

SENATE BILL 1934

By Oliver

AN ACT to amend Tennessee Code Annotated, Title 57
and Title 67, relative to taxation.

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

SECTION 1. Tennessee Code Annotated, Section 67-6-228(a), is amended by deleting the subsection and substituting instead the following:

Notwithstanding this chapter to the contrary, except as otherwise provided in subsection (b), the retail sale of food and food ingredients shall not be taxed.

SECTION 2. Tennessee Code Annotated, Section 67-6-103(u), is amended by deleting the subsection and substituting instead the following:

Notwithstanding the allocations provided for in subsection (a), there must be allocated and distributed to the counties and municipalities an amount substantially equal to the amount that would have been allocated to the counties and municipalities under subdivision (a)(3) but for the exemption from sales tax applicable to the retail sale of food and food ingredients. The allocation provided in this subsection (u) must be based on the reporting of exempt sales of food and food ingredients and any other data or information the commissioner deems relevant.

SECTION 3. Tennessee Code Annotated, Section 67-6-329(a), is amended by adding the following as a new, appropriately designated subdivision:

() Food and food ingredients;

SECTION 4. Tennessee Code Annotated, Section 67-6-329(a)(18), is amended by deleting the language "or food and food ingredients".

SECTION 5. Tennessee Code Annotated, Section 67-6-337, is amended by deleting the language "or food and food ingredients".

SECTION 6. Tennessee Code Annotated, Section 67-6-229, is amended by deleting the language "food and food ingredients or".

SECTION 7. Tennessee Code Annotated, Section 57-3-802(1), is amended by deleting the language "that derives at least twenty percent (20%) of its sales taxable sales from the retail sale of food and food ingredients for human consumption taxed at the rate provided in § 67-6-228(a)" and substituting instead the language "that derives at least twenty percent (20%) of its sales from the retail sale of food and food ingredients for human consumption".

SECTION 8. Tennessee Code Annotated, Section 57-3-806(d)(1), is amended by deleting the language "must maintain a minimum of twenty percent (20%) of the licensee's sales taxable sales from the retail sale of food and food ingredients for human consumption taxed at the rate provided in § 67-6-228(a)" and substituting instead the language "must maintain a minimum of twenty percent (20%) of the licensee's sales from the retail sale of food and food ingredients for human consumption".

SECTION 9. Tennessee Code Annotated, Section 67-6-103(c)(2), is amended by deleting the following language:

Revenue generated from one-half percent (0.5%) of the tax rate provided in § 67-6-228 shall continue to be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12) regardless of whether the tax rate provided in § 67-6-228 is reduced below six percent (6%).

SECTION 10. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

67-4-1801. Short title.

This part is known and may be cited as the "Business Enterprise Tax Act."

67-4-1802. Part definitions.

As used in this part:

(1) "Accumulated revenues and profits" means:

(A) In the case of a corporation, other than a subchapter S corporation, the amount determined to be earnings and profits for federal income tax purposes; or

(B) In the case of all other business enterprises, including subchapter S corporations, the total undistributed revenues of the enterprise from whatever source derived, except that the distribution of capital, whether in liquidation or otherwise, shall not be included in the enterprise value tax base;

(2) "Affiliated group" has the same the meaning as defined in section 1504(a) of the Internal Revenue Code (26 U.S.C. § 1504(a)), except that "affiliated group" does not include:

(A) An insurance company subject to taxation under section 801 of the Internal Revenue Code (26 U.S.C. § 801);

(B) Regulated investment companies or real estate investment trusts subject to tax under subchapter M of chapter 1 of the Internal Revenue Code (26 U.S.C. §§ 851 –860); or

(C) An includible insurance company as defined in section 1504(c) of the Internal Revenue Code (26 U.S.C. § 1504(c));

(3) "Business activity":

(A) Means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in,

or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, net earnings, revenue, or advantage, whether direct or indirect, to the business enterprise or to others. Although an activity of an enterprise may be incidental to another of its business activities, each activity is considered to be business engaged in or carried on within the meaning of this part; and

(B) Does not include:

(i) Services rendered by an employee to an employer or services as a director of a corporation; or

(ii) The holding of an ownership interest in a qualified investment company if no other business activity is engaged in outside of the holding of the ownership interest;

(4) "Business enterprise":

(A) Means any profit or nonprofit enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, foundation, business trust, real estate trust, or other form of organization engaged in or carrying on any business activity within this state, except those enterprises as are expressly made exempt from taxation of net earnings under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) to the extent the enterprise does not engage in any business activity constituting unrelated business activity as defined by § 513 of the Internal Revenue Code (26 U.S.C. § 513). Each business enterprise is subject to the tax imposed under this part as a separate entity except that trusts and foundations treated as grantor trusts under § 671 of the Internal Revenue Code (26 U.S.C. § 671) must

be included in the return of their owners, and the owners are subject to the tax on the trust or foundation to the extent the owners would be considered a business enterprise under this part, notwithstanding the existence of the trust or foundation. The use of consolidated returns as defined in the Internal Revenue Code or of combined reporting is not permitted; and

(B) Does not include a qualified investment company;

(5) "Commissioner" means the commissioner of revenue;

(6) "Compensation" means:

(A) All wages, salaries, fees, bonuses, commissions, or other payments paid directly or accrued by the business enterprise in the taxable period on behalf of or for the benefit of employees, officers, or directors of the business enterprise and subject to or specifically exempt from withholding under § 3401 of the Internal Revenue Code (26 U.S.C. § 3401) except for:

(i) Payments that are made expressly exempt from withholding under § 3401(a)(1), (9), (10), (13), (14), (15), (16), (18), (19), or (20); and

(ii) Tips required to be reported by the employee to the employer under § 6053(a) of the Internal Revenue Code (26 U.S.C. § 6053(a));

(B) The amount of any deduction taken under § 67-4-1805 in the taxable period; and

(C) Net earnings from self-employment subject to tax under § 1401 of the Internal Revenue Code (26 U.S.C. § 1401) to the extent not

included in the amount of any deduction taken under § 67-4-1805 in the taxable period;

(7) "Department" means the department of revenue;

(8) "Dividends":

(A) Means any distribution of money or property, other than the distribution of newly issued stock of the same enterprise, to the owners of a business enterprise with respect to their ownership interest in the enterprise from the accumulated revenues and profits of the enterprise; and

(B) Does not include:

(i) Distributions of money or property to beneficiaries of a trust qualified under § 401 of the Internal Revenue Code (26 U.S.C. § 401);

(ii) Cash or non-cash payments of life, sickness, accident, or other benefits to members or their dependents or designated beneficiaries from a voluntary employee's beneficiary association qualified under § 501(c)(9) of the Internal Revenue Code (26 U.S.C. § 501(c)(9));

(iii) Distributions of money or property to participants from any common trust fund as defined under § 584 of the Internal Revenue Code (26 U.S.C. § 584);

(iv) Policyholder dividends as defined under § 808 of the Internal Revenue Code (26 U.S.C. § 808), to the extent such dividends are not reduced pursuant to § 809 of the Internal Revenue Code (26 U.S.C. § 809);

(v) Payment of interest on deposits of depositors of a mutual bank or credit union; or

(vi) Distributions of money or property to or on behalf of beneficiaries of a trust that is either subject to taxation under § 641 of the Internal Revenue Code (26 U.S.C. § 641) or described in § 664 of the Internal Revenue Code (26 U.S.C. § 664); provided, that this subdivision (5)(B)(vi) applies only to the extent that the trust limits its activities to personal investment activities that do not constitute business activities, and those incidental to or in support of personal investment activities;

(9) "Employee":

(A) Means an employee as defined in § 3401(c) of the Internal Revenue Code (26 U.S.C. § 3401(c)); and

(B) Includes any person from whom an employer is required to withhold for federal income tax purposes;

(10) "Employer":

(A) Means an employer as defined in § 3401(d) of the Internal Revenue Code (26 U.S.C. § 3401(d)); and

(B) Includes any person required to withhold for federal income tax purposes;

(11) "Enterprise value tax base" means the sum of all compensation paid or accrued, interest paid or accrued, and dividends paid by the business enterprise, before special adjustments provided in § 67-4-1804 or apportionment as provided in § 67-4-1806;

(12) "Gross business receipts":

(A) Means all earnings for federal income tax purposes from whatever source derived in the conduct of business activity; provided, that, in the case of nonprofit enterprises not required to pay income taxes, "gross business receipts" means the sum of all revenues derived in the conduct of business activity;

(B) Includes, but is not limited to, gross proceeds from sales; compensation for rendering services; gross proceeds realized from trading in stocks, bonds, or other evidences of indebtedness; gross proceeds realized from sale of assets used in trade or business; interest, discount, gross rents, royalties, fees, commissions, and dividends, without any deduction on account of the cost of property sold; and the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense paid or accrued and without any deduction on account of losses; and

(C) Does not include any receipts that would otherwise be considered "gross business receipts" received by an enterprise that constitutes a qualified trust under § 401, or is defined in § 501(c)(9) or § 584, of the Internal Revenue Code (26 U.S.C. § 501(c)(9) or 26 U.S.C. § 584);

(13) "Interest":

(A) Means all amounts paid or accrued for the use or forbearance of money or property; and

(B) Does not include amounts paid, credited, or set aside in connection with reserves by insurers to fulfill policy and contractual responsibilities to policy holders or by voluntary employees' beneficiary

associations qualified under § 501(c)(9) of the Internal Revenue Code (26 U.S.C. § 501(c)(9)) to fulfill obligations to members;

(14) "Qualified investment company" means:

(A) A regulated investment company as defined in § 851 of the Internal Revenue Code (26 U.S.C. § 851);

(B) An organization that is an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), as amended;

(C) An organization that would be an investment company under the Investment Company Act of 1940, as amended, but for the exception from investment company status provided by § 3(c)(1) (15 U.S.C. § 80a-3(c)(1)) or § 3(c)(7) (15 U.S.C. § 80a-3(c)(7)) of the Investment Company Act of 1940; or

(D) A qualified community development entity, as defined in § 45D of the Internal Revenue Code (26 U.S.C. § 45D), that is owned, controlled, or managed, directly or indirectly, by a department or agency of this state;

(15) "Taxable enterprise value tax base" means the enterprise value tax base adjusted by the special adjustments provided in § 67-4-1804 and then adjusted by the method of apportionment provided in § 67-4-1805; and

(16) "Taxable period" means:

(A) The calendar or fiscal year, or fractional part of a year, that a business enterprise uses for federal income tax purposes; or

(B) If the business enterprise is not required to make and file a return for federal income tax purposes, then the calendar or fiscal year, or

fractional part of a year, the enterprise has adopted for financial purposes.

67-4-1803. Imposition of tax.

A tax is imposed at the rate of three-quarters of one percent (0.75%) upon the taxable enterprise value tax base of every business enterprise.

67-4-1804. Special adjustments.

The following adjustments must be made to the enterprise value tax base in determining taxable enterprise value tax base:

(1) For each business enterprise, the enterprise value tax base of which includes compensation derived from net earnings from self-employment subject to tax under § 1401 of the Internal Revenue Code (26 U.S.C. § 1401), a deduction of such amounts of compensation as are retained for use in the business enterprise, except that compensation deducted under § 67-4-1805 shall not be included in this deduction. The business enterprise has the burden to show that any amounts deducted have actually been retained for use in the business enterprise;

(2) In the case of a business enterprise that is a corporation, a deduction of an amount equal to dividends received from another corporation that have previously been included in the payor corporation's taxable enterprise value tax base subject to taxation under this part and which payor corporation is, at the close of the day on which such dividend is received, a member of the same affiliated group as the corporation receiving the dividend; and

(3) In the case of a business enterprise that is not a corporation, a deduction of an amount equal to dividend distributions received from another business enterprise that have previously been included in the payor business

enterprise's taxable enterprise value tax base subject to taxation under this part and which payor business enterprise is, at the close of the day on which such dividend is received, a member of the same affiliated group as the business enterprise receiving the dividend distribution. For purposes of this subdivision (3), the term "affiliated group" shall be determined by rules adopted by the commissioner similar to those applicable to corporations.

67-4-1805. Deductions.

(a) In the case of a proprietorship, partnership, or limited liability company filing a return under this part as a proprietorship or partnership, a deduction equal to a fair and reasonable compensation for the actual personal services of a natural person who is a proprietor, partner, or member provided to the business organization; provided, however, that the amount of such deduction shall not reduce such business organization's taxable business profits to less than zero dollars (\$0.00). The purpose of this section is to permit a deduction from gross business profits of such a proprietorship, partnership, or limited liability company of all amounts that are fairly attributable to the actual personal services of the proprietor, partner, or member. Such amounts shall not exceed the amount reported as net earnings on the federal income tax returns of the proprietor, partner, or member, but may also include an amount not to exceed net rental income as compensation for operating rental property, and an amount not to exceed fifteen percent (15%) of the gross sales price as commissions on the sale of business assets.

(b) Subject to subsection (c) which establishes a record-keeping safe harbor, the method of determining the amount of the deduction available to the business organization allowed under this section must be by using the standards set forth in § 162(a)(1) of the Internal Revenue Code (26 U.S.C. § 162(a)(1)), as amended, and the regulations, administrative rulings, and judicial cases issued thereunder. The business

organization shall keep such records as may be necessary to determine that the deduction is reasonable under these standards.

(c) In lieu of substantiating the value of the personal services of proprietors, partners, or members, a business organization or group of related business organizations may elect, as a record-keeping safe harbor, to deduct up to seventy-five thousand dollars (\$75,000) as total compensation for the tax year.

(d)

(1) For purposes of this section, "record-keeping safe harbor" means the amount of compensation for personal services claimed by a business organization which does not need to be substantiated by any evidence, records, or legal or regulatory authority, except as provided in subsection (e).

(2) Notwithstanding subdivision (d)(1), the record-keeping safe harbor shall not be relevant or admissible for any purpose in determining whether a compensation deduction claimed in an amount in excess of any such record-keeping safe harbor is fair and reasonable.

(e) A business organization or group of related business organizations may elect to use the record-keeping safe harbor option in subsection (c) without a redetermination of the reasonableness of the deduction by the commissioner. Any such deduction claimed by the business organization or group of related business organizations shall not be subject to challenge; provided, that upon request, the business organization or group of related business organizations shall be required to substantiate that the proprietor or at least one (1) partner or member performed actual personal services for the business organization or group of related business organizations.

(f) Related business organizations electing not to substantiate the extent of the actual personal services of their proprietors, partners, and members, are limited to the

record-keeping safe harbor deduction, less any owners' compensation taken on the federal tax returns of corporate members of the group, allocated among the related business organizations. For the purposes of this section, "related business organizations" are unitary business organizations and business organizations that would qualify as unitary but for the fact that they conduct business only within this state.

(g) A business enterprise claiming a deduction under this section bears the burden of proving that all proprietors, partners, or members for whom a deduction is being claimed provided actual personal services to the business enterprise at any time during the taxable period. Once a business organization has satisfied this burden of proof, the amount claimed as a deduction is presumed to be reasonable, unless the commissioner proves by a preponderance of the evidence that the deduction claimed by the business enterprise is clearly unreasonable.

67-4-1806. Apportionment.

(a) A business entity, the business activities of which are taxable both within and without this state and which is subject to a business privilege tax, a tax on net earnings, a franchise tax measured by net earnings, a capital stock tax, or a tax of the type imposed by this part or is subject to the jurisdiction of another state to impose a business privilege tax, a tax on net earnings, a franchise tax measured by net earnings, a capital stock tax, or a tax of the type imposed by this part shall apportion its enterprise value tax base so as to allocate to this state a fair and equitable proportion of such base. Except as provided in this section, the apportionment must be made in the following manner:

(1) The portion of the base from compensation must:

(A) Include the amount of any deduction taken pursuant to § 67-4-1805, the amount relating to self-employment income, and the amount relating to wages and salaries subject to or specifically exempt from

withholding under § 3401 of the Internal Revenue Code (26 U.S.C. § 3401) except such payments as are made expressly exempt from withholding under 26 U.S.C. § 3401(a)(1), (9), (10), (13), (14), (15), (16), (18), (19), and (20); and

(B) Be apportioned to this state as a percentage of total compensation paid by the business enterprise to employees everywhere as is paid by the business enterprise to employees for services rendered within this state. Such compensation is deemed to be disbursed for services in this state if:

(i) The service is performed entirely within this state;

(ii) The service is performed both within and without this state, and the service performed without this state is incidental to the service within this state; or

(iii) Some of the service is performed in this state and:

(a) The base of operations or the place from which the service is directed or controlled is located in this state;

or

(b) The base of operations or the place from which the service is directed or controlled is not located in any state in which some part of the service is performed, but the individual performing such service resides within this state;

(2) The portion of the base from interest must be apportioned by multiplying the percentage of value of the total real and tangible personal property owned and employed by the business enterprise everywhere as is

owned and employed by it in business activities in this state. Property owned by the business enterprise must be valued at its original cost; and

(3) The portion of the base from dividends must be apportioned on the basis of the following three (3) factors, giving equal weight to each, and applying the average of the three (3) percentages to the dividends:

(A) The compensation factor determined in accordance with subdivision (a)(1)(B);

(B) The interest apportionment factor calculated in accordance with subdivision (a)(2); and

(C) The percentage of the total sales, including charges for services, made by the business enterprise everywhere as is made by it within this state and determined as follows:

(i) Sales of tangible personal property are made in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of free on board point or other conditions of sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(1) The purchaser is the United States government; or

(2) The business enterprise is not taxable in the state of the purchaser;

(ii) Sales other than sales of tangible personal property are in this state if the business enterprise's market for the sales is in this state, as follows:

(a) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(b) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(c) In the case of sale of a service, if and to the extent the service is delivered to a location in this state;

(d) In the case of sale, rental, lease, or license of intangible property, if and to the extent the property is used in this state;

(e) In the case of interest income, if and to the extent the debtor or encumbered property is located in this state;

(f) In the case of dividend income, if and to the extent the business enterprise's commercial domicile is in this state; and

(g) In the case of other income, if and to the extent the income is derived from sources in this state;

(iii) In the case of sales other than sales of tangible personal property, if the state or states of assignment cannot be

determined, then the state or states of assignment must be reasonably approximated; and

(iv) In the case of sales other than sales of tangible personal property, if the taxpayer is not taxable in a state to which a sale is assigned, or if the state of assignment cannot be determined or reasonably approximated, then the sale is excluded from the denominator of the sales factor.

(b) If the method of apportionment in subsection (a) does not fairly represent the business enterprise's business activity in this state, then the business enterprise may petition for, or the commissioner may require, in respect to all or part of the business enterprise's business activity, if reasonable:

(1) The exclusion of one (1) or more of the apportionment factors;

(2) The inclusion of one (1) or more additional apportionment factors that will fairly represent the business enterprise's business activity in the state; or

(3) The employment of another method to effect an equitable apportionment of the business enterprise's enterprise value tax base.

67-4-1807. Returns.

(a) A business enterprise having gross business receipts in excess of two hundred fifty thousand dollars (\$250,000) during the taxable period or an enterprise value tax base that is greater than two hundred fifty thousand dollars (\$250,000) shall make a return to the commissioner in accordance with the following schedule:

(1) If required to file a United States partnership tax return, then on or before the fifteenth day of the third month following expiration of its taxable period;

(2) If required to file a United States exempt organization return, then the fifteenth day of the fifth month following expiration of its taxable period; and

(3) For all other business enterprises, the fifteenth day of the fourth month following expiration of its taxable period.

(b) The commissioner shall biennially adjust these threshold amounts rounding to the nearest one thousand dollars (\$1,000) based on the two-year (twenty-four-month) percentage change as measured by the United States bureau of labor statistics consumer price index for all urban consumers, south region, using the amount published for the month of June in the year prior to the start of the tax year.

(c) All returns shall be signed by the business enterprise or by its authorized representative under penalty of perjury.

(d) A business enterprise shall also file a declaration of its estimated business enterprise tax for its subsequent taxable period; provided, however, that if the estimated tax is less than two hundred sixty dollars (\$260), a declaration need not be filed. A declaration must be filed at the end of any quarter in which the estimated tax exceeds two hundred sixty dollars (\$260). The declaration must be filed when payments are due under § 67-4-1808.

67-4-1808. Payments due with returns.

(a) A business enterprise required to file a declaration of its estimated business enterprise tax under § 67-4-1807(d) shall make payments of the estimated tax in installments as follows:

(1) Twenty-five percent (25%) is due and payable on the fifteenth day of the fourth month of the subsequent taxable year;

(2) Twenty-five percent (25%) is due and payable on the fifteenth day of the sixth month of the subsequent taxable year;

(3) Twenty-five percent (25%) is due and payable on the fifteenth day of the ninth month of the subsequent taxable year; and

(4) Twenty-five percent (25%) is due and payable on the fifteenth day of the twelfth month of the subsequent taxable year.

(b) If the return required by § 67-4-1807 shows an amount to be due, the amount is due and payable on the prescribed payment date. If the return shows an overpayment of the tax due, the commissioner shall refund or credit the overpayment to the business enterprise in accordance to rules promulgated by the department.

67-4-1809. Additional returns.

When the commissioner has reason to believe that a business enterprise failed to file a return or to include any part of its enterprise value tax base in a filed return, the commissioner may require the enterprise to file a return or a supplementary return showing such additional information as the commissioner prescribes. Upon the receipt of the supplementary return, or if none is received within the time set by the commissioner, the commissioner may find and assess the amount due based upon the information that is available. The making of the additional return does not relieve the business enterprise of any penalty for failure to make a correct original return or relieve it from liability for interest or any other additional charges imposed by the commissioner.

67-4-1810. Extension of time for returns.

For good cause, the commissioner may extend the time within which a business enterprise is required to file a return. If the return is filed during the period of extension, then a penalty shall not be imposed for failure to file the return at the time required by this part, but the business enterprise is liable for interest and late payment charges. Failure to file the return during the period of the extension voids the extension.

67-4-1811. Corrections.

A business enterprise shall report to the commissioner any change in the amount of the business enterprise's compensation, interest, or dividends as finally determined by the internal revenue service with respect to any previous year for which the business enterprise has made a return under this part. The report must be made not later than six (6) months after the business enterprise has received notice that the change has finally been determined. Notwithstanding any other law, a business enterprise reporting a correction pursuant to this section must be given notice by the department of any adjustment to the tax due with respect to the correction within six (6) months after the filing of the report.

67-4-1812. Taxpayer records.

(a) A business enterprise shall:

(1) Keep such records as may be necessary to determine the amount of its tax liability under this part;

(2) Preserve the records for the period of five (5) years or until any litigation or prosecution under this chapter is finally determined; and

(3) Make the records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours.

(b) A violation of this section is subject to the penalties described under § 67-1-113(b).

67-4-1813. Certifications for dissolution, withdrawal, and good standing.

(a)

(1) A corporation organized under any law of this state shall not transfer property to its shareholders pursuant to title 48, chapter 24 until all taxes and interest imposed upon the corporation under this part have been fully paid and a

certificate of dissolution has been obtained from the commissioner that no returns, tax, additions to tax, interest, or penalties for taxes administered by the department are due and unpaid.

(2) A corporation wishing to transfer property to a shareholder shall submit a written request containing the complete corporate name and identification number and accompanied by a nonrefundable fee of thirty dollars (\$30.00) to the department. This fee must be deposited into the state general fund. If, after reviewing the corporation's records, the commissioner determines that no returns, tax, additions to tax, interest, or penalties for taxes administered by the department are due and unpaid, then the commissioner shall prepare a statement in accordance with subsection (a).

(b) A business enterprise wishing to obtain a certificate of withdrawal, in accordance with § 48-25-201 shall submit a written request containing the complete corporate name and identification number and accompanied by a nonrefundable fee of thirty dollars (\$30.00) to the department. This fee must be deposited into the state general fund. If, after reviewing the business enterprise's records, the commissioner determines that no returns, tax, additions to tax, interest, or penalties for taxes administered by the department are due and unpaid, then the commissioner shall prepare a certificate of withdrawal pursuant to § 48-25-201.

(c) A business enterprise wishing to obtain a statement that the business enterprise is in good standing with the department shall submit a written request containing the complete corporate name and identification number and accompanied by a nonrefundable fee of thirty dollars (\$30.00) to the department. This fee must be deposited into the state general fund. If, after reviewing the business enterprise's records, the commissioner determines that no returns, tax, additions to tax, interest, or

penalties for taxes administered by the department are due and unpaid, then the commissioner shall prepare a statement of good standing.

67-4-1814. Election of qualified investment company status.

(a) A business organization must file an election with the commissioner to be a qualified investment company with respect to any taxable period on a form prescribed by the commissioner at any time on or before the fifteenth day of the third month of the taxable period. An election is effective for the taxable period of the qualified investment company for which it is made and for all succeeding taxable periods until the election is terminated as provided in this section.

(b) A business organization electing treatment as a qualified investment company shall, with respect to each taxable period, file a report, in accordance with such rules or forms as the commissioner may prescribe, setting forth the following:

(1) The aggregate amounts of funds invested in the qualified investment company;

(2) The names, addresses, and federal taxpayer identification numbers of the holders of the qualified investment company and the amount, if any, of their proportional share of the net earnings required to be included in the holder's state tax return;

(3) The name, address, and federal taxpayer identification number of the manager of the qualified investment company;

(4) The amount of the net earnings received and expenses incurred by the qualified investment company for the tax period; and

(5) Notwithstanding this section, a qualified investment company has satisfied the reporting requirements of this section if it files with the commissioner a copy of its federal income tax return, as filed with the internal revenue service.

(c)

(1) The report or copy of the federal income tax return must be filed on or before thirty (30) days following the filing of the federal income tax return with the internal revenue service.

(2) A qualified investment company that fails to timely file the report as required by this section shall pay a penalty equal to one hundred dollars (\$100) for each day the report is not filed, unless an extension has been granted by the commissioner. A monetary fine imposed by this subdivision (c)(2) shall not exceed five thousand dollars (\$5,000).

(3) A qualified investment company notified by the department that the report is overdue by more than fifty (50) days has thirty (30) days from the date of the notification to file the delinquent report. If the delinquent report is not filed within thirty (30) days after notification, the commissioner shall disallow the business organization qualified investment company status for the tax periods for which a timely report is not filed.

(d) The election provided for in subsection (a) may be terminated as follows:

(1) By revoking the election by consent of the majority of the members, partners, or shareholders of the qualified investment company, or by determination of the manager of the qualified investment company. The revocation must be filed with the department on or before the fifteenth day of the third month of the taxable period to be effective for the period. A revocation filed after the fifteenth day of the third month of the taxable period shall be effective for the following tax period; or

(2) Whenever the company ceases to satisfy the requirements for qualification as a qualified investment company under § 67-4-1802.

67-4-1815. Credit for franchise and excise taxes.

If a business enterprise liable for taxes imposed by this part is liable for taxes imposed under part 20 or 21 of this chapter, then the amount of taxes paid by the business enterprise under parts 20 and 21 of this chapter for the applicable taxable period must be credited in full toward the amount of the taxes due under this part for the corresponding taxable period.

67-4-1816. Distribution of tax revenues.

All taxes collected under this part must be distributed to the general fund.

67-4-1817. Rulemaking.

The commissioner shall promulgate rules and forms necessary to implement this part. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 11. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

67-4-3301. Short title.

This part is known and may be cited as the "Worldwide Combined Reporting Act."

67-4-3302. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of revenue;

(2) "Disqualified captive insurance company" means a captive insurance company, as defined in § 56-13-102, that:

(A) Pays less than one-half percent (0.5%) of its total premiums for the taxable year in insurance taxes under § 56-13-114; or

(B) Receives less than fifty percent (50%) of its gross premiums for the taxable year from premiums;

(3) "Insurance company":

(A) Means a business entity engaged in the business of issuing insurance or annuity contracts and where more than fifty percent (50%) of the company's business during the taxable year is the issuance of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies; and

(B) Does not include a disqualified captive insurance company;

(4) "Investment company" means a person, copartnership, association, or corporation that is registered under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), as amended, and solicits or receives payments to be made to itself and that issues, or has issued, and has outstanding bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement to return to the holders or owners thereof money or anything of value at some future date; and as to whom the gross payments received during the taxable year in question upon outstanding investment contracts, plus interest and dividends earned on investment contracts determined by prorating the total dividends and interest for the taxable year in question in the same proportion that certificate reserves as defined by the Investment Company Act of 1940, as amended, is to total assets, are at least fifty percent (50%) of the company's gross payments upon investment contracts plus net earnings from all other sources except dividends from subsidiaries for the taxable year in question;

(5) "Investment contract" means bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement issued by an investment company;

(6) "Unitary business" or "unitary group":

(A) Means business activities or operations of a trade or business that are of mutual benefit, dependent upon, or contributory to, one another, individually or as a group, in transacting the business of a trade or business; and

(B) Includes business activities or operations within a single legal entity or between multiple entities and without regard to whether each entity is a sole proprietorship, corporation, partnership, or trust; and

(7) "Voting stock" includes membership interests of mutual insurance holding companies.

67-4-3303. Application of part.

Notwithstanding another law to the contrary, this part applies to the reporting of net earnings and the levying of taxes under parts 18 and 20 of this chapter.

67-4-3304. Unitary business principle.

(a)

(1) If a trade or business conducted wholly within this state or partly within and partly without this state is part of a unitary business, then the entire worldwide net earnings of the unitary business is subject to apportionment pursuant to §§ 67-4-2012 – 67-4-2014 and 67-4-1806, as applicable.

(2) Notwithstanding another law to the contrary, none of the net earnings of a unitary business is considered to be derived from any particular source and

none of the net earnings may be allocated to a particular place except as provided by the applicable apportionment formula.

(3) All net earnings from the operation of an athletic team when the visiting team does not share in the gate receipts is assigned to the state in which the team's operation is based, and this section does not apply to such net earnings.

(b) A trade or business is presumed to be a unitary business whenever there is unity of ownership, operation, and use, evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction, but the absence of these centralized activities does not necessarily evidence a nonunitary business.

(c) Where a business operation conducted in this state is owned by a business entity that carries on business activity outside this state different in kind from that conducted within this state, and the other business is conducted entirely outside this state, it is presumed that the two (2) business operations are unitary in nature, interrelated, connected, and interdependent unless it can be shown to the contrary.

(d) Unity of ownership does not exist when two (2) or more corporations are involved unless more than fifty percent (50%) of the voting stock of each corporation is directly or indirectly owned by a common owner or by common owners, either corporate or noncorporate, or by one (1) or more of the member corporations of the group.

(e) For purposes of determining the net earnings of a unitary business and the factors to be used in the apportionment of net earnings, there must be included the net earnings and apportionment factors of all domestic and foreign corporations or other domestic and foreign entities that are determined to be part of the unitary business pursuant to this section. For foreign corporations and other foreign entities not subject to

a federal income tax filing requirement under subtitle A of the Internal Revenue Code, net earnings must be determined as required pursuant to rules promulgated by the department of revenue.

(f)

(1) Each corporation or other entity, except a sole proprietorship, that is part of a unitary business must file combined reports as the commissioner determines.

(2) On the reports, all intercompany transactions between entities included pursuant to subsection (e) must be eliminated, and the entire net earnings of the unitary business determined in accordance with this section must be apportioned among the entities by using each entity's factors for apportionment purposes in the numerators of the apportionment formula and the total factors for apportionment purposes of all entities included pursuant to subsection (e) in the denominators of the apportionment formula.

(3) Except as otherwise provided by subsection (e), all sales of the unitary business made within this state must be situated and apportioned pursuant to §§ 67-4-2012 – 67-4-2014 and 67-4-1806, as applicable, and included on the combined report of a corporation or other entity that is a member of the unitary business and is subject to the jurisdiction of this state to impose tax under parts 18 and 20 of this chapter.

(g) If a corporation has been divested from a unitary business and is included in a combined report for a fractional part of the common accounting period of the combined report, then:

(1) The corporation's net earnings includable in the combined report is the corporation's net earnings incurred for that part of the year determined by proration or separate accounting; and

(2) The corporation's sales, property, and payroll included in the apportionment formula must be prorated or accounted for separately.

67-4-3305. Foreign corporations and other foreign entities.

(a) For purposes of imposing a tax under parts 18 and 20 of this chapter, the federal taxable net earnings of a foreign corporation or other foreign entity must be computed as follows:

(1) A profit and loss statement must be prepared in the currency in which the books of account of the foreign corporation or other foreign entity are regularly maintained;

(2) Except as determined by the commissioner, adjustments must be made to the profit and loss statement to conform the statement to the accounting principles generally accepted in the United States for the preparation of those statements;

(3) Adjustments must be made to the profit and loss statement to conform it to the tax accounting standards required by the commissioner;

(4) Unless otherwise authorized by the commissioner, the profit and loss statement of each member of the combined group, and the apportionment factors related to the combined group, whether domestic or foreign, must be converted into United States dollars; and

(5) Net earnings apportioned to this state must be expressed in United States dollars.

(b) Notwithstanding subsection (a), if the commissioner determines that the information required in the statements under subsection (a) may only be obtained through a burdensome effort and expense, the commissioner may allow reasonable approximations of the information.

67-4-3306. Rulemaking.

The commissioner shall promulgate rules and forms necessary to implement this part, including rules for combining the net earnings and apportionment factors of members of a unitary group eligible or required to use alternative apportionment formulas. Rules must be consistent with the unitary business principle as interpreted by the United States Supreme Court. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 12. Tennessee Code Annotated, Section 67-4-2004(36), is amended by adding the language "trust," immediately after the language "business trust,".

SECTION 13. Tennessee Code Annotated, Section 67-4-2004(47), is amended by deleting subdivisions (C) and (D) in their entireties.

SECTION 14. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivisions (24), (25), (26), and (50), in which the terms "intangible expense", "intangible income", "intangible property", and "unitary business" are defined, in their entireties.

SECTION 15. Tennessee Code Annotated, Section 67-4-2006(a), is amended by deleting the language "§ 67-4-2004" wherever it appears and substituting instead the language "§ 67-4-3302"; and deleting the language "For financial institutions" in subdivision (3) and substituting instead the language "For entities".

SECTION 16. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by deleting subdivisions (K) and (P) in their entireties.

SECTION 17. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by deleting subdivisions (N), (O), and (T) in their entireties.

SECTION 18. Tennessee Code Annotated, Section 67-4-2006(c), is amended by deleting the language "of financial institutions" wherever it appears.

SECTION 19. Tennessee Code Annotated, Section 67-4-2006(c)(5), is amended by deleting the language "the financial institution" and substituting instead the language "the entity".

SECTION 20. Tennessee Code Annotated, Section 67-4-2006, is amended by deleting subsection (d) in its entirety.

SECTION 21. Tennessee Code Annotated, Section 67-4-2007(e), is amended by deleting the language "of financial institutions" in subdivision (1); deleting the language "combined," in subdivision (1); and deleting the language "Financial institutions" in subdivision (2)(A) and substituting instead the language "Entities".

SECTION 22. Tennessee Code Annotated, Section 67-4-2009(6), is amended by deleting the language "of financial institutions" wherever it appears and deleting the language "the financial institution" in subdivision (C) and substituting instead the language "the entity".

SECTION 23. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 24. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 25. For purposes of rulemaking, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2025, the public welfare requiring it, and applies to tax years beginning on or after that date.