

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 1320-5-1
STATE SALES AND USE TAX RULES**

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1320-5-1-.01 AUCTIONEERS—AGENTS—FACTORS. Every factor, auctioneer, or agent acting for any unknown or undisclosed principal entrusted with any bill of lading, customhouse permit, or warehouse receipt for delivery of tangible personal property, or entrusted with possession of any such personal property for the purpose of sale, shall be deemed the owner thereof, and, upon the sale at retail of such property, shall be required to file a return of the receipts of sales and pay a tax thereon. A sale by such factor, auctioneer or agent, when acting for a known or disclosed principal shall be taxable to the principal. The same rule applies to lien holders, such as storage men, pawnbrokers and artisans.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.02 ARTICLES TAKEN IN TRADE OR "TRADE-INS".

- (1) When an item of tangible personal property is taken in trade as a credit or part payment on the sale of new or used articles, the Sales and Use Tax shall be computed and paid on the net difference between the sales price of the new or used article sold and any credit actually given for the used article accepted in trade. In cases where a credit is given for property which is owned to be applied to property which is being leased, the tax will apply to any consideration after the amount of credit given is consumed, and the lessor actually begins making charges for the lease or rental of tangible personal property.
- (2) Before any credit may be allowed for items taken in trade or trade-ins, the item so traded must be of a like kind and character of that purchased, and indicated as "trade-in" by model and serial number, where applicable, on an invoice given to the customer.
- (3) Any tangible personal property involved in a transaction in which a dealer gives a check or cash for tangible personal property, and where the customer agrees to pay the full purchase price of the property being bought, will not be considered as a trade-in, and no credit may be given or allowed for it. In cases where a credit memorandum is given for tangible personal property which is intended to be traded-in on the purchase of new articles of tangible personal property, the provisions of paragraph (2) of this rule must be complied with.
- (4) Any recovery which may be received or allowed as a result of insurance may not be considered as a trade-in, and no credit may be given or allowed for such recoveries.

Authority: T.C.A. §§67-1-102, 67-6-402 and 67-6-510. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.03 AUTOMOBILES, MOTOR VEHICLES, TRAILERS, MOTOR VEHICLE TRAILER DEALERS.

- (1) The Sales and Use Tax shall be paid on the full amount charged for an automobile, trailer, or other motor vehicle without any deductions for labor or other charges for preparing a motor vehicle for sale, freight, federal excise tax, etc. The tax shall likewise be paid on the full amount charged for any accessories or parts sold with and installed on a motor vehicle. Any installation labor in connection with a sale of accessories, or repair labor involved in installing, replacing or repairing parts on a motor vehicle, is subject to the Sales or Use Tax.
- (2) The bill of sale for a motor vehicle or trailer shall determine whether the vehicle is subject to or exempt from, the Sales or Use Tax, regardless of who may be named on the invoice. Unless the bill of sale indicates that the vehicle is being sold direct to another automobile dealer for resale purposes, or to a vendee exempt from paying the Sales or Use Tax, the dealer shall collect the appropriate Sales or Use Tax, except in cases of bona fide interstate commerce, as provided for in this rule and regulation.
- (3) Automobile and other motor vehicle and trailer dealers making deliveries of vehicles in bona fide interstate commerce to a customer out of this State, or making sales to persons who will, within three calendar days of purchase, remove the vehicle to another state where it will be registered and used are not required to collect any Sales Tax on any such sales, provided:
 - (a) The sale is a bona fide transaction in which the dealer, or one of his employees, actually makes delivery of the vehicle to a point outside the State of Tennessee, or the sale is to one who will remove the vehicle to another state within three days and there is no knowledge or reason to believe that the vehicle will be used or brought back into the State of Tennessee.
 - (b) The dealer prepares, submits, and maintains supporting evidence of delivery to a customer outside the State, or to a purchaser who will remove the vehicle to another state, in the form of an affidavit prepared at the time of the sale containing the following information:
 1. The name and Sales Tax registration number and invoice number of the dealer.
 2. The name and address of the purchaser.
 3. A description of the vehicle.
 4. The date of the sale.
 5. The place and date of delivery.
 6. The name of the dealer, employee, or salesman, or other person making delivery of the vehicle, if delivered out of state.
 7. The place where the vehicle will be registered.
 8. The trade-in allowance given, and the total sales price of the vehicle.
 9. A statement that no Tennessee tax has been paid.
 10. A statement that the information given is true and correct.

This statement shall be executed in triplicate by both the dealer and purchaser.
 - (c) The dealer, or the employee making the delivery of the motor vehicle out of the State, shall also make an oath and affidavit within two days of delivery, indicating the date and place of delivery, and the name of the person to whom delivery was made. This statement shall be executed in triplicate. The provisions of this paragraph shall not apply in cases of delivery of a new vehicle or trailer from a factory or another dealer out of this State, but the dealer shall indicate this fact on the affidavit required of him and the customer, as indicated above, and maintain records to show that the delivery was made in that manner.

(Rule 1320-5-1-.03, continued)

- (d) The original and duplicate copies of each of the affidavits referred to in this sub-section shall be submitted with the Sales Tax return reporting such sales to the Department before any credit shall be given or allowed for sales in bona fide interstate commerce.
- (4) A dealer selling an automobile or other motor vehicle to a salesman for use as a demonstrator or for any other purpose shall collect the appropriate Sales Tax due on each sale.
- (5) A dealer using an automobile or other property for demonstration purposes is not required to pay Use Tax on property so used, providing it is returned to inventory within one hundred twenty (120) days. Use Tax liability will be incurred by a dealer who uses an automobile or other personal property for demonstration purposes more than one hundred twenty (120) days if, when sold, the price of the property is less than the dealer's cost. The Use Tax will be due on the amount by which the dealer's cost exceeds the selling Price.
- (6) When a trade-in is involved in the purchase of a motor vehicle which has been imported for use in this State, the vehicle which was traded-in for the new vehicle must have been previously registered in the State of Tennessee in the name of the person importing the new vehicle into the State before any credit may be given for the allowance given for the trade-in. If the trade-in involved in the transaction was not previously registered in this State in the name of the person importing the second vehicle into the State, the trade-in must be considered a part of the purchase price or fair market value of the vehicle at the time it is imported into the State upon which the Use Tax is due and payable. The provisions of this paragraph shall not apply in computing any Sales Tax due and payable.

Authority: T.C.A. §§67-3045 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.04 ADJUSTMENTS, REPLACEMENTS, AND WARRANTIES.

- (1) When an item of tangible personal property, or any part thereof, is returned to a dealer pursuant to a sales, warranty, or guarantee agreement for repair or replacement, and no charge is made to the customer for the repair or replacement, there is no Sales or Use Tax due. In the event any charge for labor or a part or parts is made to a customer for the repair or replacement, the charge that is actually made to the customer is subject to the Sales or Use Tax.
- (2) Dealers buying and using tangible personal property to fulfill sales, warranty, or guarantee obligations to a customer may purchase and use the tangible personal property without the payment of any Sales or Use Tax.

Authority: T.C.A. §§ 67-3045 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.05 AUTOMOBILE REFINISHERS AND PAINTERS.

- (1) Charges made by automobile refinishers and painters for refinishing and painting automobiles are subject to the Sales Tax.
- (2) Automobile refinishers and painters may buy the materials which actually accompany the work done for their customers without the payment of Sales and Use Tax. Items which are used by the refinishers and painters, but which do not accompany the work done for the customers, are subject to Sales or Use Tax.

Authority: T.C.A. §§67-1-102, 67-6-102, and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.06 ARTISTS AND ART DEALERS. Sales of objects of art are sales of tangible personal property, and are, therefore taxable.

Authority: T.C.A. §§67-3045 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.07 CONTRACTORS, LUMP SUM AND COST-PLUS.

- (1) Contractors engaged in constructing or improving real property, whether on a lump sum or a cost-plus basis, are purchasers and consumers of the materials used by them, and are required to pay the Sales or Use Tax on such materials or equipment purchased or imported into this State for use in connection with their contracts.
- (2) Sales of materials and supplies to owners of real property to be used by them, their agents, or independent contractors in erecting, altering, improving, or repairing buildings, or other improvements, are sales subject to the Sales or Use Tax.

Authority: T.C.A. §§67-1-102, 67-6-209 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 18, 1984; effective June 17, 1984. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.08 CONTRACTOR-DEALERS.

- (1) Contractors and sub-contractors engaged in the business of erecting, building or otherwise improving, altering and repairing real property for others, and also engaged in the business of selling building materials and supplies to other contractors, consumers, and users, and who may not be able to segregate that portion of the materials and supplies that they will use or consume in the fulfillment of their contracts from that portion of the materials and supplies that they will sell at retail, may give a resale certificate to the seller of the materials and supplies.
- (2) Contractor-dealers making sales of tangible personal property shall report all sales made, and all withdrawals from inventory for use as a contractor each month, and pay any applicable Sales or Use Tax due. Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use, either in or out of the state.
- (3) Suppliers making sales of materials and supplies to contractor-dealers and delivering such materials and supplies to a job site for use, or tagging or marking particular materials and supplies for a particular job being performed by the contractor-dealer, shall collect the applicable Sales or Use Tax on those sales.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1984.

1320-5-1-.09 CASUAL AND ISOLATED SALES.

- (1) The Sales Tax does not apply to casual and isolated sales by persons who are not, or who have been deemed by the Commissioner not to be engaged in the business of selling tangible personal property or furnishing any of the services subject to the Sales or Use Tax. The Sales Tax, likewise, does not apply to sales of tangible personal property or taxable services not normally sold by a dealer and which has been used by the dealer prior to the sale; this exemption however, does not apply to any sales of tangible personal property or taxable services bought upon a resale certificate for resale by those persons who hold themselves out as engaged in business, notwithstanding the fact that the sales may be few and infrequent. The exemption also does not apply to the casual and isolated sale of aircraft,

(Rule 1320-5-1-.09, continued)

vessels and motor vehicles which are required to be registered by the State of Tennessee or the U.S. Government.

- (2) Bona fide residents of other states who move to and become residents of Tennessee, and cause to be imported into Tennessee their personal automobiles, personal effects, and household furniture acquired prior to the change of residence, shall not be liable for the Use Tax on these items. This does not apply to any property imported for business use.
- (3) Manufacturers, processors, wholesalers, or jobbers engaged in the business of distributing tangible personal property or furnishing taxable services, who sell primarily other than at retail, are not deemed to be making casual or isolated sales when they sell such tangible personal property or services to purchasers for use or consumption, notwithstanding that sales at retail may comprise a small fraction of their total business.
- (4) Irregular sales of tangible personal property or regular sales of tangible personal property made only during a temporary sales period occurring on a semiannual or less frequent basis are casual and isolated sales not subject to tax. If a person other than a public or private school, grades K-12, or school group has or conducts more than two (2) sales periods during a calendar year, such person shall be liable for sales tax on all sales during that calendar year. Public and private schools, grades K-12, and school support groups having or conducting more than two (2) sales periods during a calendar year, having purchased tangible personal property or taxable services without the payment of tax, shall be liable for the use tax based on the purchase price of the items or services purchased during that calendar year. A sales period shall be presumed to be temporary if it is of 30 consecutive days duration or less. Persons making purchases of tangible personal property or taxable services for resale during temporary semiannual or annual sales periods shall provide their vendor with a written statement indicating that the items or services will be sold during a semiannual or annual sales period.

Authority: T.C.A. §§67-1-102(1), 67-6-102(13)(H) and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed February 14, 1990; effective April 1, 1990.

1320-5-1-.10 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed March 3, 1983; effective June 15, 1983.

1320-5-1-.11 CONTAINERS, WRAPPING AND PACKING MATERIALS AND RELATED PRODUCTS.

- (1) Items actually accompanying the product sold or shipped, without which the delivery of the product is impracticable on account of the character of the contents, and for which there is no separate charge, are not subject to Sales or Use Tax. These items include such things as containers, packing materials, labels or name plate affixed to products manufactured, and printed matter containing only directions for use.
- (2) Sales of containers, wrapping and packing material and related products which actually accompany work done for customers, when the services are subject to the Sales or Use Tax, are exempt from the Sales or Use Tax. Sales of tangible personal property to persons who render services which are not subject to the Sales or Use Tax, are subject to the Sales or Use Tax.
- (3) Charges made by dealers in this State for "gift wrapping" are subject to the Sales or Use Tax.

(Rule 1320-5-1-.11, continued)

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed October 16, 1978, effective January 29, 1979.

1320-5-1-.12 CASH DISCOUNTS. The selling price of an article of tangible personal property or taxable service does not include the amount of bona fide cash discounts actually taken by the buyer; the amount of such discounts may be deducted from gross proceeds of sales, provided such discount has been included in the gross sales.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.13 REPEALED.

Authority: T.C.A. §§67-1-102, 67-6-102(71) and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-1-.14 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.15 ENERGY FUEL AND WATER.

- (1) All energy producing fuels such as coal, coke, electricity, natural or petroleum gases, fuel oil, and other combustibles, and water except as indicated in paragraph (3) of this rule, are subject to the Sales and Use Tax. In the event the purchaser does not pay the applicable Sales or Use Tax to the vendor, he must report the purchases, and pay the tax due thereon directly to the department.
- (2) A manufacturer whose principal business at a specified location is fabricating or processing tangible personal property for resale and for ultimate use or consumption off of his premises may apply to the Commissioner and be authorized to purchase energy fuel and water for use at that location at such reduced rate as may be authorized by law. Manufacturers authorized to purchase energy fuels and water at the reduced tax rate shall furnish a certified or photostatic copy of the authorization to the vendors of any energy fuel or water being claimed at the reduced rate of tax, and pay the tax to the vendor if the vendor is qualified to collect the applicable Sales or Use Tax.
- (3) Manufacturers who qualify for energy fuel or water at the reduced rate may apply for and be granted authority to purchase those energy fuels or water which are separately metered or shown to be solely used in a manner coming into direct contact with or as a component part of an article being fabricated or processed for sale without the payment of any sales or use tax. Manufacturers authorized to purchase and use energy producing fuels or water shall furnish a certified copy of the authorization given by the Commissioner enumerating what energy fuels or water the manufacturer may purchase without paying sales or use tax to the vendor and shall pay direct to the Commissioner the tax on those energy fuels or water upon which no tax has been paid to the vendor and which do not come into direct contact with or become a component part of an article being fabricated or produced for sale.
- (4) Manufacturers claiming the benefits of this rule must submit applications for the reduced rate or complete exemption for each place engaged in manufacturing or processing tangible personal property for sale. Energy fuel and water used by manufacturers in other places where business may be conducted and in those places for which a specific authorization has not been granted by the Commissioner are subject to the full rate of tax.

(Rule 1320-5-1-.15, continued)

- (5) The Commissioner may from time to time require a manufacturer to furnish additional or current information concerning the right of one who has been authorized to either purchase and use energy fuel or water at the reduced rate or to purchase and use energy fuel or water without payment of tax. Upon notice from the Commissioner, the manufacturer shall immediately furnish such information as the Commissioner may deem necessary to ascertain whether the conditions necessary for the authorization have changed, and whether the manufacturer is or has been entitled to the reduced rate of tax or a complete exemption on part of the energy fuel or water. Failure to submit any necessary information to the Commissioner to make this determination shall be a basis for revoking any authorization given to the manufacturer.
- (6) Vendors selling energy fuels or water to a manufacturer claiming a partial or complete examination from paying the tax on energy fuels or water shall have appropriate copies of the authorizations granted by the Commissioner to the manufacturer in their files as evidence to show why the full tax rate has not been collected and paid to the department. Vendors shall be liable for any tax due from manufacturers where proper evidence is not obtained from the manufacturer.
- (7) Vendors shall report the total sales of energy fuel and water sold to manufacturers with any other sales of energy fuels, water and any other tangible personal property and taxable services. The total amount of sales of energy fuels and water sold to manufacturers furnishing certified copies of the appropriate authorizations shall be reported on the forms and in the manner provided by the Commissioner. Manufacturers purchasing energy fuel and water without paying the appropriate tax to the vendor, when any is due, shall include and indicate the amount of purchases of energy fuel and water on their returns, and pay the appropriate tax direct to the department.
- (8) Manufacturers and processors authorized to buy any energy fuel or water without paying any tax to the vendor shall maintain accurate records showing what energy fuel or water has been used in a manner so as to be totally exempt from tax and the total purchases of such energy fuel or water. In cases of electricity, natural or artificial gas, water, and any other item that is metered, accurate meter readings showing readings of the exempt portion and the total purchases of energy fuel and water at least once each month, preferably at the time the readings are made by or for the vendor for billing purposes, shall be maintained by the manufacturer or processor.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983.

1320-5-1-.16 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.17 DENTISTS. A dentist is a consumer of the tangible personal property and taxable services which he uses in the practice of his profession. Therefore, all sales of tangible personal property and taxable services to a dentist are subject to the Sales or Use Tax unless otherwise exempt.

Authority: T.C.A. §§67-1-102, 67-6-201, 67-6-314, and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.18 SALES TO EMPLOYEES.

- (1) An employer selling tangible personal property or taxable services to employees, for use or consumption, must include the receipts from such sales in his gross taxable sales. It is immaterial that such employer makes sales at retail only to his employees, and not to the general public.
- (2) All meals sold or furnished to employees in conjunction with their employment are subject to sales tax upon the sales price to the employee or the cost of the ingredients of the meal, whichever is greater.

Authority: T.C.A. §§67-1-102, 67-6-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.19 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.20 REPEALED.

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Authority: T.C.A. §§67-1-102, 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Repeal filed December 15, 1986; effective January 29, 1987.

1320-5-1-.21 FURNITURE AND STORAGE WAREHOUSEMEN.

- (1) Warehousemen and movers engaged in the business of moving, storing, packing and shipping tangible personal property belonging to other persons render services, which are not subject to the Sales Tax. Crating, boxing, packaging, and packing materials purchased for their use and not resold are subject to the Sales and Use Tax.
- (2) Warehousemen and movers engaged in the business of selling second-hand furniture or other tangible personal property to which they have acquired title, must collect and report the Sales Tax due on any such sales, but sales at auction made by warehousemen or movers to satisfy a warehousemen's lien on account of moving, storing or other services charge will be deemed occasional sales and not subject to the Sales Tax.

Authority: T.C.A. §§67-1-102, 67-6-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.22 FLORISTS AND NURSERYMEN.

- (1) Sales of flowers, wreaths, bouquets, potted plants, shrubbery, and other such items of tangible personal property are subject to the Sales and Use Tax.
- (2) Where florists conduct transactions through a florists' telegraphic delivery association, the following rules will apply in the computation of tax liability:
 - (a) On all orders taken by a Tennessee florist and telegraphed to a second florist in Tennessee for delivery in the State, the sending florist will be liable for the tax. All service, relay and any other charges for the orders shall be considered to be part of the selling price subject to the sales tax.

(Rule 1320-5-1-.22, continued)

- (b) In cases where a Tennessee florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside Tennessee for delivery of flowers to a point outside of Tennessee, the tax will likewise be owing with respect to the total receipts of the sending florist from the customer who places the order.
 - (c) In cases where Tennessee florists receive telegraphic instructions from other florists either without or outside of Tennessee for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which he may realize from the transaction. In this instance, if the order originated in Tennessee, the tax will be due from and payable by the Tennessee florist who first received the order and gave the telegraphic instructions to the second florist.
- (3) Nursery stock actually produced by the nurseryman, when sold direct from the nursery, is exempt if such stock is accounted for separate and apart from other nursery stock.
 - (4) When a nurseryman or florist sells shrubbery, young trees or similar items which are not exempt under paragraph three (3) of this rule, and as a part of the transaction transplants them to the land of the purchaser for a lump sum or a flat rate, the vendor so selling and installing must make a segregation of that portion of the charge which is for tangible personal property sold and that portion of the charge which is for installation. Failure to segregate the charge will subject the entire amount of the transaction to the Sales Tax. In cases where a nurseryman or other contractor agrees to landscape an area, the nurseryman or contractor shall be deemed to be the user and consumer of the nursery stock, fertilizer, seed and any other tangible personal property, and shall be liable for tax on the purchase price or fair market value of the tangible personal property used in connection with his contract.

Authority: T.C.A. §§67-1-102, 67-6-102(71) and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Amendment filed March 31, 2008; effective July 29, 2008.

1320-5-1-.23 FEDERAL EXCISE TAXES, WHEN DEDUCTIBLE.

- (1) Any Federal Excise Tax which is required by law to be passed on to, and is paid by the ultimate consumer, is not a part of the selling price subject to the Sales and Use Tax, provided such tax is billed separately to the customer. However, any Federal Excise Tax which is not required by law to be passed on to consumer is a part of the selling price, even though such tax may be billed separately to the customer.

Authority: T.C.A. §§67-1-102, 67-6-102, 67-6-102(71) and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Amendment filed March 31, 2008; effective July 29, 2008.

1320-5-1-.24 FINANCE COMPANIES. Sales of tangible personal property by a finance company as a result of a default of payments by a customer are subject to the Sales or Use Tax when such property is sold to a Consumer.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.25 FINANCE CHARGES - CARRYING CHARGES.

- (1) Finance charges, carrying charges, time price differential, or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price are not considered a part of the selling

(Rule 1320-5-1-.25, continued)

price of such property and are not subject to Sales Tax if the amount of such finance charges, carrying charges, time price differential, or interest is in addition to the usual or established case selling price, and:

- (a) Is segregated on the taxpayer's invoice or bill of sale, or
 - (b) Is billed separately to customers.
- (2) Unless these conditions are met, such charges shall be deemed to be part of the selling price for the purpose of computing the tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.26 HOSPITALS AND SANITARIUMS.

- (1) Hospitals and sanitariums are primarily engaged in the business of rendering services, and are the consumers or users of all tangible personal property or taxable services purchased for use or consumption in connection with the operation of the institution. The sellers of tangible personal property, other than prescription drugs or medicines, or taxable services to these institutions must collect from them the appropriate tax, but this provision does not apply to a hospital or sanitarium which is otherwise exempt from paying the Sales or Use Tax by virtue of its being a charitable or other like institution.
- (2) If a hospital or sanitarium operates any division that sells tangible personal property or taxable services, such as a lunch room, repair shop, or similar department, then the hospital or sanitarium liable for the tax upon the gross receipts or gross proceeds derived from such sales.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983.

1320-5-1-.27 INSTALLATION SALES.

- (1) Charges for installing tangible personal property, whether made as a part of and in connection with the sale of the tangible personal property, or whether made for installing tangible personal property which has been sold in a separate bona fide transaction when the property remains tangible personal property when installed are subject to the Sales and Use Tax. The tax is due from the dealer, regardless of whether the dealer, or someone acting for him, installs the property. Tangible personal property which is sold and attached to real property, but which will ordinarily be removed by the owner or tenant, such as window air conditioning units, curtain and drapery rods, gasoline pumps, etc., shall be deemed to be personal property and the installation charges therefor shall be subject to the Sales or Use Tax.
- (2) Charges made for installing tangible personal property which becomes a part of real property, are not subject to the Sales or Use Tax. The person so installing the property shall be liable for any Sales or Use Tax that may be due, if any, on the property bought and/or used in making the installation.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.28 INSTALLMENT AND CREDIT SALES. Persons making conditional, charge, or installment sales must report the total selling price of such sales and pay the Sales or Use Tax thereon in the monthly tax period in which the contracts of sales are entered into.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.29 NONRESIDENT PURCHASES.

- (1) If a nonresident of Tennessee purchases articles of tangible personal property or taxable services from a dealer in Tennessee, and the sale is delivered to the vendee in Tennessee, the sale is not one of interstate commerce, and is subject to the Sales Tax. It is immaterial that the property will be later transported outside the State.
- (2) Bona fide dealers outside the State of Tennessee, who make purchases of tangible personal property or taxable services in this State which would otherwise be subject to the provisions of the Sales and Use Tax Law, may make purchases of items or services which they normally sell free of the Sales Tax, provided such a dealer will furnish his vendor in this State with a valid certificate of resale showing that he is a dealer located out of this State and would be entitled to purchase such property upon a resale certificate if he were a dealer in this State.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.30 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.31 JEWELRY SHOPS.

- (1) Sales of watches, watch chains and straps, clocks, pens, rings, and other jewelry are subject to the Sales or Use Tax.
- (2) Charges made for repairing, cleaning, sizing or making slight changes in jewelry, watches, etc., refinishing, converting one item of tangible personal property into another, and engraving incidental to the sale of the tangible personal property, are subject to the Sales or Use Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.32 LEASE OR RENTAL.

- (1) The gross receipts or gross proceeds derived from or amount agreed to be paid for the lease or rental, within Tennessee, of all kinds of types of tangible personal property are subject to the Sales or Use Tax. The tax shall be computed on the gross receipts, gross proceeds, or rental payable without any deduction whatsoever for expense incident to the conduct of business.
- (2) The terms of the contract under which such tangible personal property is leased or rented shall be the basis for computing the tax. The tax is to be computed on a billing basis, either on the lump sum at the time of execution, or on a monthly or periodical basis as provided in the contract. The Sales Tax shall apply to all leases of tangible personal property delivered to a lessee or rentee in this State, regardless of where the property will be taken or used by the lessee or rentee, whether within or without the State of Tennessee.

(Rule 1320-5-1-.32, continued)

- (3) Tangible personal property sold to be used exclusively for renting or leasing may be sold upon a resale certificate.
- (4) Royalties paid, or agreed to be paid, either on a lump sum or production basis, for tangible personal property used in this State are rentals subject to the Sales or Use Tax.
- (5) If the owner of the property maintains continuous supervision over the personal property being rented or leased, and furnishes an operator or crew to operate such property, he is rendering a service, and the same is not subject to Sales or Use Tax on the other hand, if the owner does not furnish the crew or operator, but merely rents the property, and the lessee operates it himself for a stated consideration or price, either by the day or week or month, in such case, the Sales or Use Tax would apply as the lessee has the possession, use and control of the property.
- (6) The tax on leases or rentals are due from the lessee even though the lessor may be a tax exempt entity. Where it is contemplated that a person shall have the right to use tangible personal property only on the premises of the owner, and such premises are occupied by the owner in the conduct of his business, the transaction shall be regarded as a license to use tangible personal property, and not as a rental thereof, and the owner shall pay any applicable Sales or Use Tax on the purchase price thereof. The transaction shall not be regarded as a license to use if the premises are occupied by the lessee or the property is removed from the premises of the lessor.

Authority: T.C.A. §§67-1-102, 67-6-204 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974 Amendment filed December 15, 1986; effective January 29, 1987.

1320-5-1-.33 LEASED DEPARTMENTS. When a dealer leases certain of its departments to other persons selling tangible personal property or taxable services to consumers, each such lessee shall make separate monthly returns and remittances if the lessee keeps his own records and makes his own collections on retail sales from such leased department. If the lessor of such departments keeps the records for the leased departments and makes collections of their accounts, the lessor may, as agent for the lessees, include on his own returns the retail sales and taxable purchases for such departments and pay the taxes due. A lessee shall not be relieved of his liability under the Act in case the lessor fails to make the proper returns or fails to pay the taxes due.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.34 MEALS FURNISHED TO THE PUBLIC.

- (1) Meals furnished at any restaurant, eating-house, hotel, drug store, club, resort, or other place at which meals are served to the public are subject to the Sales Tax.
- (2) Where meals are served only to regular boarders, the operators of the boarding house are the consumers of food articles which are subject to the Sales or Use Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.35 MEALS SERVED BY RAILROADS, AIRPLANES OR OTHER TRANSPORTATION FACILITIES.

- (1) Sales of meals or any other item of food or drink by railroads, airlines, or any other transportation company, while within the State, are subject to the Sales Tax.

(Rule 1320-5-1-.35, continued)

- (2) In cases where meals or any other item of food or drink are served without a specific charge therefor to the passengers, the carrier will be considered to be the user and consumer thereof. Any purchases of such food or drink items in this State are subject to the Sales Tax, regardless of where the food or drink may be consumed by the carrier or passengers.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.36 SCHOOL LUNCHES.

- (1) The sale of food to the State, counties, municipalities of the State, Parent Teacher Associations, or other similar school organizations for the purpose of furnishing school lunches is exempt from the Sales or Use Tax.
- (2) "School lunches" shall mean lunches furnished or sold to students in public or private schools, grades K-12.
- (3) Institutions of learning operating as boarding institutions shall be deemed the ultimate consumer of foods purchased for meal purposes and shall be liable for the payment of Sales or Use Tax for such supplies, unless such institutions have qualified for exemption from Sales or Use Tax on the ground that they are church supported or non-profit colleges, universities or schools.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed February 7, 1980; effective April 22, 1980.

1320-5-1-.37 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.38 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed January 5, 1993; effective April 30, 1993.

1320-5-1-.39 MEMORIAL STONE AND MONUMENT DEALERS. Memorial stones are tangible personal property and the sale thereof is subject to the Sales and Use Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983.

1320-5-1-.40 MANUFACTURERS AND PROCEDURES.

- (1) Materials and taxable services bought for future processing, manufacturing or conversion into articles of tangible personal property for resale, where such materials become a component part of the finished products are not subject to Sales or Use Tax.
- (2) Materials and supplies coming in direct contact with and which are consumed within twenty-five (25) consecutive calendar days, in the processing of manufactured products are not subject to the Sales or Use Tax. Unless materials and supplies come in direct contact with and are consumed within twenty-five (25) consecutive calendar days, they will not be considered as industrial materials or supplies exempt from the Sales or Use Tax. The time period, here indicated, shall apply to any single article in the solid state or to the contents of a container in which liquid is held for introduction for direct contact with the product being manufactured.

(Rule 1320-5-1-.40, continued)

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.41 "MADE TO ORDER" SALES. Where persons contract to fabricate articles of tangible personal property from materials selected or furnished by customers, the total proceeds from the sale are subject to the Sales or Use Tax. Such persons may not deduct labor or service charges of fabrication or production, notwithstanding that such charges may be separately billed to customers apart from charges for materials. Charges made for labor and other services to install tangible personal property which has been fabricated, and which remains personal property after installation, are subject to tax. Charges made for labor and other services to install such property which becomes real property are not subject to the Sales or Use Tax if such charges are billed separately on an invoice given to the customer at the time of the sale

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983.

1320-5-1-.42 OXYGEN, ACETYLENE, HYDROGEN, AND LIQUIFIED PETROLEUM.

- (1) Sales of oxygen, acetylene, hydrogen, and liquefied petroleum gas to refiners, repairmen, contract welders, dentists, junk dealers, and others, or for use as fuel and illumination, are sales to consumers or users, and are subject to the Sales or Use Tax.
- (2) Oxygen, acetylene, hydrogen, and liquefied petroleum gas are not subject to the Sales or Use Tax if the gas is used as an industrial material or supply in a manner exempt from tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.43 BARBER AND BEAUTY SHOP OPERATORS.

- (1) Barber and beauty shop operators render personal services which are not taxable. They are consumers of the various items which they use or consume in the rendition of their services. As such consumers, they are required to pay the Sales or Use Tax on all purchases which they make for use in connection with their business.
- (2) Barber and beauty shops making regular sales of tangible personal property for use of consumption are required to register with the Department and to collect the Sales Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.44 OPTOMETRISTS, OPTICIANS, AND OCULISTS.

Rule Suspended

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 2, 1975; effective January 1, 1976. The Commerce Committee of the House of Representatives, pursuant to T.C.A. § 4-535, held a hearing to consider suspension of Rule 1320-5-1-.44 of the Department of Revenue. On February 11, 1976, the committee moved to suspend the rule. The Commissioner of Revenue noted that the suspension of the rule would not affect the collection of the tax because T.C.A. §67-3003 states: It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state..” The Commerce and Labor Committee of the Senate held a suspension hearing on Revenue Rule 1320-5-1-.44 on February 19, 1976. The Senate Commerce and Labor Committee decided to take no action on the rule because T.C.A. §4-535 allows one committee of either House to suspend a rule. It was the opinion of the committee that the Department of Revenue has the authority to collect the tax with or without Rule 1320-5-1-.44, and that any question as to the validity of enforcing the tax under the Sales

(Rule 1320-5-1-.44, continued)

and Use Tax Law could be determined by litigation "without the participation of the General Assembly." The Order of Suspension by the House of Representatives' Commerce Committee and the Order of the Senate Commerce and Labor Committee on Rule 1320-5-1-.44 may be found in Volume 2 Number 3 of the Tennessee Administrative Register.

1320-5-1-.45 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed March 3, 1983; effective June 15, 1983.

1320-5-1-.46 EXEMPT PERIODICALS.

Periodicals printed entirely on newsprint or bond paper and regularly distributed on a biweekly or other printed matter distributed with such periodical are exempt from the sales and use tax. For the purpose of this rule and Tennessee Code Annotated Section 67-6-329(25), "periodicals" means publications consisting of successive issues published at regular intervals and "distributed on a biweekly or more frequent basis" refers to the initial distribution of new issues. Therefore, a periodical is considered regularly distributed on a biweekly or more frequent basis if new issues are published and distributed at least every fourteen days.

Authority: T.C.A. §§67-1-102, 67-6-402, and 67-6-329; 1993 Tenn. Public Acts 2. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Repeal filed July 15, 1991; effective August 29, 1991. New rule filed May 20, 1994; effective August 29, 1994.

1320-5-1-.47 PHYSICIANS AND SURGEONS.

- (1) Physicians and surgeons are the consumers of the various items of tangible personal property and taxable services which they use in the rendition of their professional services and as such, are required to pay the Sales or Use Tax on any of their purchases unless otherwise exempt.
- (2) Fees for professional services rendered by physicians and surgeons are not subject to the Sales or Use Tax. If physicians and surgeons, apart from their professional services are engaged in business selling tangible personal property or taxable services, they are vendors and must collect and report the Sales or Use Tax on such sales.

Authority: T.C.A. §§67-1-102, 67-6-102, 67-6-314, and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.48 PHOTOGRAPHS, PHOTOSTATS, BLUE PRINTS, ETC.

- (1) Sales of photographs, portraits, prints from camera film, camera film, photostats, blue prints, frames, and other like items are subject to the Sales and Use Tax when sold for use or consumption. Any sale of paper or other material which becomes a component of the photograph, or other prints, is a sale for resale, and not subject to the Sales or Use Tax. Chemicals and other products which do not become an actual part of the finished product being sold, are sold for use and consumption by the person making the photograph or print, and are subject to the Sales and Use Tax.
- (2) Charges made for developing films and coloring or tinting pictures or photographs furnished by customers are service charges not subject to the Sales or Use Tax when a separate charge for such services is billed to the customer. Chemicals, paints, colors, etc., used in rendering such services are used and consumed by the person doing the work who must pay the Sales or Use Tax due on such supplies.

(Rule 1320-5-1-.48, continued)

Authority: T.C.A. §§67-1-102, 67-6-402 and Tenn. Pub. Acts 25. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987.

1320-5-1-.49 PREMIUMS, GIFTS AND TRADING STAMPS.

- (1) Items of tangible personal property which are withdrawn from a dealer's stock for which a resale certificate has been issued his supplier, or which are purchased for use as premiums or gifts, are subject to the Sales or Use Tax.
- (2) Persons engaged in the business of redeeming trading stamps which have been given by other dealers shall be deemed to be a dealer and shall be liable for the Sales or Use Tax on the retail value of the merchandise given for the stamps: this value shall be deemed to be that which is assigned to the books of stamps. Such dealers shall likewise be liable for any Sale or Use Tax on the purchases and/or distribution of any catalogs, stamps, etc., in this State.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.50 RETURNED MERCHANDISE, CREDITS, AND ALLOWANCES.

- (1) The records of a taxpayer must clearly reflect and support a claim for all deductions for merchandise returned for credit or refund.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-102(71)(C), and 67-6-507. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Amendment filed June 28, 2000; effective September 11, 2000. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Amendment filed March 31, 2008; effective July 29, 2008.

1320-5-1-.51 RELIGIOUS, CHARITABLE, EDUCATIONAL AND OTHER NON-PROFIT INSTITUTIONS.

- (1) Sales made to individuals or organizations for the use and benefit of institutions which may themselves be exempt from the Sales or Use Tax, are subject to the Sales or Use Tax.
- (2) Sales of tangible personal property to churches or other religious, charitable, educational, scientific or any other similar institution for the purpose of resale when such organizations are not regularly engaged in the business of selling tangible personal property, are subject to the Sales and Use Tax, and the church or other institution shall not be required to charge or be liable for any tax on such sales. In the event, however, any church or other similar institution is regularly engaged in the business of selling tangible personal property or furnishing any taxable service, it shall qualify with the Department as a dealer and be liable for any tax due on such sales.
- (3) Religious, charitable or educational institutions entitled to an exemption from sales or use tax upon tangible personal property sold, given or donated to them will be issued a letter of exemption upon application to the commissioner. When purchasing goods and services from suppliers, the exempt institution must furnish its supplier with a properly completed copy of the letter or valid exemption under 26 U.S.C. 501(c)(3) pursuant to T.C.A. 67-6-322(e). The exempt institution should retain the original exemption letter with the lower portion left uncompleted for copy making purposes. For the purpose of these rules, "letter of exemption" and "exemption letter" shall have the same meaning as "certificate of exemption" and "exemption certificate"

(Rule 1320-5-1-.51, continued)

Authority: T.C.A. §§67-1-102, 67-6-322, and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Amendment filed February 14, 1990; effective April 1, 1990. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.52 REPOSSESSIONS.

- (1) The unpaid balance to be considered in the calculation of the repossession credit allowed by T.C.A. 67-6-507(d) is only that which constitutes principal, and shall not include interest, carrying charges or any similar charges. Any dealer claiming such a deduction or deductions shall preserve, as a part of the official records of his business, full information concerning the sale and subsequent repossession of the subject item of personal property; information shall include identification of parties and items involved, the dates of the sale and repossession, the amount of the original price to the purchaser upon which sales tax was due to be paid, and the amount of unpaid balance which forms the basis for the deduction.
- (2) A bank or other financial institution purchasing contracts "without recourse" from dealers selling tangible personal property may not claim any deduction or credit for any unpaid balances remaining due on any property which has been sold by the other dealer on a security agreement or other title retained instrument, and later repossessed, or which resulted from any other action to enforce the lien.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-507. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.53 LAUNDRIES, DRY CLEANERS, AND OTHER CLEANING TANGIBLE PERSONAL PROPERTY.

- (1) The washing, drying, or cleaning of any kind of tangible personal property and sales of any tangible personal property such as soap, bleaches, etc., and repair or alteration of any tangible personal property, for use and consumption, are subject to the Sales and Use Tax. This includes, but is not limited to such articles as clothing, furniture, rugs, draperies, jewelry, motor vehicles, etc. The receipts from coin-operated laundry and dry cleaning machines are not subject to tax if the customer performs all of the activities related to the handling of their clothing. If the dealer performs any of these services, the receipts are taxable.
- (2) The cleaning of real property such as windows, walls, and wall to wall carpeting in buildings, is not subject to any Sales or Use Tax. Likewise; charges for storage of and insurance on laundry and cleaning, and dyeing, blocking, and pressing only, are not subject to the Sales or Use Tax, provided such charges are stated separately on a ticket, statement, or invoice given to the customer and are accounted for as such on the books and records of the dealer.
- (3) Items of tangible personal property bought by laundries and dry cleaners which accompany tangible personal property washed or cleaned for customers, such as identification and packaging supplies, and items bought for resale, such as soap, bleach, and repair supplies, may be bought on a resale certificate without Sales or Use Tax. Items of tangible personal property which do not accompany tangible personal property washed or cleaned for customers, and all items used to wash or clean real property, such as equipment, public utilities, and cleaning agents, are subject to the Sales or Use Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

(Rule 1320-5-1-.55, continued)

1320-5-1-.54 REPAIR SERVICES.

- (1) All charges for repair services and repairs of any kind of tangible personal property, such as automobiles, clothing, watches and jewelry, office equipment, machinery, tires, etc., including all parts and/or labor, are subject to the Sales Tax. This includes occasions when there may be no new parts involved in the transaction, and occasions when a customer may furnish any or all of the parts necessary for the repair work. Any factor entering into the consideration charged for repair services and repairs such as "service call", minimum charge, hourly or flat rates, mileage, etc., shall be subject to the Sales Tax.
- (2) For the purposes of this rule, "repair services" and "repairs" of tangible personal property shall mean and include any one or all of the following for a user and consumer; work done to preserve or restore to or near the original condition made necessary by wear, normal use, wastage, injury, decay, partial destruction, or dilapidation; mending, correction, or adjustment made for any defect or defective portion; alterations; refinishing; any cleaning that is a necessary part of any repair work; "service calls" where any repair work is done or contemplated; and changes in the size, shape, or content. Repair services and repairs of tangible personal property shall not include any maintenance or other work on buildings, or electrical wiring, plumbing, or fixtures attached to and a part of any real property; installation of tangible personal property not incidental to a sale or repair thereof; service calls where no repair is contemplated; work done on one's own property insofar as labor is concerned, either personally, or by one's own employees, (but not to include parts, supplies, etc., all of which are taxable); or engraving not incidental to a sale of tangible personal property. In the event any services and repairs are not taxable, the charges therefor must be billed separately to the customer and indicated as such on the books and records of the dealer.
- (3) Dealers performing repair services and repairs of tangible personal property may purchase repair parts, repair services, and containers, labels, etc., for packaging work repaired, without tax, on a certificate of resale. All equipment, energy fuel, and other supplies and taxable services are subject to the Sales or Use Tax, and the tax due thereon must be paid to the vendor.

Authority: T.C.A. §§67-1-102, 67-6-102, and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.55 SALES TO THE STATE OR POLITICAL SUBDIVISIONS.

- (1) Sales of tangible personal property and taxable services to the State, or a County, or Municipality within the State of Tennessee are not subject to the Sales or Use Tax provided that such governmental institution furnishes the vendor with a properly executed exemption certificate; however, any sale made to a State other than Tennessee, or a County or Municipality not located within Tennessee, is subject to the Sales Tax.
- (2) In order to be a sale to the State of Tennessee, or a County or Municipality in this State, the State, County, or Municipality must make the purchase of the property or taxable service, obtain title to the property or service immediately when it is delivered, and pay directly to the dealer supplying the property or service the purchase price of such property or taxable service.
- (3) Sales of tangible personal property and taxable services to a contractor or other person for the use and later benefit of the State or a County, or Municipality in this State, are subject to the appropriate Sales or Use Tax.
- (4) Dealers must have an appropriate Governmental Exemption Certificate for any tangible personal property or taxable service which is sold to governmental institutions from whom the

(Rule 1320-5-1-.55, continued)

Sales or Use Tax is not collected, and keep such certificate as a part of their records to show that such sales are exempt from the Sales or Use Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983.

1320-5-1-.56 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed March 3, 1983; effective June 15, 1983.

1320-5-1-.57 TRUSTEES, RECEIVERS, EXECUTORS AND ADMINISTRATORS. Trustees, including bankruptcy trustees, receivers, executors and administrators, who continue to operate, manage or control a business selling tangible personal property or taxable services or who liquidate such a business must collect, report and pay the Sales or Use Tax as any other dealer. It is immaterial that such officers may have been appointed by a court and may be acting by virtue of their appointment. Such persons are deemed to be engaged in the business of selling tangible personal property or taxable services, even though engaged in liquidating the assets of a business.

Authority: T.C.A. §§67-1-102, 67-6-402 and 67-6-102. **Administrative History:** Original rule certified June 7, 1974. Amendment filed January 30, 1990; effective April 1, 1990.

1320-5-1-.58 SALES TO THE UNITED STATES OR AGENCIES THEREOF.

- (1) Dealers making sales direct to the United States, or any agency thereof, shall obtain an appropriate exemption certificate, and keep it in their records as evidence of such a sale.
- (2) Sales made to a contractor, who may be doing contract work for the U.S. Government, are not exempt from the Sales or Use Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.59 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.60 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed December 15, 1986; effective January 29, 1987.

1320-5-1-.61 UNDERTAKERS AND FUNERAL DIRECTORS.

- (1) Undertakers and Funeral Directors are engaged in the business of selling tangible personal property, and shall report, collect, and pay the tax on their sales of caskets, grave vaults, clothing, flowers, and similar articles. Receipts from services rendered, such as embalming, hearse service, family cars, and the like, are not subject to the Sales or Use Tax.
- (2) In order for the dealer to claim any or all of the exemptions set out herein, the vendor shall furnish an invoice showing the amount of sales or tangible personal property and the amount of sales of services, properly segregated, to the customer. Failure to furnish an invoice showing the segregation to the customer at the time of the sale will subject the total amount to the Sales or Use Tax.

(Rule 1320-5-1-.61, continued)

- (3) Where undertakers and funeral directors furnish items of tangible personal property, such as flowers and clothing, without a specific charge indicated on an invoice to the customer, the undertaker or funeral director shall be considered the user and consumer, and shall pay the appropriate Sales or Use Tax on all tangible personal property furnished for the services.
- (4) Equipment, embalming fluids, and any other supplies purchased to be consumed or used by the undertaker or funeral director in performing his services are subject to the Sales or Use Tax.

Authority: T.C.A. §§67-1-102, 67-6-329, 67-6-402, and Chapter 602, § 93, of the Public Acts of 2007.

Administrative History: Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Amendment filed March 31, 2008; effective July 29, 2008.

1320-5-1-.62 SALES FOR RESALE.

- (1) "Sales for resale" means those whereby a supplier of materials, supplies, equipment and services makes such tangible personal property or services available to legitimate dealers actually selling such property or services as such, or which becomes an industrial material or supply in a manufacturing or processing operation.
- (2) The price which a vendor charges his vendee for tangible personal property or services, whether it is a "retail" or "wholesale" price, or the quantity of such property or services sold to the vendee, may not be used to determine whether a sale is a "sale for resale."

Authority: T.C.A. §§67-101 and 67-3045. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.63 REGISTRATION CERTIFICATE.

- (1) Sales Tax.
 - (a) When a dealer changes his business location within the same county, the certificate holder shall notify the Department of the new business address and surrender his Registration Certificate. A new certificate will be issued showing the correct business address.
 - (b) When a dealer changes his business location to a different county, or to a different type of business, the certificate must be submitted for cancellation, and an application for a new certificate filed.
- (2) Use Tax
 - (a) Out-of-state dealers which have a sufficient jurisdictional contact or nexus with this State, and accept orders from residents of this State, shall register with the Department for Use Tax purposes, and report and pay the appropriate Use Tax to the Department. Other out-of-state dealers should register with the Department for the purpose of reporting and collecting use tax as a convenience and service to their customers.
 - (b) Persons importing taxable tangible personal property into the State, and who do not pay the Tennessee Use Tax to an out-of-state dealer registered with this Department, shall register with the Department for Use Tax purposes, and report and pay the appropriate Use Tax to the Department. Except as otherwise provided in these rules and regulations, such persons must pay the Use Tax to out-of-state dealers who are properly registered with this Department, rather than declare such purchases and pay the tax themselves.

(Rule 1320-5-1-.63, continued)

- (3) Dealers within the State having both Sales and Use Tax to report shall register for Sales Tax purposes, and report the Sales and Use Tax on forms provided for such purposes.
- (4) Dealers having average monthly gross sales of \$400.00 or less and taxable services of \$100.00 or less may in the discretion of the Commissioner be required to pay tax to their suppliers on purchases in lieu of registering for sales and use tax purposes since the Department's cost of administering the account would exceed the taxes reported.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-501. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.64 SCHOOL BOOKS. School books used in public or private schools in Tennessee, including colleges and universities, are not subject to the Sales or Use Tax. However, sales of paper and other supplies used for school purposes are not exempt from the Sales or Use Tax.

Authority: T.C.A. §§67-3045 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.65 SIGN MANUFACTURERS AND PAINTERS.

- (1) Sales of signs which are and remain tangible personal property are subject to the Sales and Use Tax, based upon the actual sales price thereof. Charges for installing signs which are and remain personal property which are made in connection with the sale of the signs, and any charges for repairs or maintenance of signs which are and remain personal property are subject to the Sales Tax. Signs which are and remain tangible personal property are these which are not attached in a permanent fashion to buildings or which are not an integral part of such structure or buildings, or which are not displayed on structures securely anchored in the ground.
- (2) Sales of signs which are attached in a secured and permanent fashion to buildings, which are an integral part of such buildings, or which are displayed on structures securely anchored in the ground, are subject to the Sales Tax based on the selling price thereof. Any charges for installing, repairing or maintaining such signs are not subject to the tax, but the person so installing, repairing or maintaining such signs shall be regarded as the user and consumer of tangible personal property which is used in connection with such installation, repair or maintenance, and shall be liable for the Sales or Use Tax on such materials in this case, the tax is due on the actual selling price of the sign which is securely and permanently attached to the building or to structures bolted to the building or to structures permanently anchored in the ground on heavy wood or steel poles.
- (3) Persons engaged in the business of painting signs on buildings or other real or personal property shall be considered as rendering services, not subject to the tax. Sales of paint and any other tangible personal property to such persons are subject to the Sales and Use Tax.
- (4) Signs which are personal property and which are leased to others are subject to Sales or Use Tax. Where space on signs which are real property is leased to others, and where the lessor has a right to remove the signs at the end of a specified period to time, the lease shall not be regarded as a lease of tangible personal property subject to the Sales or Use Tax; any materials, supplies and equipment which are used in connection with the construction, upkeep, repair, or maintenance, however, are subject to the Sales or Use Tax.

Authority: T.C.A. §§67-101 and 67-3045. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.66 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.67 PRINTING INDUSTRY.

- (1) Sales of advertising circulars, books, forms, tickets, and other like printed items of tangible personal property are subject to the Sales and Use Tax unless the printed matter is sold for resale purposes.
- (2) The printing and binding of paper, books, forms, letters, and the like is a fabrication thereof, and is subject to the Sales or Use Tax unless the fabrication is a part of a manufacturing process for resale. It is immaterial whether the customer furnishes any or all the paper or other materials used in the fabrication work. Any rebinding or other repair of a book or other tangible personal property is subject to the Sales or Use Tax.
- (3) Any equipment, materials and supplies which are not sold to a customer, or which do not become a component part of the printed matter being fabricated for sale, or which cannot qualify as an industrial supply exempt from tax, are subject to the Sales or Use Tax. In those cases where a printer makes a specific charge in a contract, or indicates a specific charge on an invoice for an engraving, die, plate, or any other similar kind of tangible personal property sold to a customer, and uses the property in the printing process, he shall be liable for the tax represented by such sale or use irrespective of whether the customer ever actually obtains possession of the engraving, die, plate, etc., or whether the printed matter itself is subject to the Sales or Use Tax.

Authority: T.C.A. §§67-101, 67-1-102, 67-6-102(23), and 67-3045. **Administrative History:** Original rule certified June 7, 1974. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Amendment filed March 31, 2008; effective July 29, 2008. Amendment filed March 31, 2008; effective July 29, 2008.

1320-5-1-.68 RESALE CERTIFICATE.

- (1) Dealers shall require certificates of resale for all tangible personal property sold or services rendered in this State, for the purpose of resale, and such certificates must be available at the establishment of the dealer for ready inspection and comparison with the deductions claimed on monthly Sales and Use Tax returns. A dealer duly registered under the provisions of the Sales Tax Act and continually engaged in the business of selling tangible personal property or taxable services at retail may present evidence to his wholesaler or supplier as to his registration as a retailer, and shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of his operation, and the purchases are of tangible personal property or taxable services of a sort usually purchased by the purchaser for resale.
- (2) All sales for resale which are not supported by resale certificates properly executed shall be deemed retail sales, and the dealer held liable for the tax unless the same comes within the exception mentioned as a part of paragraph (1) of this rule.
- (3) Certificates of resale may not be used to obtain tangible personal property or taxable services to be used by the purchaser, and not for resale; such use shall be grounds for the Commissioner to revoke the registration certificate of the dealer wrongfully making use of such certificate of resale. In addition to this penalty it is a misdemeanor to misuse the certificate of registration and resale certificates for the purpose of obtaining tangible personal property or taxable services without the payment of the Sales or Use Tax when it is due.

(Rule 1320-5-1-.68, continued)

- (4) Provided, however, the Commissioner may extend special written permission to a registered dealer to make purchases for his own use under a certificate of resale, and to report separately his tax liability to the Department under exceptional circumstances or hardship upon the taxpayer. A certified or photostatic copy of such permission shall be filed with the wholesaler or dealer. This special written permission to remit the use tax shall in no wise alter or affect the test or criteria for determination of whether a transaction is taxable in this State.

Authority: T.C.A. §§67-101, 67-3045, 67-1-102, 67-6-409(b)(1), 67-6-102(13)(A) and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Amendment filed March 31, 2008; effective July 29, 2008.

1320-5-1-.69 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.70 HOTELS, MOTELS, INNS, LODGING HOUSES, APARTMENT HOUSES.

- (1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist cabin, motel, or any place in which rooms, lodgings, or accommodations are furnished to transients for a consideration, are subject to the Sales Tax. The tax shall apply to any charges made for rooms, lodgings or accommodations until the same person or persons has (have) occupied the rooms, lodgings, or accommodations for a period of ninety (90) continuous days or more, and applies without regard to whether payment for the charges is ever received from that customer.
- (2) After a transient has occupied a room or other accommodation for ninety (90) continuous days or more the dealer furnishing the room or other accommodations may refund any Sales Tax which he has actually collected from the person, and claim credit for that tax on a subsequent return filed with the Department.
- (3) Sales of such articles as beds, bedding, bathroom supplies, equipment, and all other supplies and taxable services used by hotels, inns, motels, or any place of business offering lodging accommodations for a consideration, are sales to consumers, and are, therefore, subject to the Sales or Use Tax.

Authority: T.C.A. §§67-101 and 67-3045. **Administrative History:** Original rule filed June 7, 1974.

1320-5-1-.71 REPEALED.

Authority: T.C.A. §§67-101, 67-1-102, 67-6-102(23) and (71), and 67-3045. **Administrative History:** Original rule filed June 7, 1974. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-1-.72 SERVICE STATIONS.

- (1) Services such as repairing tires and tubes, replacing parts in motor vehicles, charging batteries, switching tires, washing motor vehicles, and lubrication are subject to the Sales and Use Tax.
- (2) Tangible personal property which can be identified as going to the customer, such as parts, grease, patches, etc., may be purchased on a resale certificate without payment of the tax to the vendor. Other types of supplies and equipment such as machinery, car wash soap and

(Rule 1320-5-1-.72, continued)

detergents, etc., are subject to the tax. The tax due thereon must be paid by the operator of the service station to the vendor making the sale.

Authority: T.C.A. §§67-1-102, 67-6-102, and 67-6-402. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.73 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.74 TAXPAYER'S REPORTS.

- (1) All dealers selling any tangible personal property or furnishing any of the services subject to the Sales Tax from a location in the State and all vendors and users, whether within or without the State having an "active" account as designated in their Certificate of Registration shall file a complete report of all sales, purchases, deductions, etc., with the Commissioner for each month (except as indicated in paragraph (2)). These reports shall be filed regardless of whether the dealer or user is a "manufacturer", "wholesaler", or "retailer", or whether there have been any sales or purchases, of any kind or whether there is any Sales or Use Tax due to be paid.
- (2) Reporting on other than a monthly basis may be permitted as follows:
 - (a) Dealers whose sales and use tax liability for twelve consecutive months has averaged \$200 or less per month may be permitted in the discretion of the Commissioner to file returns and make remittances thereon on a quarterly, semiannual or annual basis. Quarterly returns and remittances thereon shall cover the three calendar months ending on the last day of March, June, September and December. Semiannual returns and remittances thereon shall cover the 6 calendar months ending on the last day of June and December. Annual returns and remittances thereon shall cover the 12 calendar months ending on the last day of December.
 - (b) If a dealer's tax liability for any subsequent twelve month period should exceed \$2400, or if the Commissioner should determine that a loss of revenue might result from permitting such dealer to continue filing returns and making remittances on other than a monthly basis, the Commissioner may require such dealer to a monthly basis. Failure to timely file a return or make remittance of the tax due thereon shall be grounds for returning a dealer to a monthly basis of filing returns and making remittances.
 - (c) A new dealer whose business, in the determination of the Commissioner is highly likely to qualify under (a) may be permitted to file returns and make remittances on other than a monthly basis without the required reporting experience.
 - (d) Dealers filing returns and making remittances on other than a monthly basis shall be allowed vendor's compensation on the same basis as it is allowed to dealers on a monthly basis. Such dealers shall be liable for penalties and interest on the same basis as dealers on a monthly basis are liable. Quarterly, semiannual, and annual returns shall be filed and remittances made thereon on or before the 15th day of the month following the close of the period covered by such returns and remittances and shall be delinquent if made after such time.

Authority: T.C.A. §§67-1-101, 67-1-102, 67-3045, 67-6-402 and 67-6-505. **Administrative History:** Original rule filed June 7, 1974. Amendment filed April 28, 1977; effective October 1, 1977. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 2, 1989; effective July 17, 1989.

1320-5-1-.75 LAYAWAY AND WILL-CALL SALES. A sale whose delivery is conditional on payment of the amount due on the price of the sale is not completed until the amount due is received by the seller and, therefore, not taxable until the tangible personal property or service is delivered to the customer.

Authority: T.C.A. §§67-101 and 67-3045. **Administrative History:** Original rule filed June 7, 1974.

1320-5-1-.76 TIPS, GRATUITIES AND SERVICE CHARGES.

- (1) The term "tip" means a monetary gift or gratuity given by a customer to a server in a bar or restaurant or similar establishment. Tips are not normally included in the sales price of food or beverages sold.
- (2) (a) Tips will, however, be included in the sales price of food or beverages if the tips are either mandatory on the part of the purchaser or if the tips are not returned to the persons performing the service.
- (b) A charge which is automatically added to the customer's bill by the seller shall be considered mandatory, whether styled by the seller as a tip, gratuity or otherwise. This presumption may be overcome by an affirmative showing by the seller by a preponderance of the evidence that the prevailing practice was that payment of such charge was not required.

Authority: T.C.A. §§67-1-102, 67-6-102 and 67-6-402; *Memphis Country Club v. Tidwell*, 503 S.W.2d 919 (Tenn. 1973). **Administrative History:** Original rule filed June 7, 1974. Repeal filed December 15, 1986; effective January 29, 1987. Original rule filed January 31, 1992; effective March 16, 1992.

1320-5-1-.77 REPEALED.

Authority: T.C.A. §§67-1-102, 67-6-504(i), and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-1-.78 EXEMPTION CERTIFICATE.

- (1) Dealers making sales of tangible personal property and furnishing services that are subject to the Sales Tax to vendees exempt from payment of the Sales and Use Tax shall obtain and keep, as a part of their books and records, appropriate exemption certificates. Dealers shall likewise obtain and keep, as a part of their records, appropriate exemption certificates for sales of tangible personal property which is not specifically exempt from the Sales or Use Tax, but which may be used in a manner that will exempt it from the Sales or Use Tax. Such exemption certificates shall be maintained in the establishment of the dealer making such sales, and shall be available for inspection and comparison with the Sales or Use Tax return upon which any deduction is made from gross sales.
- (2) All sales for which an exemption has been claimed, but which are not supported by exemption certificates, will be deemed retail sales, and the dealer will be held liable for the Sales or Use Tax due thereon.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.79 REFUNDS OF, OR CREDIT FOR OVERPAYMENT OF SALES OR USE TAX. Persons who have overpaid Sales or Use Tax to the State may file a Claim for Refund for any taxes paid within the time period provided at T.C.A. §67-1-707. Such person's records must show that customers have been refunded the Sales or Use Tax, or that they have been given credit for such tax, where this is the basis for

(Rule 1320-5-1-.79, continued)

the refund. No credit for overpayment of taxes may be given unless a person claiming credit would have a right to receive the credit by means of a Claim for Refund.

Authority: T.C.A. § 67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983.

1320-5-1-.80 RECORDS OF DEALERS, PRESERVATION OF.

- (1) Every dealer must keep and preserve such adequate and complete records as are required by law to determine the amount of Sales and Use Tax for which he may be liable: it is advisable for every dealer to keep and preserve such records for a period of six years. Such records shall include and show:
 - (a) A daily record of all cash and credit sales, including sales under any type of financing or installment plan in use;
 - (b) A record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;
 - (c) A record of all deductions and exemptions allowed by law and/or claimed in filing Sales or Use Tax returns, including exemption and resale certificates;
 - (d) A record of all tangible personal property used or consumed in the conduct of his business;
 - (e) A true and complete inventory of the value of the stock on hand taken at least once yearly.
- (2) If an assessment has been made and an appeal to the Commissioner or to a Court is pending, books and records, as above specified, relating to the period covered by such proposed assessment, must be preserved until the final disposition of the appeal.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.81 DAIRIES.

- (1) Dairy products sold for use or consumption in this State are subject to the Sales or Use Tax as follows:
 - (a) A dairy buying all of its milk used for processing is required to collect, report, and pay the Sales or Use Tax on all of its sales for use or consumption.
 - (b) A farmer dairyman selling his own milk produced on his farm is not required to collect the Sales or Use Tax on his sales.
 - (c) A farmer dairyman buying milk for processing, either to supplement his own milk, or to fill in at times when he has no milk of his own to process, is required to collect, report and pay the Sales or Use Tax on that part which is purchased.
 - (d) A farmer dairyman who buys milk for processing and intermingles it with his own milk is required to collect, report, and pay the Sales or Use Tax on all of his sales for use or consumption.
- (2) Supplies, equipment and taxable services used by dairies to process dairy products are subject to the Sales or Use Tax.

(Rule 1320-5-1-.81, continued)

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.82 ADMINISTRATION OF OATHS. The Commissioner, or any of his duly authorized representatives, may administer oaths and take affirmations in any matter pertaining to the administration of the Sales Tax Law.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.83 REPEALED.

Authority: T.C.A. §§ 67-3045, 67-101, 67-1-102, and 67-6-504(i). **Administrative History:** Original rule certified June 7, 1974. Amendment: filed February 27, 1976; effective May 14, 1976. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-1-.84 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.85 COMMON CARRIERS.

- (1) A common carrier shall pay the Sales or use Tax on all tangible personal property or taxable services which it buys or uses in this State, except rolling stock, aircraft, or floating equipment which enters the State in actual use in interstate commerce at the time of entering and is continuously used in interstate commerce thereafter. This exception shall not apply to such equipment which is localized for use within the State.
- (2) Where tangible personal property is stored in this State, and is later exported to another State for use therein, the tax previously having been paid on this property, the common carriers may take credit for the tax paid on said property, in settlement for the month in which the property is removed from this State, provided accurate records of all transactions are kept on file.
- (3) Lubricants and fuel put into equipment storage facilities outside the State, and brought into this State are not subject to the Sales or Use Tax; lubricants and fuel put into equipment storage facilities in this State are subject to the Sales or use Tax. This rule is applicable regardless of the amount of lubricants or fuel used in this State.
- (4) Dealers making sales for use and consumption from locations in the State are liable for the applicable Sales Tax due thereon regardless of any possible losses or damages which may occur while the tangible personal property is in the hands of a common or contract carrier. Any claims for losses or damages to such property shall include the applicable Sales Tax. Claims for losses or damages for tangible personal property sold by a dealer for use and consumption from a place of business in the State, but actually shipped from a location out of the State shall likewise include the applicable Sales Tax. Dealers making sales, and users and consumers making shipments from out of state locations shipping tangible personal property into the State for use and consumption may be given credit for any losses or damages to tangible personal property shipped into this State for use and consumption, and the Use Tax on such losses and damages will not be considered as a part of claims for losses or damages.

(Rule 1320-5-1-.85, continued)

- (5) Common carriers making regular sales of damaged tangible personal property shall be deemed to be dealers selling tangible personal property, and must collect and be liable for any applicable Sales Tax.

Authority: T.C.A. §§67-3045 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.86 RAILROAD CROSS TIES, BRIDGE TIMBERS, ETC.

- (1) Where a railroad buys untreated ties or timber in this State and pays the Sales Tax thereon, it may, thereafter, have such ties or timber creosoted within or without the State without being subject to the payment of further Sales or Use Tax if such property is used in this State.
- (2) Where a railroad buys untreated ties or timber in this State for shipment in interstate commerce and does not pay the Sales or Use Tax thereon, and such ties or timber are shipped and creosoted outside the State, and subsequently shipped and used in this State, such railroads will be required to pay a Use Tax thereon, based upon the cost of the untreated ties or timber in Tennessee, and the cost of processing of the finished product brought into the State.
- (3) Where a railroad buys untreated ties or timber outside the State and brings said property into the State for creosoting or other processing treatment, such railroads will be required to pay a Use Tax based upon the amount paid for such untreated ties and timber.
- (4) Where a railroad buys untreated ties or timber outside the State, and the same are creosoted outside the State of Tennessee, and the railroad subsequently brings said ties or timber into the State for use, such railroad will be required to pay the Use Tax thereon, based upon the cost of the finished product.

Authority: T.C.A. §§67-101 and 67-3045. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.87 REPEALED.

Authority: T.C.A. §§67-101, 67-1-102, 67-6-207 67-6-504(l), and 67-3045. **Administrative History:** Original rule certified June 7, 1974. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-1-.88 REPEALED.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-101 and 67-3045. **Administrative History:** Original rule certified June 7, 1974. Repeal filed February 14, 1990; effective April 1, 1990.

1320-5-1-.89 EXTENSION OF TIME.

- (1) The Commissioner, under emergency or other extraordinary conditions, may extend for not to exceed thirty (30) days the time for filing any sales or use tax return pursuant to T.C.A. § 67-6-506. Requests for extensions must state why the extension is needed; must be in writing, must be signed by the dealer or his representative; and must be made before the due date of the return.
- (2) Emergency or other extraordinary conditions shall include intervening providential causes such as the occurrence of a disabling injury or illness, or death of the taxpayer, or a member of his immediate family or of a person upon whom the taxpayer has previously exclusively relied for the preparation of his returns. Emergency or extraordinary conditions shall also include the destruction by fire or other casualty of the taxpayer's place of business or records, or the breakdown or malfunction of a computer essential to preparation of the return.

(Rule 1320-5-1-.89, continued)

Authority: T.C.A. §§67-101, 67-3045, 67-1-102, 67-6-402 and 67-6-506. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987.

1320-5-1-.90 BILLING OF SALES AND USE TAX.

- (1) Vendors within the State must indicate in some definite manner whether their customers are paying any Sales Tax. This indication must be stated on the ticket, invoice, or other record given to the customer, or it may be shown by posting a sign in the place of business of the dealer indicating that the prices shown include any applicable Sales Tax. This statement cannot be included on a ticket, invoice, or other record given, and tax may not be charged, to vendees who are exempt from paying the Sales Tax.
- (2) Out-of-state vendors making taxable sales to customers in this State, and properly registered with the Department for the purpose of collecting Use Tax, shall bill the Use Tax as a separate item on the billing invoice to the Tennessee customer, indicating their Tennessee Registration Numbers, substantially as follows:

Tangible Personal Property and/or Taxable Services	\$	
Tennessee State and Local Use Tax		_____
Total	\$	
Tennessee Registration Number		

Authority: T.C.A. §§67-101 and 67-3045. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.91 CREDIT FOR SALES AND USE TAX PAID IN OTHER STATES.

- (1) Persons actually paying a legally imposed Sales or Use Tax to another State on tangible personal property or taxable services imported into this State may claim such payment as a credit against any Use Tax liability accruing in this State. The Commissioner may require persons claiming such credit to furnish the name of the vendor from whom he purchased the property, and an affidavit that such a tax has been paid. See also 1320-5-1-.09(2) regarding new residents.
- (2) Fees paid in States to register a motor vehicle are not a Sales or Use Tax, and may not be claimed as a credit for a Sales or Use Tax paid to another State.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-507. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.92 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal and filed December 15, 1986; effective January 29, 1987.

1320-5-1-.93 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed December 15, 1986; effective January 29, 1987.

1320-5-1-.94 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed December 15, 1986; effective January 29, 1987.

1320-5-1-.95 USE OF PROPERTY UPON WHICH NO SALES OR USE TAX HAS BEEN PAID. When a person purchases tangible personal property upon which no Sales or Use Tax is paid, and which is used or consumed as tangible personal property subject to the Sales or Use Tax, such use must be reported and a tax paid thereon for the month in which the taxable use arose. It is the duty of the person to keep accurate records to show what determination is made of such property.

Authority: T.C.A. §§67-1-102, 67-6-201, and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.96 TANGIBLE PERSONAL PROPERTY SOLD BY DEALERS TO OTHER VENDORS WHERE DELIVERY IS MADE FOR USE AND CONSUMPTION. Except in cases where specific and satisfactory arrangements are made with the Commissioner before sales and deliveries are made, sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as his (the out-of-state vendor) agent to deliver or ship tangible personal property or taxable services to his (the out-of-state vendor) customer, who is a user or consumer, are subject to the Sales or Use Tax. The dealer so acting as agent for the out-of-state vendor must collect the tax involved on the transaction unless the transaction comes within the conditions indicated herein.

Authority: T.C.A. §§67-101 and 67-3045. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.97 DEFINITIONS.

- (1) The following terms wherever used in these Rules and Regulations shall have the following meanings:
 - (a) "Commissioner" shall mean the Department of Revenue of the State of Tennessee.
 - (b) "Department" shall mean the Department of Revenue of the State of Tennessee.
 - (c) "Persons" shall have the meaning as defined in the Sales Tax Law.
 - (d) "Sales Tax Law" or "Sales Tax Act" shall mean the "Retailers' Sales Tax Act," as codified in Title 67, Chapter 6, T.C.A.
 - (e) "State" shall mean the State of Tennessee.

Authority: T.C.A. §§67-101, 67-3045, 67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987.

1320-5-1-.98 REPEALED.

Authority: T.C.A. §§67-1-101 and 67-3045. **Administrative History:** Original rule certified June 7, 1974. Repeal filed March 3, 1983; effective June 15, 1985.

1320-5-1-.99 ADVERTISING, ADVERTISING AGENCIES, ETC.

- (1) Charges made for advertising in newspapers, magazines, brochures, programs, etc., are not subject to the Sales or Use Tax. Any sales or works of art to be used in preparing advertising material for use in newspapers, magazines, brochures, programs, etc., are however, subject to the Sales and Use Tax.
- (2) In the event an advertising agency sells tangible personal property to its clients, or obtains tangible personal property for a client and charges the client more for the property than the agency pays for the property the agency shall collect, report and pay the Sales or Use Tax on the amount actually charged or received for the tangible personal property.

(Rule 1320-5-1-.99, continued)

- (3) Catalogues, magazines, handbills, and other items of tangible personal property which are sold, imported, or caused to be imported into the State for advertising purposes, and which are not for resale purposes, are subject to the Sales or Use Tax. Any charges for postage are not subject to the Sales or Use Tax, provided the charge for postage is stated separately on the invoice.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.100 ALCOHOLIC BEVERAGES AND BEER.

- (1) All sales of alcoholic beverages, including beer, ale and any other malt beverages, are subject to the Sales or Use Tax.
- (2) The sales price subject to tax shall include any and all Federal and State taxes, except the tax imposed by T.C.A. §57-4-301(c) on the sale of alcoholic beverages.

Authority: T.C.A. §§67-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987.

1320-5-1-.101 CONTRACTORS - USE OF TANGIBLE PERSONAL PROPERTY UPON WHICH NO SALES OR USE TAX HAS BEEN PAID. Any tangible personal property or taxable service which is furnished by a church to a contractor or subcontractor for use in church construction is exempt from the Sales or Use Tax, but the exemption does not apply to any materials which may be furnished and used in constructing any other building or improvement to real property, even though it may be for a church supported hospital, school, orphanage, etc.

Authority: T.C.A. §§67-1-102, 67-6-209, 67-6-322, and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.102 ELECTRIC GENERATING PLANTS AND TRANSMISSION SYSTEMS.

- (1) Tangible personal property which actually becomes a component part of an electric generating plant or distribution system owned or operated by the United States or any of its agencies, by the State of Tennessee, or any of its political subdivisions, or any Electric Membership Corporation or Electric Cooperative Organized pursuant to the Tennessee Law, is exempt from the Sales or Use Tax. This exemption applies without regard to who purchases the tangible personal property, and without regard to the form of any contract involved for the installation of the property as a part of such a system. The exemption provided for herein does not apply to any tangible personal property as a part of such a system. The exemption provided for herein does not apply to any tangible personal property or taxable service which is used in the process of installing the exempt property, when such property does not become a component part of the electric generating plant or distribution system.
- (2) Contractors and sub-contractors purchasing tangible personal property to be use as a component part of an electric generating plant or distribution system may furnish their supplier an exemption certificate for each purchase in lieu of the Sales or Use Tax on such sales. Dealers making such sales shall keep such certificates as part of their records. Any dealer who has made any sales which would otherwise be exempt because of this rule and regulation, but who fails to obtain an appropriate exemption certificate at the time of making the sale, shall nevertheless be liable for the payment of any Sales or Use Tax which would otherwise be due on such a transaction.

(Rule 1320-5-1-.102, continued)

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.103 FABRICATION OR PROCESSING OF TANGIBLE PERSONAL PROPERTY TO BE APPLIED TO OR INSTALLED ON REAL PROPERTY, OR TANGIBLE PERSONAL PROPERTY OTHERWISE USED.

- (1) Any manufacturer, producer, compounder or contractor who builds, makes, compounds or otherwise fabricates tangible personal property in a manner changing the form of the property used, and then uses the property shall be liable for use tax upon the fair market value of the fabricated property.
- (2) Contractors and sub-contractors who are not in the business of selling tangible personal property which they fabricate to erect or apply as a component part of a building shall pay the Sales or Use Tax on the purchase price of the materials and supplies used in connection with their contract work.
- (3) Any manufacturer, producer, compounder, or contractor who fabricates, in any manner, any tangible personal property, such as machinery, or other equipment for use, shall pay a Sales or Use Tax upon the fair market value of the fabricated property.
- (4) In no case shall the total Sales or use Tax due, under the provisions of this rule, be less than the tax due on the cost of the materials plus direct labor and overhead involved in fabricating or severing the item of tangible personal property applied to real property, or otherwise used, except as indicated in (2) above.

Authority: T.C.A. §§67-1-102, 67-6-209 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed February 17, 1988; effective May 29, 1988. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.104 PARKING LOTS.

- (1) The Sales Tax applies to any charges made for storing or parking motor vehicles and trailers overnight, but does not apply to charges made for storing and parking trailers, other than overnight, when the trailers are not attached to motor vehicles.
- (2) Charges for storing airplanes, motorboats, and similar conveyances are not subject to tax under T.C.A. §67-6-102(13)(F)(ii).

Authority: T.C.A. §§67-1-102, 67-6-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.105 VENDING MACHINE SALES. All dealers making sales of tangible personal property through vending machines, and electing to pay the Gross Receipts Tax thereon in lieu of all other taxes, shall register with the Department for Sales Tax purposes, and make a report of their sales and purchases each month, listing the gross sales and any purchase for their own use when no Sales or use Tax has been paid to the vendor. The amount of sales made through the vending machines upon which the Gross Receipts Tax is being paid may then be claimed by the dealers on the Sales Tax return, and no Sales Tax will be required to be paid thereon.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.106 INDUSTRIAL MACHINERY.

- (1) Persons who wish to make purchases or leases of industrial machinery shall apply to the commissioner for authority to make such purchases exempt from tax. This application shall give such information as the commissioner may require. If the commissioner finds from such information that the applicant is entitled to make purchases or leases of industrial machinery, authority shall be permanent in nature and shall continue until such time as the business ceases operation or until such time as the business changes in character such that it is no longer operating within the scope of its original application. Any misrepresentation made on the application by the taxpayer will subject the taxpayer to any applicable tax, penalty and interest.
- (2) Authority must be obtained prior to the purchase in order for the machinery to qualify as industrial machinery for tax purposes. However, if authority is not obtained prior to the purchase the commissioner may allow retroactive application of the authority upon a showing sufficient to the commissioner that the failure to obtain authority resulted from:
 - (a) A major restructuring of the business or the business having gone through a change in ownership; or
 - (b) A death of a key person in the tax area of the organization; or
 - (c) The entity having been misled by state officials which indicated that authority to purchase industrial machinery was not required; or
 - (d) The entity having previously received authority to purchase industrial machinery but failed to renew their exemption certificate; or
 - (e) Any other grounds that the Commissioner finds satisfactory to allow retroactive application of this exemption.
- (3) Persons who have obtained authority from the commissioner to make purchases of industrial machinery shall provide their vendors with a copy of their authority and such purchases shall then be exempt from tax.
- (4) Persons to whom the commissioner has extended special written permission to make purchases for their own use under a certificate of resale pursuant to 1320-5-1-.68(4) must obtain authority from the commissioner as provided in this rule prior to making purchases of industrial machinery, but may provide their vendors with a copy of the special permission extended under 1320-5-1-.68(4) in lieu of the authority to purchase industrial machinery.
- (5) Persons seeking to purchase industrial machinery must comply with the provisions of this rule in order to obtain the exemption provided at T.C.A. §67-6-206(a). Failure to do so shall subject such purchases to tax.

Authority: T.C.A. §§67-1-102, 67-6-102, 67-6-206 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Amendment filed February 17, 1988; effective May 29, 1988. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.107 ELECTRICITY.

- (1) Sales of electricity, including any charges such as demand, minimum bill, temporary service, and scrap, and items of tangible personal property for accommodation, are subject to the Sales or Use Tax.

(Rule 1320-5-1-.107, continued)

- (2) Charges for amortization, investment, connection for temporary service, collection fees, reconnections fees, damaged facilities, late payment, and security deposits are not subject to the Sales or Use Tax provided they are indicated as such on the statement given to the customer, and the charges are segregated and maintained as such on the books and records of the dealer. If these charges are not indicated as such on a statement given to the customer, and are not maintained as such on the books and records of the dealer, they are subject to the Sales or Use Tax.
- (3) Statements for sales of electricity must indicate in some manner whether the customer is paying any Sales or Use Tax.

Authority: T.C.A. §§67-1-102, 67-6-209 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.108 NATURAL OR ARTIFICIAL GAS.

- (1) Sales of natural or artificial gas of any kind, and sales of appliances, pipe or fittings, and installation charges for installing tangible personal property incidental to the sale thereof where the property remains personal property, are subject to the Sales or Use Tax.
- (2) In the event a distributor of natural or artificial gas uses electricity, gas, or other tangible personal property in connection with his distribution, he shall be liable for the Sales or Use Tax applicable to the cost price thereof where it is used.
- (3) In the event a dealer installs pipe, fittings, etc., which he has sold to a customer which is exempt from paying Sales and Use Tax, and which becomes real property when it is installed, the dealer shall be deemed to be a contractor, and liable for Sales and Use Tax on the cost price of the tangible personal property which becomes real property, except where the customer is a church or private nonprofit college or university, and the pipe, fittings, etc., are used for church or private nonprofit college or university construction, maintenance etc., in which case the dealer is not liable for any Sales or Use Tax.
- (4) Statements for sales of natural or artificial gas must indicate in some manner whether the customer is paying any Sales or Use Tax.

Authority: T.C.A. §§67-1-102, 67-6-209 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.109 REPEALED.

Authority: T.C.A. §§67-1-102, 67-6-102, 67-6-205 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-1-.110 WATER.

- (1) Sales of water, including any charges for standby or special fire protection, minimum bills, or any other charges where the use of water is contemplated, are subject to the Sales or Use Tax.
- (2) Charges for sewage disposal, amortization, tap fees, late payment and damages to facilities are not subject to the Sales or use Tax, provided some definite amount or percentage of the charges for water are indicated as such on the statement given to the customer, and the

(Rule 1320-5-1-.110, continued)

charges are segregated and maintained as such on the books and records of the dealer. Security deposits are not subject to the Sales or Use Tax. If these charges are not indicated as such on a statement given to a customer, and are not maintained as such on the books and records of the dealer, they are subject to the Sales or Use Tax.

- (3) Dealers giving allowances to customers for charges for water that has been metered, but which is lost because of leaky or open pipe, may claim credit for such allowances.
- (4) Statements for sales of water must indicate in some manner whether the customer is paying Sales or Use Tax.
- (5) Landlords who make any charges to tenants for water shall be deemed to be dealers, shall qualify with the Department for Sales Tax purposes, and report and pay applicable tax due on such sales to their tenants.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974.

1320-5-1-.111 REPEALED.

Authority: T.C.A. §§67-1-102, 67-6-207 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Amendment filed December 15, 1986; effective January 29, 1987. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Repeal filed March 31, 2008; effective July 29, 2008.

1320-5-1-.112 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.113 RECORDING AND TELEVISION STUDIOS, MASTERING TAPES.

- (1) Recording studios, engaged in the business of making original sound recordings onto tapes or discs, are deemed to be engaged primarily in rendering personal services which are not subject to the sales tax. In addition, persons engaged in the business of mastering such original tapes are also rendering a personal service not subject to the tax.
- (2) Television studios engaged in the business of recording commercials or other programming onto video tapes or film are deemed to be engaged primarily in rendering personal services which are not subject to the sales tax.
- (3) Sales to recording studios, to persons engaged in the mastering business, or to television studios of tangible personal property, such as supplies, cameras, recording equipment, mastering equipment, magnetic tape, video tape, etc., for use or consumption by such persons in connection with the recording of their services are subject to the Sales or Use Tax.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule filed January 17, 1978; effective February 17, 1978.

1320-5-1-.114 DEPOSIT AND ALLOCATION OF TAX RECEIPTS

- (1) All moneys received by the Department of Revenue shall be promptly deposited to the credit of the state treasurer in state depositories. Receipts shall be earmarked and allocated as provided in T.C.A. §67-6-103.

(Rule 1320-5-1-.114, continued)

- (2) A municipality which qualifies as a "premiere type tourist resort" may elect or withdraw an election to have tax receipts allocated to it during any fiscal year (July 1 - June 30) under the alternative allocation formula by a written notice from the chief executive or fiscal officer of the municipality to the commissioner of revenue. To be effective such notice must be received on or before June 1 of the fiscal year next preceding the fiscal year for which the election is made or within thirty (30) days of the effective date of this rule. An election or withdrawal shall remain in effect throughout the fiscal year. In the absence of further notification in the manner described above, the election or withdrawal shall also remain in effect during subsequent fiscal year.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule filed April 24, 1980; effective July 29, 1980.

1320-5-1-.115 SALES TAX ON AMUSEMENT OR RECREATIONAL ACTIVITY. The sales and use tax shall also apply to actual or accrued gross receipts from:

- (1) Dues and fees to membership sports and recreation clubs;
- (2) Admissions to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities;
- (1) Charges for engaging in any kind of recreational activity when no admission is charged spectators;
- (4) Charges made for the privilege of using tangible personal property for amusement, sports, entertainment or recreational activity where the privilege does not otherwise constitute a taxable rental; and
- (5) Charges or fees for cable television service in excess of the lowest or minimum charge for service made by the supplier.

Authority: T.C.A. §§67-1-102, 67-6-212, 67-6-330 and 67-6-402. **Administrative History:** Original rule filed May 18 1984; effective June 17, 1984. Amendment filed June 1, 1988; effective September 28, 1988.

1320-5-1-.116 MEMBERSHIP SPORTS AND RECREATION CLUBS.

- (1) Membership sports and recreation clubs shall include but not be limited to those organizations listed in Major Group No. 79, Industry 7991 of the Standard Industrial Classification Manual of 1987, as amended. Industry 7991 includes, but is not limited to, establishments primarily engaged in operating reducing and health clubs, spas, and similar facilities featuring exercise and other active physical fitness conditioning. Membership sports and recreation clubs shall also include, but not be limited to, those organizations listed in Major Group No. 79, Industry 7997 of the Standard Industrial Classification Manual of 1987, as amended. Industry 7997 includes, but is not limited to, sports and recreation clubs which are restricted to use by members and their guests, such as country, golf, tennis, yacht and amateur sports and recreation clubs.
- (2) A recreation club or community service organization must retain a signed contract with its member for a period of one (1) year or more and each family member must be specified in the contract before an exemption of the first \$150 in dues will be allowed for each family member.
- (3) Membership dues or fees shall include initiation fees, required stock purchases and any other fees required for membership.

(Rule 1320-5-1-.116, continued)

Authority: T.C.A. §§67-1-102, 67-6-212, 67-6-330 and 67-6-402. **Administrative History:** Original rule filed May 18, 1984; effective June 17, 1984. Amendment filed June 1, 1988; effective September 28, 1988. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.117 ADMISSIONS. Places of amusement, sports, entertainment, exhibition, display or other recreational events or activities subject to sales and use tax upon charges or admissions shall include, but not be limited to:

- (1) Establishments listed or described in Major Group 79 of the Standard Industrial Classification Manual as establishments providing amusement or entertainment.
- (2) Motion picture theaters, mini adult theaters, or similar establishments displaying motion pictures, whether the exhibition is indoors or outdoors.
- (3) Establishments listed or described in Major Group 84 of the Standard Industrial Classification Manual including noncommercial museums, art galleries and botanical and zoological gardens.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule filed May 18, 1984; effective June 17, 1984.

1320-5-1-.118 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.119 EXEMPT EVENTS. Organizations qualified as exempt from federal taxes under 26 U.S.C. §501(c) or that are listed in Major Group 86 of the Standard Industrial Classification Manual of 1972, as amended, which wish to obtain a prior advisory ruling on the events exempt status may provide the Department with information relating to where and when the event will be held and details concerning the conducting, producing and promoting of the event. This information should be supplied in letter form at least thirty (30) days prior to the event. A copy of the organization's 26 U.S.C. §501(c) determination or other proper evidence of the organization's exempt status should also be submitted.

Authority: T.C.A. §§67-1-102, 67-6-212, 67-6-330 and 67-6-402. **Administrative History:** Original rule filed May 18, 1984; effective June 17, 1984. Amendment filed June 1, 1988; effective September 28, 1988.

1320-5-1-.120 ATHLETIC AND INTERSCHOLASTIC SPORTING EVENTS. All proceeds from dues, fees, or other charges made for admission to interscholastic sporting events held or sponsored by private or public colleges or universities are subject to tax notwithstanding T.C.A. 67-6-330; except proceeds from activity fees charged students. Proceeds from athletic events for participants under eighteen years of age sponsored by civic or not-for profit organizations, other than private or public colleges or universities, are not taxable. If any individual eighteen (18) years of age or older may qualify for participation in the event, the entire gross proceeds of the event shall be taxable

Authority: T.C.A. §§67-1-102, 67-6-212, 67-6-330, and 67-6-402. **Administrative History:** Original rule filed May 18, 1984; effective June 17, 1984. Amendment filed June 1, 1988; effective September 28, 1988. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.121 FREE, COMPLIMENTARY, OR REDUCED DUES, FEES, OR ADMISSION CHARGES. Free or complimentary dues, fees, or admission charges are taxable when made in connection with a valuable contribution. Tax shall only apply to that portion of the contribution which represents the fair market value of the membership or admission. Where memberships or admissions are purchased at a reduced charge, tax shall only apply to the reduced charge; provided that tax shall also apply to any additional contribution up to the actual fair market value of the membership or admission.

(Rule 1320-5-1-.121, continued)

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule filed May 18, 1984; effective June 17, 1984.

1320-5-1-.122 ENTERING OR ENGAGING IN AMUSEMENT OR RECREATIONAL ACTIVITY.

Fees or charges for the privilege of entering or engaging in tennis, racquetball, handball, skiing, dancing or any other amusement or recreational activity, including contests or tournaments, are taxable in addition to membership fees or admissions. Fees or charges for instruction in such activities are not taxable. If recreational activity not essential to or a part of the instruction is also provided, the entire charge shall be subject to tax unless charges for instruction are separately billed.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule filed May 18, 1984; effective June 17, 1984.

1320-5-1-.123 CHARGES FOR USING PROPERTY FOR AMUSEMENT, SPORTS, ENTERTAINMENT OR RECREATION. Charges for using entertainment equipment such as televisions, stereo equipment, etc., are taxable. Tangible personal property purchased by a dealer and provided to the customer in the manner described herein for use only on the premises of the owner is not deemed to be purchased for resale.

Authority: T.C.A. §§67-1-102, 67-6-212, and 67-6-402. **Administrative History:** Original rule filed May 18, 1984; effective June 17, 1984. Amendment filed November 1, 1990; effective February 27, 1991. Amendment filed June 28, 2000; effective September 11, 2000.

1320-5-1-.124 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.125 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.126 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-6-402. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-5-1-.127 CHARGES FOR CABLE TELEVISION SERVICE.

- (1) The basic rate charged by a supplier for cable television service is not subject to the sales or use tax. The basic rate is the periodic charge for basic cable television service. "Basic cable television service" means the following:
 - (a) A basic package of broadcast channels, local origination channels, advertiser supported channels, and access information channels or home shopping channels; and
 - (b) A single additional lower-priced package of broadcast channels and access information channels which is a subset of the package described in (a) above.

Basic cable television service does not include any premium or pay-per-view channels for which per channel or per viewing charge is assessed.

- (2) Charges for cable television service in excess of the basic rate charged by the supplier are subject to the sales and use tax. Charges for pay-per-view, FM connection, program guide,

(Rule 1320-5-1-.127, continued)

remote control, premium channels, duplicate premium channels, and installation are in excess of the basic rate and are subject to the sales and use tax.

Authority: T.C.A. §§67-1-102 and 67-6-212. **Administrative History:** Original rule filed July 6, 1992; effective October 28, 1992.