

Public Necessity Rules  
of the  
Department of Revenue

Statement of Necessity Requiring Public Necessity Rules

I am herewith submitting amendments to the rules of the Tennessee Department of Revenue for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209.

Pursuant to T.C.A. § 4-5-209(a)(4), the Department is authorized to promulgate public necessity rules and regulations when an enactment of the general assembly requires implementation of rules within a prescribed period of time that precludes the utilization of rulemaking procedures for the promulgation of permanent rules.

Tennessee is an associate member of the multi-state Streamlined Sales Tax Governing Board. Public Chapter 602 (2007) amended the Retailers' Sales Tax Act, T.C.A. §§67-6-101 et seq., to bring Tennessee into compliance with significant portions of the Streamlined Sales and Use Tax Agreement. Statutory changes were made to adopt uniform streamlined sales tax definitions. Additional changes involve exemptions applicable to farmers, timber harvesters, and nursery operators, as well as the uniform administration of exemption certificates. The statutory changes are effective January 1, 2008. These public necessity rules are needed to eliminate direct conflict between the Sales and Use Tax Rules and the Retailers' Sales Tax Act, as amended effective January 1, 2008.

For a copy of these public necessity rules, contact David Gerregano, General Counsel, Department of Revenue, 6<sup>th</sup> Floor, Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, TN 37242, telephone 615-741-2348.

Reagan Farr, Commissioner  
Tennessee Department of Revenue

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Chapter 1320-05-01  
State Sales and Use Tax Rules

Chapter 1320-05-02  
Local Sales and Use Tax Rules

Amendments

1320-05-01-.22 Florists and Nurserymen is amended by deleting the language “, except that charges for long distance telephone calls and telegraph service which are separately stated and represent cost to the florist, without any mark up, are excluded from the tax base” from subparagraph (a) of paragraph (2), so that as amended the subparagraph shall read as follows:

(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.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71).

1320-05-01-.23 Federal Excise Taxes, When Deductible is amended by deleting paragraph (2) in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71).

1320-05-01-.50 Returned Merchandise, Credits, and Allowances is amended by deleting paragraph (2) in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71)(C).

1320-05-01-.61 Undertakers and Funeral Directors is amended by deleting the second, third, and fourth sentences from paragraph (1), so that as amended the paragraph shall read as follows:

(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.

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

1320-05-01-.67 Printing Industry is amended by deleting the last sentence in paragraph (1), so that as amended the paragraph shall read as follows:

(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.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(23).

1320-05-01-.68 Resale Certificate is amended by deleting the first sentence in paragraph (4), so that as amended the paragraph shall read as follows:

(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. §§ 67-1-102 and 67-6-409(b)(1).

#### Repeals

1320-05-01-.13 Computation of Tax is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(71).

1320-05-01-.71 Freight and Delivery Charges is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-102(23) and (71).

1320-05-01-.77 Tax Applies to Total Purchases is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-504(i).

1320-05-01-.83 Bracket System is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-504(i).

1320-05-01-.87 Livestock-Feeders-Livestock and Poultry Feed is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-207.

1320-05-01-.109 Telephone and Telegraph Service is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102, 67-6-102 and 67-6-205.

1320-05-01-.111 Farm Equipment and Machinery is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-207.

1320-05-02-.01 Bracket System is repealed in its entirety.

Authority: T.C.A. §§ 67-1-102 and 67-6-504(i).

The public necessity rules set out herein were properly filed in the Department of State on the 29th day of February, 2008, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the day of 12th day of August, 2008. (FS 02-28-08; DBID 2834-2836)