

PUBLIC CHAPTER NO. 1134**SENATE BILL NO. 3901****By Kyle**

Substituted for: House Bill No. 3787

By Mike Turner

AN ACT to amend Tennessee Code Annotated, Title 7; Title 55; Title 56; Title 67 and Title 71, Chapter 602 of the Public Acts of 2007; and Chapter 530 of the Public Acts of 2009, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-102(78), is amended by designating the current language as subdivision (A) and by adding the following as a new subdivision (B):

(B)(i) "Sale for resale" does not include a sale of tangible personal property or 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 shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

(a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;

(b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;

(c) Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and

(d) Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property.

(ii) "Sale for resale" 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 shall be considered the end user and consumer of services used in conducting such business.

(iii) Nothing in this subdivision (78) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392.

SECTION 2. Tennessee Code Annotated, Section 67-6-322(a), is amended by deleting the following language:

There is exempt from the provisions of this chapter any sales or use tax upon tangible personal property or taxable services

and by substituting instead the following language:

There is exempt from the provisions of this chapter any sales or use tax upon tangible personal property, computer software, or taxable services

SECTION 3. Sections 18 through 22 of Chapter 530 of the Public Acts of 2009 shall apply to transactions occurring on or after January 1, 2008.

SECTION 4. Tennessee Code Annotated, Section 7-88-106(a), is amended by inserting the following language between the second sentence and the third sentence:

For any facility that elects to qualify as a qualified public use facility and is located in any county having a population of not less than seventy-one thousand one hundred (71,100) nor more than seventy-one thousand two hundred (71,200) according to the 2000 federal census or any subsequent federal census, any revenue derived from an increase in the local sales and use tax rate occurring on or after January 1, 2009, may not be apportioned and distributed for such a qualified public use facility and instead shall be apportioned and distributed exclusively as provided in § 67-6-712(a); provided, however, that this sentence shall not apply to any increase in the local sales and use tax enacted after July 1, 2010.

SECTION 5. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (7) in its entirety and by substituting instead the following:

(7) "Captive real estate investment trust" or "captive REIT" means an entity with an election in effect under § 856(c)(1) of the Internal Revenue Code, compiled in 26 U.S.C. § 856(c)(1), in which any other entity or individual, directly or indirectly, has at least eighty percent (80%) ownership interest by value determined in accordance with generally accepted accounting principles and whose shares are not traded on a national stock exchange;

SECTION 6. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

() "Captive REIT affiliated group" means a captive REIT and any entity in which the captive REIT, directly or indirectly, has more than fifty percent (50%) ownership interest; provided, however, that a "captive REIT affiliated group" does not include a group in which the captive REIT is owned, directly or indirectly, by a bank, a bank holding company, or a public REIT;

SECTION 7. Tennessee Code Annotated, Section 67-4-2006(e), is amended by designating the current language as subdivision (1) and by adding the following language as a new subdivision (2):

(2) For purposes of this subsection (e), "captive REIT" means an entity with an election in effect under § 856(c)(1) of the Internal Revenue Code, compiled in 26 U.S.C. § 856(c)(1), in which the financial institution, directly or indirectly, has at least eighty percent (80%) ownership interest by value determined in accordance with generally accepted accounting principles and whose shares are not traded on a national stock exchange;

SECTION 8. Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following as a new, appropriately designated subdivision:

() In the case of a captive REIT affiliated group, "net earnings" or "net loss" is defined as the combined net earnings or net loss, as defined in subdivision (a)(1), for all members of the affiliated group, with all dividends, receipts, and expenses resulting from transactions between members of the affiliated group excluded when computing combined net earnings, and subject to the adjustments in subsections (b) and (c) on a combined basis, even if some of the members would not be subject to taxation under this part if considered apart from the affiliated group.

SECTION 9. Tennessee Code Annotated, Section 67-4-2006(b), is amended by adding the following as a new, appropriately designated subdivision:

() Any deduction by a captive REIT for dividends paid, as defined under 26 U.S.C. § 561, that is allowed and taken under 26 U.S.C. § 857(b)(2)(B); provided, however, that this subdivision shall not apply to a captive REIT that is owned, directly or indirectly, by a bank, a bank holding company, or a public REIT;

SECTION 10. Tennessee Code Annotated, Section 67-4-2007(e)(1), is amended by deleting the language "Except for unitary groups of financial institutions and business entities that have been required or permitted" and by substituting instead the language "Except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities that have been required or permitted".

SECTION 11. Tennessee Code Annotated, Section 67-4-2007(e), is amended by adding the following as a new, appropriately designated subdivision:

() Persons subject to tax in this state that are members of a captive REIT affiliated group shall file a combined return and pay tax based on the apportioned combined net earnings of the entire captive REIT affiliated group, as defined in § 67-4-2006(a). The members of the group shall designate one (1) member that is subject to tax in this state to file the combined return. Each member subject to tax in this state shall be jointly and severally liable for the tax imposed by this part with regard to the affiliated group.

SECTION 12. Tennessee Code Annotated, Section 67-4-2013, is amended by adding the following as a new, appropriately designated subsection:

() The net earnings of a captive REIT affiliated group shall be apportioned to Tennessee based on property, payroll, and double weighted receipts as provided in § 67-4-2012, including the factors of those members of the affiliated group that would not be subject to taxation in this state if considered apart from the affiliated group; provided, however, that dividends, receipts, and expenses resulting from transactions between members of the affiliated group shall be excluded for purposes of apportionment under this subsection.

SECTION 13. Tennessee Code Annotated, Section 67-4-2106(b), is amended by adding the following language at the end of the subsection:

For a captive REIT affiliated group, "net worth" is defined as the difference between the total assets less the total liabilities of the affiliated group at the close of business on the last day of the tax year, as shown by a pro forma consolidated balance sheet including all members of the group. The pro forma consolidated balance sheet shall be prepared in accordance with generally accepted accounting principles wherein transactions and holdings between members of the group and holdings in non-domestic persons have been eliminated.

SECTION 14. Tennessee Code Annotated, Section 67-4-2106(c), is amended by deleting the language "Except for unitary groups of financial institutions, business entities that have been required or permitted" and by substituting instead the language "Except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities that have been required or permitted".

SECTION 15. Tennessee Code Annotated, Section 67-4-2111(b)(2)(A), is amended by deleting the following language:

For a taxpayer electing to compute its net worth on a consolidated basis, the property factor is

and by substituting instead the following language:

For a taxpayer electing to compute its net worth on a consolidated basis, and for a member of a captive REIT affiliated group, the property factor is

SECTION 16. Tennessee Code Annotated, Section 67-4-2111(e)(2)(A), is amended by deleting the following language:

For a taxpayer electing to compute its net worth on a consolidated basis, the payroll factor is

and by substituting instead the following language:

For a taxpayer electing to compute its net worth on a consolidated basis, and for a member of a captive REIT affiliated group, the payroll factor is

SECTION 17. Tennessee Code Annotated, Section 67-4-2111(g)(2), is amended by deleting the following language:

For a taxpayer electing to compute its net worth on a consolidated basis, the receipts factor is

and by substituting instead the following language:

For a taxpayer electing to compute its net worth on a consolidated basis, and for a member of a captive REIT affiliated group, the receipts factor is

SECTION 18. Tennessee Code Annotated, Section 67-4-2114, is amended by adding the following as a new, appropriately designated subsection:

() Persons subject to tax in this state that are members of a captive REIT affiliated group, as defined in § 67-4-2004, shall file a combined return and pay the tax imposed by this part, after apportionment, based on all operations of the entire captive REIT affiliated group. The return required by this section shall include the information set out in subsections (a) and (b) for every member of the affiliated group, even if some of the members would not otherwise be subject to taxation under this part. The members of the group shall designate one (1) member that would otherwise be subject to tax on a separate entity basis to file the combined return. Each member subject to tax in this state shall be jointly and severally liable for the tax imposed by this part with regard to the affiliated group.

SECTION 19. Tennessee Code Annotated, Section 67-4-2006(b)(1)(N), is amended by adding the following sentence at the end of the subdivision:

This subdivision (b)(1)(N) shall not apply to "commercial and industrial tangible personal property" as defined in § 67-5-501.

SECTION 20. Tennessee Code Annotated, Section 67-4-2004(1), is amended by adding the following as a new subdivision (C):

(C) For purposes of this subdivision (1), an entity described in subdivision (1)(A)(ii) can include a natural person, and for such purposes, indirect ownership by an individual includes ownership by any family member of the individual, which means, with respect to the individual:

- (i) An ancestor of the individual;
- (ii) The spouse or former spouse of the individual;
- (iii) A lineal descendant of the individual, of the individual's spouse or former spouse, or of a parent of the individual;
- (iv) The spouse or former spouse of any lineal descendant described in subdivision (1)(C)(iii); or
- (v) The estate or trust of a deceased individual who, while living, was as described in any of the subdivisions (1)(C)(i)-(iv);

SECTION 21. Tennessee Code Annotated, Section 67-1-804(b), is amended by inserting the following as a new subdivision immediately following subdivision (2) and by renumbering the remaining subdivisions accordingly:

(3) When any person fails to pay the tax required by § 67-4-2007(f), if such failure is determined by the commissioner to be due to negligence, there shall be imposed a penalty in the amount of fifty percent (50%) of the underpayment.

SECTION 22. Tennessee Code Annotated, Section 67-4-2007(f)(3), is amended by deleting the language "§ 67-1-804(b)(2)" and by substituting instead the language "§ 67-1-804(b)(3)".

SECTION 23. Tennessee Code Annotated, Section 67-4-2109(g)(5), is amended by deleting the language "The provisions of subdivisions (c)(2)(F) and (G)" and by substituting instead the language "The provisions of subdivision (b)(1)(D)".

SECTION 24. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as two new, appropriately designated subdivisions:

() "Key tenant" means any tenant, located within a qualified medical trade center, that leases and occupies a significant portion of the facility and is determined, in the sole discretion of the Commissioner of Economic and Community Development and the Commissioner of Revenue, to be essential to the initial establishment and viability of the trade center;

() "Qualified medical trade center" means any facility, located in a county with a metropolitan form of government, that is substantially composed of permanent and temporary show rooms for medical product suppliers as well as educational space and conference facilities for medical trade shows, provided that such facility is constructed, expanded, or remodeled through an investment of more than two hundred fifty million dollars (\$250,000,000) and contains more than one million square feet (1,000,000 sq. ft.) of space upon completion;

() "Qualified medical trade center relocation expenses" means those expenses that both the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, are necessary to the creation of a permanent show room within a qualified medical trade center in conjunction with the initial establishment of such facility;

SECTION 25. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new, appropriately designated subsection:

() There shall be allowed a credit against a key tenant's franchise and excise tax liability equal to any qualified medical trade center relocation expenses incurred by the key tenant; provided, however, that such credit shall not exceed an amount equal to ten dollars (\$10.00) for each square foot of space within the facility that is leased and occupied by the key tenant. To the extent that any amount allowed as a credit under this subsection (), for any tax year, exceeds the combined franchise and excise tax after the application of all available credits, the amount of such excess shall be considered an overpayment and shall be refunded to the key tenant. The refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified medical trade center relocation expenses were incurred.

SECTION 26. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new, appropriately designated subsection:

()(1) For purposes of this subsection (), "qualified advertising expenses" means advertising expenses that are incurred for the purpose of co-promoting a qualified medical trade center and the State of Tennessee or the City of Nashville; provided, however, that the expenses shall not qualify under this subdivision unless both the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, that the advertising and the allowance of the credit are in the best interests of this state. For purposes of this subdivision, "best interests of the state" means a determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development that the advertising is a result of the credit provided in this subsection ().

(2) A credit in an amount equal to fifteen percent (15%) of any qualified advertising expenses shall be allowed against the combined franchise and excise tax liability of any taxpayer that incurs and pays such qualified expenses.

(3) In order for a taxpayer to become entitled to a credit under this subsection, the taxpayer shall submit documentation verifying that the qualified advertising expenses have been incurred and paid.

(4) The commissioner shall review the documentation and notify the taxpayer of the approved credit.

(5) Once the taxpayer has been notified of the approved credit, the taxpayer may submit a claim for the credit. To the extent that any amount allowed as a credit under this subsection, for any tax year, exceeds the combined franchise and excise tax after the application of all available credits, the amount of such excess shall be considered an overpayment and shall be refunded to the taxpayer. The refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified advertising expenses were incurred.

SECTION 27. Tennessee Code Annotated, Section 67-4-2109(b)(3), is amended by adding the following language as a new, appropriately designated subdivision:

() If determined to be in the best interests of the state, the commissioner is authorized to lower the wage and investment criteria contained in subdivision (b)(2)(B) of this subsection if the investment is made and the jobs are created within a central business district or an economic recovery zone;

SECTION 28. Tennessee Code Annotated, Section 67-4-2109(h), is amended by adding the following as a new, appropriately designated subdivision:

() If determined to be in the best interests of the state, the commissioner is authorized to lower the wage criteria contained in this subsection (h) if the jobs are created within a central business district or an economic recovery zone. If determined to be in the best interests of the state, the commissioner is further authorized to allow a relocation expense credit to any scrap metal processing facility relocating from a central business district or an area adjacent to the central business district and separated only by a waterway. Such credit shall be equal to the amount of relocation expenses incurred and paid by the facility but shall not exceed the amount of credit allowed under subdivision (3)(E) of this subsection (h) for the relocation of staff employees of a headquarters facility.

SECTION 29. Tennessee Code Annotated, Section 67-4-2109(b)(3), is amended by adding the following language as a new, appropriately designated subdivision:

() Any airline company that has established its international, national or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224 may elect to convert any available and unused job tax credit created under subdivision (b)(1) of this section and any available and unused additional annual credit created under subdivision (b)(2) of this section into a refundable credit which shall be discounted to net present value using the interest rate in effect pursuant to the provisions of § 67-1-801 on the date of such election; provided, however, that the election shall be available only if the Commissioner of Revenue and the Commissioner of Economic and Community Development determine that allowance of the election is in the best interests of the state;

SECTION 30. Tennessee Code Annotated, Section 67-4-2109(h), is amended by adding the following as a new, appropriately designated subdivision:

() Any insurance company, as defined in § 56-1-102, that otherwise meets all of the criteria contained in this subsection (h) and would be subject to the tax imposed by this part and Part 20 of this chapter if not for the exemption provided in § 67-4-2008(a)(14), shall be granted the credit provided in this subsection (h) and shall be entitled to a refund as provided in subdivision (4) of this subsection;

SECTION 31. Tennessee Code Annotated, Section 67-4-2109(k)(1), is amended by deleting the language "prior to July 1, 2012," from the first sentence of subdivision (A).

SECTION 32. Tennessee Code Annotated, Section 67-4-2109(k), is amended by deleting subdivisions (2) through (5) and by substituting instead the following:

(2) A credit in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed against the combined franchise and excise tax liability of any qualified production company that has established a headquarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a credit equal to the amount of credit to which the qualified production company would have been entitled had it established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor's percentage ownership interest in the qualified production company.

(3) In order for either a qualified production company or a qualified investor to become entitled to a credit under this subsection (k), the qualified production company shall submit documentation verifying that the qualified expenses have been incurred and paid.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved credit.

(5) Once the qualified production company has been notified of the approved credit, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for the credit. To the extent that any amount allowed as a credit under this subsection (k) exceeds the current and outstanding combined franchise and excise tax liability of the claimant, the amount of such excess shall be deemed an overpayment and shall be refunded to the claimant. For qualified expenses incurred and paid during any tax year, the commissioner is authorized to issue a refund as described in this subdivision (5) prior to the expiration of such tax year if the amount of the approved credit exceeds the claimant's current and outstanding franchise and excise tax liability on the date of such refund. Any refund under this subsection shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

SECTION 33. Tennessee Code Annotated, Section 67-6-102(47)(H)(i), is amended by adding the word "or" at the end of subdivision (b) and by adding the following language as a new subdivision (c):

(c) An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars (\$20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars (\$10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equipment for such a building, together with an investment in excess of ten million dollars (\$10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;

SECTION 34. Tennessee Code Annotated, Section 67-4-2109(m), is amended by deleting the language "the Tennessee rural opportunity fund" each place that it appears in subdivisions (1) and (2) and by substituting instead the language "the Tennessee rural opportunity fund or the Tennessee small business opportunity fund".

SECTION 35. Tennessee Code Annotated, Section 67-4-2008(a), is amended by deleting the word "and" at the end of subdivision (13) and is further amended by deleting the period at the end of subdivision (14) and substituting instead the language "; and" and is further amended by adding the following language as subdivision (15):

(15) Any qualified TNInvestco, as defined in § 4-28-102, that has received an allocation of investment tax credits under the Tennessee Small Business Investment Company Credit Act and continues to participate in the program established by such act.

SECTION 36. Tennessee Code Annotated, Section 67-4-2008(f)(5), is amended by deleting the language "(a)(13) or (a)(14)" and by substituting instead the language "(a)(13), (a)(14) or (a)(15)".

SECTION 37. Tennessee Code Annotated, Section 67-4-2109(b)(2)(B)(iii), is amended by deleting the language "An integrated supplier," and by substituting instead the language "An integrated supplier or integrated customer,".

SECTION 38. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

() "Certified green energy production facility" means a facility certified by the Department of Environment and Conservation as producing electricity for use and consumption off the premises using clean energy technology. For the purposes of this subdivision, clean energy technology means technology used to generate energy from geothermal, hydrogen, solar, and wind sources;

SECTION 39. Tennessee Code Annotated, Section 67-4-2108(a)(5), is amended by adding the following as a new, appropriately designated subdivision:

() Machinery and equipment used to produce electricity in a certified green energy production facility shall not be deemed to be property that is actually utilized by the taxpayer for purposes of this section. A copy of the facility

certification issued by the Department of Environment and Conservation shall be furnished to the commissioner by the taxpayer with the franchise tax return to verify exemption.

SECTION 40. Tennessee Code Annotated, Section 67-6-346, is amended by inserting the following language between the third and fourth sentences:

The credit provided in this section shall also apply to machinery and equipment used to produce electricity in a certified green energy production facility, as defined in § 67-4-2004. A copy of the facility certification issued by the Department of Environment and Conservation shall be furnished to the commissioner by the taxpayer to establish entitlement to the credit.

SECTION 41. Tennessee Code Annotated, Section 67-5-604, is amended by adding the following as a new, appropriately designated subsection:

() The valuation applied to pollution control facilities under this section shall also apply to machinery and equipment used to produce electricity in a certified green energy production facility, as defined in § 67-4-2004. A copy of the facility certification issued by the Department of Environment and Conservation shall be required in order to qualify for such valuation.

SECTION 42. Tennessee Code Annotated, Section 67-6-103(d)(1)(E), is amended by inserting the following language as a new subdivision immediately after subdivision (ii) and by redesignating the remaining subdivision accordingly:

(iii) In addition to the distribution provided in subdivisions (d)(1)(E)(i) and (ii), if a hotel within the footprint of the convention center, as determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development, undertakes a significant capital improvement program in connection with the construction of the convention center, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink, and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotel. The apportionment and distribution shall begin at the time that the significant capital improvement program is substantially completed and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner. To be entitled to receive the distribution of state and local tax revenue under this subdivision (d)(1)(E)(iii), the entity responsible for the retirement of the debt on the convention center must first receive certification from the Commissioner of Revenue and the Commissioner of Economic and Community Development, with the approval of the Commissioner of Finance and Administration, that the capital improvement program is directly related to the construction of the convention center.

SECTION 43. Tennessee Code Annotated, Section 67-4-708(1), is amended by deleting subdivisions (A) and (B) in their entireties and by substituting instead the following:

(A) Food and/or beer as defined in § 57-6-102, generally destined for home preparation and consumption, except persons engaged in the business of selling delicatessens and candy at retail; and services performed by food brokers;

(B) Lumber, building materials, tools, builders' hardware, paint and glass, electrical supplies, roofing materials, farm equipment, plumbing, heating and air conditioning equipment, and other basic lines of hardware; gasoline and diesel fuel sold at wholesale; and sales of tangible personal property by persons operating service stations, except sales covered by subdivision (1)(D);

SECTION 44. Tennessee Code Annotated, Section 67-4-713(a)(3), is amended by deleting subdivision (A) in its entirety and by substituting instead the following:

(A) Personal property taxes are allowable as a credit only to the extent that the property is located at the place of business covered by the return required by this part and the property is taxed by the same city or county that levied the tax under this part;

SECTION 45. Tennessee Code Annotated, Section 67-4-714, is amended by deleting the current language in its entirety and by substituting instead the following:

§ 67-4-714.

(a) The minimum business tax payable under this part by any person subject to the tax levied in this part shall be as follows:

(1) Notwithstanding § 67-4-709(1)-(4) for taxpayers included in classifications (1)-(4) in § 67-4-708, the minimum business tax shall be twenty-two dollars (\$22.00) per annum after applying all deductions and credits set forth in §§ 67-4-711 and 67-4-713. In the case of coin-operated machines, only the principal place of business shall be subject to the minimum tax.

(2) Notwithstanding § 67-4-709(5) for taxpayers included in classification (5) in § 67-4-708, the minimum tax payable shall be four hundred fifty dollars (\$450) per annum after applying all deductions and credits set forth in §§ 67-4-711 and 67-4-713; however, under no circumstances shall the tax payable under § 67-4-709(5) be more than one thousand five hundred dollars (\$1,500) per annum after applying all deductions and credits set forth in §§ 67-4-711 and 67-4-713.

(b) A taxable entity that is incorporated, domesticated, qualified or otherwise registered to do business in this state, but is, or has become, inactive in this state, or whose charter, domestication, qualification or other registration is forfeited, revoked or suspended without the entity being properly dissolved, surrendered, withdrawn, cancelled or otherwise properly terminated, shall not be relieved from filing a return and paying the business tax, which shall be no less than the minimum tax established in subsection (a) of this section.

SECTION 46. Tennessee Code Annotated, Section 67-2-106, is hereby repealed in its entirety.

SECTION 47. Tennessee Code Annotated, Section 67-2-121, is amended by deleting the language "or any corporation failing to furnish the information required by § 67-2-106,".

SECTION 48. Tennessee Code Annotated, Section 67-8-208, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) The commissioner shall thereupon cause to be paid to the executor the amount of refund found to be due, together with interest thereon as provided in § 67-1-801(b).

SECTION 49. Tennessee Code Annotated, Section 67-4-409(j), is amended by adding the following as a new, appropriately designated subdivision:

() Acquisition pursuant to this subsection (j) of property classified under Title 67, Chapter 5, Part 10, shall not constitute a change in the use of the property, and no rollback taxes shall become due solely as a result of such acquisition.

SECTION 50. Tennessee Code Annotated, Section 7-39-307, is amended by deleting the following language:

Accordingly, the corporation and all properties at any time owned by it

and by substituting instead the following language:

Accordingly, the corporation and all properties at any time owned by it, except as provided in subsection (b),

SECTION 51. Tennessee Code Annotated, Section 7-39-307, is amended by designating the current language as subsection (a) and adding the following language:

(b)(1) Notwithstanding any other provision of the law to the contrary, an energy acquisition corporation, established pursuant to Title 7, Chapter 39, that acquires an ongoing concern engaged in the sale and distribution of liquefied petroleum gas (propane) may enter into agreements for payments in lieu of taxes, referred to as "tax equivalents", with any local government to which the acquired concern formerly paid ad valorem property tax.

(2) The amount of such payments shall be fixed at the amount of ad valorem taxes that would be otherwise due and payable by the business based upon the assessed value of the property that would be subject to tax if such business had not been acquired by the energy acquisition corporation. Such payments shall only be used in the same manner and for the same purposes as ad valorem taxes collected by the recipient local government.

SECTION 52. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new, appropriately designated subsection:

() The Commissioner of Revenue, the Commissioner of Economic and Community Development, and the Commissioner of Finance and Administration are authorized, with the approval of the comptroller of the treasury, to jointly establish a program pursuant to which buildings, facilities, or other infrastructure may be developed utilizing a state funding mechanism and pursuant to which the value of tax credits that have been earned by the taxpayer but remain unutilized may be applied, in lieu of payments, toward the purchase or lease of such property pursuant to a contractual agreement between the taxpayer and the program. Such tax credits may include those to which the taxpayer is entitled under this section or under any other provision of this part, Part 20 of this chapter, or Chapter 6 of this title.

SECTION 53. Tennessee Code Annotated, Section 67-4-2109(a), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) "Best interests of the state" includes, but is not limited to, a determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development that the capital investment or jobs are a result of the credit provided in this section. In addition to its use in subsection (b), the definition in this subdivision (a)(1) shall apply to this section in its entirety unless otherwise specifically provided;

SECTION 54. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

§ 67-6-2____.

(a) A taxpayer who engages in a qualified disaster restoration project in this state shall be eligible for a credit of all state sales or use taxes paid to the State of Tennessee, except tax at the rate of one-half percent (0.5%), on the sales or use of qualified tangible personal property.

(b) For purposes of this section:

(1) "Qualified disaster restoration project" means 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 that disaster, provided, that such project involves a minimum investment of fifty million dollars (\$50,000,000) or more for the restoration of such property. Such minimum 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, but shall not include land or inventory; and

(2) "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 covered by this section and purchased or leased prior to substantial completion of the qualified disaster restoration project. "Qualified tangible personal property" does not include any payments with respect to leases of qualifying tangible personal property that extend beyond substantial completion of the disaster restoration project.

(c) The taxpayer shall not be permitted to take advantage of any additional sales or use tax credits, exemptions, or reduced rates that would otherwise be available under this chapter as a result of the same purchases or minimum investment.

(d)(1) A taxpayer seeking this credit shall first submit to the commissioner an application to qualify its 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 shall also file an application and plan, if any taxes paid by the lessor are to be claimed as part of the credit provided in this section. The application and plan shall be submitted on forms prescribed by the commissioner and shall demonstrate that the requirements of the law will be met.

(2) After approval of the application and plan, the commissioner shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for the credit provided in this section.

(3) In order to receive the credit, the taxpayer shall submit a claim for credit, along with documentation as required by the commissioner showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor, in the case of a leased building, contractors, and subcontractors on sales or use of qualified tangible personal property. Documentation verifying that the minimum investment requirements have been met shall include, but are not limited to, employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules as required by the commissioner.

(4) The commissioner shall review the claim for credit and notify the taxpayer of the approved tax credit amount and provide direction for taking the credit. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the amount approved and provided direction to the taxpayer on the proper methodology for taking the credit. The credit may only be taken by the taxpayer engaged in the qualified disaster recovery project.

(e) If the minimum investment requirement or other terms of this section are not met, the taxpayer shall be subject to assessment for any sales or use tax, penalty, or interest that would otherwise have been due and for which credit was taken. The statute of limitations shall not begin to run on these assessments until December 31 of the year in which the project is substantially completed.

(f) Credits under this section shall not reduce the taxes earmarked and allocated to education pursuant to § 67-6-103(c).

(g) Nothing in this section shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit.

SECTION 55. Tennessee Code Annotated, Section 67-4-2109(l), is amended by adding the following as a new, appropriately designated subdivision:

() Notwithstanding § 47-14-103 or any other provision to the contrary, a community development financial institution, as described in this subdivision (l), shall be allowed to charge a rate of interest not to exceed twenty-four percent (24%) per annum.

SECTION 56. Tennessee Code Annotated, Section 67-4-2109(a)(5)(C), is amended by deleting the language "in an enhancement county" in its entirety.

SECTION 57. Tennessee Code Annotated, Section 67-6-103, is amended by adding the following as a new, appropriately designated subsection:

() (1) Notwithstanding the allocations provided for in subsection (a), if there exists a zoo or aquarium that is accredited by the Association of Zoos and Aquariums and has received and currently holds a determination of exemption from the Internal Revenue Service under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), then an amount shall be apportioned and distributed to the zoo or aquarium equal to the amount of state tax revenue derived under this chapter from the sale of tangible personal property or amusements on the premises of the zoo or aquarium; provided, however, that such apportionment and distribution shall be used exclusively for the operation of the zoo or aquarium, including, but not limited to, capital projects.

(2) Notwithstanding subdivision (1) of this subsection to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, Ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, Ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection. The revenue shall continue to be allocated as provided in Acts 1992, Ch. 529 and Acts 2002, Ch. 856, respectively.

SECTION 58. Tennessee Code Annotated, Section 67-5-606, is amended by inserting the following as a new subdivision (c):

(c) In the event commercial and industrial tangible personal property is destroyed, demolished or substantially damaged as a result of a disaster certified by the Federal Emergency Management Agency (FEMA), the annual assessment of such qualifying personal property in a FEMA certified county shall be prorated as otherwise provided in subsection (a), for the actual time the qualifying personal property is not replaced or restored notwithstanding that such personal property is replaced or restored by September 1, provided the total time the qualifying personal property is not replaced or restored exceeds thirty (30) days. The owner must apply for this relief to the assessor by September 1 using a form approved by the director of the state division of property assessments. Furthermore the owner must provide the assessor a listing of the destroyed, demolished or substantially damaged personal property for which the proration is sought. This subdivision shall be effective retroactively to January 1, 2010, but shall not take effect as to any particular county or municipality unless approved by two-thirds (2/3) vote of its governing body. This subdivision shall expire on December 31, 2010.

SECTION 59. Tennessee Code Annotated, Section 7-53-303, is amended by adding the following language as a new, appropriately designated subsection:

() For purposes of calculating the "applicable formula rate" under § 47-14-103 and the related provisions of Title 47, Chapter 14, to determine the maximum effective rate applicable to bonds or other obligations designated as "recovery zone facility bonds" pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA"), P.L. 111-5, the language "four (4) percentage points above the average prime loan rate" in the definition of "formula rate" in § 47-14-102(7) shall be replaced with the language "seven (7) percentage points above the average prime loan rate". This subsection shall apply to any such bonds or other obligations issued by a corporation on or before June 30, 2012, and designated as recovery zone facility bonds for purposes of the American Recovery and Reinvestment Act of 2009.

SECTION 60. (a) Tennessee Code Annotated, Section 67-4-409(g)(2), is amended by deleting the language "shall be repealed on June 30, 2010" and by substituting instead the following:

shall be repealed on June 30, 2012

(b) Tennessee Code Annotated, Section 67-4-409(i)(1)(B), is amended by deleting the language "shall be repealed on June 30, 2010" and by substituting instead the following:

shall be repealed on June 30, 2012

(c) Tennessee Code Annotated, Section 67-4-409(j)(1)(B), is amended by deleting the language "shall be repealed on June 30, 2010" and by substituting instead the following:

shall be repealed on June 30, 2012

(d) Tennessee Code Annotated, Section 67-4-409(l)(1)(B), is amended by deleting the language "shall be repealed on June 30, 2010" and by substituting instead the following:

shall be repealed on June 30, 2012

SECTION 61. Tennessee Code Annotated, Title 67, Chapter 4, Part 1, is amended by adding the following language as a new section:

Section 67-4-114. Notwithstanding any rule or law to the contrary, no tax shall be due under § 57-5-201 for any beer or ale that has been rendered unsalable and subsequently destroyed as a result of flooding occurring between May 1, 2010 and May 8, 2010. Any tax previously paid under § 57-5-201 by the wholesaler on any such beer or ale that is unsalable and destroyed as a result of such flooding occurring between May 1, 2010 and May 8, 2010 shall be allowed as a credit against the tax levied by § 57-5-201 on the subsequent purchase of beer or ale by such wholesaler. However, this section shall not apply unless such flooding resulted in the destruction of at least fifty (50) barrels, or liquid volume equivalent, of beer or ale and satisfactory proof of such destruction is submitted to the department.

SECTION 62. Tennessee Code Annotated, Section 67-4-409(g), is amended by adding the following language as a new subdivision:

(_) Notwithstanding any provision of this section to the contrary, the Commissioner of Finance and Administration, with the written approval of the executive director of the Tennessee Wildlife Resources Agency, is authorized, subject to legislative appropriation, to transfer funds from the 1986 wetland acquisition fund to the Tennessee heritage conservation trust fund, created in Title 11, Chapter 7, Part 1. For the purposes of § 11-7-103(h), "other available sources" also shall not include any funds transferred to the Tennessee heritage conservation trust fund from the 1986 wetland acquisition fund pursuant to this subdivision.

SECTION 63. Tennessee Code Annotated, Section 67-4-409(j), is amended by adding the following language as a new subdivision:

(_) Notwithstanding any provision of this section to the contrary, the Commissioner of Finance and Administration, with the written approval of the Commissioner of Environment and Conservation, is authorized, subject to legislative appropriation, to transfer funds from the state lands acquisition fund to the Tennessee heritage conservation trust fund, created in Title 11, Chapter 7, Part 1. For the purposes of § 11-7-103(h), "other available sources" also shall not include any funds transferred to the Tennessee heritage conservation trust fund from the state lands acquisition fund pursuant to this subdivision.

SECTION 64. Tennessee Code Annotated, Section 67-4-1025, is amended by deleting subsection (d) in its entirety and by substituting instead the following language:

(d) Notwithstanding the provisions of subsections (a) and (b) to the contrary, all cigarette tax revenue generated from the increase in the tax rate

from ten (10) mills to three cents (3¢) on each cigarette shall be deposited in the education trust fund created by Title 49, Chapter 3; provided, that an amount of twenty-one million dollars (\$21,000,000) of that cigarette tax revenue shall be allocated to the Department of Agriculture's Tennessee agriculture enhancement program; provided, however, that in the fiscal year beginning July 1, 2009, the amount of sixteen million three hundred thousand dollars (\$16,300,000) or a larger amount not exceeding twenty-one million dollars (\$21,000,000) annually shall be allocated to the Tennessee agriculture enhancement program, such amount to be specified in the annual General Appropriations Act; and provided further, that in the fiscal year beginning July 1, 2010, the amount of ten million dollars (\$10,000,000) or a larger amount not exceeding twenty-one million dollars (\$21,000,000) annually shall be allocated to the Tennessee agriculture enhancement program, such amount to be specified in the annual General Appropriations Act.

SECTION 65. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following language as a new subdivision:

(10)(A) Except as otherwise provided in subdivision (10)(D), there shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in Part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to fifty percent (50%) of the purchase price of Brownfield property purchased in Tennessee during the tax period covered by the return for the purpose of a qualified development project.

(B) For the purposes of this subdivision (10), unless the context otherwise requires:

(i) "Brownfield property" means real property that is the subject of an investigation or remediation as a Brownfield project under a voluntary agreement or consent order pursuant to § 68-212-224;

(ii) "Capital investment" means a business investment in real property, tangible personal property or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction;

(iii) "Investment period" means a period not to exceed five (5) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made;

(iv) "Non-prime agricultural property" means real property included within the United States Department of Agriculture land capability classification Classes IV, V, VI, VII and VIII; and

(v) "Qualified development project" means a project consisting of a capital investment of at least twenty-five million dollars (\$25,000,000), utilizing at least five (5) acres of Brownfield property, or non-prime agricultural property as provided in subdivision (10)(G), and having a business plan approved by the Commissioner of Revenue in accordance with the applicable provisions of subdivision (10)(E) or (10)(G).

(C) The credit allowed pursuant to this subdivision (10) shall apply against the excise tax imposed by this part and the franchise tax imposed by Part 21 of this chapter; provided, however, that such credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before any credit is taken. Any credit authorized under this subdivision that is unused may be carried forward in any tax period until the credit is taken; provided, that the credit may not be carried forward for more than fifteen (15) years.

(D) If the taxpayer makes an enhanced capital investment equal to or in excess of two hundred million dollars (\$200,000,000) during the investment period for the qualified development project, the credit allowed in subdivision (10)(A) shall be equal to seventy-five percent (75%) of the purchase price of the Brownfield property purchased in Tennessee for the purpose of the project.

(E)(i) The taxpayer shall file a business plan for the development project with the Commissioner of Revenue in order to qualify for the credit provided in subdivision (10)(A) or the enhanced credit provided in subdivision (10)(D).

(ii) For purposes of the enhanced credit, the business plan shall be filed on or before the last day of the first fiscal year in which the investment is made and shall describe the capital investment.

(iii) Qualifying plans shall be approved by the Commissioner of Revenue. At such time, an approval letter authorizing the credit, the value of the credit and the terms of the credit shall be issued. A copy of the approval letter shall be filed by the taxpayer with the Department of Revenue in any year in which the taxpayer utilizes the credit.

(iv) The Commissioner of Revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit in this subdivision (10).

(F) The credit provided in this subdivision (10) shall begin to apply in the first year of the investment period as provided in the business plan;

however, if the capital investment is not met during the investment period, the taxpayer shall be subject to an assessment equal to the amount of any credit taken under this subdivision (10) for which the taxpayer failed to qualify, plus interest.

(G) The aggregate amount of the credits allowed to all taxpayers under this subdivision (10) shall not exceed ten million dollars (\$10,000,000) in any one (1) tax year; provided, that in any tax year in which it is determined that credits remain available, the Commissioner of Revenue and the Commissioner of Economic and Community Development, in consultation with the Commissioner of Agriculture, may open availability to qualified development projects utilizing non-prime agricultural property. Credits for projects utilizing non-prime agricultural property shall be issued in the same manner and under the same terms as credits allowed for projects utilizing Brownfield property except that all business plans for such projects shall be approved by the Commissioner of Economic and Community Development, in addition to the Commissioner of Revenue, and in consultation with the Commissioner of Agriculture.

(H) Notwithstanding any provision of this subdivision (10) to the contrary, no credit shall be allowed unless the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, that the credit is in the best interest of the state. For purposes of this subdivision, "best interest of the state" means a determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development that the project is a result of the credit provided in this subdivision (10).

SECTION 66. Sections 1 and 49 of this act shall take effect on July 1, 2010, the public welfare requiring it. Sections 5 through 18 of this act shall take effect on July 1, 2010, and shall apply to all tax years ending on or after July 1, 2010, the public welfare requiring it. Sections 33 and 54 of this act shall take effect on July 1, 2010, and shall apply to business plans filed on or after July 1, 2010, the public welfare requiring it. The remaining sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 9, 2010



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 30th day of June 2010



PHIL BREDESEN, GOVERNOR