

BURR ALERT

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New Tennessee Tax Laws

The state of Tennessee recently enacted the Revenue Modernization Act (the "Act"). According to the state, while the legislation does not introduce any new taxes, it should raise revenue and create an even playing field in Tennessee for both in-state and out-of-state businesses by updating Tennessee's tax laws to reflect the realities of the constantly growing e-commerce economy. Although new taxes are not created, the Act does expand the state's taxing authority in a number of ways that will affect both in-state and, more importantly, out-of-state companies generating revenue in Tennessee.

In adopting the Act, Tennessee joins the movement by the states to determine a taxpayer's nexus (for purposes of levying business, franchise, and excise taxes) based upon the taxpayer's **economic** relationship to the state. The following factors are specifically incorporated by the Act and are considered indicia of Tennessee nexus:

1. organization or commercial domicile in the state;
2. ownership or use of capital in the state;
3. systematic and continuous business activities in the state which producing gross receipts attributable to Tennessee customers; and
4. a "bright-line presence" in the state, which is satisfied by:
 - a. having gross receipts for a tax year exceeding the lesser of \$500,000 or 25% of the taxpayer's total receipts for the tax year;
 - b. having real and tangible personal property owned or rented and used during the tax year, the amount of which exceeds the lesser of \$50,000 or 25% of the taxpayer's real and tangible personal property; or
 - c. paying compensation in the state during the tax year in an amount exceeding the lesser of \$50,000 or 25% of total compensation paid by the taxpayer during the tax year.

Tennessee also joins several other states, including neighbors Georgia, Arkansas, and North Carolina, in applying "click-through nexus" to online businesses having agreements with one or more persons with a Tennessee presence whereby the online business pays such person(s) to route potential customers to it, provided such referrals yield gross sales which exceed \$10,000 over a 12-month period.

Some significant changes are also adopted for sales tax purposes. No longer will Tennessee source sales other than of tangible personal property according to the location where the earning-producing activities occurred. With the Act, Tennessee has adopted the *market approach* which sources sales

according to the delivery or location of the sale or service. For example, the market approach will specifically authorize Tennessee to tax certain video game and software products or services (notably cloud computing) which are sold or used by customers in Tennessee.

The extended reach of Tennessee's new Act significantly affects its franchise and excise taxes (Tennessee's income-based taxes) by modifying the formula by which they are apportioned. The Act substitutes a triple-weighted sales factor for the existing double-weighted sales factor utilized in the apportionment formula.

There are three prominent dates on which various portions of the Act become effective. On July 1, 2015 sales and use tax changes regarding digital video game and software products go into effect, as does the application of click-through nexus to online retailers. The new substantial nexus standard applied to business, franchise, and excise taxes is effective January 1, 2016. Becoming effective July 1, 2016 are the new triple-weighted sales factor and market-based sourcing for sales of services and intangible personal property.

For more information:

If you would like more information on Tennessee's Revenue Modernization Act or to discuss its impact in your business, please contact:

[Jim McCarten](#) or [Josh Ehrenfeld](#) in Burr's Nashville office at (615) 724-3200;

For the impact of this law and other state and local changes on multistate taxpayers, you may also contact:

[Ed Brown](#), [Jim McCarten](#) or [Reid Barrineau](#) in Burr's Atlanta office at (404) 815-3000

[Allen Sullivan](#) in Burr's Birmingham office at (205) 251-3000

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