



HOUSE BILL 323

By Lamberth

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

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

SECTION 1. Tennessee Code Annotated, Section 67-1-118, is amended by adding

"This report may be submitted electronically." following the last sentence.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. _____

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 275*

House Bill No. 323

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 67-4-709(4)(A)(ii), is amended by deleting the language "fifty thousand dollars (\$50,000)" and substituting "one hundred thousand dollars (\$100,000)".

SECTION 2. Tennessee Code Annotated, Section 67-4-709(5)(A)(i), is amended by deleting the language "three-tenths of one percent (3/10 of 1%)" and substituting "one-tenth of one percent (1/10 of 1%)".

SECTION 3. Tennessee Code Annotated, Section 67-4-712(b)(2), is amended by deleting the subdivision and substituting:

(2) A person primarily engaged in the fabrication or processing of tangible personal property for resale and consumption off the premises with respect to the sales of such property made from the manufacturing location or from a storage or warehouse facility that is situated within a ten-mile radius of the manufacturing location;

SECTION 4. Tennessee Code Annotated, Section 67-4-712(d)(1), is amended by deleting the language "ten thousand dollars (\$10,000)" and substituting "one hundred thousand dollars (\$100,000)".

SECTION 5. Tennessee Code Annotated, Section 67-4-712(d)(2), is amended by deleting the language "ten thousand dollars (\$10,000)" and substituting "one hundred thousand dollars (\$100,000)".



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SECTION 6. Tennessee Code Annotated, Section 67-4-712(d)(3), is amended by deleting the language "ten thousand dollars (\$10,000)" and substituting "one hundred thousand dollars (\$100,000)".

SECTION 7. Tennessee Code Annotated, Section 67-4-717(b)(3), is amended by deleting the language "fifty thousand dollars (\$50,000)" wherever it appears and substituting "one hundred thousand dollars (\$100,000)".

SECTION 8. Tennessee Code Annotated, Section 67-4-717(c)(3), is amended by deleting the language "fifty thousand dollars (\$50,000)" wherever it appears and substituting "one hundred thousand dollars (\$100,000)".

SECTION 9. Tennessee Code Annotated, Section 67-4-723(b)(1), is amended by deleting the language "ten thousand dollars (\$10,000)" wherever it appears and substituting "one hundred thousand dollars (\$100,000)".

SECTION 10. Tennessee Code Annotated, Section 67-4-723(b)(4), is amended by deleting the language "ten thousand dollars (\$10,000)" and substituting "one hundred thousand dollars (\$100,000)".

SECTION 11. Tennessee Code Annotated, Section 67-4-724(a)(3), is amended by deleting the language "forty-three percent (43%)" and substituting "forty-two and sixty-two hundredths percent (42.62%)".

SECTION 12. Tennessee Code Annotated, Section 67-4-724(b)(3), is amended by deleting the language "forty-three percent (43%)" and substituting "forty-two and sixty-two hundredths percent (42.62%)".

SECTION 13. Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following as a new subdivision:

() For assets purchased on or after January 1, 2023, for purposes of computing "net earnings" or "net loss" under this subsection (a), Section 168 of the Internal Revenue Code of 1986 (26 U.S.C. § 168), as amended, shall be applied as it exists and applies under the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97.

SECTION 14. Tennessee Code Annotated, Section 67-4-2006(b)(1)(H), is amended by deleting the language "Any depreciation" and substituting instead the language "For assets purchased on or before December 31, 2022, any depreciation".

SECTION 15. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subdivision:

() For tax years ending on or after December 31, 2023, but before December 31, 2025, any amount deducted under subdivision (b)(2)(F) relating to the federal employer tax credit in Section 45S of the Internal Revenue Code of 1986 (26 U.S.C. § 45S) and earned as a credit against the excise tax under § 67-4-2009;

SECTION 16. Tennessee Code Annotated, Section 67-4-2006(b)(2)(I), is amended by deleting the language "Any depreciation" and substituting instead the language "For assets purchased on or before December 31, 2022, any depreciation".

SECTION 17. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by adding the following as a new subdivision:

() An amount equal to the lesser of net earnings or fifty thousand dollars (\$50,000); provided, that this amount must not create or increase a net loss;

SECTION 18. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following as a new subdivision:

()

(A) For tax years ending on or after December 31, 2023, but before December 31, 2025, there is allowed against the sum total of the taxes imposed by the Franchise Tax Law of 1999, compiled in part 21 of this chapter, and by this part, a credit equal to the federal employer tax credit in Section 45S of the Internal Revenue Code of 1986 (26 U.S.C. § 45S), as amended, as a result of compensation paid in this state during the tax period by the taxpayer as determined consistent with § 67-4-2012.

(B) The credit allowed pursuant to this subdivision () taken on a franchise and excise tax return must not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before the credit is taken. A credit authorized under this subdivision () that is unused may be carried forward in a tax period until the credit is taken; provided, however, that the credit may not be carried forward for more than fifteen (15) years.

SECTION 19. Tennessee Code Annotated, Section 67-4-2012(a), is amended by adding the following as new subdivisions (3) through (6):

(3) Except as otherwise provided in this part, for tax years ending on or after December 31, 2023, but before December 31, 2024, net earnings must be apportioned to this state by multiplying the earnings by a fraction, the numerator of which is the property factor plus the payroll factor plus five (5) times the receipts factor, and the denominator of the fraction is seven (7).

(4) Except as otherwise provided in this part, for tax years ending on or after December 31, 2024, but before December 31, 2025, net earnings must be apportioned to this state by multiplying the earnings by a fraction, the numerator of which is the property factor plus the payroll factor plus eleven (11) times the receipts factor, and the denominator of the fraction is thirteen (13).

(5) Except as otherwise provided in this part, for tax years ending on or after December 31, 2025, net earnings must be apportioned to this state by multiplying the earnings by the receipts factor only.

(6) If the application of subdivision (a)(3), (a)(4), or (a)(5) to a tax year results in a lower apportionment ratio than under the application of the apportionment method in subdivision (a)(2) as it applied to tax years ending before December 31, 2023, then a taxpayer may annually elect to apply the apportionment method in subdivision (a)(2) as it applied to tax years ending before December 31, 2023; provided, however, the election

must result in a higher apportionment factor for the tax year, and the taxpayer must have net earnings, rather than a net loss, for that tax year as computed under § 67-4-2006.

SECTION 20. Tennessee Code Annotated, Section 67-4-2012(l), is amended by adding the following as a new subdivision:

() This subsection (l) is repealed for tax years ending on or after December 31, 2025.

SECTION 21. Tennessee Code Annotated, Section 67-4-2012(m), is amended by adding the following as a new subdivision:

() This subsection (m) is repealed for tax years ending on or after December 31, 2025.

SECTION 22. Tennessee Code Annotated, Section 67-4-2108(a)(1), is amended by deleting the subdivision and substituting:

(1) The measure of the tax levied by this part must not be less than the actual value of the real or tangible property owned or used in this state, excluding exempt inventory and exempt required capital investments; provided, that for tax years ending on or after December 31, 2024, the measure of the tax levied in this section applies to the actual value of the taxpayer's aggregate real or tangible property in excess of five hundred thousand dollars (\$500,000).

SECTION 23. Tennessee Code Annotated, Section 67-4-2111(a), is amended by adding the following as new subdivisions (3) through (6):

(3) Except as otherwise provided in this part, for tax years ending on or after December 31, 2023, but before December 31, 2024, the net worth of a taxpayer doing business both inside and outside this state must be apportioned to this state by multiplying such values by a fraction, the numerator of which is the property factor plus the payroll factor plus five (5) times the receipts factor, and the denominator of the fraction is seven (7).

(4) Except as otherwise provided in this part, for tax years ending on or after December 31, 2024, but before December 31, 2025, the net worth of a taxpayer doing business both inside and outside this state must be apportioned to this state by multiplying such values by a fraction, the numerator of which is the property factor plus the payroll factor plus eleven (11) times the receipts factor, and the denominator of the fraction is thirteen (13).

(5) Except as otherwise provided in this part, for tax years ending on or after December 31, 2025, the net worth of a taxpayer doing business both inside and outside this state must be apportioned to this state by multiplying such values by the receipts factor only.

(6) If the application of subdivision (a)(3), (a)(4), or (a)(5) to a tax year results in a lower apportionment ratio than under the application of the apportionment method in subdivision (a)(2) as it applied to tax years ending before December 31, 2023, then a taxpayer may annually elect to apply the apportionment method in subdivision (a)(2) as it applied to tax years ending before December 31, 2023; provided, however, the election must result in a higher apportionment factor for the tax year, and the taxpayer must have net earnings, rather than a net loss, for that tax year as computed under § 67-4-2006.

SECTION 24. Tennessee Code Annotated, Section 67-4-2111(l), is amended by adding the following as a new subdivision:

() This subsection (l) is repealed for tax years ending on or after December 31, 2025.

SECTION 25. Tennessee Code Annotated, Section 67-4-2111(m), is amended by adding the following as a new subdivision:

() This subsection (m) is repealed for tax years ending on or after December 31, 2025.

SECTION 26. Tennessee Code Annotated, Section 67-6-203, is amended by adding the following as a new subsection:

() A tax is levied at the rate of the tax levied on the sale of tangible personal property at retail by § 67-6-202 on the repairing of tangible personal property or computer software, the laundering or dry cleaning of tangible personal property, the installing of tangible personal property that remains tangible personal property after installation, and the installing of computer software, when such repair, cleaning, or installation occurs at a place of business outside this state and the serviced tangible personal property or computer software is delivered by the seller to the purchaser or the purchaser's designee within the physical limits of this state or to a carrier for delivery to a place inside the physical limits of this state for use or consumption in this state.

SECTION 27. Tennessee Code Annotated, Section 67-6-329(a)(6), is amended by deleting the subdivision.

SECTION 28. Tennessee Code Annotated, Section 67-6-344, is deleted.

SECTION 29. Tennessee Code Annotated, Section 67-6-393(j), is amended by designating the existing language as subdivision (1) and adding the following as a new subdivision (2):

(2) There is exempt from the tax imposed by this chapter the retail sale of food and food ingredients, as defined in § 67-6-102, if sold between 12:01 a.m. on August 1, 2023, and 11:59 p.m. on October 31, 2023. This subdivision (j)(2) does not exempt sales from a micro market, as defined in § 67-6-102, or vending machine or device.

SECTION 30. Tennessee Code Annotated, Title 67, Chapter 6, Part 9, is amended by adding the following new sections:

67-6-901.

(a) Notwithstanding another law to the contrary, this part applies in determining whether a transaction is sourced to this state under this chapter. This part applies regardless of the characterization of a product as tangible personal property, a digital good, a service, or other taxable product and applies only to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail

sale of a product. This part does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.

(b) This part does not impose tax on a transaction if that tax is prohibited by the United States Constitution or the Constitution of Tennessee.

(c) Florist retail sales where orders taken by a florist are sent to a receiving florist for delivery to the purchaser's designee must be sourced in accordance with rules promulgated by the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) Sales made through a marketplace facilitator's marketplace must be sourced in accordance with § 67-6-902.

(e) Telecommunications services and ancillary services, as set out in § 67-6-905, must be sourced in accordance with that section.

67-6-902.

(a)

(1) For purposes of this subsection (a):

(A) "Location" does not include a location that merely provided the digital transfer of the product sold; and

(B) "Receive" or "receipt":

(i) Means:

(a) Taking possession of tangible personal property;

(b) Making first use of services; or

(c) Taking possession or making first use of digital products, whichever comes first; and

(ii) Does not include possession by a shipping company on behalf of the purchaser.

(2) The retail sale, excluding lease or rental, of a product from out of state into this state is sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee as designated by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser or the purchaser's donee, known to the seller;

(C) When subdivisions (a)(2)(A) and (a)(2)(B) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of that address does not constitute bad faith;

(D) When subdivisions (a)(2)(A) – (a)(2)(C) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of that address does not constitute bad faith; and

(E) When subdivisions (a)(2)(A) – (a)(2)(D) do not apply, or in the circumstance in which the seller is without sufficient information to determine which sourcing requirement in this subdivision (a)(2) applies, then the location is determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided.

(b)

(1) For purposes of this subsection (b), "transportation equipment"

means:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(B) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of ten thousand one pounds (10,001 lbs.) or greater, trailers, semi-trailers, or passenger buses that are:

(i) Registered through the International Registration Plan;

and

(ii) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(C) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(D) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (b)(1)(A) – (b)(1)(C).

(2) The lease or rental of tangible personal property imported into this state is sourced as follows:

(A) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (a);

(B)

(i) Except as provided in subdivisions (b)(2)(C) and (b)(2)(D), for a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment;

(ii) The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of that address does not constitute bad faith; and

(iii) The property location must not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and services calls;

(C) For the lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment and watercraft with a displacement of under fifty (50) tons, that requires recurring periodic payments, the first and each subsequent periodic payment is sourced to the primary property location. The primary property location is determined in accordance with subdivision (b)(2)(B); and

(D) Notwithstanding the primary property location covered by a recurring periodic payment, the lease or rental of transportation equipment is sourced the same as a retail sale in accordance with subsection (a).

(3) This subsection (b) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

67-6-903.

(a) The sale, including lease or rental, of a product made from a place of business within the physical limits of this state where delivery is made by the seller or lessor to a purchaser or lessee within the physical limits of this state, or to a carrier or United States postal service location for delivery to a place within the physical limits of this state, is sourced to the seller's or lessor's place of business in this state.

(b) The location of where the purchaser may take or use the product is not determinative of where the sale is sourced.

(c) For the sale of a product made from a place of business within the physical limits of this state that is delivered by the seller to the purchaser or the purchaser's designee outside the physical limits of this state or to a carrier for delivery to a place outside the physical limits of this state, the sale is not sourced to this state.

(d) For a lease or rental of property, excluding transportation equipment as defined in § 67-6-902(b)(1), delivered to the lessee or renter in this state that requires recurring periodic payments, the periodic payments made subsequent to the first payment that cover periods where the primary property location is no longer within the physical limits of this state are not sourced to this state. The lessor is not liable for the tax imposed under this chapter on the periodic payments that cover periods where the primary property location is no longer in this state. The primary property location is determined in accordance with § 67-6-902(b)(2)(B).

(e) For the sale of repairing of tangible personal property or computer software; laundering or dry cleaning of tangible personal property; and installing of tangible personal property that remains tangible personal property after installation; and installing of computer software, made from a place of business within the physical limits of this

state where the serviced tangible personal property or computer software is delivered by the seller to the purchaser or the purchaser's designee outside the physical limits of this state or to a carrier for delivery to a place outside the physical limits of this state, the sale is not sourced to this state.

67-6-904.

(a) For purposes of this section:

(1) "Advertising and promotional direct mail" means printed material that is direct mail, for which the primary purpose is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization;

(2) "Direct mail" has the same meaning as defined in § 67-6-102;

(3) "Other direct mail":

(A) Means direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing; and

(B) Includes, but is not limited to:

(i) Transactional direct mail that contains personal information specific to the addressee, including, but not limited to, invoices, bills, statements of account, and payroll advices;

(ii) Any legally required mailings, including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(iii) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including, but not limited to, newsletters and informational pieces; and

(C) Does not include the development of billing information or the provision of a data processing service that is more than incidental; and

(4) "Product" means tangible personal property, a product transferred electronically, or a service.

(b) The sale of direct mail is sourced as follows:

(1) For the sale of advertising and promotional direct mail and other direct mail made from a place of business in this state to a purchaser where delivery is made by the seller to a carrier or United States postal service location for distribution or delivery to direct mail recipients within the physical limits of this state, the sale is sourced to the seller's place of business;

(2) To the extent the seller knows based on information provided by the purchaser showing the jurisdictions to which the direct mail will be delivered to recipients in another state, the portion of the sales price that equals the percentage of direct mail delivered to recipients in another state is not sourced to this state;

(3) In lieu of providing the delivery information in accordance with subdivision (b)(2), a purchaser may provide the streamlined certificate of exemption to claim the direct mail exemption for the portion of the sales price that equals the percentage of direct mail delivered to recipients in another state; and

(4) In the absence of bad faith, where the seller sourced the sale according to the delivery information provided by the purchaser in accordance with this section, the seller is not liable for tax if it is determined the purchaser provided incorrect delivery information.

(c) This section does not impose tax on billing services or data processing services.

SECTION 31. Tennessee Code Annotated, Section 67-6-905(a), is amended by adding the following as new, appropriately designated subdivisions:

() "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed

telecommunications billing service, directory assistance service, vertical service, and voice mail service;

() "Conference bridging service":

() Means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number; and

() Does not include the telecommunications services used to reach the conference bridge;

() "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

() "Directory assistance service" means an ancillary service of providing telephone number information and address information;

() "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

() "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance, that is sold in predetermined units or dollars, of which the number declines with use in a known amount;

() "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, and that offers advanced calling features

that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services;

() "Voice mail service":

() Means an ancillary service that enables the customer to store, send, or receive recorded messages; and

() Does not include vertical services that the customer may be required to have in order to utilize the voice mail service;

SECTION 32. Tennessee Code Annotated, Section 67-6-905, is amended by adding the following as a new subsection:

(e) A sale of a prepaid calling service, or a sale of a prepaid wireless calling service, is sourced in accordance with:

(1) Section 67-6-903 when sold from a place of business within the physical limits of this state; and

(2) Section 67-6-902(a)(2) when sold from out of state into this state; provided, however, that, in the case of a sale of prepaid wireless calling service, the rule provided in § 67-6-902(a)(2)(E) includes as an option the location associated with the mobile telephone number.

SECTION 33. Tennessee Code Annotated, Section 67-4-2023(b)(3), is amended by designating the existing language as subdivision (b)(3)(A) and adding the following as a new subdivision (b)(3)(B):

(B) "Certified distribution sales" also includes sales of alcoholic beverages, as defined in § 57-3-101, when such sales are made in this state by the taxpayer to an affiliate that continues the manufacturing process, prior to the manufactured beverage being sold for ultimate use or consumption outside this state; provided, that the affiliate has certified that such property has been sold for ultimate use or consumption outside this state. Such certification must be made in the manner prescribed by the commissioner.

SECTION 34. Tennessee Code Annotated, Section 67-4-2023(b)(1), is amended by inserting the following at the end of the subdivision immediately preceding the semicolon:

, or if a taxpayer's sales of alcoholic beverages, as defined in § 57-3-101, made in this state to an affiliate that continues the manufacturing process exceed one billion dollars (\$1,000,000,000), as determined under § 67-4-2012 without regard to this section

SECTION 35. Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 33, and 34 of this act take effect upon becoming a law, the public welfare requiring it, and apply to tax years ending on or after December 31, 2023. Sections 11 and 12 of this act take effect April 1, 2024, the public welfare requiring it, and apply to revenue received on or after that date. Section 17 of this act takes effect January 1, 2024, the public welfare requiring it, and applies to tax years ending on or after December 31, 2024. Sections 26, 27, 28, 30, 31, and 32 of this act take effect January 1, 2024, the public welfare requiring it. All other sections of this act take effect upon becoming a law, the public welfare requiring it.