, petroleum products, or shop tools. Dealers should maintain documentation of buyer's eligibility.
- + Payments on leases or rental of property, owned by airport authorities, to businesses primarily engaged in the repair of aircraft owned or leased by commercial air carriers.
- + Aircraft used for and owned by a person providing flight training.

Amusements

[Tenn. Code Ann. Section 67-6-330]

- + Events held for, or sponsored by, schools in grades K-12 or athletic events for participants 18 years old or younger sponsored by civic or nonprofit organizations.
- + Admissions to county fairs and participation in fair activities such as rides, shows, or grandstand events.
- + Admission to museums, historical sites, and historical societies operated by nonprofit entities.

- + Fees resulting from the production of film, television, radio, or theatrical presentations. Charges for admission to these presentations are not exempted by this provision.
- + Receipts from coin-operated amusement devices.
- + Admissions to recreational or amusement facilities operated and controlled by city or county governments.
- + Member assessments made for capital improvements by recreation, community, or country clubs.
- + Proceeds from and entry fees to rodeos and beauty pageants, conducted by nonprofit organizations, which have been held in the same city for 30 years or longer.
- + Admissions to musical concerts conducted solely by nonprofit community group organizations.
- + Events held entirely by employers and solely for the benefit of their employees.
- + Dues and fees paid to physical fitness facilities that meet certain program and staffing requirements established by law, if the exemption has been approved in advance by the Department of Revenue.
- + Entry fees for any contest, tournament, or charity horse show. Fishing tournament registration fees are also exempt.

Automobiles

- + Motor vehicles registered in Tennessee to active full-time duty members of the armed forces stationed anywhere in Tennessee or at Ft. Campbell military installation. [Tenn. Code Ann. Section 67-6-303]

SALES AND USE TAX

Exempt Products and Services

(continued)

- + Transfer of automobiles between spouses as the result of a divorce. [Tenn. Code Ann. Section 67-6-306]
- + Motor vehicles sold in Tennessee but removed from the state within 3 days and registered outside the state. [Tenn. Code Ann. Section 67-6-343]
- + Equipment used to adapt motor vehicles for use by honorably discharged disabled veterans of the armed services of the United States. [Tenn. Code Ann. Section 67-6-353]
- + Sales of motor vehicles to members of the Tennessee National Guard and reserve component units who are called into active military service and who are stationed outside the United States during hostilities in which such person is actually engaged in combat. The exemption from sales tax begins on the effective date of the orders assigning the member to the combat zone and expires ninety days after the effective date the individual receives military orders releasing him or her from the combat zone. A copy of the military orders must be provided to the dealer or county clerk, as appropriate. [Tenn. Code Ann. Section 67-6-303]
- + Purchases of motor vehicles made by members of the Tennessee National Guard on Active Guard and Reserve (AGR) tour and stationed in Tennessee or at Ft. Campbell military installations. [Tenn. Code Ann. Section 67-6-303]

Design Professionals

- + Concept sketches, drawings, and models made by architects, engineers, landscape architects, and interior designers used to develop a prototype for production. [Tenn. Code Ann. Section 67-6-354]
- + The transfer of preliminary artwork by an advertising agency to its client and the use of preliminary artwork created by the advertising agency to provide advertising services. Preliminary artwork means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client. This includes, but is not limited to, concept sketches, illustrations, drawings, paintings, models, photographs, storyboards, and similar materials. [Tenn. Code Ann. Sections 67-6-102 and 67-6-312]

Display Property

- + Inventory items used by a dealer for display or demonstration that are returned to inventory within 120 days. Items consumed in display or demonstration or remaining out of inventory for more than 120 days are subject to the use tax. The dealer will pay use tax on the amount that the cost to the dealer exceeds the sales price of the article at the time it is sold. [Tenn. Code Ann. Section 67-6-305]

SALES AND USE TAX

Exempt Products and Services (continued)

Energy

- + Money paid by customers of city and county utilities, electric cooperatives, and electric membership cooperatives, directed to capital construction. [Tenn. Code Ann. Section 67-6-332]
- + Charges for gas, electricity, or other energy fuels sold directly to consumers for residential use. [Tenn. Code Ann. Section 67-6-334]
- + Sales of propane in cylinders of 100 pounds or more made over the counter by the seller for residential use. Other over-the-counter sales of energy fuel, including propane in containers of less than 100 pounds, are subject to tax. [Tenn. Code Ann. Section 67-6-334]
- + Retail sales of kerosene through dispensers designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank. [Tenn. Code Ann. Section 67-6-334(b)(4)]

Exemptions for Tennessee Sales for Out-of-state Consumer Use

- + Sale or use of materials for fabrication of structural metal products for use on out-of-state jobs. [Tenn. Code Ann. Section 67-6-339]
- + Sale of boats or other marine vessels moved to another state within three days of purchase.
- + Sales to non-residents of helicopters and airplanes that will have a situs out of Tennessee and will be removed from Tennessee within 15 days of purchase. Effective January 1, 2016, the time period for removal

- without payment of tax is extended to 30 days. [Tenn. Code Ann. Section 67-6-313 as amended by Public Chapter 48, Acts of 2015]
- + The sale of helicopters within Tennessee to purchasers who are not Tennessee residents are exempt when those helicopters remain in Tennessee after the sale solely for purposes of repair or refurbishment and are removed from Tennessee within 15 days of the completion of such repair or refurbishment. Repair and refurbishment includes modifications, conversions, and installations. This exemption works in conjunction with existing exemptions for the sale and repair of helicopters that are removed from the state within 15 days. Effective January 1, 2016, the time period for removal without payment of tax is extended to 30 days. [Tenn. Code Ann. Section 67-6-313(h)]
- + Repair and refurbishment services within Tennessee on airplanes and airplane components and parts, performed pursuant to a "supplemental type certificate" issued to the repairer by the FAA, to aircraft qualifying as "Transport Category Aircraft," or performed by a facility designated to perform such services to aircraft qualifying as "Transport Category Aircraft," where the airplane is situated outside of Tennessee and is removed from Tennessee within 15 days from the completion of the repair. Effective January 1, 2016, the time period for removal without payment of tax is extended to 30 days. [Tenn. Code Ann. Sections 67-6-313 as amended by Public Chapter 48, Acts of 2015]

SALES AND USE TAX

Exempt Products and Services

(continued)

- + Sales of fuel and petroleum products to air common carriers for flights destined for, or continuing from, outside the United States. [Tenn. Code Ann. Section 67-6-349]
- + Sales of computer media exchange services or other storage media when that media is to be shipped out of Tennessee or to a government agency or non-taxable business in Tennessee. [Tenn. Code Ann. Section 67-6-313]
- + Sales of property for use by commercial marine vessels when the deliveries are made mid-stream in waterways that are part of the geographical boundaries of Tennessee. [Tenn. Code Ann. Section 67-6-326]
- + Repair services, including parts and labor, performed on certain tangible personal property, when the repair services are initiated and/or completed in Tennessee, where the repaired property is delivered or shipped out of state. The exemption applies to repairs to mining, logging, and other natural resource extraction equipment; road-building equipment; land-clearing, excavation, and construction equipment; and equipment for loading or unloading containers or truck trailers from railcars, ships, barges, or aircraft. [Tenn. Code Ann. Section 67-6-313(b)]
- + Repair service labor on aircraft engine equipment and aircraft mainframes, when the repair services are initiated, performed, or completed in Tennessee. "Aircraft engine equipment" and "aircraft mainframes" are defined by statute and limited to aircraft used by a commercial interstate or international air carrier. [Tenn. Code Ann. Section 67-6-313(c)]
- + Repair services, including parts and labor, performed out of state on equipment used primarily in interstate commerce, when the original purchase of the equipment was exempt from sales and use tax. [Tenn. Code Ann. Section 67-6-313(d)]
- + Repair parts and labor for firefighting equipment owned by an out-of-state fire Department. [Tenn. Code Ann. Section 67-6-313(e)]
- + Repair service labor on railroad rolling stock, when the repair services are initiated, performed, or completed in Tennessee. [Tenn. Code Ann. Section 67-6-313(g)]
- + Parts and accessories, materials and supplies used in servicing and/or maintaining railroad rolling stock used, or intended to be used, in interstate commerce. [Tenn. Code Ann. Section 67-6-321(a)]
- + The transfers of railroad rolling stock and vessels or barges of 50 tons or more displacement that are used in interstate commerce or outside Tennessee. [Tenn. Code Ann. Section 67-6-321]
- + Repair services, including renovations and improvements, performed on barges and vessels of 50 tons and over displacement, used in interstate commerce, and the parts, accessories, material, and supplies used in such repairs if the parts, accessories, material, and supplies become a part of the barge. [Tenn. Code Ann. Sections 67-6-321, 327]

SALES AND USE TAX

Exempt Products and Services

(continued)

Films

[Tenn. Code Ann. Section 67-6-309]

- + Rental fees of films to theaters that charge tax on admission prices to view the films.
- + Rental prices for films, recordings, or transcriptions charged to radio and television stations operating under license by the Federal Communications Commission.

Food

[Tenn. Code Ann. Sections 67-6-337, 67-6-338]

- + Food paid for by food stamps, food coupons, or approved electronic benefits transfer systems from special supplemental food programs for women, infants, and children as required by federal law, or any other means approved by the Department of Human Services and issued by the Department or the federal government.

Fuel

[Tenn. Code Ann. Section 67-6-329]

- + Motor vehicle fuels taxed per gallon under the petroleum products statutes of Tennessee law.
- + Gasoline on which a privilege tax is paid, not including premixed two-cycle engine fuel containing gasoline and oil sold in containers of one gallon or less.
- + Liquefied gas taxed under Tenn. Code Ann. Title 67, Chapter 3.

Leased Vehicles

[Tenn. Code Ann. Section 67-6-388]

- + Insurance proceeds paid to the owner of a leased vehicle pursuant to a damage settlement are exempt. The exemption applies when the vehicle has sustained damage that renders it a salvage vehicle, a non-repairable vehicle, or a flood vehicle, and the owner transfers title of the leased vehicle to the insurance company.

Medical Equipment and Supplies

[Tenn. Code Ann. Sections 67-6-314, 67-6-320]

- + Prosthetic devices for human use, repair and replacement parts, and repair services for such items. .
- + Durable medical equipment for home use sold with a prescription for human use. Items generally understood and intended to be used in the patient's home are exempt. DME sold to or for use by a facility such as a for-profit hospital, nursing home, clinic, or dental office is not for home use and is subject to sales tax. Repair and replacement parts and repair services are exempt only if the equipment qualified for exemption. Parts, components, or attachments that are for single patient use are not exempt.
- + Kidney dialysis equipment for treatment of humans, repair parts and repair services for such equipment, and attachments, components, and parts that are for single patient use with such equipment.

SALES AND USE TAX

Exempt Products and Services

(continued)

- + Enteral feeding systems for treatment of humans, repair parts and repair services for such equipment, and attachments, components, and parts for single patient use with such equipment.
 - + Mobility enhancing equipment sold with a prescription for human use, repair and replacement parts, and repair services for such equipment.
 - + Oxygen prescribed for medical treatment of humans and equipment for administering medical oxygen; repair and replacement parts and repair services for such equipment; attachments and components that are for single patient use with such equipment.
 - + Disposable medical supplies needed to administer or deliver medical oxygen.
 - + Insulin and any syringe used to dispense insulin for human use.
 - + Disposable medical supplies, such as bags, tubing, needles, and syringes dispensed by a licensed pharmacist on a prescription by a practitioner of the healing arts for the intravenous administration of any prescription drug and which come into actual contact with the drug or medicine. This exemption applies only to such items used to treat a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center.
 - + Computer software, prescribed by a practitioner of the healing arts, designed for the treatment of people with learning disabilities.
 - + Sales or use of disposable non-prosthetic ostomy products for use by persons who have had colostomies, ileostomies, or urostomies.
 - + Repair parts and services for helicopters and aircraft used by government organizations and nonprofit hospitals and medical facilities for medical evacuation or transportation. [Tenn. Code Ann. Section 67-6-347]
 - + Prescription drugs distributed at no charge by the manufacturer. [Tenn. Code Ann. Section 67-6-319]
 - + Drugs or medicines, including over-the-counter drugs, for human use dispensed on a prescription. [Tenn. Code Ann. Section 67-6-320]
 - + Veterinarian purchases of drugs, including wormers, used to treat livestock. Other purchases of drugs by veterinarians are taxable based on the veterinarian's purchase price. [Tenn. Code Ann. Section 67-6-351]
 - + Drugs, including over-the-counter drugs, sold to healthcare service providers such as hospitals, nursing facilities, physicians, and dentists that will be prescribed for treatment of humans.
 - + Effective July 1, 2015, diabetic testing supplies, including lancets, test strips for blood glucose monitors, visual read test strips, and urine test strips. [Tenn. Code Ann. Section 67-6-314(7) as amended by Public Chapter 274, Acts of 2015]
- Durable medical equipment and mobility enhancing equipment purchased and used by pharmacies and home health care providers in rendering outpatient health care services in the home is not

SALES AND USE TAX

Exempt Products and Services

(continued)

eligible for the exemption for durable medical equipment for home use or mobility enhancing equipment. Exceptions are oxygen delivery equipment, kidney dialysis equipment, and enteral feeding systems. [Tenn. Code Ann. Section 67-6-352(b)]

Miscellaneous Nonprofit Sales

- + Sales at gun shows conducted by a nonprofit organization of gun collectors. Sales by dealers who regularly conduct gun sales, and sales of guns for later delivery are not tax exempt. [Tenn. Code Ann. Section 67-6-310]
- + Sales of school textbooks and workbooks, including electronically accessed or transmitted digital textbooks and digital workbooks. [Tenn. Code Ann. Section 67-6-329]
- + Sales of school meals in grades K-12. [Tenn. Code Ann. Section 67-6-329]
- + Sales of parking privileges sold by colleges, universities, technical institutes, or technology centers to students. [Tenn. Code Ann. Section 67-6-329]
- + Sales of United States or Tennessee flags by nonprofit organizations. [Tenn. Code Ann. Section 67-6-329]
- + Sales made by schools (grades K-12) or school support groups. Such schools or school support groups are required to pay Tennessee sales tax on the purchase price of the goods or services purchased for resale to others but are not subsequently required to collect tax when the goods or services are resold. [Tenn. Code Ann. Section 67-6-229]

The requirement for schools or school support groups to pay tax to the supplier at time of purchase does not apply to purchases of textbooks and workbooks to be sold to students or purchases of food to be sold as meals for public or private school students in grades K – 12.

Motor Vehicles Used by Common Carriers

[Tenn. Code Ann. Section 67-6-331]

The transfer, by any dealer in personal property, of motor vehicles with a Gross Vehicle Weight Rating of Class 3 (maximum gross weight of vehicle and load of 16,000 pounds) [Tenn. Code Ann. Section 55-4-113] and above, and trailers, semi-trailers, and pole-trailers [Tenn. Code Ann. Sections 55-1-105, 55-4-113] which will be used in the transport of passengers or cargo, principally in interstate or foreign commerce, by a common carrier or contract carrier under authority granted by the federal government or other state regulatory agency, shall be exempt from the sales or use tax. The term “principally” means more than 50% use. This exemption is available regardless whether or not the carrier sells its services for a fee, provided that all requirements of Tenn. Code Ann. Section 67-6-331 are met.

A motor vehicle is used in the transport of cargo or passengers in interstate or foreign commerce if it transports passengers or cargo from:

- + A point of origin in another state or foreign country to a point within this state.
- + A point of origin within this state to a point in another state or foreign country.

SALES AND USE TAX

Exempt Products and Services

(continued)

- + A point of origin in another state or foreign country, moving through Tennessee, to a point in a different state or foreign country.

Natural Disasters

Refunds of state and local sales tax paid to retailers are available as a result of purchases of major appliances, residential furniture, or residential building supplies used in the claimant's primary residence to replace, repair, or restore such items that were damaged or destroyed in a federally-declared natural disaster in Tennessee occurring on or after January 1, 2012. To qualify, the claimant must receive natural disaster assistance through the Federal Emergency Management Agency (FEMA) as a result of the natural disaster.

The sales price of the appliance or piece of residential furniture cannot exceed \$3,200 per item. The sales price of an item of residential building supplies cannot exceed \$500. The total amount of refund connected to any one residence cannot exceed \$2,500. To receive a refund, a claimant must file one natural disaster claim for refund within one year from the date shown on the FEMA decision letter received by the claimant. Claimants must retain records of purchases for which the refund is claimed for three years from December 31 in the year in which the natural disaster claim for refund was filed. Persons knowingly filing a false or fraudulent refund claim are subject to a civil penalty of up to \$25,000. [Tenn. Code Ann. Section 67-6-396]

Packaging

- + Containers and packaging materials actually accompanying products sold, without which their delivery would be impracticable on account of their character, and for which there is no separate charge. [Tenn. Code Ann. Section 67-6-329]

Pollution Control

- + Sales of chemicals and supplies used in air and water pollution control. [Tenn. Code Ann. Section 67-6-329]

Preservation of Historic Property

- + Tangible personal property or taxable services sold, given, or donated to an entity that is directly or indirectly owned and controlled by a nonprofit entity, is organized for the purpose of preserving or rehabilitating a historic property listed on the National Register of Historic Places, and the controlling nonprofit entity has received approval of its historic certification application by the U.S. Department of the Interior National Park Service. [Tenn. Code Ann. Section 67-6-322]

Publications

- + Magazines and books distributed to consumers via the United States Postal Service or common carriers by sellers or distributors whose only Tennessee activities involve the printing, storing, labeling, or delivering of these items to the postal service or common carrier, maintenance of stock or

SALES AND USE TAX

Exempt Products and Services

(continued)

- newsgathering activities. [Tenn. Code Ann. Section 67-6-329]
- + Publications printed on newsprint or bond paper and advertising supplements or other printed inserts delivered with the publications on a biweekly or more frequent basis. [Tenn. Code Ann. Section 67-6-329]
- + Direct mail advertising, in the form of discount coupons or advertising leaflets for more than one business, distributed in Tennessee from out of state by a person engaged solely and exclusively in the business of cooperative direct mail advertising. [Tenn. Code Ann. Section 67-6-344]
- + Direct mail delivery charges, including postage and mailing services, for direct mailing to a mass audience printed materials, such as advertising, are exempt if the delivery charges are separately itemized on the invoice. [Tenn. Code Ann. Section 67-6-102]
- + Hospital records, as defined in Tenn. Code Ann. Section 68-11-302, provided to an attorney, agent, or other authorized representative acting in a lawsuit on behalf of an exempt nonprofit hospital. [Tenn. Code Ann. Section 67-6-329(a)]

Railroad Tank Cars

- + Materials used for the lining or protective coating of railroad tank cars and charges made for installing or repairing such linings or protective coatings. [Tenn. Code Ann. Section 67-6-329]

Sales in Interstate Commerce

- + When title and possession of property passes from seller to buyer outside Tennessee, the sale is considered to be in interstate commerce and exempt from state and local sales or use tax in the state where the seller is located.

Sales Tax Holiday

Tennessee holds an annual sales tax holiday from 12:01 a.m. on the first Friday of August through 11:59 p.m. on the following Sunday. During the holiday, these items are exempt from sales and use tax:

- + Clothing with a price of \$100 or less per item.
- + School supplies with a price of \$100 or less per item.
- + School art supplies with a price of \$100 or less per item.
- + Computers with a price of \$1,500 or less per item.

Articles normally sold together as a single unit, cannot be priced and sold separately to obtain the exemption. For shipping charges, if all items in a shipment qualify individually for exemption, the shipping charge is also exempt. If both exempt and taxable items are shipped, the percentage of the shipping charge determined to be allocated to the taxable items is also part of the tax base.

Items specifically excluded from the holiday exemption include computer software, clothing accessories, protective equipment, sports and recreation equipment, school instructional material, and school computer supplies. The

SALES AND USE TAX

Exempt Products and Services

(continued)

exemption also does not apply to items used in a trade or business or to items that are rented. [Tenn. Code Ann. Section 67-6-393]

Specified Digital Products

- + Sales of specified digital products are exempt from tax when the same product in tangible form is exempt from tax. [Tenn. Code Ann. Section 67-6-329]
- + Specified digital products provided to the customer without charge on a trial basis. [Tenn. Code Ann. Section 67-6-329]

Telephone Cooperatives

- + Sales of tangible personal property to telephone cooperatives organized under Tennessee law, for their own use or consumption. [Tenn. Code Ann. Section 67-6-325]

Telecommunications

- + Charges made by local telephone exchanges to long-distance resellers and cellular telephone companies for local access and use of intercompany facilities. [Tenn. Code Ann. Section 67-6-342]
- + Charges for Internet access or information services are exempt from sales and use tax. [Tenn. Code Ann. Section 67-6-102]

Transactions between Parent Companies and Wholly Owned Subsidiaries

- + The sale, transfer, or lease of construction machinery between parent companies and wholly owned subsidiaries is not taxable

provided the Tennessee sales or use tax was paid on the property at its initial purchase. [Tenn. Code Ann. Section 67-6-311]

- + Services, which would otherwise be taxable, are not subject to the sales tax if the corporations involved meet certain ownership and control requirements. The services must not be performed for profit. [Tenn. Code Ann. Section 67-6-395(b)]

Time-share Accommodations

- + Charges for the use of, or the value of any time-share estate and charges for the use of or the value of the use of a perpetual interest in specified entities whose substantial purpose is the ownership or control of real property, are not included in the definition of "retail sale," "sale at retail," and "retail sales price." A definition of "time-share estate" was added to Tenn. Code Ann. Section 67-6-102 and is consistent with the Tennessee Time Share Act of 1981. [Tenn. Code Ann. Section 67-6-102]

Used Property

- + Sales of used factory-manufactured structures to the extent the Tennessee sales or use tax was paid on the initial purchase of the structure in Tennessee. [Tenn. Code Ann. Section 67-6-336]
- + Retail sales of used clothing by 501(c)(3) nonprofit organizations that have been issued an exemption certificate by the Commissioner of Revenue. [Tenn. Code Ann. Section 67-6-348]

SALES AND USE TAX

Exempt Products and Services

(continued)

Utility Poles

- + Utility poles, anchors, guys, and conduits are exempt from sales or use tax. [Tenn. Code Ann. Section 67-6-329]

Vending Items

- + The proceeds of vending machines operated for the benefit of a charitable nonprofit organization by which merchandise of the market value of not more than 25 cents is sold or delivered to customers are subject to a gross receipts tax of 1.5% rather than the sales or use tax. [Tenn. Code Ann. Section 67-4-506]

Warranty Services

- + Parts supplied to consumers for replacement, under warranty, of faulty parts are not taxable if the sales or use tax was originally paid on the item under warranty. [Tenn. Code Ann. Section 67-6-324]

Watershed Districts

- + Sales of tangible personal property for use by watershed districts. [Tenn. Code Ann. Section 67-6-328]

SALES AND USE TAX

Flea Markets

Flea Market Registration

[Tenn. Code Ann. Sections 67-6-102, 220]

Dealers who sell at flea markets will register and pay an annual registration fee of \$45. This registration fee shall be credited against that person's actual annual sales tax liability. This registration shall be valid at any location in the state during the period for which it is issued.

Sales on Less than Permanent Basis

Dealers engaging in retail sales at flea markets on less than a permanent basis may register, at their option, as follows:

(A) On a quarterly basis for a fee of \$15. This registration fee is to be paid per location at which retail sales are made. A person may register a maximum of three times per year at each location. A dealer, needing to register more than three times per year at any one location, must purchase an annual registration certificate. No refund is payable from the registration fee. This registration fee shall, however, be credited against any such person's actual sales tax liability.

(B) On a monthly basis for a fee of \$5. This registration fee is to be paid per location at which retail sales are made. A person may register a maximum of three times per year at each location. A person needing to register in excess of three times must purchase either a quarterly or an annual registration certificate. No refund is payable from the registration fee. This registration fee shall, however, be credited against any such person's actual sales tax liability.

The flea market operator is responsible for ensuring that all dealers operating at

the flea market are properly registered with the Department. The flea market operator is empowered to accept applications for registration with all required fees. The operator will supply the dealer with a copy of the application for registration, together with evidence of the amount of fee submitted. This copy shall be displayed by the dealer and shall serve as evidence of proper registration

The provisions of this section do not apply to dealers who sell prepared foods at flea markets for consumption.

Submission of Flea Market Returns

[Tenn. Code Ann. Sections 67-6-102, 220]

Dealers Registering Annually

If the annual sales tax liability is less than \$45 for a dealer registering annually, that person is not required to file an annual sales tax return. In no case will any person receive a refund of any portion of the registration fee. Should any dealer's tax liability exceed \$45, then that dealer will file an annual return. The return will be due by January 20 and reflect the gross sales during the preceding calendar year. A dealer beginning business after January 1 will be responsible for transmitting an annual return on or before January 20 of the subsequent calendar year for all months in which the dealer made taxable sales or purchases through December 31 of the preceding year.

Dealers Registering Quarterly or Monthly

Dealers registering on a quarterly or monthly basis shall file quarterly returns if their tax liability exceeds the amount of the registration fees paid during that quarter. The quarterly returns will be due

SALES AND USE TAX

Flea Markets *(continued)*

by the 20th day of the month next following the end of each quarter and will show the gross sales from all taxable sales or purchases during the preceding quarter.

At the time of transmitting any of the returns, the dealer shall remit the amount of tax due. Failure to so remit the tax or to file the return will make the tax delinquent. Failure to remit the tax or to file the return will subject the dealer to penalties and interest and the possibility of further actions.

Penalty for Late Filing

The flea market operator will submit the registration fees collected on the operator's monthly return to the Commissioner, together with the registration applications received by the operator. Failure to comply will subject the flea market operator to the penalty provided by law for delinquent tax payments.

The penalty to the dealer will be \$10 per booth per day for violations of tax remittance requirements. The Department may also impose a penalty upon the flea market operator of \$10 per booth per day, up to a maximum fine of \$100 per day at any location where it is determined by the Commissioner that the flea market operator has been negligent in allowing dealers to operate at the flea market without proper registration.

The term "negligent" includes, but is not limited to, any failure of the flea market operator to make a reasonable attempt to ensure that every dealer renting space from the operator is properly registered for tax purposes. A determination by the

Commissioner that a flea market operator has been negligent shall be deemed presumptively correct. Such determination may be rebutted only if the flea market operator makes a showing of due care. As used, "due care" means that the flea market operator has made every reasonable effort to ensure that every dealer renting space from the operator is properly registered for tax purposes.

SALES AND USE TAX

Contractors

Generally, contractors are persons who perform installations of personal property as an improvement to realty. Contractors may include persons performing management services. The term "contractor" also includes subcontractors as well.

Contractors as Consumers

[Tenn. Code Ann. Section 67-6-209]

Contractors and subcontractors who improve realty, or otherwise use personal property in the performance of a contract, are considered the users and consumers of the materials that are used or installed as part of the real property. If the sales tax is not paid when the materials are purchased, the contractor or subcontractor owes the use tax on the cost of their materials. The labor costs of installation or erection and markup on materials are not taxable. The sales or use tax cannot be itemized separately and collected from the contractee.

Liability for the Sales or Use Tax

Generally speaking, the contractor or subcontractor remains liable for the sales or use tax on materials used in providing the contracted service even when the contractee is an otherwise exempt entity, such as federal, state, county, or city governments, and most exempt organizations. This is true even when the tax-exempt entity buys the materials and turns them over to the contractor or subcontractor for use.

A contractor-dealer is one who improves realty and is also engaged in selling building materials and supplies to other contractors, consumers, or users. 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.

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. 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.

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. [Sales Tax Rule 1320-5-1-.08]

Exemptions

[Tenn. Code Ann. Sections 67-6-102, 209, 384]

Under specific circumstances outlined in the law, contractors or subcontractors are not liable for the sales or use tax on construction materials. 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.

SALES AND USE TAX

Contractors *(continued)*

- + If materials are purchased by a private, nonprofit college or university and are used in college or university construction, they are exempt from the state sales or use tax but not from the local tax.

Specific exemptions from sales or use tax are available to contractors for specific types of contracts. Examples are:

- + Electrical generating facilities and distribution systems owned by a government entity.
- + Wastewater and sewage systems, and sanitary sewer pipes owned by a county or city.
- + Coal gasification plants and distribution systems owned by government entities.
- + A neutron spallation facility owned by the federal government.

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. On the other hand, contractors fabricating materials for use in non-building projects, such as bridge steel, are liable for tax on the fabricated value of the materials.

Asphalt Fabricators

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 arms length transaction. The Department of Revenue will accept as fair

market value \$5 per ton plus the cost of materials as the tax base.

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 contractor 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 of asphalt by an asphalt fabricator or installer in a contract with a government or other tax-exempt entity subjects the fabricator or installer to payment of the use tax. Use tax is due even if the asphalt is provided by the government or tax-exempt entity. However, if asphalt is sold directly to the exempt entity with no installation or use by the seller, the purchase is tax-exempt. [Tenn. Code Ann. Section 67-6-209 and Sales Tax Rule 1320-5-1-1.03(1)(a)]

Installation of Industrial Machinery

Contractors installing qualified tax-exempt industrial machinery for qualified manufactures must apply to the Department of Revenue for their own industrial machinery authorization number for each project.

Lump Sum or Unit Price Construction Contracts on Realty in Effect on July 15, 2002

All construction contractors and subcontractors will pay to their vendors the increased state tax of 7% on materials purchased on or after July 15,

SALES AND USE TAX

Contractors (continued)

2002. Vendors of materials who have a lump sum or fixed price contract to provide materials are required to collect and remit the new rate of tax.

General or prime construction contractors making improvements to real property under a lump sum or unit price construction contract entered into prior to July 15, 2002, or contracts awarded by the state or a political subdivision pursuant to a bid opening which occurred prior to July 15, 2002, if the provisions of such provide that the amount payable remains fixed without regard to costs, may file a claim for refund with the Department of Revenue for tax paid to any of the contractor's vendors at a rate in **excess** of the 6% state rate and the applicable local option sales tax in effect July 1, 2002. A claim for refund must be supported by a copy of the contract that was signed prior to July 15, 2002, and documentation in the form of schedules and invoices to support the payment of sales tax in excess of the 6% state rate. A separate claim form will be required for each contract.

Subcontractors entering into lump sum or unit price contracts to make improvements to realty prior to September 1, 2002, with general or prime contractors that have entered into contracts described in the preceding paragraph prior to July 15, 2002, may file a claim for refund with the Department of Revenue for tax paid in excess of the 6% state rate and the applicable local option sales tax in effect July 1, 2002. A claim for refund must be supported by a copy of the subcontractor's contract that was signed prior to September 1, 2002, a copy of the contractor's contract entered into

prior to July 15, 2002, and documentation in the form of schedules and invoices to support the payment of sales tax in excess of the 6% state rate. A separate claim form will be required for each contract.

Contractors and subcontractors who have made purchases without the payment of tax on tangible personal property that will be used in the performance of qualifying lump sum or unit price construction contracts that became binding prior to July 15, 2002, should report and remit the use tax at the 6% state rate and the applicable local option tax rate. Dealers are required to keep records to demonstrate the tangible personal property was subject to the 6% state rate. Such records include a copy of the contract with the dates that the contract was entered into, records indicating the materials used in the performance of the qualifying lump sum contract, and records demonstrating that the state rate of 6% and the applicable local tax rate was reported and paid to the Department

"Lump sum or unit price construction contract" is defined as a written contract for the construction of, or improvements to, real property under which the amount payable to the contractor, subcontractor, or material vendor is fixed without regard to costs incurred in the performance of the contract and apply to equipment or other property used to conduct the test. [Tenn. Code Ann. Sections 67-6-209; 67-6-541]

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

SALES AND USE TAX

Contractors (continued)

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. [Tenn. Code Ann. Section 67-6-209]

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. [Tenn. Code Ann. Section 67-6 209]

Qualified Disaster Restoration

An entity that engages in a qualified disaster restoration project in Tennessee is eligible for a credit of all Tennessee state sales or use tax except for one-half percent on the sale or use of qualified tangible personal property used in the project.

A "qualified disaster restoration project" is a project undertaken in connection with the restoration of real or tangible personal property located within a declared federal disaster area that suffered damages as a result of the

disaster. The project must involve a minimum of \$50 million or more in the restoration of the property.

The investment may include, but is not limited to, the cost of constructing or refurbishing a building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, and other tangible personal property within the building. The investment may not include land or inventory.

"Qualified tangible personal property" means building materials, machinery, equipment, computer software, furniture, and fixtures used exclusively to replace or restore real or tangible personal property that suffered damages as a result of the disaster and purchased or leased prior to substantial completion of the qualified disaster restoration project.

"Qualified tangible personal property" does not include payments with respect to leases of qualifying tangible personal property that extend beyond substantial completion of the disaster restoration project.

No other sales or use tax credits, exemptions, or reduced rates that may be available may be taken as a result of the same purchases or minimum investment.

Persons seeking the credit must submit an application to the Commissioner of Revenue to qualify the project as a qualified disaster restoration project, together with a plan describing the investment to be made. In the case of a leased building, the lessor must also submit an application and plan if any taxes paid by the lessor are to be claimed as part of the credit.

SALES AND USE TAX

Contractors *(continued)*

Upon approval of the application and plan, the Commissioner will issue a letter to the applicant stating that the applicant has tentatively met the requirements for the credit.

To receive the credit, the taxpayer must submit a claim for the credit and documentation showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The claim may include taxes paid by the taxpayer, the lessor in the case of a leased building, contractors, and subcontractors.

Documentation verifying that the minimum investment requirements have been met can include employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules required by the Commissioner.

The Commissioner will review the claim for credit and notify the taxpayer of the approved credit amount and directions for taking the credit. Such notification must be given before the taxpayer can take the credit.

If any of the qualifying requirements for this claim are not met, the taxpayer will be subject to an assessment of any sales or use tax, penalty, and interest that would have been due and for which credit was taken.

The taxpayer does not have to establish its commercial domicile in Tennessee to be eligible for the credit. [Tenn. Code Ann. Section 67-6-235]

SALES AND USE TAX

Returns And Payments

Returns and Payment

[Tenn. Code Ann. Sections 67-6-504, 505, and 506]

As of October 1, 2013, all sales and use taxpayers are required to file returns and remit the associated tax payments electronically. If this requirement creates a hardship on any taxpayer subject to this requirement, the taxpayer can request permission to continue to file using paper return forms. The Commissioner can require that any paper return be accompanied by a manual handling fee of \$25 to account for the additional cost of preparing, printing, receiving, reviewing, and processing the paper return. [Tenn. Code Ann. Section 67-1-115(a)]

Taxpayers whose average tax liability is \$500 or more per return must file returns and remit payments electronically by statute. Failure to do so carries a statutory penalty of \$500 per incident.

After completing the registration process, you will receive reporting information. You must file a timely return, beginning with the date entered in Item 4 of the application, even if no sales were made and no tax is due.

Sales or use taxes are due on the first day of each month for the preceding month. The last day for electronic returns to be timely filed with the Department of Revenue is the 20th of each month. The amount of tax due will be paid with the return. Failure to do so will make the return delinquent.

The Commissioner may decide, when it is in the best interest of the state, that specific taxpayers may file returns on other than a monthly basis. The

Commissioner may also, under emergency or extraordinary reasons, extend a taxpayer's time for filing a return for up to 30 days. In the latter case, any interest payment will be added to the amount of payment due.

The Commissioner of Revenue can require aviation fuel dealers to file sales reports monthly rather than quarterly for purposes of distributing revenue to the transportation equity trust fund and impose a \$500 penalty if such report is not filed as required. [Tenn. Code Ann. Section 67-6-407]

If a taxpayer has paid a legally imposed sales or use tax to another state for property imported into this state, that payment may be claimed as a credit against the tax on the Tennessee return. The taxpayer must be able to furnish the name of the vendor from whom the property or service was purchased and an affidavit or bill of sale showing the tax has been paid. [Tenn. Code Ann. Section 67-6-507]

If a taxpayer fails to report and pay the sales or use tax as required or files a grossly incorrect or fraudulent report, the Commissioner will estimate the amount of tax due plus interest and penalties, if applicable, and the taxpayer will be assessed accordingly. [Tenn. Code Ann. Section 67-6-517]

Electronic Data Interchange (EDI)

The Electronic Data Interchange program is a method of filing tax returns electronically from one computer to another. Tennessee sales or use tax taxpayers are required to make their tax

SALES AND USE TAX

Returns And Payments *(continued)*

payments by Electronic Funds Transfer and are required to file their returns through EDI.

The EDI setup involves several steps including selecting a certified software vendor or Internet tax service provider, completing the registration process, establishing communications, and performing a test of the chosen software. It is the taxpayer's responsibility to choose a software vendor. Internet tax services provide or develop its own software.

Each taxpayer filing sales tax returns electronically must have a Registration for Sales Tax Electronic Filing Application on file with the Department of Revenue. If using a software vendor, the taxpayer must also complete a Transmission Specification Questionnaire for the Department. Additionally, each taxpayer that pays sales taxes electronically must have an Electronic Funds Transfer (EFT) agreement on file with the Department. Taxpayers who file electronically must pay electronically.

Software vendors and Internet tax services usually offer both "Filing Only" and "Filing and Payment" options. If the "Filing Only" option is selected, the software or tax service will only initiate a transaction for filing the return. The associated EFT payment will need to be initiated via the Department's EFT program.

To avoid late delivery of the return and payment, taxpayers using a tax service must contact their provider for cutoff deadlines. Taxpayers using software must transmit to the Department's filing service by 4:15 p.m. Eastern Time on the business

day prior to the due date for "Filing and Payment" transactions, and by 11: 59 p.m. Eastern Time on the due date for "Filing Only" transactions.

Electronic Funds Transfer (EFT)

The Tennessee General Assembly has authorized the Commissioner of Revenue to require certain tax payments to be made by funds readily available to the state. Electronic Funds Transfer is a method approved by the Commissioner for accomplishing this. Rules for the administration of this legislation went into effect on January 1, 1992.

Two payment options are available that use the Automated Clearing House (ACH) system to electronically transfer tax payments. The ACH system is a nationwide network designed for this purpose and is the preferred transaction method for many financial institutions and corporations. A third payment option, federal wire transfer, should be used only as an emergency option.

Penalty and interest charges may be incurred if the taxpayer fails to remit by the chosen method. No matter which method is chosen, the taxpayer must complete the Electronic Funds Transfer Agreement with the Department of Revenue.

A taxpayer filing returns for multiple locations and required to file returns electronically from one location, outlet, or place of business must to file electronic returns and make electronic payments from each of the taxpayer's locations. [Tenn. Code Ann. Section 67-6-504(f)]

SALES AND USE TAX

Returns And Payments *(continued)*

The Department of Revenue offers payment warehousing for sales and use tax payments. Taxpayers are able to file a return upon its completion and delay the accompanying payment until it is due.

Additional information on EDI and EFT, and the required forms, may be obtained by contacting the Department of Revenue's Electronic Commerce Unit at (866) 368-6374.

Online Filing

Online filers can file all periodic returns and make payments directly from checking accounts. They can also update business information, such as location and mailing addresses. They can also file past due and amended returns. Returns can be filed right up to midnight of the return due date to ensure timely filing. Online filing will also calculate the return and provide an immediate confirmation of receipt by the Department of Revenue. Online filing is free without purchasing additional software. Information about initiating online filing is available on the Department's Web site.

Filing Date

If the due date for a return falls on Saturday, Sunday, or a holiday, the due date is automatically extended until the next business day. [Tenn. Code Ann. Section 67-1-107]

Penalty and Interest

A penalty is imposed for the late filing of a tax return and for late payment of taxes owed the state. The penalty is computed at a rate of 5% per month, or any portion of a month, from the due date until the

date the taxes are paid. The maximum penalty is 25% of the tax amount due; the minimum penalty is \$15.

Interest is imposed on any taxes not paid by the date required by law even though a filing date extension has been granted. The interest rate on deficient tax payments is established each year on July 1st.

When a taxpayer fails to submit a timely return and penalties and/or interest are applied, the penalties and interest become a part of the tax due. The Department of Revenue has no discretion to refund or waive any interest charges. [Tenn. Code Ann. Section 67-1-804]

Audits and Assessments

All tax returns filed with the Department of Revenue undergo some type of audit or examination to ensure that the correct tax has been paid. This may be a computer math audit, a manual examination by a trained auditor, or both. The taxpayer will be contacted if additional information is needed to complete the audit. The taxpayer will receive written notification of any adjustments made to the return.

Taxpayers selected for field audits will be contacted by the Department to set up a convenient time for the audit. Taxpayers will receive advance notice of which records will be needed for the audit. A field audit generally involves examination of documentation and records used to file returns for three previous years.

At the completion of the audit, the auditor will leave the taxpayer a written report for review. Once the auditor has made any

SALES AND USE TAX

Returns And Payments *(continued)*

necessary changes to the report, the notice of assessment for any underpaid taxes will be issued. [Tenn. Code Ann. Section 67-1-1301]

Right to a Conference

[Tenn. Code Ann. Section 67-1-1801]

Taxpayers are entitled to an informal conference to discuss an assessment. If this request is made in writing within 30 days from the date of the Notice of Proposed Assessment, the conference will be granted. If made after 30 days, the conference may be granted at the Commissioner's discretion.

If the taxpayer timely requests an informal conference, the proposed assessment will become final after the informal conference process concludes.

Taxpayers wishing to contest a final assessment without making payment have 90 days to file suit in chancery court, as provided by statute. Interest will continue to accrue at the prevailing rate until payment is received. A lien may be filed against the taxpayer's property during this 90-day period.

If the taxpayer does not file suit within the 90 days of becoming final, the taxpayer may pay the final assessment, request a refund, and then file suit in chancery court if the refund is not paid following the procedures set forth in the law (Tenn. Code Ann. Section 67-1-1802). You are not required to request an informal conference before contesting a final assessment in court.

Keeping Records

Taxpayers are required to establish and maintain records that are adequate for auditors to use in determining the correct amount of a business's tax liability. This responsibility includes not only those liable for sales tax but also businesses or individuals subject to use tax – persons importing untaxed tangible personal property for storage, use, or other consumption in the state. Records of business transactions must be kept for a minimum of three years from December 31 of the year in which the associated sales and use tax return was filed [Tenn. Code Ann. Section 67-6-523] and must include:

- + A daily record of all cash and credit sales including those under a finance or installment plan.
- + A record of the amount of all merchandise purchased including bills of lading, invoices, and purchase orders.
- + A record of all deductions and exemptions allowed or claimed including exemption and resale certificates.
- + A record of all property used or consumed in the conduct of the business.
- + A true and complete yearly inventory of the value of stock on hand.

All such records shall be open for inspection, at all reasonable hours, to the Commissioner of Revenue or authorized representatives of the Commissioner. [Tenn. Code Ann. Section 67-6-523]

SALES AND USE TAX

Returns And Payments *(continued)*

If the taxpayer maintains any such records in an electronic format, the taxpayer shall comply with reasonable requests by the Commissioner, or the Commissioner's authorized agents, to provide those electronic records in a standard record format.

Tenn. Code Ann. Section 67-1-113]

SALES AND USE TAX

THE TAXPAYER BILL OF RIGHTS

You, as a taxpayer, have certain rights that are protected by state law.

TAXPAYER RIGHTS [Tenn. Code Ann. Section 67-1-110]

Tennessee guarantees that you, the taxpayer, have the right to:

- Receive fair and courteous treatment from all Department of Revenue employees;
- Receive tax forms and information written in plain language;
- Receive prompt and accurate responses to all questions and requests for tax assistance;
- Request public records;
- Be assured that the Department will keep confidential the financial information you give it;
- Know the Department's policies with respect to use and retention of personally identifiable information;
- Receive tax notices that provide an explanation of the amount being billed;
- Receive a clear set of rules and procedures to resolve tax problems that arise from the interpretation and administration of Tennessee's tax laws;
- Dispute any proposed assessment by filing a timely request for an information conference;
- Know that the Department's employees are not paid or promoted as a result of money billed to or collected from taxpayers;
- Suggest ideas about how the Department of Revenue can better serve you;
- Prompt notification by the Department of any refund to which you are entitled;
- Attend annual meetings held by the Department of Revenue in convenient locations to voice your suggestions;
- A 10-day notice before a levy on assets is enforced;
- A 30-day notice before seized assets are liquidated;
- A speedy, informal, and inexpensive review of a proposed assessment in an informal conference with an impartial representative of the Department and to be represented by an attorney, certified public accountant, or other representative; and
- Any other rights the Commissioner of Revenue deems necessary and appropriate.

TAXPAYER RIGHT TO A CONFERENCE [Tenn. Code Ann. Section 67-1-1801]

Taxpayers are entitled to an informal conference to discuss a proposed assessment. If this request is made in writing within 30 days from the date of the Notice of Proposed Assessment, the conference will be granted. If it is made beyond the 30 days, the conference may be granted within the discretion of the Commissioner.

Requests for conferences may be sent to:

Administrative Hearing Office
Tennessee Department of Revenue
500 Deaderick Street, Suite 11.451
Nashville, TN 37242
Phone (615) 741-3810
Fax (615) 741-6463
DORconference.request@tn.gov

SALES AND USE TAX

If you request an informal conference in a timely manner, the proposed assessment will become final after the informal conference process concludes. If the Commissioner does not allow an adjustment, the proposed assessment will become final as of the date of the Commissioner's written decision. If the Commissioner allows an adjustment, a written determination will be issued stating the amount of tax due, and that amount will be the final assessment.

If you do not request an informal conference, or if you make an untimely request for an informal conference, that proposed assessment will automatically become a final assessment on the 31st day after the date of the notice of proposed assessment. If you cancel your timely informal conference, the proposed assessment will become a final assessment on the date you notify the Department in writing of the cancellation or on the 31st day after the date of the notice of proposed assessment, whichever is later.

If you wish to contest an assessment without making payment, you have 90 days to file suit in chancery court, either in Davidson County or in the Tennessee county where you reside or principally conduct your business. Interest will continue to accrue at the prevailing rate until payment is received. A lien may be filed against your property during this 90-day period.

If you do not file suit within 90 days of the assessment becoming final, you may pay the final assessment, request a refund, and then file suit in chancery court if the refund is not paid, following the procedures set forth in the law (See Tenn. Code Ann. Section 67-1-1802). You are not required to request an informal conference before contesting a final assessment in court.

Alicia Gillespie

Subject: FW: Sales Tax Questions

From: Billy Trout <Billy.Trout@tn.gov>
Sent: Wednesday, February 3, 2016 4:03 PM
To: Linda Ciprich
Subject: RE: Sales Tax Questions

Hi Linda,

There are two issues here – let me address them one by one...

1. Universities would be exempt from paying sales tax to receive parking services if they presented a sales tax exemption certificate to the provider of the parking services. (I do not think this is what you were asking, but just in case, I thought I'd mention it.)
2. As you accurately quoted, universities would not collect sales tax on any parking fee charged in their government facilities. That would include a parking garage, metered parking, or any parking charge as long as the parking was on-site.

If they collected sales tax in error, state law still requires that the sales tax be remitted if it was charged to a customer, so they would want to do this, unless they somehow had a way to reimburse the customer (unlikely). Otherwise, if they never collected it, it's a non-issue.

I hope this covers everything – thanks!

Billy Trout

From: Linda Ciprich [<mailto:Linda.Ciprich@tbr.edu>]
Sent: Wednesday, February 03, 2016 3:26 PM
To: Billy Trout
Subject: RE: Sales Tax Questions

Billy, I have another sales tax question for you. I just found out one of our universities is paying sales tax for parking services. Not sure yet if they are actually charging sales tax or taking the total collected and backing sales tax out. Would our universities be exempt as a government entity? I'm basing that on page 38 of the sales and use tax guide:

Charges for services rendered in the operation of parking or vehicle storage facilities are subject to tax. The tax does not apply for parking in state and local government facilities or on the street where the fees are collected by state or local government parking meters.

Thanks! Linda Ciprich

<image001.jpg>

<image002.jpg>

Attachment G

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Fees, Charges, Refunds, and Fee Adjustments : B-060

Topics

- **Topics**(active tab)
- **Topics A-Z**

- Purpose
- General Provisions
- Maintenance Fees
- Out-of-State Tuition
- Recruitment Focus Area Plan
- eRate
- Debt Service Fees
- Student Fees
- Technology Access Fees
- Specialized Academic Fees
- Miscellaneous Course Fees
- Incidental Fees and Charges
- Deposits
- Student Residence Hall and Apartments
- Other Fee and Charge Considerations
- Refunds and Fee Adjustments

- Debt Service Fees
- Deposits
- General Provisions
- Incidental Fees and Charges
- Maintenance Fees

- Miscellaneous Course Fees
- Other Fee and Charge Considerations
- Out-of-State Tuition
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- Recruitment Focus Area Plan
- Refunds and Fee Adjustments
- Specialized Academic Fees
- Student Fees
- Student Residence Hall and Apartments
- Technology Access Fees
- eRate

Guideline Area

Business and Finance Guidelines

Applicable Divisions

TCATs, Community Colleges, Universities

Purpose

The purpose of the following guideline is to outline significant provisions for consistent administration of fees, charges, and refunds at the institutions governed by the Tennessee Board of Regents. These guidelines largely represent a consolidation of existing statements and practices. They are intended to serve as a reference document for institutional staff responsible for implementing and communicating fee-related matters. The guideline contents include general and specific provisions for: maintenance fees; out-of-state tuition; debt service fees; student activity; miscellaneous and incidental fees; deposits; residence hall fees; and refunds.

These guidelines supersede all previous fee and refund guidelines, and may be revised by action of the Tennessee Board of Regents or the Chancellor. Exceptions to the guidelines may be made by the Chancellor upon written request by the president, or

college of applied technology director through the Vice Chancellor for Colleges of Applied Technology.

Guideline

I. General Provisions

A. Establishment of Fees and Charges

1. The Tennessee Board of Regents must establish or approve all institutional fees and charges unless specific exceptions are provided. The Board has adopted a practice of approving changes in fees and charges one time per year at the Board meeting when the annual operating budgets are considered. This is usually the regular June meeting of the Board.
2. The institution president or college of applied technology director is responsible for the enforcement and collection of all fees and charges. Fees and charges which specifically do not require Board approval must receive formal approval by the president or designee, in the case of the colleges of applied technology, the Vice Chancellor for Colleges of Applied Technology.
3. Institutions should attempt to follow a general format in publishing information on fees and charges, including but not limited to the following:
 - a. All statements which include the fee amount should be complete and specific enough to prevent misunderstanding by readers.
 - b. When a fee is quoted, the refund procedures should be clearly stated. If there are qualifying conditions for refunds, those conditions also should be stated. If there is no refund, it should be labeled as non-refundable.
 - c. Whenever possible, specific dates related to the payment of fees and the refund procedures should be stated.
 - d. It should be made clear that all fees are subject to change at any time.

B. Approval of Exceptions

1. In accordance with these guidelines, the president of an institution or designee has the authority to determine the applicability of certain fees, fines, charges, and refunds, and to approve exceptions in instances of unusual circumstances or for special groups.
2. The Vice Chancellor for Colleges of Applied Technology shall have this authority for the colleges of applied technology.
3. All such actions should be properly documented for auditing purposes.

C. Appeals Process

1. An appeals process should be established by each institution, and communicated to students, faculty, and staff.
2. The process should provide for final appeal to the president or director, or his or her designee.
3. Separate appeals processes may exist for different types of fees, charges, and refunds.

D. Payment of Student Fees

1. As provided in the Tennessee Board of Regents Policy on Payment of Student Fees and Enrollment of Students (No. 4:01:03:00):
 - a. An applicant for admission to an institution will be considered and counted as a student when all assessed fees have been paid in cash, when the initial minimum payment due under the deferred payment plan has been paid, or when an acceptable commitment from an agency or organization approved by the institution has been received by the institution.
 - b. An applicant shall possess an acceptable commitment when he/she has timely submitted an application(s) for financial aid with the reasonable probability of receiving such.
2. Pursuant to the above condition, institutions with a continuous registration process must require payment of all applicable fees or payment of the initial

minimum payment due under the deferred payment plan prior to the regular registration period as defined by each institution.

- a. Students who do not prepay all fees or have an acceptable approved financial aid deferment will forfeit pre-registration privileges and must enroll under the normal registration process.
3. A prepayment plan to assist parents and students with planning and budgeting their academic year expenses is authorized.
 - a. Under the plan, students may choose the expenses they wish to prepay including room, board, tuition, and fees.
 - b. Expenses can be prepaid over a period of eight months.

II. Maintenance Fees

A. Description of Fees

1. The Maintenance Fee is a charge to students enrolled in credit courses. It is an enrollment or registration fee and is calculated based on the number of Student Credit Hours (SCH's) for universities and two-year institutions or student contact hours for colleges of applied technology for which the student enrolls. Fees are established by the Tennessee Board of Regents.
2. The same fee is applicable to courses for which the student is enrolled on an audit basis.

B. Rates

1. Rates are established by the Board and incorporated in a fee schedule that groups specific fees; by type of institution (two-year institutions; APSU, ETSU, MTSU, TSU, and TTU; and UOM); and by student level (undergraduate and graduate). The hourly rate will be discounted when undergraduate students enroll in greater than 12 hours and graduate students in greater than 10 hours unless stated otherwise elsewhere in this guideline.

2. Developmental courses are charged at the two-year institution hourly rate. If a student enrolls in both regular and developmental courses, the rates shall be assessed at the hourly rate for each up to the current amount of 12 undergraduate hours. The discounted tuition rate will then apply to any additional courses.
3. For institutions with multiple summer sessions, maintenance fees and tuition may be assessed by using the current part-time rate with no maximum amount for total credit hours enrolled.
4. Maintenance fees may not be waived. However, specific exceptions are provided in the following instances:
 - a. Pursuant to T.C.A. § 49-7-113, exceptions exist for certain disabled and elderly students, as well as state service retirees. For audit courses, no fee is required for persons with a permanent, total disability, persons 60 years of age or older and domiciled in Tennessee and persons who have retired from state service with 30 or more years of service, regardless of age. For credit, a fee of \$70 per semester or \$60 per trimester may be charged to persons with a permanent, total disability, and persons who will become 65 years of age or older during the academic semester in which they begin classes and who are domiciled in Tennessee. (Note: This fee includes all mandatory fees; it does not include course-specific fees such as all miscellaneous course fees, materials fees, application fee, online course fees and parking fees.) This only applies to enrollment on a space available basis, which permits registration no earlier than four (4) weeks prior to the first day of classes.
 - b. Pursuant to T.C.A. § 49-7-102, certain statutory fee exceptions exist for dependents and spouses of military personnel killed, missing in action, or officially declared a prisoner of war while serving honorably as a

member of the armed forces during a period of armed conflict. If these provisions are invoked by a student, the correct applicable law should be determined.

5. Military reserve and national guard personnel who are mobilized to active military service within six months of attendance at a TBR institution and whose mobilization lasts more than six months shall be charged upon re-enrollment at such institution the tuition, maintenance fees, student activity fees and required registration or matriculation fees that were in effect when such student was enrolled prior to mobilization. After re-enrollment, no increase in tuition, maintenance fees, student activity fees or required registration or matriculation fees shall be assessed to such student until a period of time equal to one year plus the combined length of all military mobilizations has elapsed. In no event, however, shall a student's tuition and fees be frozen after re-enrollment for more than four years.
 - a. To be eligible for the tuition and fee freeze, the student shall have completed military service under honorable conditions and shall re-enroll in a TBR institution within six months of release from active duty.
 - b. A student eligible for the tuition and fee freeze may transfer from one state institution of higher education to another state institution of higher education one time with such student's tuition and fees calculated at the institution to which the student transfers as if the student had been in attendance at that institution before the mobilization that resulted in the student's tuition and fee freeze at the initial institution.
- C. Accounting Treatment
1. A revenue account for Maintenance Fees is used to record both the revenue assessed and refunds made.

2. As provided in GASB Statements 34 and 35, summer school revenues and expenditures must be accrued at fiscal year-end. Summer school activity will not be allocated to only one fiscal year.
3. In some cases full fees are not assessed to students. These occur when statutes establish separate rates for such groups as the disabled, elderly, and military dependents. The difference between normal fees and special fees is not assessed. Fees not assessed in these cases do not represent revenue. For administrative purposes the fees may be calculated and credited to revenue, then written off against a contra revenue account.
4. Agreements/contracts may be executed with a third party (federal agency, corporation, institution, etc.), but not with the individual student, to deliver routine courses at a fixed rate or for the cost of delivering the course and may provide for fees not to be charged to individual students. Individual student fees will be assessed as usual and charged to the functional category Scholarships and Fellowships. The amount charged to or paid by the third party is credited to the appropriate Grants and Contracts revenue account.
5. In some cases a non-credit course provides an option to grant regular credit. If a separate (or additional) fee is collected because of the credit, that amount is reported as Maintenance Fee revenue.
6. Full-time employees of the Tennessee Board of Regents and the University of Tennessee systems may enroll in one course per term at any public postsecondary institution, with fees waived for the employee.
 - a. No tuition paying student shall be denied enrollment in a course because of enrollment of TBR and UT employees.
 - b. Spouses and dependents of employees of the Tennessee Board of Regents system may be eligible for a student fee discount for

undergraduate courses at Tennessee Board of Regents institutions and the University of Tennessee.

7. Tennessee Board of Regents institutions exchange funds for tuition fees of employees' spouses and dependents who participate in a Tennessee Board of Regents educational assistance program. Effective fall term 1990, the charging and exchanging of funds for maintenance fee discounts between Tennessee Board of Regents institutions and the University of Tennessee shall begin.
8. To the extent they are not reimbursed by the State, fee waivers for full-time State employees and fee discounts to children of certified public school teachers shall be accounted for as a scholarship.

III. Out-of-State Tuition

A. Description of Fee

1. This is an additional fee charged to students classified as non-residents who are enrolled for credit courses, including audit courses. This fee is in addition to the maintenance fee.
2. Out-of-state tuition fee rates are established by the Tennessee Board of Regents and are incorporated in the annual fee schedule.
3. A separate hourly rate for out-of-state tuition will be set for undergraduate and graduate students.
 - a. While the per-hour rate for graduate students will be higher, the rates will be set so that a full-time graduate student and a full-time undergraduate student will pay approximately the same amount for out-of-state tuition.
 - b. A full-time student is defined as an undergraduate enrolled in 12 hours or a graduate student enrolled in 10 hours.
4. Applicability of out-of-state tuition is determined pursuant to Tennessee Board of Regents Policy on Regulations for Students In-State and Out-of-

State for the Purpose of Paying College or University Fees and Tuition and for Admission Purposes (No. 3:05:01:00). The business office will collect fees based upon student classification as determined by the appropriate authority within the institution.

B. Accounting Treatment

1. A revenue account for out-of-state tuition is used for recording both credits for fees and debits for refunds.
2. Other accounting is the same for out-of-state tuition as that outlined under Maintenance Fees except that separate out-of-state accounts are used.
 - a. In the case of fees not collected from students under grants and contracts, the same expense account under Scholarships and Fellowships may be used.

IV. Recruitment Focus Area Plan

A. Description of Plan

1. The Recruitment Focus Area Plan has been made available to TBR universities on an "opt-in" basis. Institutions who wish to opt-in must file a request with the System Office. Unless otherwise delegated, approval of a request to adopt the Plan would rest with the Board.
2. The Plan applies to admitted students (both undergraduate and graduate) who graduate from a high school located in a county within a 250 mile radius of the city in which the main campus of a university is located.
3. The out-of-state tuition rate charged to students eligible for the Plan rate will equal the institutions's state subsidy per full-time equivalent for the prior fiscal year. This rate would be capped at 12 hours for undergraduate students and 10 hours for graduate students.
4. The Recruitment Focus area rate does not impact students who otherwise qualify for border county classification or other in-state residency classification.

5. Participating institutions must adopt a process that permits reporting to the System Office on the effect of the Plan.

B. Accounting Treatment

1. The maintenance fee and the out-of-state tuition should each be recorded as outlined in sections II and III above.

V. eRate

A. Description of Fee

1. The eRate is available to students who enroll at TBR institutions, who are classified as non-residents of Tennessee, and who are enrolled exclusively in online courses.
2. The eRate is 150% of the institution's approved undergraduate or graduate maintenance fee.
3. The hourly rate will not be discounted for students receiving the eRate and enrolling in greater than 12 undergraduate hours or 10 graduate hours.
4. To qualify for an eRate, students must:
 - a. Meet all institution admission requirements and must
 - b. Be verified as an online out-of-state student enrolled exclusively in courses delivered online by a procedure documented by the institution.
 - c. Out-of-state students in item 2. above refers to geographic location and does not include undocumented students living in Tennessee.
5. Students enrolled in any type courses other than online (on-ground, telecourse, distance education, etc.) will not be eligible for the eRate specified in this guideline and will instead incur traditional non-resident fees and charges.
 - a. Students who enroll in both online courses and other type courses and subsequently drop the other type courses will not then become eligible for the eRate.

6. Institutions enrolling eRate students as defined in this guideline must provide a method to mitigate any negative impact on the opportunity for Tennessee student enrollment in online courses.

B. Accounting Treatment

1. The eRate is comprised of the maintenance fee and a 50% markup that represents the out-of-state tuition portion.
2. The maintenance fee and the out-of-state tuition should each be recorded as outlined in sections II and III above.

VI. Debt Service Fees

- A. The amount of debt service fees will be approved by the Tennessee Board of Regents. Separate rates are recommended by each institution based on requirements of the institution.
- B. For simplicity of administration and communication, institutions may combine debt service with maintenance fees in quoting fee rates, in fee billings and charges, and in making refunds.
- C. Revenue from debt service fees will be recorded in the unrestricted current fund and then transferred to the retirement of indebtedness fund as either a mandatory transfer or a non-mandatory transfer. The portion of debt service fee revenue used for current-year debt service will be reported as a mandatory transfer. Any additional debt service fee revenue will be transferred to the retirement of indebtedness fund as a non-mandatory transfer.
- D. At the conclusion of the debt retirement for a given project, the debt service fee attributed to the project will cease. Any new project requires the approval of a new debt service fee on its own merits without the reallocation of any existing fee. Any continuation of fees necessary for renewal and replacement of a project for which the debt is totally retired must be approved for that purpose by the Tennessee Board of Regents.

VII. Student Fees

- A. A student government activity fee may be established pursuant to T.C.A. § 49-8-109. Any increase in this fee shall be subject to a referendum for student body approval or rejection. The fee will be administered in accordance with the provisions adopted by each institution. These fees will be restricted current funds additions. These fees are refundable on the same basis as maintenance fees or as established by the institution.
- B. Student activity fees (other than student government activity fees) will be approved by the Tennessee Board of Regents. Such fees may be recommended by each institution based on services to be provided which are related to the activity fee. These fees will be unrestricted current funds revenues. These fees are refundable on the same basis as maintenance fees or as established by the institution.

VIII. Technology Access Fees

- A. A fee shall be levied by each institution for the purpose of providing student access to computing and similar technologies. It is refundable on the same basis as maintenance fees or as established by the institutions. Institutions shall establish expenditure accounts and designated revenue accounts for purposes of recording technology access fees and expenditures.
- B. Use
 - 1. Technology Access Fees (TAF) are composed of two pools. Pool 1 represents the TAF prior to FY 1997-98 when it did not exceed \$30 annually. Pool 2 represents the difference between the current TAF rate and the pre-1997-98 TAF rate. Items 2 and 3 below shall apply to use of Pool 2 TAF funds.
 - 2. The TAF should be used by TBR institutions for direct student benefit, for items such as new and improved high technology laboratories and classrooms, appropriate network and software, computer and other

equipment, and technological improvements that enhance instruction. Use of Pool 2 TAF is limited to the following items:

- a. Computers and other technical laboratory supplies, equipment, and software and maintenance.
- b. Network costs (WWW internet, interactive video, etc.)
- c. "Smart" or multimedia classroom equipment and classroom modifications.
- d. Lab and course staffing - student and staff assistance for lab and classroom uses; universities re limited to a 12% maximum (Pool 2 current-year TAF revenues) and student employees only; community colleges are limited to 25% maximum (Pool 2 current-year TAF revenues) for student or staff employees.
- e. Renewal and replacement reserves as necessary.
- f. New machines for faculty use when faculty are actively engaged in developing and conducting on-line courses.
- g. Faculty and staff development directly related to the introduction or application of new technology which impacts students. These guidelines should have the flexibility to place instructional technology in a faculty lab where course materials are being prepared. For example, TAF funds can be used to create faculty labs to include the purchase of computers and to conduct faculty training and course development. (Travel costs for faculty and staff are excluded; however, consultants may be hired as needed for training.)
- h. Infrastructure (wiring, network, servers, etc.) necessary to provide students maximum computing capability. A ceiling is established of 50% of the total project costs from which technology access fees can be used.

- i. Expand technology resources in library, i.e., video piped anywhere on campus, interactive video room for distance education, network for web video courses.
3. Effective July 1, 2005, institutions may use Technology Access Fee (TAF) revenues for the purpose of supporting the financing of the implementation of the Banner Enterprise Resource Planning (ERP) project including subsequent software and hardware upgrades. Use of TAF funds for this purpose is limited to a maximum of 25% of the annual revenue collected at universities, community colleges and colleges of applied technology. Use of TAF fees for the ERP project must be disclosed and justified in the annual spending plan which requires approval by the Board. The provision for use of TAF fees for this special purpose is repealed for fiscal years beginning on or after July 1, 2010.
4. As part of the July budget process, each institution shall prepare a detailed spending plan for the use of funds generated by the TAF. Prior to submission of July budgets, the Chancellor or his designee shall randomly select 25% of institutions for review of TAF spending plans. Each institution selected shall submit their TAF spending plan as part of their July budget. These spending plans shall be reviewed by the Chancellor or his designee for compliance with TAF use guidelines and Board policy. A report of this review shall be filed with the Board.
5. The spending plan will be maintained by the institution and will be updated throughout the year as needed. The President shall ensure that the spending plan is prepared. At the end of the fiscal year, a summary of the actual money generated and actual use of the money shall be prepared and maintained by the institution.

6. Compliance with these guidelines will be audited by the internal audit staff and reported to the Board as determined by the internal auditor's annual risk-based planning process or other appropriate means.

IX. Specialized Academic Fees

- A. Certain academic programs require expensive maintenance/updating of equipment and software and the employment of highly qualified staff. The high costs of instruction for these programs can be offset by establishing specialized academic fees, with the Board's approval. To receive approval for a specialized academic fee, a program will be required to meet criteria 1., High Cost of Instruction as defined below. Additionally, the program should document meeting criteria 2.-7., as applicable.
 1. High Cost of Instruction. Programs qualifying for charging specialized academic fees must demonstrate that they are more costly than other programs offered by the institution. If appropriate, the extraordinary cost of the program must be validated including benchmarking with similar programs in the region and nation.
 2. High Demand. The number of students enrolled in the program and the student credit hours generated are sufficient to justify additional fees.
 3. High Cost of Updating/Maintaining Equipment and Software. Programs qualifying for charging specialized academic fees are expected to be those that require extensive maintenance and regular updating of equipment and/or software, all of which are very expensive. An average hardware/software cost per student credit hour serves as the basis for determining the amount of the fee.
 4. Accreditation. Meeting standards of specific accrediting agencies may also qualify a specialized program for charging specialized academic fees. The accrediting standards that justify a fee are those that specify the possession and use of certain equipment and unique software that are extraordinarily

costly and/or the employment of faculty with specific credentials that demand high salaries.

5. High Recognition and Quality. The programs approved for specialized academic fees are expected to be distinctive and with a regional or national reputation. The program must demonstrate that it has achieved exceptional recognition in its particular enterprise.
6. High Value to Tennessee. The program must demonstrate that it is a good investment for the State of Tennessee to justify charging extra fees to the student. The program should be distinctive and not one duplicated in other TBR institutions and should be of integral value to Tennessee. The graduates' earning potential and the associated benefit to the state economy should be projected, as well as the efforts taken by the institution to aid graduates in finding appropriate employment in Tennessee.
7. Impact on Affected Students. Through surveys, questionnaires, or other suitable means, the program must demonstrate that the charging of additional fees will not diminish enrollment. The program should demonstrate that enrolled students realize that the potential earning power in the work force justifies their additional investment.

B. Institution must submit documentation of the above applicable criteria when requesting approval of a specialized academic fee. Specialized academic course fee revenues are limited to funding related costs accumulated in the instruction function.

X. Miscellaneous Course Fees

A. All miscellaneous fees must be approved by TBR. Fees for courses requiring special off-campus facilities or services do not require Board approval but should reflect the cost of the facilities or services.

B. An institution may include the cost of books and supplies as tuition and fees if:

1. The institution can provide books and/or supplies at a cost below competitive market rates;
2. The institution can provide for delivery of the books and/or supplies by the seventh day of a payment period; AND
3. The institution has a policy that allows a student to opt out of the institution's mandated delivery system.

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The ability to opt out does not have to be offered if the books and/or materials are being provided by the institutions because:

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1. The institution has documented for the current academic year that the books and/or materials, including digital or electronic course materials are not available from any source except the institution;OR

2.The institution demonstrates that there is a compelling health or safety reason for providing the material.

A- The institution must carefully document its justificationfor an exception to the opt-out requirement.

XI. Incidental Fees and Charges

A. Uniform Rates and Policies - Institutions

1. The following fees will be uniformly charged (or, if applicable, to the extent that they remain within the set range) at all institutions both as to the amount and condition of assessment. Charges are subject to approval by the Tennessee Board of Regents.

a. Application Fee:

1. Undergraduate - Not less than \$5.00 or more than \$25.00.
2. Graduate - Not less than \$25.00 or more than \$75.00.

3. ETSU College of Medicine and College of Pharmacy – Not less than \$50 or more than \$100.

1. This is a non-refundable fee paid by an individual who applies for admission to the institution. A student is required to pay this fee when he/she applies for admission as a graduate student even if the student attended a TBR institution as an undergraduate student. Additionally, the student is required to pay this fee when he/she applies for admission to a doctoral-level program after receiving a masters-level degree from the institution.

b. Graduation Fee: This fee shall be assessed according to degree level as follows and shall include the cost of the diploma and rental of academic regalia:

1. Associate Degree	\$25.00
2. Baccalaureate	30.00
3. Master and Specialist	35.00
4. Doctor and Juris Doctor	45.00

1. The fee is refundable only if the institution has incurred no costs on the student's behalf. Other items may be included in the fee, as determined by the institution. Additional fees may be charged for optional graduation-related activities or services. Effective July 1, 2011, community colleges will no longer assess a graduation fee.

c. Late Exam Fee: None

B. Institutions

1. Returned Check Fee: \$30.00 per check - nonrefundable. All institutions will charge a returned check fee that is the maximum set by state law. This fee will apply to all returned checks received by the institution, whether from

students, faculty, staff, or other parties. The Board will review state statutes each spring to determine any changes.

C. Colleges of Applied Technology

1. Each college of applied technology will assess a nonrefundable fee for individual instructional projects pursuant to a schedule approved by the Tennessee Board of Regents.

D. Other Fees and Charges Subject to Board Approval

1. Institutions

- a. The following fees may be assessed by all institutions. Specific rate recommendations will be developed separately by each institution for approval by the Tennessee Board of Regents. In review of the recommendations, the Board staff will consider the consistency of fees for comparable services among institutions.
 1. Motor Vehicle Registration - nonrefundable. A fee may be levied by each institution per academic year, per fiscal year and/or per academic term for motor vehicle registration, and such fee shall be applicable to each student, faculty and staff member.
 2. Campus Access Fee - At institutions where registration of specific vehicles is not necessary a campus access fee may be assessed in lieu of a motor vehicle registration fee. It is refundable on the same basis as maintenance fees or as established by the institution.
 3. Post Office Box and/or Postal Service Fee - nonrefundable. This fee may be assessed for U.S. Postal services provided on campus to the student population.
 4. Traffic Fines - nonrefundable. These fines will apply to all employees and students.

5. Applied Music Fees. This fee is charged for private music lessons or small group training sessions. It is refundable on the same basis as maintenance fees or as established by the institution.
 6. Late Registration Fee. A late registration fee up to \$100 will be charged during the entire period of late registration. The effective date of the fee will be determined by each institution.
 7. Facilities Fee. This fee will be used to improve facilities and fund expenditures such as replacing carpets in student lounges, remodeling classrooms, etc. The fee would not be used for routine maintenance or new construction, but would be used to make improvements to areas that have an impact on students. The intended projects will be disclosed during the normal budget cycles. The fee is refundable on the same basis as maintenance fees.
2. Institutions and Colleges of Applied Technology
 - a. Transcript Fee. There will be no charge for transcripts; however, institutions and colleges of applied technology shall set a limit on a reasonable number of copies at any one time and may establish a nonrefundable charge for the cost of copying transcripts in excess of that number.
3. Fees and Charges to be Established and Administered by the Institution.
 - a. The following fees and charges may be established and administered by each institution. No specific approval or notification to the Tennessee Board of Regents will be required unless subject to other Board or State requirements. The institution will establish appropriate refund policies. College of Applied Technology fees and charges in this category must be approved by the Vice Chancellor for Colleges of Applied Technology.
 1. Sales of goods and services of a commercial nature, including bookstores, food services, vending, laundry and similar activities.

2. Rental of non-student housing and facilities.
3. Admissions fees to athletic and other events open to the public, including special events sponsored by campus organizations and activities.
4. Sales and services of educational activities such as clinical services, publications, etc.
5. Registration for conferences, institutes, and non-credit activities (see XIII.A.4.).
6. Fees for use of campus facilities for recreational purposes.
7. Parking permits and parking meters for use by guests and visitors.
8. Colleges of Applied Technology may assess a fee for specific school instructional projects to defray incidental costs incurred by the college of applied technology in performing the project.
9. Nonrefundable library fines, which will apply to students, faculty, staff, and other library users.
10. Thesis and dissertation fee - nonrefundable. The fee will be determined based upon cost to the institution.
11. Child Care Fees - Kindergarten, Preschool, Early Childhood, Day Care, or similarly defined activities. The refund policy will be established by the institution.
12. Special Exam Fee - nonrefundable. The fee will be determined based upon cost to the institution.
13. Standardized Test Fees - nonrefundable. The fee will be determined based upon the cost for administering the tests.
14. Identification Card Replacement - nonrefundable. There will be no charge for the original identification card. A fee may be set by each institution to offset the cost of replacing the card. This fee applies only to student ID cards and not to faculty and staff ID's.

15. Change of Course or Section Fee - nonrefundable. If the change is caused by the institution, there will be no charge for the change. If two or more forms are used at one time, they will be treated as one change/form. Institutions may waive the fee for schedule changes.

XII. Deposits

- A. Breakage deposits may be recommended by the institution for Board approval for courses in which it can be shown that there is a reasonable chance of loss or damage to items issued to students. The amount of the deposit should be related to the materials issued and subject to a 100% refund.
- B. A deposit may be established by the institution for rent or lease of buildings and facilities or for the issuance of other institutional property or equipment. Deposits should be subject to a 100% refund if no damage or loss occurs. The amount of such deposits should be related to the value of the facilities or equipment subject to loss and the general ability of the institution to secure reimbursement should loss or damage occur.
- C. Pursuant to Tennessee Board of Regents Policy on Student Residence Regulations and Agreements (No. 3:03:01:00), each institution is authorized to require a security deposit for residence hall facilities which may be forfeited by the student for failure to enter into a residence agreement or non-compliance with applicable agreement terms.

XIII. Student Residence Hall and Apartments

- A. All regular and special rental rates for student dormitories and student apartments will be approved by the Tennessee Board of Regents upon the recommendation of the institution. A \$5.00 late payment fee shall be assessed. Each institution may recommend special rates for non-student groups during summer periods, etc.
- B. Pursuant to Tennessee Board of Regents Policies on Student Resident Regulations and Agreements (No. 3:03:01:00) and Payment of Student Fees

and Enrollment of Students (No. 4:01:03:00), rental for student dormitory or residence hall units shall be payable in full in advance of the beginning of a term. However, each institution shall offer an optional payment plan under which a prorated amount of the rental shall be payable monthly in advance during the term. Specific provisions for the payment plan must comply with those cited in Policy No. 3:03:01:00. A monthly service charge and a late payment charge may be assessed. Residence Hall students can participate in either the deferred payment plan (Guideline B-070) or the optional monthly housing payment plan. Each institution has the option of allowing students to participate in both the deferred payment plan and the optional monthly housing payment plan.

XIV. Other Fee and Charge Considerations

- A. Institutions may submit for Board of Regents approval fees and charges not specifically covered by those guidelines when the establishment of a fee or charge is justified by the institution.
 1. Fees may be established to control the utilization of facilities and services or to offset the cost of extraordinary requirements as a result of specific programs or activities. [Reference Tennessee Board of Regents Policy on Access to and Use of Campus Property and Facilities (No. 1:03:02:50).]
 2. When fees and charges are incorporated in agreements with outside contractors and vendors, specific rates, refunds and conditions must be clearly stated.
 3. Fees for auxiliary services must take into consideration that Auxiliary Enterprises should be a break-even operation with rates and charges generating revenue sufficient to cover all expenses as defined in operating budget guidelines.
 4. Fees established for non-credit courses and activities shall be sufficient to cover the total costs incurred in providing instruction plus a minimum of 25%

of the annual instructional salary costs including contractual salary costs or personal services contracts.

5. Students enrolled for six or more hours are eligible for full-time privileges, i.e., access to social, athletic, and cultural functions, pursuant to T.C.A. § 49-8-109.

XV. Refunds and Fee Adjustments

- A. Adjustments to all fees and charges must be in accordance with the following provisions except as previously stated, or when required by federal law or regulation to be otherwise.
- B. Pursuant to T.C.A. §§ 49-7-2301 and 49-7-2302, students called to active military or National Guard service during the semester are entitled to a 100% adjustment or credit of mandatory fees. Housing and meal ticket charges may be prorated based on usage.
- C. Maintenance Fee Refunds and Adjustments
 1. Refunds are 100% for courses canceled by the institution.
 2. Changes in courses involving the adding and dropping of equal numbers of SCH's for the same term at the same time require no refund or assessment of additional maintenance fees, unless the dropping and adding involves RODP courses. The change of course fee would be applicable.
 3. The fee adjustment for withdrawals or drops during regular terms (fall and spring) is 75% from the first day of classes through the fourteenth calendar day of classes and then reduced to 25% for a period of time which extends 25% of the length of the term. When the first day of the academic term falls on a Saturday, the 100% refund period is extended through the weekend until the following Monday morning (12:01 am). There is no fee adjustment after the 25% period ends. Dropping or withdrawing from classes during either the 75% or the 25% fee adjustment period will result in a fee

adjustment of assessed maintenance fees based on the total credit hours of the final student enrollment.

4. For summer sessions and other short terms, the 75% fee adjustment period and the 25% fee adjustment period will extend a length of time which is the same proportion of the term as the 75% and 25% periods are of the regular terms.
5. All fee adjustment periods will be rounded to whole days and the date on which each fee adjustment period ends will be included in publications. In calculating the 75% period for other than the fall and spring and in calculating the 25% length of term in all cases, the number of calendar days during the term will be considered. When the calculation produces a fractional day, rounding will be up or down to the nearest whole day.
6. A full refund (100%) is provided on behalf of a student whose death occurs during the term. Any indebtedness should be offset against the refund.
7. A 100% refund will be provided for students who enroll under an advance registration system but who drop a course or courses prior to the beginning of the first day of class.
8. A 100% refund will be provided to students who are compelled by the institution to withdraw when it is determined that through institutional error they were academically ineligible for enrollment or were not properly admitted to enroll for the course(s) being dropped. An appropriate official must certify in writing that this provision is applicable in each case.
9. When courses are included in a regular term's registration process for administrative convenience, but the course does not begin until later in the term, the 75%/25% fee adjustment periods will be based on the particular course's beginning and ending dates. This provision does not apply to classes during the fall or spring terms which may meet only once per

week. Those courses will follow the same refund dates as other regular courses for the term.

10. The fee adjustment is calculated as the difference between (1) the per credit hour cost of originally enrolled hours and (2) the per credit hour cost of the courses at final enrollment after adjustments have been applied for all courses dropped. Adjustments are calculated at the full per credit hour rate less the fee adjustment credit at the applicable fee adjustment percentage (regardless of the original number of hours enrolled). Not all drops/withdrawals will result in fee adjustments.

D. Out-of-State Tuition Refunds and Fee Adjustments

1. The fee adjustment provision for out-of-state tuition is the same as that for maintenance fees. The 75% fee adjustment period and the 25% fee adjustment period will follow the same dates as the fee adjustment periods for maintenance fees. When 100% of maintenance fees are refunded, 100% of out-of-state tuition also is refunded. Calculation procedures are the same as those specified for maintenance fees.

E. Debt Service Fee Refunds

1. Debt service fees will be subject to the same refund policy as maintenance fees.

F. Student Residence Hall/Apartment Rent and Deposit Refunds

1. Refund of residence hall rent after registration will be prorated on a weekly calendar basis when the student is forced to withdraw from the residence hall:
 - a. Because of personal medical reasons confirmed in writing by a licensed physician, or
 - b. At the request of the institution for other than disciplinary reasons. Full refund will be made in the case of the death of the student. Withdrawals for other reasons will be subject to the same 75%/25% amounts and

time periods as maintenance fees. No refund will be made other than under the above conditions.

2. Residence hall reservations and breakage deposits will be refunded in full if:
 - a. The institution is notified by a specific date which it establishes, but which may not be later than 14 calendar days prior to the first official day of registration,
 - b. The student is prevented from entering the university because of medical reasons confirmed in writing by a licensed physician, or
 - c. Residence hall space is not available. Full refund also will be made in the case of the death of the student.

G. Meal Plan Refunds

1. Each institution with meal plans should develop appropriate refund procedures.

Sources

December 2, 1977 TBR meeting. Revised March 14, 1980 TBR meeting; November 13, 1991 presidents meeting; November 8, 1982 presidents meeting; July 1, 1984; November 1, 1988; May 15, 1990 presidents meeting; August 14, 1990 presidents meeting; November 10, 1992 presidents meeting; August 10, 1993 presidents meeting; November 9, 1993 presidents meeting; August 9, 1994 presidents meeting; May 8, 1995 presidents meeting, August 8, 1995 presidents meeting, November 8, 1995 presidents meeting, February 6, 1996 presidents meeting, May 14, 1996 presidents meeting, November 12, 1996 presidents meeting, May 6, 1997 presidents meeting, July 16, 1997 called Board meeting, November 5, 1997 presidents meeting, February 17, 1998 presidents meeting via conference call, August 25, 1998 presidents meeting, May 9, 2000 presidents meeting, August 8, 2000 presidents meeting, November 8, 2000 presidents meeting, February 13, 2001 presidents meeting, August 21, 2001 presidents meeting, May 21, 2002 presidents meeting, February 11, 2003 presidents meeting, May 20, 2003 presidents meeting, February 10, 2004 presidents meeting, August 17, 2004

presidents meeting, February 8, 2005 presidents meeting, May 17, 2005 presidents meeting, February 8, 2006 presidents meeting, May 16, 2006 presidents meeting, August 16, 2006 presidents meeting, May 15, 2007 presidents meeting, August 21, 2007 presidents meeting, November 6, 2007 presidents meeting, February 17, 2009 presidents meeting; May 12, 2009 presidents meeting; August 11, 2009 presidents meeting; November 10, 2009 presidents meeting; February 16, 2010 presidents meeting; February 15, 2011 presidents meeting; May 17, 2011 presidents meeting; August 16, 2011 presidents meeting; May 16, 2012 presidents meeting; August 21, 2012 presidents meeting; Revised at Presidents Meeting, February 4, 2014; Revised at Presidents Meeting, August 18, 2015; Revised at Presidents Meeting, November 10, 2015; Presidents Meeting February 2, 2016.

Related Policies

- Access to and Use of Campus Property and Facilities
- General Student Housing Policy
- Policy for Classifying Students In-State & Out-of-State for Paying College or University Fees & Tuition & for Admission Purposes

Contact

Mickey Sheen

615-366-4437

mickey.sheen@tbr.edu





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STATE UNIVERSITY



THE UNIVERSITY OF
MEMPHIS



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COMMUNITY COLLEGE



DYERSBURG STATE
COMMUNITY COLLEGE




Nashville State
Community College


NORTHEAST STATE


MISSISSIPPI STATE
COMMUNITY COLLEGE


Roane State


SOUTHWEST
TENNESSEE COMMUNITY COLLEGE


VOLUNTEER
STATE
COMMUNITY COLLEGE


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TENNESSEE COLLEGES
OF APPLIED TECHNOLOGY

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1415 Murfreesboro RdNashville TN 37217

The Tennessee Board of Regents (TBR) is one of the nation's largest higher education systems, governing 46 post-secondary educational institutions. The TBR system includes six universities, 13 two-year colleges and 27 colleges of applied technology, providing programs to students across the state, country and world.

The Tennessee board of Regents does not discriminate on the basis of race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, and any other category protected by federal or

Attachment H

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Debt Management : 4:01:01:20

Policy Area

Business and Finance Policies

Applicable Divisions

TCATs, Community Colleges, Universities, System Office, Board Members

Purpose

Debt management policies provide written guidance about the amount and type of debt issued by governments, the issuance process, for such debt and the management of the debt portfolio. A debt management policy tailored to the needs of the Board:

Identifies policy goals and demonstrates a commitment to long-term financial planning.

Improves the quality of decisions: concerning debt issuance and

Provides justification for the structure of debt issuance.

Adherence to its debt management policy signals to rating agencies and the capital markets that the Board is well-managed and should meet its obligations in a timely manner.

Debt levels and their related annual costs are important ~~long-term obligations~~ financial considerations that ~~must be managed within available~~ impact the use of current resources. An

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effective debt management policy provides guidelines for the Board to manage its debt programs in line with those resources.

Policy

1. Introduction

1. The Board of Regents of the State University and Community College System ("Board") adopts the following policies concerning debt management.

2. Pursuant to T.C.A. § 49-3-1205(11), whenever the Board takes action under chapters 4, 7-9, and 12 of Title 49 to borrow money for any purpose, the Board must first seek the approval of the Tennessee State School Bond Authority (the "Authority"), created in 1965 under the Tennessee State School Bond Authority Act, T.C.A. § 49-3-1201 et seq. The Authority is a corporate governmental agency and instrumentality of the State of Tennessee whose purpose is to finance revenue generating capital projects for public institutions of higher education located in Tennessee by issuing its bonds and notes. The Board has entered into a Second Program Financing Agreement as of November 1, 1997 with the Authority for the financing of projects for institutions under the jurisdiction of the Board.

3. At this time, the Board chooses to borrow only through the Authority; however, with the approval of the Authority, the Board reserves the right to utilize other borrowing methods should special circumstances arise.

4. The Authority has financed for the Board a variety of revenue generating higher education projects including, but not limited to, dormitories, athletic facilities, parking facilities, student activities/recreation centers, research laboratories, and major equipment purchases. These projects ~~could be contrasted with~~ stand in contrast to non-revenue generating capital projects for basic academic needs such as classrooms and libraries that are funded from the proceeds of the State's general obligation bonds issued by the State Funding Board and for which the Board is not obligated to pay the debt service.

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2. Goals and Objectives

1. The Board is establishing ~~a this~~ debt policy as a tool to ensure that financial resources are adequate to meet the Board's long-term debt program and financial planning.

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2. In addition, ~~the this~~ Debt Management Policy (the "Policy") helps to ensure that financings undertaken by the Board satisfy certain clear objective standards designed to protect the Board's financial resources and to meet its long-term capital needs.

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3. This Policy coordinates with other policies and guidelines of the Board.

1. The goals of this ~~policy~~ Policy are:

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1. To document responsibility for the oversight and management of debt related transactions;
2. To define the criteria for the issuance of debt;
3. To define the types of debt approved for use within the constraints established by the General Assembly;
4. To define the appropriate uses of debt; and
5. To minimize the cost of ~~issuing and servicing~~ debt.

2. The objectives of this ~~policy~~ **Policy** are:

1. To establish clear criteria and promote prudent financial management for the issuance of all debt obligations;
2. To identify legal and administrative limitations on the issuance of debt;
3. To ensure the legal use of the Board's direct debt issuance authority;
4. To maintain appropriate resources and funding capacity for present and future capital needs;
5. To evaluate debt issuance options;
6. To promote cooperation and coordination with other stakeholders in the financing and delivery of services;
7. To manage interest rate exposure and other risks; and
8. To comply with Federal Regulations and ~~Generally Accepted Accounting Principles~~ **generally accepted accounting principles** ("GAAP").

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3. Debt Management

1. Purpose and Use of Debt Issuance

1. Debt may be used to finance projects identified by institutions comprising the State University and Community College System. Ordinarily, projects are identified and included within the System's approved capital plan that is submitted annually to the Tennessee Higher Education Commission. After consideration by the Commission, these projects are incorporated into the State of Tennessee annual budget (as "disclosed

projects"). From time to time, mission critical projects not considered as part of the annual process will be brought to the Commission by the Board for intra-year financing.

2. Debt may be used to finance project costs which include all direct capital costs and indirect capital costs of projects, including but not limited to costs of construction and acquisition, costs of issuance of debt, funded interest on debt, and amounts to fund or replenish reserves, if and to the extent approved by the Authority. In compliance with Article II, Section 24 of the Tennessee Constitution, no budgeted current operational expenditures (including internal employee labor) shall be reimbursed with debt proceeds unless such debt is retired/repaid within the fiscal year of issuance.

3. Prior to the issuance of bonds, bond anticipation notes may be issued for the payment of costs as authorized by the Authority.

2-4. Bonds may be issued to refinance outstanding debt.

2. Debt Capacity Assessment

1. The debt capacity of the Board is partially reliant on the debt capacity of each institution under its jurisdiction. Due to this reliance, this Policy requires the assessment of the debt capacity on a project by project basis as each project is considered. Debt capacity of each project is based on debt service coverage, which measures the actual margin of protection for annual debt service payments from the annual pledged revenue. ~~The pledged revenue plus the pledge of Legislative Appropriations~~ legislative appropriations must meet a two times coverage test for ~~the a~~ a project to be approved for debt funding.

2. ~~The Commercial Paper Program is~~ Bond anticipation notes are limited to the amount stated in the ~~Commercial Paper related~~ Resolution as amended and/or by the amount ~~allowed in the Credit Agreement.~~

3. Federal Tax Status

1. Tax-Exempt Debt

1. The Board will use its best efforts to have projects eligible for financing with tax-exempt debt based on the assumptions that tax-exempt interest rates are lower than

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taxable rates and that the interest savings outweigh the administrative costs, restrictions on use of financed projects, and investment constraints.

2. Taxable Debt

1. The Board will agree to financing of projects with taxable debt when projects are not eligible to be financed with tax-exempt debt or when the administrative costs, restrictions on use of financed projects, and investment constraints outweigh the benefit of tax-exempt rates.

4. Legal Limitations on the Use of Debt

1. Pursuant to T.C.A. § 49-3-1207(d)(4), limitations on the purpose to which the proceeds of sale of bonds or notes may be applied are contained in the resolution or resolutions authorizing the bonds or notes ~~(commercial paper)~~.
2. No debt may be issued for a period longer than the useful life of the capital project it is funding.

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4. Types of Debt

1. Pursuant to T.C.A. § 49-3-1207, the Authority is authorized from time to time to issue its negotiable bonds and notes. These include:
2. ~~The Board (through the Executive Director of Facilities Development and Vice Chancellor of Business and Finance) will work with the Authority concerning the type of debt used to fund the Board's projects.~~
3. ~~The Board will request funding through short term debt, from time to time as needed to fund projects during their construction phase and to fund projects with an average useful life of ten years or less.~~

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A. Bonds

The Authority may issue bonds, where repayment of the debt service obligations of the bonds will be made through revenues generated from specifically designated sources. The bonds will be special obligations of the Authority. These bonds may include but not limited to:

1. Fixed Interest Rate Bonds. Bonds that have an interest rate that remains constant throughout the life of the bond.

- Serial Bonds

- Term Bonds

2. **Variable Interest Rate Bonds.** Bonds which bear a variable interest rate but do not include any bond which, during the remainder of the term thereof to maturity, bears interest at a fixed rate. Provision as to the calculation or change of variable interest rates shall be included the corresponding Supplemental Resolution.

3. **Capital Appreciation Bonds.** Bonds as to which interest is payable only at maturity or prior redemption of such Bonds or which bear a stated interest rate of zero. The corresponding Supplemental Resolution for the bonds will define the manner in which the period during which principal and interest shall be deemed to accrue, and the valuation dates for the bonds and the accreted value on the valuation date.

4. **Refunding Bonds.** Bonds refunding the whole or a part of a Series of Bonds delivered on original issuance.

B. Short-Term Debt

The Authority may issue short-term debt, from time to time as needed to fund projects for the Higher Educational Institutions during their construction phase. Such debt shall be authorized by resolution of the Authority. Short-term debt may be used for the following reasons:

- To fund projects with an average useful life of ten years or less; and
- To fund projects during their construction phase.

These notes may be structured as Bond Anticipation Notes (“BANs”) or short-term obligations that will be repaid by proceeds of a subsequent long-term bond issue or fees and charges from the borrowers. Typically these notes are issued during the construction period to take advantage of lower short-term interest rates. These notes may include:

1. **Commercial Paper (“CP”)** – CP is a form of bond anticipation note that has a maturity up to 270 days, may be rolled to a subsequent maturity date and is commonly used to finance a capital project during construction. It can be issued incrementally as funds are needed.

2. **Fixed Rate Notes** – Notes issued for a period of time less than three years at a fixed interest rate.

3. **Variable Rate Notes** – Notes issued for a period of time less than three years which bear variable interest rates until redeemed. Provision as to the calculation or change of variable interest rates shall be included in the authorizing resolution.

4. **Revolving Credit Facility** – A form of bond anticipation note involving the extension of a line of credit from a bank. The bank agrees that the revolving credit facility can be drawn upon incrementally as funds are needed. The draws upon the line of credit may bear variable interest rates until redeemed. Provision as to the calculation or change of variable interest rates shall be included in the authorizing credit agreement.

~~3.4.~~

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5. Debt Management Structure

1. The Board, when requesting financing for a project, shall request the Authority to structure the funding:

1. Term

1. All capital projects financed through the issuance of debt will be financed for a period not to exceed the useful life of the projects, but in no event will the term exceed thirty (30) years.

2. Financed (Capitalized) Interest

- 1. From time to time certain projects may require the use of capitalized interest from the issuance date until the Board has beneficial use or occupancy of the financed project.
- 2. Interest may be financed (capitalized) through a period permitted by federal law and the Authority's Second Program General Bond Resolution if it is determined that doing so is beneficial.

3. Debt Service

- 1. Debt issuance shall be planned to achieve relatively net level debt service. The Board shall not use bullet or balloon maturities, absent sinking fund requirements, except in those instances where these maturities serve to make existing overall debt service level or to match a specific income stream.
- 2. No request shall be made to the Authority for debt to be structured with deferred repayment of principal unless such structure is specifically approved by affirmative vote of the members of the Board.

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4. Call Provisions

In general, the Authority's securities will include a call feature no later than ten (10) years from the date of delivery of the bonds. Call Features should be structured to provide the maximum flexibility relative to cost. The Authority will avoid the sale of long-term non-callable bonds absent careful evaluation by the Authority with respect to the value of the call option.

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5. Original Issuance Discount/Premium

Bonds sold with original issuance discount/premium will be permitted with the approval of the Authority.

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6. Refunding Outstanding Debt

1. At least semiannually, Authority staff with assistance from the Authority's Financial Advisor analyzes outstanding bond issues for refunding opportunities, whether for economic, tax-status, or project reasons.
2. Consideration is to be given to anticipated costs and administrative implementation and management.
3. The Board shall report to the Authority a need for refunding when:
 1. The refunding of the debt is necessary due to a change in the use of a project that would require a change to the tax status of the debt.
 2. The project is to be sold or no longer in service while still in its amortization period.
 3. Restrictive Covenants prevent the issuance of other debt or create other restrictions on the financial management of the project and revenue producing activities.
4. The Board will request the refunding term to be no longer than the term of the originally issued debt.

7. Reserve Funds

1. Debt Service Reserve Fund

1. The Authority's Second Program General Bond Resolution ~~establishes~~ ~~provides that a~~ Debt Service Reserve Fund ~~to~~ ~~shall~~ ~~be set up~~ ~~established~~ for each bond that is issued.

2. If future Authority bond resolutions do not require such a reserve fund, this provision is not required.

2. Liquidity Facility
In the event the Authority shall utilize CP, the Authority may set up a liquidity facility to provide liquidity to securities that have been tendered. The liquidity facility may be in the form of a letter of credit, advance agreement or other arrangement that may provide liquidity.

2.

2.3. Interest Rate Reserve Fund

1. The Authority establishes an interest reserve fund for the ~~Commercial Paper Program~~ ~~bond anticipation notes issued~~ for each project. The interest reserve fund provides

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security for interest due on the ~~commercial paper~~ bond anticipation notes as it ~~such~~ interest matures between billings.

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2. The Board will pay on a monthly basis based on the amount ~~of commercial paper was~~ used, ~~borrowed~~.

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3. When the short-term debt for a project is either repaid or ~~taken to~~ converted to bonds, the amount invested in the reserve fund will be credited back to the Board.

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8. Risk Assessment

1. The Executive Director of Facilities Development, subject to approval of the Vice Chancellor of Business and Finance, will evaluate each transaction to assess the types and amounts of risk associated with that transaction, considering all available means to mitigate those risks.

2. The Executive Director of Facilities Development, subject to approval of the Vice Chancellor of Business and Finance, will evaluate all proposed transactions for consistency with the objectives and constraints defined in this Policy.

3. The following risks should be assessed before issuing debt:

1. Change in Public/Private Use

1. The change in the public/private use of a project that is funded by tax-exempt funds could potentially cause a ~~debt bond~~ issue to become taxable.

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2. Default Risk

1. The risk that revenues for debt service payments are not all received by the due date.

3. Liquidity Risk

1. For variable rate debt, the risk of having to pay a higher rate to the Authority for the liquidity provider in the event of a failed remarketing.

4. Interest Rate Risk

1. For variable rate debt, the risk that interest rates will rise, on a sustained basis, above levels that would have been set if the issue had been fixed.

5. Rollover Risk

1. For variable rate debt, the risk of the inability to obtain a suitable liquidity facility at an acceptable price to replace a facility upon termination or expiration of the contract period.

9. Transparency

1. As a public body, the Board shall comply with the Tennessee Open Meetings Act.
2. Additionally, the Board will assist the Authority in complying with U.S. Securities and Exchange Commission Rule 15c2-12, by providing certain financial information and operating data by specified dates, and to provide notice of certain enumerated events with respect to the bonds, if material. Such material events include:

1. Issuer's Counsel

The Authority will enter into an engagement letter agreement with each lawyer or law firm representing the Authority in a debt transaction. No engagement letter is required for any lawyer who is an employee of the Office of Attorney General and Reporter for the State of Tennessee which serves as counsel to the Authority.

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2. Bond Counsel

Bond Counsel shall be engaged through the Office of State and Local Finance and serves and assists the Authority on all its debt issues under a written agreement.

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3. Financial Advisor

The financial advisor shall be engaged through the Office of State and Local Finance and serves and assists the Authority on financial matters under a written agreement. However, the financial advisor shall not be permitted to bid on or underwrite an issue for which it is or has been providing advisory services.

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10. Professional Services

1. From time to time the Board uses its General Counsel for advice on aspects of a debt transaction; no engagement letter is required since General Counsel is an employee of the Board.
2. Additionally, the Board relies upon advice from the Office of Attorney General and Reporter, with which no engagement letter is required.

11. Potential Conflicts of Interest

1. If the Board were to hire professionals to assist the Board in a debt transaction, the professionals shall be required to disclose to the Board existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisor), as well as the Authority.
2. This disclosure shall include ~~that such information that is~~ reasonably sufficient to allow the Board to appreciate the significance of the relationships.

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12. Debt Administration

1. Planning for Sale

1. The Board (through the Executive Director of Facilities Development and Vice Chancellor of Business and Finance) will provide all requisite information to the Authority to facilitate the compilation of data necessary for the Official Statement related to the bond issuance and bond underwriting.

2. Post-Sale

1. The Board will ascertain that fees and charges are established at levels sufficient to meet the two times debt service coverage when combined with legislative appropriations.
2. The Board will (through the Executive Director of Facilities Development and Vice Chancellor of Business and Finance) provide for timely transmission of requisite debt service payments as billed by the Authority.

3. Continuing Administration

1. The Board (through institutional administration) will ascertain that facilities financed with tax exempt debt will be used in a manner such as to not jeopardize the exempt status of the issued debt.
2. The Board (through institutional administration) will maintain the financed facilities in a prudent manner establishing maintenance reserves when necessary to preserve the viability of facilities.

13. Federal Regulatory Compliance and Continuing Disclosure

1. Arbitrage

1. The Board (through the Executive Director of Facilities Development and Vice Chancellor of Business and Finance) will work with the Office of State and Local Finance to comply with arbitrage requirements on invested tax-exempt bond funds consistent with representations made in the relevant Tax Certificate.

2. The Board will also retain all records relating to debt transactions for as long as the debt is outstanding, plus three years after the final redemption date of the transaction.

2. Generally Accepted Accounting Principles (GAAP)

1. The Board will comply with the standard accounting practices adopted by the ~~Financial Accounting Standards Board and the~~ Governmental Accounting Standards Board when applicable.

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14. Review of the Policy

1. The debt policy guidelines outlined herein are intended to provide direction regarding the future use and execution of debt. The Board maintains the right to modify these guidelines in a manner similar to the original adoption of the Policy.

Sources

TBR Board Meeting September 21, 2012

Related Policies

- Acquisition & Disposal of Real Property
- Fees, Charges, Refunds, and Fee Adjustments
- Approval of Agreements
- Property Acquisition
- Facilities Planning & Design
- Budget Control
- Access to and Use of Campus Property and Facilities
- Purchasing Policies and Procedures
- Classification and Operation of Auxiliary Enterprises

Contact

Proposed Language for Study Abroad Business Procedures

Budgeting

Each study abroad program is expected to be financially self-sustaining over time, and be accountable for good financial management practices. A projected budget must be completed by the Study Abroad Program Director and submitted to the sponsoring institution's Chief Business Officer or his/her designee.

The budgeting process for study abroad programs should be based on a reasonable projection of operating costs in the host country, including consideration of projected currency exchange rates. The budget should also clearly identify which expenses are to be paid from tuition and mandatory course fees and which expenses are to be paid from the student-specific program fee revenue. The budget should also specify if the expense is for the employee or students.

Budgeting for instructional costs paid from unrestricted E&G funds may include tuition revenues generated by student enrollments in study abroad programs. Institutions should document what costs will be covered, and from which funding source.

In addition, the budgeting process should include the establishment of a reserve fund, appropriate to the size and scale of the institution's programs, to ensure that the institution can meet reasonable contingencies that may arise during the operation of the program. It is recommended that an amount not less than 5% or more than 20% of the program fees be budgeted for this reserve.

Before travel occurs, the following items must be on file with the sponsoring department or Study Abroad Office:

1. List of program participants with student ID numbers and amount of program fees paid by each participant.
2. List of faculty, including course names and numbers, section numbers, credit hours for classes taught, and names of students in each class.

Registration and Fee Payment

Students who participate in approved study abroad programs should normally be assessed tuition and program fees by their home institution (or the sponsoring institution) Business Office. Study Abroad Offices and program directors should avoid the direct receipt of payments from students, whenever possible. Study Abroad Offices and program directors should provide the Business Office necessary information about each student and his/her appropriate program charges, so that these can be entered into the institution's student information system.

Study abroad fees generally consist of two components:

1. **Tuition and mandatory student fees related to the actual registration for classes.** All campus-based study abroad programs charge students a minimum of tuition and applicable mandatory fees. Whenever possible, tuition and maintenance fees should be assessed by the regular student information system when registration occurs.
2. **Program specific fees (for travel, lodging, meals, exchange rate variance, etc.)** These program fees should be assessed in the student information system whenever possible. The payment deadlines and refund schedules for these fees will vary from program to program.

Accounting

Financial activity attributable to study abroad programs is recorded in two funds: General funds (Unrestricted E&G) and Agency funds.

1. Student tuition and applicable mandatory fee revenue is assessed and recorded in General funds (E&G) as tuition revenue. Salaries and benefits of program faculty and staff should be paid from applicable departmental E&G funds.

Note: Costs of instruction and other instructionally related costs such as employee travel, international medical insurance, lodging, meals, as well as other instructional expenses such as tutors, lecturers, room rental, etc., may be paid from E&G funds.

2. Program Fee revenue and related expenses are recorded in an Agency Fund account specific to the responsible program or office. Student-specific expenses must be paid from the Agency account. Typical student-specific costs include travel, lodging, tours, meals, event fees, and student supplies. Students are also assessed an additional program fee to cover such things as the cost of travel and non-instructional costs of conducting the program. The Program Director may also elect to charge a per-person amount for emergency funds.

Note: If an agency account has been inactive for eighteen months, with no deposits or expenditures, any excess funds remaining in the account must be transferred to another study abroad program, reserve fund for study abroad contingencies, or the general fund.

Both the activity's E&G and agency funds should be monitored and regularly reconciled by the Study Abroad Office. It should also be verified that only activity-related expenses are charged to E&G. The institution may choose to refund residual balances in the self-supporting agency fund among activity participants, or use this money to establish and maintain a contingency account. However, once the pre-determined contingency reserve has been met, any unused personal expense funds remaining in the related agency fund at the end of the program must be refunded to the participants who submitted the

funds. If funds cannot be refunded to the participants, the institutions established unclaimed property procedures should be followed.

It is recommended that the revenues and expenditures of study abroad program accounts be audited at least once every three years. This audit may be performed by institution internal auditors, State auditors, or external auditors.

Acquiring Goods and Services Abroad

To the maximum extent possible, arrangements for goods and services needed while abroad should be paid directly to the vendor from the General fund account and/or Agency account established for the study abroad program. However, there are situations where payment for goods and services abroad must be rendered at the time they are acquired. In these situations institutions may utilize several methods to make payments while abroad.

Any of the following can be used for purchases and expenses associated with a study abroad program:

- Procurement card
- Check request
- Stored value/pre-paid card
- Traveler's check
- Cash Advance/petty cash advance to an authorized institutional representative
- Direct payment by an authorized institutional representative from personal funds, with a reimbursement request to follow

Study abroad programs should comply with all applicable TBR and institution policies regarding procurement and use of these payment methods.

Petty Cash - Each institution will have the authority to determine the best way to handle payment of purchases and expenses for its study abroad programs. A petty cash fund may be established to pay for goods/services while in a foreign country. However, due to the risks and responsibilities associated with petty cash, its use should be limited to those situations where other payment alternatives are not an option.

Institutions using petty cash should have the following in place:

- Petty cash application and approval process
- Procedures for opening a domestic petty cash fund bank account
- Reconciliation guidelines
- Closeout guidelines
- Management, record-keeping, and reimbursement procedure

Travel Advance - Institutions may also allow for travel advances to pay for large expenses abroad. All travel advances should follow current institution policies. The employee must include the estimated foreign expenses that will be required to be paid in cash, along with an explanation of why they cannot be paid for with a credit card or direct billing arrangement. The employee must provide information to clearly show the business purpose of the expenses and documentation to support the expenses claimed.

Upon return, the employee must complete a Travel Expense Report and submit itemized receipts for all expenses paid from the advance. If the expenses were less than the amount of advance received, all remaining funds must be returned to the institution. If costs were more than what was provided in the travel advance for expenses that are approved or integrally related to the educational aspects of the program, the employee may receive reimbursement for these expenses.

Reimbursement

Employees are responsible for keeping copies of original receipts to verify that expenses were valid and related to the program. If it isn't possible to obtain original receipts for program-related expenses, the employee must keep a log listing all expenses and ask the person providing the service to sign and document what was provided. The institution will hold the employee financially responsible for all charges for which there are no receipts or log entries. The employee will also be responsible for all expenses that are not approved according to TBR or institution regulations, as well as those not integrally related to the educational aspects of the program.

Whether the employee owes money back to the institution or is eligible for reimbursement, he/she is responsible for completing the Travel Expense Report and submitting it with all appropriate receipts within 45 days following their return to the United States. Reimbursements that are not submitted within 60 days are considered taxable by the IRS and must be processed through the payroll system.

The following items must be completed and submitted to the Study Abroad Office no later than 45 days after the conclusion of the study abroad trip:

1. Upon return from the trip, remaining institution funds must be deposited in the Business Office with a deposit receipt form. A copy of the deposit receipt form must be submitted to the Study Abroad Office if funds were deposited.
2. Required documentation of expenses – including receipts for goods and services purchased, and signature sheets for cash allowances distributed during the program.
3. The Travel Expense Summary and a summary of travel advances should be submitted with the Travel Expense Report.
 - a. The Travel Expense Report must be filled out in U.S. dollars and signed by the Study Abroad Program Director or his/her designee.
 - b. Do not include disallowed expenses on the Travel Expense Summary and Travel Expense Report. Examples of disallowed expenses include personal items, alcohol, etc.
4. Documentation of foreign exchange rates used. This will only apply if funds were exchanged during the program. (www.oanda.com is a good resource for currency conversion.) If currency

is bought in advance, please provide documentation of the rate at which the currency was originally purchased.

5. If foreign currency was distributed to the program director in advance of the trip, documentation must be submitted with the Travel Expense Report. This also applies if foreign currency was returned to the Study Abroad/Business Office.
6. All bank statements, if applicable to the program.

CYBER INCIDENT RESPONSE PLAN

[Cover]

Agency

Incident Response Plan

EXAMPLE ONLY

Cloud services...Deductible...

Prepared by:

State of Tennessee, Treasury Department

Division of Risk Management Claims Administration

[Date]

TABLE OF CONTENTS

- EXECUTIVE SUMMARY 1
- 1.0 INTRODUCTION**
 - 1.1 GLOSSARY OF TERMS 2
 - 1.2 PURPOSE OF THE CYBER INCIDENT RESPONSE PLAN 6
 - 1.3 PURPOSE OF THE INCIDENT RESPONSE TEAM 6
 - 1.4 OBJECTIVES OF THE INCIDENT RESPONSE TEAM 6
 - 1.5 INCIDENT RESPONSE TEAM STRUCTURE AND COLOR CODE 7
- 2.0 INCIDENTS**
 - 2.1 THE FOUR FUNDAMENTAL WAYS DATA BREACHES OCCUR 8
 - 2.2 THE SIX STAGES OF RESPONSE 8
 - 2.3 INCIDENT CLASSIFICATION AND NOTIFICATION 12
 - 2.4 ESCALATION CONSIDERATIONS 14
 - 2.5 INCIDENT RESPONSE TEAM ROLES AND RESPONSIBILITIES AT EACH ESCALATION LEVEL 14
 - ESCALATION LEVEL 1 - VERY MINOR 15
 - ESCALATION LEVEL 2 - MINOR 15
 - ESCALATION LEVEL 3 - LOW 16
 - ESCALATION LEVEL 4 - MODERATE 17
 - ESCALATION LEVEL 5 - HIGH 20
 - ESCALATION LEVEL 6 - VERY HIGH 24
 - POST INCIDENT 28
- 3.0 CONTENTS OF NOTIFICATION 29**
- APPENDIX A - CONTACT LISTS FOR INCIDENT RESPONSE TEAMS 30**
- APPENDIX B - SAMPLE WRITTEN NOTIFICATION 33**
- APPENDIX C - GENERAL GUIDANCE FOR ESTABLISHMENT OF A CALL CENTER
IN THE EVENT OF A SIGNIFICANT DATA BREACH 35**
- APPENDIX D - FREQUENTLY ASKED QUESTIONS FOR CALL CENTERS 37**
- APPENDIX E - SAMPLE QUESTIONS AND CHECK LIST FOR INVESTIGATION REPORTS 41**

EXECUTIVE SUMMARY

The State of Tennessee, Treasury Department, Division of Risk Management and Claims Administration, has purchased Cyber Liability Insurance Coverage to protect State Agencies and Departments. In order to ensure coverage under this policy, each agency must implement a cyber-incident response plan. The Treasury Department has developed the following Cyber Incident Response Plan (CIRP) as a guide and framework to be used in the event of a cyber-incident. This CIRP guide is designed to assist with tailoring your own CIRP for the purpose of meeting the specific operational needs for your organization.

Cyber incidents can be accidental or malicious actions or events that have the potential of causing unwanted effects on the confidentiality, integrity and availability of State information and IT assets. Cyber incidents include, but not limited to, theft or loss of physical equipment, illegal access to systems or information, and failing to protect and secure electronic Personal Identifiable Information (PII) and/or Personal Health Information (PHI). These situations can cause your agency or department to face unnecessary expense in productivity, significant damage to systems and damage to your agency or department's reputation. Clearly, the need now exists to take action prior to suffering the consequences of a serious computer security issue.

The goal of the State of Tennessee's CIRP is to assist agencies and departments with managing a cyber-security event or incident for the purpose of mitigating damages, increasing the confidence and trust of all stakeholders and to reduce the recovery time and costs of a cyber-security breach. The CIRP will assist with decision making, internal and external coordination, unity of effort, and minimization of reputational and financial losses for your organization. This will be achieved through the implementation of these procedures outlined within this plan. The CIRP provides operational instructions for the discovery of a cyber-breach, the investigation and remediation process, the assembly of the internal response team, determining the escalation level, contacting law enforcement, the utilization of vendors, the notification process, establishing a call center and post incident lessons learned.

Effective planning must incorporate coordination across all business functions, for example, organizational communications among leadership, regulatory affairs, legal, compliance and audit and operational functions. Internal coordination, combined with easily accessible documentation of CIRP, ensures that all levels of an organization can react with greater alertness during an incident. If your agency discovers a cyber-breach or if you have any questions regarding this CIRP, please contact the Treasury Department, Division of Risk Management and Claims Administration, at 615-741-2734. Additionally, pursuant to Tennessee Code Annotated, Section 8-4-119, your agency is required to notify the Tennessee Comptroller of the Treasury by submitting a report at:

<http://www.comptroller.tn.gov/DataBreach>

Please note that this is a guide and that it is up to the individual State agency or higher learning institution to develop a CIRP that strategically fits the needs of their organizational structure. Furthermore, there will be mandatory requirements within this guide that SHALL be adopted into your organizations CIRP. These mandatory requirements will be highlighted in "BOLD" type.

STATE OF TENNESSEE, [NAME OF AGENCY/DEPARTMENT/UNIVERSITY/COLLEGE]
CYBER INCIDENT RESPONSE PLAN

1.0 INTRODUCTION

1.1 GLOSSARY OF TERMS

TERM	DEFINITION
Advanced Persistent Threat (APT)	An advanced persistent threat is a network attack in which an unauthorized person gains access to a network and stays there undetected for a long period of time. The intention of an APT attack is to steal data rather than to cause damage to your network or organization. An APT uses multiple phases to break into a network, avoid detection, and harvest valuable information over the long term.
Breach	The term "breach" is used to include the loss control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where any person that is not authorized and does not have an authorized purpose to have access or potential access to information, whether physical or electronic. It includes both intrusions (from outside the organization) and misuse (from within the organization). Malware infections will be considered a breach ONLY if it is widespread and infects computers where repairs or replacement costs exceed \$25,000, or where data is known to have been compromised.
Business Identifiable Information (BII)	Business identifiable information is information about a company or other business entity that could be used to commit or facilitate the commission of fraud, deceptive practices or other crimes. Examples include, but are not limited to, bank account information, trade secrets, and confidential or proprietary business information.
Command Center	For the purposes of this document, the command center is the central point of contact which any member of the respective government sector (STS/UT/TBR) can contact to report a cyber-security incident.
Communications Officer/Public Information Officer (PIO)	NA

TERM	DEFINITION
Computer Security Incident Response Team (CSIRT)	The computer incident response team is comprised of State subject matter experts who provide guidance and advice, and operational employees who undertake the actions required to mitigate the threat and investigate computer security events and incidents. These can be system administrators, database administrators, network engineers, or application administrators/programmers.
Cyber Security Event	A Cyber Security event is an observable change that adversely impacts the established security behavior of an environment or system.
Cyber Security Incident	A cyber security incident can be accidental or malicious actions or events that have the potential of causing actual or potential jeopardy to the confidentiality, integrity, and availability of State data and information technology assets.
Data Exfiltration	Data exfiltration is the unauthorized copying, transfer or retrieval of data from a computer or server. Data exfiltration is a malicious activity performed through various different techniques, typically by cybercriminals, over the internet or other network.
Denial of Service (DoS)	A DoS is a type of attack that attempts to prevent a system from performing its normal functions or, more frequently attempts to prevent authorized users from accessing a system.
Executive Management TEAM (EMT)	The executive management team is comprised of the senior leadership for the [Name of Agency/Department/ University/ College].
Harm	For the purposes of this document, harm means any adverse effects that would be experienced by an individual or organization (e.g., that may be socially, public trust, physically or financially damaging) whose information was breached, as well as any adverse effects experienced by the organization that maintains the information.
Human Resources (HR)	NA

TERM	DEFINITION
Imminent Threat	Imminent threat is a situation in which the agency has a factual basis for believing that a specific incident is about to occur. For example, the agency receives a bulletin from Microsoft warning of operating system vulnerabilities that must be patched immediately.
Inappropriate Usage	Inappropriate usage entails the use of resources in ways other than their intended purpose or which have not been approved. Examples include, but are not limited to, any illegal use of State computer systems; using State computer systems to conduct personal business, and sending communications that violate established conduct policies.
Incident Lead (IL)	The incident lead is an individual appointed the highest official within in the Executive Management Team to direct and manage the internal response team, as well as to act as the go-between for the Executive Management Team.
Identity Theft	<p>Identity theft is the act of obtaining or using an individual’s identifying information without authorization in an attempt to commit or facilitate the commission of fraud or other crimes. The resulting crimes usually occur in one of the following ways. Identity thieves may attempt to:</p> <ul style="list-style-type: none"> • Gain unauthorized access to existing bank, investment or credit accounts using information associated with the person. • Withdraw or borrow money from existing accounts or charge purchases to the accounts. • Open new accounts with a person’s identifiable information without that person’s knowledge. • Obtain driver’s licenses, social security cards, passports or other identification documents using the stolen identity.
Legal, Audit and Compliance Team	The legal, audit and compliance team is comprised of Agency and Treasury personnel.
Malware	Short for malicious software, malware is software that enters a computer system without the user’s knowledge or consent and then performs an unwanted, and usually harmful, action. Examples include, but are not limited to, worms, viruses, key-loggers, rootkits, and Trojans.

TERM	DEFINITION
Unauthorized Access	Unauthorized access occurs when individuals or systems are able to access data, resources or environments without explicit approval from the owner.
Unauthorized Release of Data that is Protected by State or Federal Statute or Regulation	An unauthorized release of data is a communication or physical transfer of confidential information to an unauthorized recipient. Examples include, but are not limited to, a user inadvertently sends a confidential file to an email list, a poorly written application allows users to gain access to sensitive information, and an unencrypted computer or data storage device with confidential information on it is lost or stolen.
Zero-Day Threat	A Zero-Day Threat is a computer threat that exposes undisclosed or unpatched computer vulnerabilities. Zero-day attacks can be considered extremely dangerous because they take advantage of previously unknown vulnerabilities for which no solution is currently available.

1.2 PURPOSE OF THE CYBER INCIDENT RESPONSE PLAN (CIRP)

The CIRP is required in order to bring needed resources together in an organized manner to deal with an adverse event related to the safety and security of *[Name of Agency/ Department/University/College]* Computer Resources and the Securing of Personal Identifiable Information (PII) and Personal Health Information (PHI). This adverse event may be malicious code attack, unauthorized access to *[Name of Agency/Department/University/ College]* systems, unauthorized use of *[Name of Agency/Department/University/ College]* services, general misuse of systems and failure to secure PPI and PHI information.

1.3 PURPOSE OF THE INCIDENT RESPONSE TEAM (IRT)

The purpose of *[Name of Agency/Department/University/College]* Incident Response Team is to:

- Protect *[Name of Agency/Department/University/College]* information assets.
- Provide subject matter expertise with managing and handling incidents.
- Determine the extent to which the incident poses problems related to identity theft, loss of individuals', companies' or businesses' privacy or confidentiality or the security of *[Name of Agency/Department/University/College]* information and systems.
- Manage activities to recover from the breach and mitigate the resulting damage, including decisions relating to external breach notification.
- The team will implement the response plan, engage the proper resources and track the efforts and the progress of containing the breach.
- Prevent the use of *[Name of Agency/Department/University/College]* systems in attacks against other systems (which could cause us to incur legal liability).
- Minimize the potential for negative exposure with *[Name of Agency/Department/ University/College]* reputation and regaining and building public trust.

1.4 OBJECTIVES OF THE INCIDENT RESPONSE TEAM (IRT)

The objectives of *[Name of Agency/Department/University/College]* Incident Response Team are to:

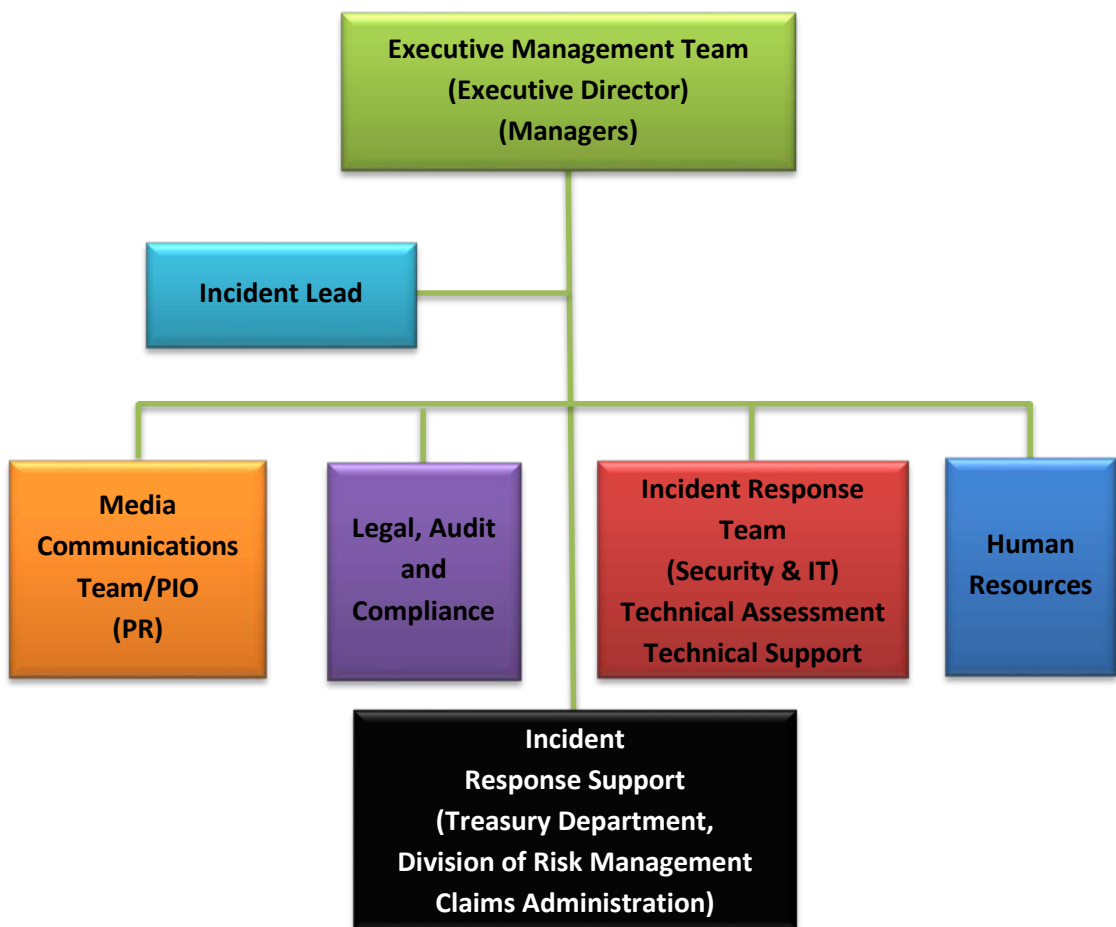
- Contain and minimize threat.
- Determine who initiated the incident. Identify key tasks, manage timelines and document all response efforts from beginning to end.
- Assign and establish team roles and responsibilities, along with specifying access credentials.
- Determine how the incident occurred.
- Avoid escalation and further incidents from specific breach.
- Limit immediate incident impact to customers and partners.
- Summarize the steps needed to assess the scope of a breach.

- Assess the impact and damage in terms of financial harm, reputational harm or other harm.
- Recover from the incident.
- Outline the budget and resources needed to handle a breach.
- Find out how to avoid further exploitation of the same vulnerability.
- Update policies and procedures as needed.
- Ensure contact lists remain updated and team members remain ready to respond.
- Analyze response efforts post-breach to better prepare the *[Name of Agency/Department/University/College]* and team for the next incident.

1.5 INCIDENT RESPONSE TEAM STRUCTURE AND COLOR CODE

To adequately respond to an intrusion or incident, predetermined teams will participate depending on the incident characteristics. As the situation develops and the impact becomes more significant, the various teams will be called to contribute.

See **Appendix A** for list of names and contact numbers for IRT Members.



2.0 INCIDENTS

2.1 THE FOUR FUNDAMENTAL WAYS DATA BREACHES OCCUR

- Theft or Loss of Physical Equipment - A data breach can occur with the theft or loss of physical equipment which stores data, such as laptop computers or memory storage devices.
- Illegal Access to the Systems or Information - A data breach can occur through malicious code, denial of service, unauthorized access, and unlawful access to PII data by technological means such as hacking into existing computer systems or hijacking computers with viruses, worms or Trojans. Once inside a system, a cyber-criminal can steal data, infect it or overload computer systems.
- Insiders - A data breach can be committed by current employees, ex-employees or even through social engineering where an employee is tricked into providing access or unauthorized release of sensitive information either within or outside of the State such as, but not limited to, phishing, spear phishing, hacking into social networks, and other socially-engineered fraud.
- Oversight - A data breach can occur when no one thought the information needed to be protected and no precautions were taken to safeguard the data in the first place.

2.2 THE SIX STAGES OF RESPONSE

(1) **Preparation** - One of the most important facilities to a response plan is to know how to use it once it is in place. Knowing how to respond to an incident BEFORE it occurs can save valuable time and effort in the long run through the practice of table top exercises and annual training. Review your information system(s) and data and identify where PII, PHI and other sensitive information resides. This can be done by the following:

- Documenting what PII, PHI and other sensitive information is maintained by your organization, where it is stored (including backup storage and archived data), and how it is kept secure;
- Conducting regular risk assessments and evaluating privacy threats for your organization, as well as any contractors, vendors, and other business partners;
- Reviewing who is approved for access to PII, PHI and/or other sensitive information and checking user activity status to determine which accounts should be deactivated after a pre-determined period of inactivity;
- Reviewing separation of duties to help ensure integrity of security checks and balances as employees should only have access to information related to their job function;
- Implementing mitigation controls designed to prevent and detect unauthorized access, theft or misuse of PII, PHI and/or other sensitive data, which includes hard copy files;

- Implementing security controls, such as encryption of sensitive data in motion and at rest (where feasible);
 - Regularly reviewing and keeping up-to-date your data destruction policies, to minimize the risk of data breaches through unauthorized access to archived media or computers that are no longer in use; and
 - **Annually review and update your CIRP and conduct table top exercises that shall include the Executive Management Team.**
- (2) **Incident Discovery/Detection** - It is important that anyone who reports a security incident provides as much relevant information as possible. Based upon the type of the incident, notifications need to go to the appropriate people in the Incident Classification Chart. Additionally, the IRT will identify the appropriate technical teams that are needed to assist with the analysis phase of the incident.
- (3) **Triage and Analysis** - Involves limiting the scope and magnitude of an incident because some incidents may involve malicious code and these types of incidents can spread rapidly. This can cause massive destruction and loss of information. As soon as an incident is recognized, immediately begin working on containment. Also, involves the containment of stolen or unauthorized access to electronic stored data or disseminated of information to an external data base. During this phase of the Incident Handling, it is important to initially identify the criticality of the incident (this may be changed during the analysis phase). This will be done by the IL and IRT. The IL and IRT should consider and determine that an incident may have a State-wide impact. The IL and IRT will undertake appropriate root cause analysis and actions to minimize the risk to state's core business operations.
- (4) **Eradication and Recovery** - Restoring a system to its normal business status is essential. Once a restore or recovery has been performed, it is important to verify that the restore operation was successful and that the system is back to its normal condition or the breached data has been contained.
- A computer forensic examination of all loss of data shall be conducted to determine all possible external electronic storage locations.
 - This computer forensic examination shall also verify if the breached data has or has not been disseminated to any other known or unknown external electronic location.
 - The IL shall document all ongoing events, all people involved and all discoveries into a timeline for evidentiary use.
 - The EMT will determine if external notification process shall be activated (*affected individuals, affected businesses, local law enforcement, FBI and/or contracted cyber response vendors*).
 - To determine whether notification of a breach is required, the likely risk of harm caused by the breach and then the level of risk must be assessed.

- A wide range of harm should be considered, such as harm to reputation and the potential for harassment or prejudice, particularly when health or financial benefits information is involved in the breach. Removing the cause of the incident can be a difficult process. It can involve virus removal, conviction of perpetrators or dismissing employees.

(5) **Initial Notification** - Identify whether or not an incident has occurred. If one has occurred, the incident response team (IRT) can take the appropriate actions. If the initial cyber incident is determined to be moderate or high, the EMT shall notify and activate appropriate segments of the Incident Response Team (IRT) and determine if Tennessee Bureau of Investigation involvement is warranted. **Agencies shall report actual or suspected data breaches and suspected data breaches and significant cyber security incidents within 24 hours of discovery to the State Comptroller, the State Treasurer, and the Treasury Department, Division of Risk Management Claims Administration.** Depending on the totality of the circumstances, these guidelines recommend consideration of when an agency or higher learning institution should notify the State Attorney General, the Executive Branch, the Chancellors of the Tennessee Board of Regents, and the University of Tennessee as applicable, and, if determined, members of the General Assembly. **All Departments are still subject to audit by the Comptroller of the Treasury authorized by Tennessee Code Annotated, Section 8-4-109(a)(2).**

- **The highest appointed/elected official (Executive Director) in the EMT shall determine if the [Name of Agency/Department/University/College] will notify the State of Tennessee Board of Regents Chancellor, the University of Tennessee Chancellor, Legislative Branch, Treasurer, Comptroller, Secretary of State, Attorney General, and the Executive Branch.**
- The internal notification process shall include details of the incident, initial risk rating (Low, Moderate, High), as well as the actions that have been taken to respond to the incident thus far.
- Upon discovery, the Incident Lead (IL) of the Incident Response Team (IRT) shall report actual or suspected breaches, significant breaches of departmental data or significant cyber security incidents to [Name of Agency/Department] Executive Management Team immediately (EMT) and as soon as possible to the Department of Treasury, Division of Risk Management Claims Administration, if a brief status report of what has occurred is determined by IRT. The IRT will work with the EMT to record the incident information and the details of the breach in the Cyber Incident Investigation Report Form Note: For individual instances of malware, the IRT should not be activated.

Consider the following:

- ✓ How difficult is it to contain the incident?
- ✓ How fast is the incident spreading?

(6) **Follow-Up** - Performing follow-up activity is one of the most critical activities in the response procedure. This follow-up can support any efforts to prosecute those who have broken the law.

- This includes, but not limited to, changing *[Name of Agency/Department/University/College]* policies as appropriate. After an incident is resolved, all incidents that have reached a severity of Level 4 or higher will be reviewed by the CSIRT and CISO and a final incident report will be compiled to ensure that all existing processes were followed and were adequate.
- Schedule a lessons-learned meeting with IRT and EMT to discuss any identified improvements to the response plan and the processes to the response that worked well during the incident.
- Determine if other external services, such as law enforcement, insurance company, or cyber vendors, should be considered to assist with future cyber breaches and incidents.
- What is the estimated financial impact to *[Name of Agency/Department/University/College]*?
- Will this affect *[Name of Agency/Department/University/College's]* image or public trust negatively?
- Maintain logbook of events and develop an investigation report.
- The investigation report shall include, describe and answer the following:
 - ✓ The description of the data lost, including the amount and its sensitivity or classification level.
 - ✓ For cyber security incidents, the nature of the cyber threat (e.g., Advanced Persistent Threat, Zero Day Threat and data exfiltration).
 - ✓ Nature and number of persons affected (e.g., employees, external customers, students, citizens, vendors).
 - ✓ Likelihood data is accessible and usable from unauthorized personnel or cyber criminals.
 - ✓ Likelihood the data was intentionally targeted.
 - ✓ Evidence that the compromised data is actually being used to commit identity theft.
 - ✓ Strength and effectiveness of security technologies protecting data.
 - ✓ Likelihood the breach may lead to harm and the type of harm. Such harm may include confidentiality or fiduciary responsibility, blackmail, disclosure of private facts, mental pain and emotional distress, the disclosure of address information for victims of abuse, the potential for secondary uses of the information which could result in fear or uncertainty.
 - ✓ Ability to mitigate the risk of harm.

2.3 INCIDENT CLASSIFICATION AND NOTIFICATION

An incident will be classified as one of six severity levels. These severity levels are based on the impact to *[Name of Agency/Department/University/College]* and can be expressed in terms of financial impact, impact to services and/or performance of *[Name of Agency/Department/University/College]* mission functions, impact to image or impact to public trust.

All security incidents are classified by the actual and potential impacts on day-to-day activities of the State. This criticality review must occur within all phases and, as the criticality changes, appropriate notifications need to be made. As shown in the chart below, the Incident Response Team (IRT) will be notified for all suspected or confirmed incidents starting with incidents triaged and determined to be “Minor” or above in severity. All incidents determined to be severity level “Low” and above will be escalated by the IRT to the Incident Lead (IL). Incidents determined to be “Moderate” and above will be escalated by the IL to the Executive Management Team (EMT). At the EMT’s discretion, notification will be given to *(the State of Tennessee Board of Regents Chancellor, the University of Tennessee Chancellor, Legislative Branch, Treasurer, Comptroller, Secretary of State, Attorney General, and the Executive Branch)*.

There may be times when other notifications need to take place, and the Notification Target is only the minimum notification requirement. The (STS, UT, or TBR) Command Center is responsible for maintaining up-to-date contact lists. Please contact them to initiate any required contacts that are not already available. [Strategic Technology Solutions-(615) 741-1001 or (800) 342-3276, option 3; University of Tennessee Office of Information Technology (865) 974-2333; Tennessee Board Regents Chief Information Officer (615) 366-4451].

The Incident Response Team (IRT) shall assess data breaches and incidents involving PII, payment card information, federal tax information, PHI, BII, FERPA, PCI, FTI, or all other data breaches and incidents with support from Treasury Department, Division of Risk Management Claims Administration. The assessment will be based on the details included in the incident report and will assign an initial potential impact level of Low, Moderate or High. The potential impact levels describe the worst case potential impact on the organization, individual person, employee, or vendor of the breach/cyber incident. The Executive Management Team shall determine, as the incident has more impact (severity level increases), the escalation process will be invoked to involve appropriate resources. Incidents should be handled at the lowest escalation level that is capable of responding to the incident, with as few resources as possible, to reduce the total impact, and to keep tight control. Below category defines the escalation levels with the associated team involvement.

INCIDENT CLASSIFICATION, ESCALATION LEVELS AND NOTIFICATION		
SEVERITY	DESCRIPTION	NOTIFICATION TARGET
6 - Very High	Multiple systems inoperable or taken offline preventing the performance of daily duties impacting the servicing of customers, or confirmed data breach or system compromise of more than one application, system or area, or involving sensitive application or system data.	<ul style="list-style-type: none"> • EMT • IL • PIO/Media Communications (PR) • Legal • IRT • HR • IRS (Incident Response support-Treasury)
5- High	Single system inoperable or taken offline, preventing the performance of daily duties impacting the servicing of customers, or confirmed data breach or system compromise of a single application, system or area involving non-sensitive application or system data.	<ul style="list-style-type: none"> • EMT • IL • PIO/Media Communications (PR) • Legal • IRT • HR • IRS (Incident Response support-Treasury)
4 - Moderate	Server(s) is operable with minor damage. Minor damage to facility or business areas which prevents the performance of daily duties which impact the servicing of customers, or unconfirmed suspected data or system compromise.	<ul style="list-style-type: none"> • EMT • IL • PIO/Media Communications (PR) • IRT • IRS (Incident Response support-Treasury)
3 - Low	Server operable with no significant degradation of performance or more than five end user sites affected by the same Minor severity event.	<ul style="list-style-type: none"> • IL • IRT Primary Contact
2 - Minor	More than five workstations, in a single site, blocked for reimaging.	<ul style="list-style-type: none"> • IRT Primary Contact
1 - Very Minor	Single workstation blocked for reimage. No data compromise.	<ul style="list-style-type: none"> • No Notification

2.4 ESCALATION CONSIDERATIONS

Executive Management Team (EMT) will consider several characteristics of the incident before escalating the response to a higher level and prior to the EMT determining the severity of the data breach (Low, Moderate or High). The following considerations should be answered by the EMT:

- How wide spread is the incident?
- What is the impact to *[Name of Agency/Department/University/College's]* operations?
- How difficult is it to contain the incident?
- How fast is the incident spreading?
- What is the estimated financial impact to *[Name of Agency/Department/University/College]*?
- Should law enforcement be notified?"
- Will this affect *[Name of Agency/Department/University/College's]* public image negatively?

2.5 INCIDENT RESPONSE TEAM'S ROLES AND RESPONSIBILITIES AT EACH ESCALATION LEVEL

The *[Name of Agency/Department/University/College]* EMT and IRT will determine the appropriate course of action, including notification to affected individuals, the resources needed, and any appropriate remedy options. The EMT and IRT shall notify the State of Tennessee Division of Risk Management Claims Administration (DRMCA) for insurance purposes. The EMT and/or IRT may request additional support from DRMCA upon request.

ESCALATION LEVEL 1 - VERY MINOR

Normal Operations

- Monitor all known sources for alerts or notification of a threat. Single workstation blocked for reimage. No data compromised. NO NOTIFICATION REQUIRED.

ESCALATION LEVEL 2 - MINOR

Incident Response
Team - Primary Contact

- Verify that an incident has actually occurred. This activity typically involves the unit systems administrator and end user, but may also result from proactive incident detection work of the Security Office or central IT operations. If it is determined that an incident has occurred, inform appropriate authorities.
- Monitor all known sources for alerts or notification of a threat. More than five workstation blocked for reimage. No data compromised.
- Determine if the Incident Lead needs to be contacted to escalate to Levels 3, 4, 5, or 6.

ESCALATION LEVEL 3 - LOW

Incident Response Team - Primary Contact

- Conduct a thorough assessment of the type and scope of data exposed following applicable laws, regulation, and policy.
- Determine initial defensive action required.
- Notify the Incident Lead.
- Server operable with no significant degradation of performance, or more than five end user sites affected by the same minor severity event.
- Take steps to remove the cause of the exposure, reduce the impact of the exposure of the sensitive data, and restore operations if the incident compromised or otherwise put out of service a system or network, and ensure that future risk of exposure is mitigated.

Incident Lead

- Based upon the incident classification, determine if an "Executive Communications Team" needs to be formed.
- Receive and track all reported potential threats.
- Escalate Incident Response to appropriate Escalation Level if a report is received indicating that the threat has manifested itself.
- Determine relevant assignment of tasks for personnel to conduct the assessment the data breach has been confirmed.
- Alert IT organizations and applicable support organizations of the potential threat and any defensive action required.
- Alert the Executive Management Team and the Communication Team of the potential threat if determined the incident needs to escalate to Levels 4, 5, or 6.
- Alert Legal, Audit and Compliance of the potential threat if determined the incident needs to escalate to Levels 5 and 6.
- Notify the Incident Response Support Team (DRMCA) of the potential threat if determined the incident needs to escalate to Levels 4, 5, or 6.

ESCALATION LEVEL 4 - MODERATE

Executive Management Team

- Assume responsibility for directing activities in regard to the incident.
- Determine whether Escalation Level 4 is appropriate or escalate to Level 5, or possibly Level 6.
- Determine when the risk has been mitigated to an acceptable level.
- Executive Director determines when internal notification process should be activated.
- Executive Director determines if Tennessee Bureau of Investigation notification process should be activated.
- Determine when the breach of data has been either contained or mitigated to an acceptable level through the activation of the computer forensic examination.
- Determine if external notification process shall be activated (affected individuals, affected businesses, local law enforcement, FBI and/or contracted cyber response vendors).
- Ensure a computer forensic examination of all loss of data will be conducted to determine all possible external electronic storage locations.
- Determine risk of harm caused by the breach and then the level of risk must be assessed to escalate to Levels 5 or 6.
- **Determine if notice to individuals whose data may have been exposed by the incident is addressed. Swiftmess in notifying those affected by a breach of personally identifiable information (PII), as well as informing certain government entities, is legally mandated in many states and, depending on the nature of the data, also federal law. Speed is also important from a public relations standpoint. To this end, many of the sub-steps can and should be undertaken in parallel to accommodate these needs.**

ESCALATION LEVEL 4 - MODERATE

Incident Lead

Note:

The chronological log will be used to support possible follow up on legal action as determined by [Name of Agency/ Department/ University/College] General Counsel, and Executive Director.

- **Notify the Executive Management Team of the manifestation of the threat.**
- **Notify the Incident Response Support Team (DRMCA) of the incident.**
- **Receive status from the Technical Assessment Team and report to the Executive Management Team.**
- Start a chronological log of events.

Incident Response Team -Technical Assessment

- **Determine best course of action for containment of the incident.**
- **Report actions taken and status to the Incident Lead.**
- **Report actions taken and status to the Incident Response Coordinator.**

Incident Response Team - Technical Support

- Take whatever action as determined by the Technical Assessment Team.
- Report actions taken, number of personnel involved etc. to Incident Coordinator for the chronological log.

Communication Team/PIO

Note:

The Communication and Executive Management Teams should consider notifying the public media as soon as possible after the discovery of a breach. However, if possible, the incident response plan and notification content should be developed prior to notifying the media.

- Message the [Name of Agency/ Department/University/ College] employee population informing them of the incident if deemed appropriate by the Executive Management Team.
- Message the [Name of Agency/ Department/University/ College] employee population of any action they need to take as determined by the Technical Assessment Team and directed by the Executive Management Team.
- Determine, with Legal, Audit and Compliance, the specific legal obligations and timeline for notification.
- Assist the Executive Management Team with determining if or when the data breach should be released to affected individuals and/or the media.
- Notification content should focus on providing information, including links to resources, to aid the public in its response to the breach.

ESCALATION LEVEL 4 - MODERATE

Communication
Team/PIO
(continued)

- Notification may be delayed upon the request of law enforcement.
- To the extent possible, prompt public media disclosure is generally preferable because delayed notification may erode public trust.

Incident Reponse
Support

(Risk Management
Claims Administration -
Treasury)

- Obtain copy of initial investigation report from the Incident Lead or the Executive Management Team.
- Notify State of Tennessee's insurance broker and insurance carrier.
- Submit the initial investigation report to insurance carrier and broker.
- Determine if a recommendation to activate cyber reponse vendors is needed to the Incident Lead or the Executive Management Team.
- Respond to any request for assistance from the Incident Lead or the Executive Management Team.

ESCALATION LEVEL 5 - HIGH

Executive Management Team

- Direct the Incident Response Support Team to:
 - ✓ Set up communications between all Executive Team Managers and the Technical Support Team.
 - ✓ Establish and assume occupancy of the command center.
 - ✓ Initialize an incident voice mail box where status messages can be placed to keep *[Name of Agency/ Department/University/College]* personnel updated.
- Executive Director determines if Tennessee Bureau of Investigation (TBI) notification process should be activated. In some circumstances, the Executive Director, Executive Team Managers, and TBI may consider delaying external notification to affected individuals and media if a notification would seriously impede the investigation of the breach or the affected parties. However, any delay should not worsen risk or harm to any affected individual.
- Alert the Extended Team of the incident notifying them of the Severity Level.
- Determine when external notification process shall be activated (affected individuals, affected businesses, local law enforcement, FBI, and/or contracted cyber response vendors).
- Determine when a computer forensic examination of all loss of data will be conducted to determine all possible external electronic storage locations.
- Determine when the risk has been mitigated to an acceptable level.
- Provide status updates from Executive Director to the leadership hierarchy within the *[Name of Agency/ Department/ University/College]*.
- Ensure that all needed information is being collected to support legal action or financial restitution.
- Determine if the information that has been lost or stolen is properly protected by encryption and has been validated by the Technical Assessment Team. If it is determined that the data is encrypted, the risk of compromise may be low to nonexistent.
- Determine if and when the cyber vendor's call center and monitoring services will be used for the data breach/cyber incident.

ESCALATION LEVEL 5 - HIGH

Executive Management Team
(continued)

- **Determine if notice to individuals whose data may have been exposed by the incident is addressed. Swiftmess in notifying those affected by a breach of personally identifiable information (PII), as well as informing certain government entities, is legally mandated in many states and, depending on the nature of the data, also federal law. Speed is also important from a public relations standpoint. To this end, many of the sub-steps can and should be undertaken in parallel to accommodate these needs.**

Incident Lead

- Continue maintaining the chronological log of event.
- Post numbered status messages in the incident voice mail box for updating agency executive management.
- Continue to have oversight over the tasks and progress of the Technical Assessment Team and the Technical Support Team.
- Report progress of both the Technical Assessment Team and the Technical Support Team to the Executive Management Team.

Incident Reponse Team - Technical Assessment

- Continue to monitor all known sources for alerts, looking for further information or actions needed to eliminate the threat.
- Continue reporting status to the Incident Lead for the chronological log of events.
- Monitor effectiveness of actions taken and modify them as necessary.
- Provide status updates to the Incident Lead on effectiveness of actions taken and progress in eliminating the threat.

Incident Reponse Team - Technical Support

- Continue actions to eradicate the threat as directed by the Executive Management Team, the Incident Lead, and the Technical Assessment team.
- Continue to report actions taken, number of personnel, etc. to the Incident Lead for the chronological log.

ESCALATION LEVEL 5 - HIGH

Legal, Audit and Compliance

- Determine, with Communications, the specific legal obligations and timeline for notification. Consult Tennessee Code Annotated, Section 47-18-2107 for specific requirements, and with the Consumer Protection Division of the Attorney General's Office.
- Notify the Executive Management Team to determine if or when the data breach notification letter should be released to affected individuals and/or the media.
- If the breach involves a state contractor or a public-private vendor operating a system of records on behalf of *[Name of Agency/Department/University/College]*, the Legal, Audit, and Compliance Team is responsible for ensuring or determining if any notification and corrective actions needs to be taken by *[Name of Agency/Department/University/College]*.
- Review contract and outline the roles, responsibilities, and relationships with contractors or vendors, and prepare a summary reflecting cyber insurance requirements within contract.
- Work directly with the state-contracted Cyber Coach Attorney and/or obtain an engagement letter with outside counsel or firm that specializes in cyber breaches/incidents. Consult with Attorney General's Office if an engagement letter is required.

Communication Team/PIO

*Note:
The Communication and Executive Management Teams should consider notifying the public media as soon as possible after the discovery of a breach. However, if possible, the incident response plan and notification content should be developed prior to notifying the media.*

- Message the *[Name of Agency/Department/University/College]* employee population informing them of the incident if deemed appropriate by the Executive Management Team.
- Message the *[Name of Agency/Department/University/College]* employee population of any action they need to take as determined by the Technical Assessment Team and directed by the Executive Management Team.
- Determine, with Legal, Audit and Compliance, the specific legal obligations and timeline for notification.
- Assist the Executive Management Team with determining if occurrence of the data breach should be released to affected individuals and/or the media and, if so, when to release information.

ESCALATION LEVEL 5 - HIGH

Communication
Team/PIO
(continued)

- Notification content should focus on providing information, including links to resources, to aid the public in its response to the breach.
- Notification may be delayed upon the request of law enforcement.
- To the extent possible, prompt public media disclosure is generally preferable because delayed notification may erode public trust.

Incident Reponse
Support

(Risk Management
Claims Administration -
Treasury)

- Obtain copy of initial investigation report from the Incident Lead or the Executive Management Team.
- Notify State of Tennessee's insurance broker and insurance carrier.
- Submit the initial investigation report to insurance carrier and broker.
- Determine if a recommendation to activate cyber reponse vendors is needed to the Incident Lead or the Executive Management Team.
- Respond to any request for assistance from the Incident Lead or the Executive Management Team.

Human Resources

- HR, Legal, Audit and Compliance, and Executive Director determine disciplinary action or termination is warranted if the breach of data/cyber incident was from an internal source.

ESCALATION LEVEL 6 - Very High

Executive Management Team

- Direct the Incident Response Support team to:
 - ✓ Set up communications between all Executive Team Managers and the Technical Support Team.
 - ✓ Establish and assume occupancy of the command center.
 - ✓ Initialize an incident voice mail box where status messages can be placed to keep *[Name of Agency/ Department/University/College]* personnel updated.
- Executive Director determines if Tennessee Bureau of Investigation (TBI) notification process should be activated. In some circumstances, the Executive Director, Executive Team Managers and TBI may consider delaying external notification to affected individuals and media if a notification would seriously impede the investigation of the breach or the affected parties. However, any delay should not worsen risk or harm to any affected individual.
- Alert the Extended Team of the incident notifying them of the Severity Level.
- Determine when external notification process shall be activated (affected individuals, affected businesses, local law enforcement, FBI, and/or contracted cyber response vendors).
- Determine when a computer forensic examination of all loss of data will be conducted to determine all possible external electronic storage locations.
- Determine when the risk has been mitigated to an acceptable level.
- Provide status updates from Executive Director to the leadership hierarchy within the *[Name of Agency/ Department/ University/College]*.
- Ensure that all needed information is being collected to support legal action or financial restitution.
- Determine if the information that has been lost or stolen is properly protected by encryption and has been validated by the Technical Assessment Team. If it is determined that the data is encrypted, the risk of compromise may be low to nonexistent.
- Determine if and when the cyber vendor's call center and monitoring services will be used for the data breach/cyber incident.

ESCALATION LEVEL 6 - Very High

Executive Management Team
(continued)

- **Determine if notice to individuals whose data may have been exposed by the incident is addressed. Swiftmess in notifying those affected by a breach of personally identifiable information (PII), as well as informing certain government entities, is legally mandated in many states and, depending on the nature of the data, also federal law. Speed is also important from a public relations standpoint. To this end, many of the sub-steps can and should be undertaken in parallel to accommodate these needs.**

Incident Lead

- Continue maintaining the chronological log of events.
- Post numbered status messages in the incident voice mail box for updating agency executive management.
- Continue to have oversight over the tasks and progress of the Technical Assessment Team and the Technical Support Team.
- Report progress of both the Technical Assessment Team and the Technical Support Team to the Executive Management Team.

Incident Response Team - Technical Assessment

- Continue to monitor all known sources for alerts, looking for further information or actions needed to eliminate the threat.
- Continue reporting status to the Incident Lead for the chronological log of events.
- Monitor effectiveness of actions taken and modify them as necessary.
- Provide status updates to the Incident Lead on effectiveness of actions taken and progress in eliminating the threat.

Incident Reponse Team - Technical Support

- Continue actions to eradicate the threat as directed by the Executive Management Team, the Incident Lead, and the Technical Assessment team.
- Continue to report actions taken, number of personnel, etc. to the Incident Lead for the chronological log.

ESCALATION LEVEL 6 - Very High

Legal, Audit and Compliance

- Determine, with Communications, the specific legal obligations and timeline for notification. Consult Tennessee Code Annotated, Section 47-18-2107 for specific requirements, and with the Consumer Protection Division of the Attorney General's Office.
- Notify the Executive Management Team to determine if or when the data breach notification letter should be released to affected individuals and/or the media.
- If the breach involves a state contractor or a public-private vendor operating a system of records on behalf of *[Name of Agency/Department/University/College]*, the Legal, Audit, and Compliance Team is responsible for ensuring or determining if any notification and corrective actions needs to be taken by *[Name of Agency/Department/University/College]*.
- Review contract and outline the roles, responsibilities, and relationships with contractors or vendors, and prepare a summary reflecting cyber insurance requirements within contract.
- Work directly with the state-contracted Cyber Coach Attorney and/or obtain an engagement letter with outside counsel or firm that specializes in cyber breaches/
- incidents. Consult with Attorney General's Office if an engagement letter is required.

Communication Team/PIO

*Note:
The Communication and Executive Management Team should consider notifying the public media as soon as possible after the discovery of a breach. However, if possible, the incident response plan and notification content should be developed prior to notifying the media.*

- Message the *[Name of Agency/Department/University/College]* employee population informing them of the incident if deemed appropriate by the Executive Management Team.
- Message the *[Name of Agency/Department/University/College]* employee population of any action they need to take as determined by the Technical Assessment Team and directed by the Executive Management Team.
- Determine, with Legal, Audit and Compliance, the specific legal obligations and timeline for notification.
- Assist the Executive Management Team with determining if occurrence of the data breach should be released to affected individuals and/or the media and, if so, when to release information.

ESCALATION LEVEL 6 - Very High

Communication
Team/PIO
(continued)

- Notification content should focus on providing information, including links to resources, to aid the public in its response to the breach.
- Notification may be delayed upon the request of law enforcement.
- To the extent possible, prompt public media disclosure is generally preferable because delayed notification may erode public trust.

Incident Reponse
Support
(Risk Management
Claims Administration)

- Submit updated status reports received from the Incident Lead or the Executive Management Team to insurance carrier.
- Determine if a recommendation to activate cyber reponse vendors is needed to the Incident Lead or the Executive Management Team.
- Respond to any request for assistance from the Incident Lead or the Executive Management Team.
- Assist the Executive Management Team with setting up cyber vendors call center and monitoring services.

Human Resources

- HR, Legal, Audit and Compliance, and Executive Director determine disciplinary action or termination is warranted if the breach of data/cyber incident was from an internal source.

POST INCIDENT

Incident Lead	<p>Prepare a report for <i>[Name of Agency/Department/ University/ College]</i> executive management to include:</p> <ul style="list-style-type: none">• Estimate of damage/impact;• Action taken during the incident (not technical detail);• Follow-up on efforts needed to eliminate or mitigate the vulnerability;• Policies or procedures that require updating;• Efforts taken to minimize liabilities or negative exposure; and• Document lessons learned and modify the Incident Response Plan accordingly.
Legal, Audit and Compliance	<ul style="list-style-type: none">• Confirm transmission of any notifications determined necessary by law or policy.• Provide the chronological log and any system audit logs requested by law enforcement or prosecutors, if applicable.• Assist with preparing any or all documents, upon request, from law enforcement or prosecutors, if applicable.
Human Resources	<ul style="list-style-type: none">• Determine if any additional training regarding PII, HIPAA, or FERPA is needed for all or certain classes of employees.• Continue with scheduling annual training for PII, HIPAA, or FERPA for all employees.

3.0 CONTENTS OF THE NOTIFICATION

Please note that Legal, Compliance, and Audit divisions should consult Tennessee Code Annotated, Section 47-18-2107 regarding notification requirements.

The **notification letter** should be provided in writing and should use concise and plain language. The notice should include the following elements:

- A brief description of what happened, including the date(s) of the breach and of its discovery.
- A description of the types of personal information involved in the breach (e.g., full name, Social Security number, date of birth, home address, account number, disability code, etc.).
- A statement regarding whether the information was encrypted or protected by other means when determined such information would be beneficial and would not compromise the security of the system.
- What steps affected parties should take to protect themselves from potential harm, if any.
- What is being done, if anything, to investigate the breach, to mitigate losses and to protect against any further breaches? The inclusion of any details concerning the investigation of the breach should take into consideration whether or not the inclusion of such details would jeopardize an ongoing law enforcement investigation.
- Who should affected parties contact for more information? Include a toll-free call center telephone number, e-mail address, and postal address.
- Given the amount of information required above, the component may want to consider layering the information, providing the most important information up front, with the additional details in a Frequently Asked Questions (FAQ) format, or on the *[Name of Agency/Department/University/College]* website. If the *[Name of Agency/Department/University/College]* has knowledge that the affected parties are not English speaking, notice should also be provided in the appropriate language(s).

See Appendix B for sample of written notifications.

CONTACT LISTS

INCIDENT RESPONSE TEAMS:

<i>Executive Management</i>		
Organization	Contact Name	Phone Numbers

<i>Incident Lead</i>		
Organization	Contact Name	Phone Numbers

<i>Technical Assessment</i>		
Organization	Contact Name	Phone Numbers

<i>Technical Support</i>		
Organization	Contact Name	Phone Numbers

<i>Incident Response Support Team (Division of Risk Management Claims Administration)</i>		
Organization	Contact Name	Phone Numbers

<i>Communications</i>		
Organization	Contact Name	Phone Numbers

<i>Legal, Audit and Compliance</i>		
Organization	Contact Name	Phone Numbers

<i>Human Resources</i>		
Organization	Contact Name	Phone Numbers

<i>External Notification List</i>		
Organization	Contact Name	Phone Numbers
[Name of Cyber Vendor Name]		
[Name of Forensic Computer Firm]		
[Name of Insurance Carrier]		

<i>Law Enforcement Notification Contact List</i>		
Organization	Contact Name	Phone Numbers
Tennessee Bureau of Investigation		
Nashville FBI Office		
Memphis FBI Office		
Knoxville FBI Office		
Chattanooga FBI Office		

SAMPLE WRITTEN NOTIFICATION

DATA ACQUIRED: Social Security Number (SSN)

(Note: Do not insert actual SSN)

Dear:

We are writing to you because of a recent security incident at *[Name of Agency/Department/University/College]*. [Describe what happened in general terms, what kind of PII was involved, and what you are doing in response.]

The *[Name of Agency/Department/University/College]* takes the security of personal information very seriously, and we continue to work closely with the appropriate authorities to continue to monitor this situation. In addition, the *[Name of Agency/Department/University/College]* has taken immediate steps to strengthen its internal controls, and established safeguards to prevent a similar breach.

[Name of Agency/Department/University/College] is notifying you, with this letter, so that you can take actions, along with efforts, to minimize potential harm. *[Name of Agency/Department/University/College]* has also advised the three (3) major credit reporting agencies, in the United States, about this incident and have given those agencies a report, alerting them of this incident.

Even though the *[Name of Agency/Department/University/College]* is not aware that any of the personal information has been used for identity theft or other criminal activity, the *[Name of Agency/Department/University/College]* has taken the added precaution of hiring the identify theft prevention firm *[Name of Vendor]* to provide you with one (1) year of identity protection services, and the optional credit monitoring services, all free of charge.

However, *[Name of Agency/Department/University/College]* also encourages you to protect yourself from the possibility of identity theft. We recommend that you complete a [Federal Trade Commission ID Threat Affidavit](#). This added step will assist you with legally notifying your creditors that your identity may have been compromised. Any debts or newly opened lines of credit incurred, after that date, will not be assigned to you.

We also recommend that you place a fraud alert on your credit files. A fraud alert lets creditors know to contact you before opening new accounts. Just call any one of the three credit reporting agencies at the numbers below. This will let you automatically place fraud alerts with all of the agencies. You will then receive letters from all of them, with instructions on how to get a free copy of your credit report from each.

Equifax
1-800-525-6285

Experian
1-888-397-3742

TransUnion
1-800-680-7289

[Name of Agency/Department/University/College] believes you should closely monitor your credit report and place a fraud alert on your credit file. If you do find suspicious activity on your credit report or have reason to believe your information is being misused, please call your local law enforcement agency for assistance. You may also file a complaint with the Federal Trade Commission by visiting www.ftc.gov/bcp/edu/microsites/idtheft or calling 1-877-ID-THEFT (438-4338).

Even if you do not find any signs of fraud on your reports, we recommend that you check your credit report every three months for the next year. Just call one of the numbers above to order your reports and keep the fraud alert in place. For more information on identity theft, we suggest that you visit the [Identity Theft](#) website of the Federal Trade Commission.

In closing, *[Name of Agency/Department/University/College]* also encourage you to access the following resources and review the enclosed brochure about identity theft from *[Name of Vendor]*:

- Federal Trade Commission's website provides information about the three (3) major credit reporting agencies and identity theft consumer alerts: www.ftc.gov/bcp/conline/pubs/alerts/infocompartr.htm
- Identity Theft Resource Center: www.idtheftcenter.org
- Privacy Rights Clearinghouse: www.privacyrights.org

One of the top priorities of the *[Name of Agency/Department/University/College]* is protecting the personal information that flows through our various programs that we are responsible for administering.

Sincerely,

[Name and Title]

GENERAL GUIDANCE FOR THE ESTABLISHMENT OF A CALL CENTER IN THE EVENT OF A SIGNIFICANT DATA BREACH

In the event of a significant data breach involving PII, the following guidance is provided to help with the determination of whether to establish a call center. The purpose of a call center is to provide individuals a number to call to obtain further information regarding the data loss and possible action they may want to take to lessen the incident's impact on their personal lives.

The decision to establish a call center should be based on several considerations:

- If the breach affects a large number of individuals and those individuals are not easily identifiable or easily contacted, establishment of a call center should be considered to allow those potentially impacted to call and obtain additional information regarding the breach.
- Each situation will be unique and the decision to establish a call center must be based on individual circumstances. The main concern should be sharing of information with those affected and how they may obtain assistance.

Once a decision is made to establish a call center, there are several options:

- Contract with external cyber vendor to obtain call center and monitoring services.
- Establish an internal, fully-supported and staffed call center. A thorough description of the incident and set of frequently asked questions (FAQs) will also be required for call center to refer to when fielding calls.

Suggested items to consider based on the nature of the breach would include, but are not limited to, the following:

- Using existing *[Name of Agency/Department/University/College]* personnel to staff the call center and monitoring services, if external cyber vendor services are not used.
- Ensuring training of call center operators.
- Pre-stage FAQs.
- Ability to adjust staffing in response to call volume.
- Daily hours of operations.
- Cost of service.
- Call logging.

- Establish reporting requirements such as dropped calls or wait time, number of callers, etc.
- Advertising call center numbers and making data breach information readily available to those affected.
- Quality assurance checks of call center effectiveness.

SAMPLE CALL CENTER FAQ

EXAMPLE QUESTION	EXAMPLE ANSWER (In case there is no evidence of illegal use of information.)
How can I tell if my information was compromised?	<ul style="list-style-type: none"> At this point, there is no evidence that any missing data has been used illegally. However, the <i>[Name of Agency/Department/University/College]</i> is asking each individual to be extra vigilant and to carefully monitor bank statements, credit card statements, and any statements relating to recent financial transactions. If you notice unusual or suspicious activity, you should report it immediately to the financial institution involved.
What is the earliest date at which suspicious activity might have occurred due to this data breach?	<ul style="list-style-type: none"> The information was stolen from an employee of the <i>[Name of Agency/Department/University/College]</i> during the month of _____. It is likely that individuals may notice suspicious activity during the month of _____.
I haven't noticed any suspicious activity in my financial statements, but what can I do to protect myself from being victimized by credit card fraud or identity theft?	<ul style="list-style-type: none"> <i>[Name of Agency/Department/University/College]</i> strongly recommends that individuals closely monitor their financial statements, and visit the <i>[Name of Agency/Department/University/College's]</i> special website at www._____.tn.gov for updates regarding this incident.
Should I reach out to my financial institutions or will the <i>[Name of Agency/Department/University/College]</i> do this for me?	<ul style="list-style-type: none"> The <i>[Name of Agency/Department/University/College]</i> does not believe that it is necessary to contact financial institutions or cancel credit cards and bank accounts unless you detect suspicious activity. If so, you will need to report it.

EXAMPLE QUESTION**EXAMPLE ANSWER**
(In case there is no evidence of illegal use of information.)

Where should I report suspicious or unusual activity?

The Federal Trade Commission (FTC) Identity Theft website (<http://www.consumer.ftc.gov/features/feature-0014-identity-theft>) recommends the following steps if you detect suspicious activity:

Immediate Steps:

- Place an Initial Fraud Alert.
- Contact the fraud department of one of the three major credit bureaus:
 - ✓ Equifax: 1-800-525-6285; www.equifax.com; P.O. Box 740241, Atlanta, GA 30374-0241
 - ✓ Experian: 1-888-EXPERIAN (397-3742); www.experian.com; P.O. Box 9532, Allen, TX 75013
 - ✓ TransUnion: 1-800-680-7289; www.transunion.com; Fraud Victim Assistance Division, P.O. Box 6790, Fullerton, CA 92834-6790
- Order your credit report from the three major credit bureaus above.
- Create an Identity Theft Report.
- Submit a report about the theft to the FTC online or call the FTC at 1-877-438-4338 (1-866-653-4261 – TTY). When you finish writing all the details, print a copy of the report. It will be called an Identity Theft Affidavit. Bring your FTC Identity Theft Affidavit when you file a police report.
- File a police report with your local police department or the police department where the theft occurred, and get a copy of the police report or the report number. Your FTC Identity Theft Affidavit and your police report make an Identity Theft Report.

EXAMPLE QUESTION**EXAMPLE ANSWER**
(In case there is no evidence of illegal use of information.)

Where should I report suspicious or unusual activity?
(continued)

- Consider whether you need an Extended Fraud Alert. If you have created an Identity Theft Report, you can get an extended fraud alert on your credit file. When you place an extended alert, you can get two free credit reports within 12 months from each of the three nationwide credit reporting companies, and the credit reporting companies must take your name off marketing lists for prescreened credit offers for five years, unless you ask them to put your name back on the list. The extended alert lasts for seven years.
- Consider whether you need a Credit Freeze. You may choose to put a credit freeze on your file, but a credit freeze may not stop misuse of your existing accounts or some other types of identity theft. Also, companies that you do business with would still have access to your credit report for some purposes. A fraud alert will allow some creditors to get your report as long as they verify your identity. This measure is only recommended if you have confirmed your identity has been stolen.
- Close any accounts that have been tampered with or opened fraudulently.

EXAMPLE QUESTION	EXAMPLE ANSWER (In case there is no evidence of illegal use of information.)
Where can I get further, up-to-date information?	<ul style="list-style-type: none"> The <i>[Name of Agency/Department/University/College]</i> has set up a special website which features up-to-date news and information. Please visit www.____@tn.gov.
Does the data breach affect only certain individual?	<ul style="list-style-type: none"> It potentially affects a large population of individuals. We urge everyone possibly affected to be extra vigilant and monitor their financial accounts.
What is the <i>[Name of Agency/ Department/ University/ College]</i> doing to ensure that this does not happen again?	<ul style="list-style-type: none"> The <i>[Name of Agency/Department/University/College]</i> is working with the law enforcement to investigate the data breach and to develop safeguard against similar incidents. The <i>[Name of Agency/ Department/University/ College]</i> has directed all employees to complete the Computer Security Awareness and Training (CSAT) course. Appropriate law enforcement agencies, <i>(Name of Law Enforcement Agency/or Department)</i> have launched full-scale investigations into this matter.
What additional information will I receive regarding this incident?	<ul style="list-style-type: none"> You will receive a Notification Letter from <i>[Name of Agency/ Department/University/College]</i> mailed to you by the <i>[Name of Agency/Department/University/College]</i> vendor, <i>[Name of Cyber Vendor]</i> ID on ____, (DATE). <p>This letter will include a toll-free telephone number to the <i>[Name of Cyber Vendor]</i> call center for any questions and information regarding consumer identity protection, credit monitoring, and identity theft insurance services being provided free through <i>[Name of Vendor]</i>. You will be automatically enrolled in the consumer identity protection services. In addition, free optional credit monitoring services with three national credit bureaus and identity theft insurance is also available to those who register for these services. The <i>[Name of Agency/Department/University/College]</i> encourages you to take advantage of these free services.</p>
Has the problem been contained?	<ul style="list-style-type: none"> <i>[Name of Agency/Department/University/College]</i> believes this is an isolated incident and it does not appear that the file has been disseminated to other people or sources.

SAMPLE QUESTIONS AND CHECKLIST FOR INVESTIGATION REPORTS

The investigation report shall include, describe, and answer the following:

- The description of the data lost, including the amount and its sensitivity or classification level.
- For cyber security incidents, the nature of the cyber threat (e.g., Advanced Persistent Threat, Zero Day Threat and data exfiltration).
- Nature and number of persons affected (e.g., employees, external customers, students, citizens, vendors).
- Likelihood data is accessible and usable from unauthorized personnel or cyber criminals.
- Likelihood the data was intentionally targeted.
- Evidence that the compromised data is actually being used to commit identity theft.
- Strength and effectiveness of security technologies protecting data.
- Likelihood the breach may lead to harm and the type of harm. Such harm may include confidentiality or fiduciary responsibility, blackmail, disclosure of private facts, mental pain and emotional distress, the disclosure of address information for victims of abuse, the potential for secondary uses of the information which could result in fear or uncertainty.
- Ability to mitigate the risk of harm.
- How wide spread is the incident?
- What is the impact to business operations?
- How difficult is it to contain the incident?
- How fast is the incident spreading?