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SENATE BILL 2241
By Dixon

AN ACT to enact "The Tax Relief and Reform Act of 2002" and to to amend Tennessee Code Annotated, Title 3; Title 4; Title 5; Title 6; Title 7; Title 8; Title 9; Title 12; Title 16; Title 30; Title 36; Title 39; Title 40; Title 45; Title 47; Title 48; Title 55; Title 56; Title 57; Title 61; Title 62; Title 67; Title 68; Title 69; Title 70 and Title 71.

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

SECTION 1. The title of this act is, and may be cited as, “The Tax Relief and Reform Act of 2002”.

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

67-6-385.

(a) Except as provided in subsection (c), the sale of food and food products for human consumption shall be exempt from the state portion of the sales and use tax levied by this chapter.

(b) Except as otherwise provided in this section, “food or food products” means any item that is eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977

(7 U.S.C. §§ 2011 et seq.) as it may be amended from time to time, or any item that would be so eligible if the dealer from which the food or food products are purchased were participating in the food stamp program.

(c) As used in this section, "food or food products" does not include items sold for consumption on the premises of the dealer or items sold for immediate consumption off the premises of the dealer. “Items sold for immediate consumption” means items such as those intended to be sold in a heated state; sandwiches; salads and other dishes prepared by the dealer and suitable for immediate consumption by the purchaser or suitable for consumption after being reheated; drinks dispensed in or with a cup or glass either by a dealer or on a self-service basis by the consumer; frozen yogurt, ice cream, or ice milk sold in single or individual servings; and all food served by, or sold in or by, restaurants, fast food outlets, carryout shops (such as doughnut, ice cream, or coffee shops), lunch counters, cafeterias, snack bars, hot dog carts, hotels, caterers, boarding houses, movie theaters, concerts, athletic events, or like places of business.

SECTION 3. Tennessee Code Annotated, Section 67-6-202, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "three and one-quarter percent (3.25%)".

SECTION 4. Tennessee Code Annotated, Section 67-6-202, is amended by deleting subsection (b) in its entirety.

SECTION 5. Tennessee Code Annotated, Section 67-6-203, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of Section 67-6-202".

SECTION 6. Tennessee Code Annotated, Section 67-6-203, is amended by deleting subsection (c) in its entirety.

SECTION 7. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears and substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of Section 67-6-202".

SECTION 8. Tennessee Code Annotated, Section 67-6-204, is amended by deleting subsection (d) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 67-6-205, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of Section 67-6-202".

SECTION 10. Tennessee Code Annotated, Section 67-6-205, is amended by deleting subsection (b) in its entirety.

SECTION 11. Tennessee Code Annotated, Section 67-6-212(a), is amended by deleting the language “the rate of tax levied on the sale of tangible personal property at retail by the provisions of Section 67-6-202” and substituting instead the language "the rate of six percent (6%)."

SECTION 12. Tennessee Code Annotated, Section 67-6-221, is amended by deleting the first sentence of subsection (b).

SECTION 13. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following new section:

67-6-228. Notwithstanding any other provision of law to the contrary, there is levied a tax at the rate of six percent (6%) of the gross receipts or gross proceeds of each sale at retail of the following:

(1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. The tax does not

apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more;

(2) Rental of motor vehicles for a period of thirty-one (31) days or less.

SECTION 14. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following two new sections:

Section 67-6-229. Notwithstanding any other provision of law to the contrary, the rate of any tax imposed under Section 67-6-202 or 67-6-205 shall be six percent (6%) if such taxes are to be distributed pursuant to Section 67-6-103(d).

Section 67-6-230. Notwithstanding any other provision of law to the contrary, the rate of tax levied on the retail sale, use or consumption of tobacco products and alcoholic beverages, for on- or off-premises consumption, including distilled spirits, wine and beer, shall be six percent (6%).

SECTION 15. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (a) and by substituting instead the following:

(a) The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by the commissioner under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) Twenty-five and nine thousand seven hundred fifty-nine ten-thousandths percent (25.9759%) of such moneys shall be earmarked and allocated specifically and exclusively to the general fund;

(2) Sixty-five and nine hundred seventy ten-thousandths percent (65.0970%) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes; and

(3)

(A) Seven and three thousand forty ten-thousandths percent (7.3040%) shall be appropriated to the several incorporated municipalities

within the state of Tennessee to be allocated and distributed to them monthly by the commissioner of finance and administration in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state according to the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installation of officials, on the population basis determined by the comptroller of the treasury and certified by that office to the commissioner; provided, that an accurate census of population has been certified to the comptroller by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law;

(B)

(i) A municipality having a population of one thousand one hundred (1,100) or more persons, according to the federal census of 1970 or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, is defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a premiere type tourist resort may elect to receive six and forty-eight ten-thousandths percent (6.0480%) of the tax actually collected and remitted by dealers within the boundaries of

such resort. Any distribution made to a premiere type tourist resort pursuant to such election, shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount which would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(ii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also owning a golf course and ski slope shall also receive an amount equal to the amount distributed pursuant to subdivision (a)(3)(B)(i). Any distribution made to such a municipality shall be earmarked and paid from the general fund for the purpose of assisting in the retirement of the convention center obligations in connection with the acquisition, construction and operation of the convention center;

(iii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also containing within its boundaries a theme park of not less than eighty (80) acres shall also receive an amount equal to the distribution pursuant to subdivision (a)(3)(B)(i);

(iv)

(*a*) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(ii) shall also receive in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to fifty-six percent (56%) of the amount distributed in the 1986-1987 fiscal year

pursuant to subdivision (a)(3)(B)(ii), and an amount equal to ninety percent (90%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(*b*) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(iii) shall also receive, in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to sixty percent (60%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(iii), and an amount equal to ninety-six percent (96%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(C) Any municipality shall have the right to take not more than one (1) special census at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the comptroller. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1 following the certification of the census results by the federal bureau of the census or the comptroller to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforementioned;

(D) Any other such special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used

for the distribution of such funds and, in that case, no additional special census shall be taken under the provisions of this section;

(E) Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of a sum equal to one percent (1%) of the seven and three thousand forty ten thousandths percent (7.3040%) allocated to incorporated municipalities. This sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance at such conferences and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and, with the advice of, cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(4) One and six thousand two hundred thirty-one ten-thousandths percent (1.6231%) is appropriated to the sinking fund account to be used by the state funding board for the payment of principal and interest becoming due on state bonds issued by the state of Tennessee.

SECTION 16. Tennessee Code Annotated, Section 67-6-103(c), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) Notwithstanding any other provision of law or this act to the contrary, the portion of the sales and use tax revenue dedicated to education, grades k-12, pursuant to the provisions of chapter 529 of the public acts of 1992 and Section 67-6-224(b), shall continue to be earmarked for such purposes as provided in Section 49-3-357 and deposited in the education trust fund of 1992.

SECTION 17. Tennessee Code Annotated, Section 67-6-103, is amended by adding the following new subsection:

(g) Notwithstanding any provision of law to the contrary, counties and municipalities receiving allocations under this section shall be held harmless from any reduction in such allocations that would result from the reduction in the state sales tax rate from six (6) percent to three and one-quarter percent (3.25%), or any subsequent modification of such rate. Counties and municipalities shall continue to receive allocations in a percentage sufficient to provide the revenue that would have been provided under this section if the state sales tax rate were six (6) percent. The commissioner shall adjust the percentage allocation to the general fund as necessary to accomplish this allocation requirement.

SECTION 18. Tennessee Code Annotated, Title 67, Chapter 2, Part 1, is amended by deleting that part in its entirety for tax years beginning after January 1, 2002.

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 2, is amended by adding the following new part:

67-2-201. The title of this part is, and may be cited as, “The Tax Reform and Relief Act of 2002.”

67-2-202.

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

(1) “Commissioner” means the commissioner of revenue or the commissioner’s designee.

(2) “Department” means the department of revenue.

(3) “Estimated tax” means the amount that the taxpayer estimates to be the taxpayer’s income tax under this part for the taxable year less the amount which the taxpayer estimates to be the sum of any credits allowable for tax withheld.

(4) “Individual” means a natural person.

(5) “Internal Revenue Code” means Title 26 of the United States Code as effective during the year in which the tax under this part is determined.

(6) “Nonresident individual” means any natural person who is not a resident of this state for any portion of the taxable year.

(7) “Nonresident trust or estate” means any trust or estate other than a resident trust or estate or a part-year resident trust.

(8) “Partner” means a partner as defined in Section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended. With respect to any reference in this part, or in regulations adopted under this part, to pass-through entities, “partner” shall include a member of a limited liability company that is treated as a partnership for federal income tax purposes, and includes any person who owns, directly or indirectly through one or more pass-through entities, an interest in another pass-through entity.

(9) “Partnership” means a partnership as defined in Section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended, and any reference in this part, or in regulations adopted under this part, to a partnership shall include a limited liability company that is treated as a partnership for federal income tax purposes.

(10) “Part-year resident individual” means any natural person who is not either a resident of this state for the entire taxable year or a nonresident of this state for the entire taxable year.

(11) “Part-year resident trust” means any trust that is not either a resident trust or a nonresident trust for the entire taxable year.

(12) “Pass-through entity” means any partnership of any kind whatsoever, any limited liability company or other entity treated as a partnership for purposes of federal income taxation, and any S corporation.

(13) “Person” means any natural person, association, corporation, partnership, limited liability company, trust, estate, and any other entity of any kind whatsoever.

(14) “Resident individual” means any natural person who is domiciled in this state at any time during the taxable year or who resides in this state during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual other than a member of the armed forces of the United States, who is present in this state for more than one hundred eighty-three (183) days during the taxable year, is presumed to be a resident, but the absence of an individual from this state for more than one hundred eighty-three (183) days raises no presumption that the individual is not a resident. A resident who removes from the state during a taxable year is considered a resident until he or she has both established a definite domicile elsewhere and abandoned any domicile in this state.

(15) “Resident trust or estate” means:

(A) The estate of a decedent who at the time of death was a resident of this state;

(B) The estate of a person who, at the time of commencement of a case under Title 11 of the United States Code, was a resident of this state;

(C) A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at the time of death was a resident of this state; and

(D) A trust, or a portion of a trust, consisting of the property of:

(i) A person who was a resident of this state at the time the property was transferred to the trust if the trust was then irrevocable;

(ii) A person who, if the trust was revocable at the time the property was transferred to the trust, and has not subsequently become irrevocable, was a resident of this state at the time the property was transferred to the trust; or

(iii) A person who, if the trust was revocable when the property was transferred to the trust but the trust has subsequently become irrevocable, was a resident of this state at the time the trust became irrevocable.

(16) “S corporation” means any corporation that is an S corporation for federal income tax purposes.

(17) “Taxable year” means the year defined in Section 67-2-205.

(18) “Taxpayer” means any person, trust or estate subject to the tax levied by this part, including any pass-through entity referenced in Section 67-2-216.

(19) “Trust” means an arrangement that is ordinarily created either by a will or by an inter vivos declaration whereby a trustee or trustees take title to property for the purpose of protecting or conserving it for beneficiaries and that, under 26 C.F.R. § 301.7701-4, is classified and treated as a trust (and not as an association, under 26 C.F.R. § 301.7701-2, or partnership, under 26 C.F.R. § 301.7701-3) for federal income tax purposes. “Trust” does not include any real estate mortgage investment conduit, as defined in Section 860D of the Internal Revenue Code, that is created as a trust, or any other entity described in Section 67-4-2105(f)(1).

(b) Any term used in this part shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is provided or clearly required.

67-2-203.

(a) The tax levied by this part is declared to be a tax on one or more of the following:

(1) The privileges of engaging in a business, profession, occupation, trade, employment, enterprise, or endeavor; of investing or depositing money or capital; of selling one's labor or property; of engaging in a lease or rental; of benefiting from a pension, trust, annuity, or similar account; of receiving income or earnings; of applying one's talents, skills, time, efforts, resources, or property for personal gain or advantage; or of enjoying the protections and benefits provided by government; or

(2) Income as a species of intangible personal property;

(3) Income; or

(4) To the extent not otherwise included in subdivisions (1) - (3), capital gains. For purposes of this part, "capital gains" shall mean the sum of long-term and short-term capital gains for the taxable year as determined for federal income tax purposes, except that "capital gains" does not include:

(A) Gains from the sale of real or tangible property situated outside of Tennessee;

(B) Long- and short-term capital losses.

(C) Gains from the sale of securities not taxable under this chapter.

Provided, however, if any of the categories or subcategories contained in this subsection are determined by a court of competent jurisdiction to be beyond the authority of the general assembly to levy taxes on such categories or subcategories, then the tax levied by this part shall not be deemed to be a tax on the categories or subcategories determined to be invalid.

(b) It is unlawful to engage in any of the privileges enumerated in subsection (a)(1) that produce income that is used to measure the tax levied by this part without paying the tax in accordance with the provisions of this part.

(c) The tax levied by this part is for state purposes only, and no county or municipality shall have power to levy any like tax.

67-2-204.

(a) There is hereby levied on each resident single individual, resident married individual filing separately, resident estate, and resident trust, a tax as follows:

If Tennessee taxable income is:	The tax is:
Not over fifteen thousand dollars ($15,000)	Zero (0).
Over fifteen thousand dollars ($15,000) but not over thirty thousand dollars ($30,000)	Two percent (2%) of Tennessee taxable income over fifteen thousand dollars ($15,000).
Over thirty thousand dollars ($30,000) but not over forty-five thousand dollars ($45,000)	Three hundred dollars ($300) plus four percent (4%) of Tennessee taxable income over thirty thousand dollars ($30,000).
Over forty-five thousand dollars ($45,000) but not over sixty thousand dollars ($60,000)	Nine hundred dollars ($900) plus six percent (6%) of Tennessee taxable income over forty-five thousand dollars
Over sixty thousand dollars ($60,000)	One thousand eight hundred dollars ($1,800)

	plus eight percent (8%) of Tennessee taxable income over sixty thousand dollars

(b) There is hereby levied on every resident head of household a tax as follows:

If Tennessee taxable income is:	The tax is:
Not over twenty-two thousand five hundred dollars ($22,500)	Zero (0).
Over twenty-two thousand five hundred dollars ($22,500) but not over forty-five thousand dollars ($45,000)	Two percent (2%) of Tennessee taxable income over twenty-two thousand five hundred dollars ($22,500).
Over forty-five thousand dollars ($45,000) but not over sixty-seven thousand five hundred dollars ($67,500)	Four hundred fifty dollars ($450) plus four percent (4%) of Tennessee taxable income over forty-five thousand dollars ($45,000).
Over sixty-seven thousand five hundred dollars ($67,500) but not over ninety thousand dollars ($90,000)	One thousand three hundred fifty dollars ($1,350) plus six percent (6%) of Tennessee taxable income over sixty-seven thousand five hundred dollars ($67,500)
Over ninety thousand dollars ($90,000)	Two thousand seven hundred dollars ($2,700) plus eight percent (8%) of Tennessee taxable income over ninety thousand dollars ($90,000)

(c) There is hereby levied on married persons filing jointly, and on each resident individual who files as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code, a tax as follows:

If Tennessee taxable income is:	The tax is:
Not over thirty thousand dollars ($30,000)	Zero (0).
Over thirty thousand dollars ($30,000) but not over sixty thousand dollars ($60,000)	Two percent (2%) of Tennessee taxable income over thirty thousand dollars ($30,000).
Over sixty thousand dollars ($60,000) but not over ninety thousand dollars ($90,000)	Six hundred dollars ($600) plus four percent (4%) of Tennessee taxable income over sixty thousand dollars ($60,000).
Over ninety thousand dollars ($90,000) but not over one hundred twenty thousand dollars ($120,000)	One thousand eight hundred dollars ($1,800) plus six percent (6%) of Tennessee taxable income over ninety thousand dollars ($90,000).
Over one hundred twenty thousand dollars ($120,000)	Three thousand six hundred dollars ($3,600) plus eight percent (8%) of Tennessee taxable income above one hundred twenty thousand dollars ($120,000).

(d) There is hereby levied on each nonresident individual of this state a tax equal to the product of an amount equal to the tax computed as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state and the denominator of which is the nonresident's Tennessee adjusted gross income; provided, if the nonresident's Tennessee adjusted gross income is less than the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state, then the nonresident's Tennessee adjusted gross income derived from or

connected with sources within this state, reduced by the amount of the exemption provided in Section 67-2-206, shall be the nonresident's Tennessee taxable income derived from or connected with sources within this state and shall be applied to the table specified in subsection (a) of this section for the purposes of determining the tax pursuant to this section. The provisions of this subsection shall also apply to nonresident trusts and estates, and wherever reference is made in this subsection to nonresidents of this state, such reference shall be construed to include nonresident trusts and estates; provided any reference to a nonresident's Tennessee adjusted gross income derived from sources within this state or to a nonresident's Tennessee adjusted gross income shall be construed, in the case of a nonresident trust or estate, to mean the nonresident trust or estate's Tennessee taxable income derived from sources within this state and the nonresident trust or estate's Tennessee taxable income, respectively.

(e) There is hereby levied on the Tennessee taxable income of each part-year resident individual, derived from or connected with sources within this state, a tax which shall be a product equal to the tax computed as if such part-year resident were a resident, multiplied by a fraction, the numerator of which is the part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, as described in Section 67-2-210, and the denominator of which is the part-year resident's Tennessee adjusted gross income; provided, if the part-year resident's Tennessee adjusted gross income is less than such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, then such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, reduced by the amount of the exemption provided in Section 67-2-206, shall be such part-year resident's Tennessee taxable income derived from or connected with sources within this state and shall be applied to the table specified in subsection (a) of this section for purposes of determining the tax pursuant to

this section. The provisions of this subsection shall apply to part-year resident trusts, and wherever reference is made in this subsection to part-year residents, such reference shall be construed to include part-year resident trusts; provided, any reference to a part-year resident's Tennessee adjusted gross income derived from sources within this state or a part-year resident's Tennessee adjusted gross income shall be construed, in the case of a part-year resident trust, to mean the part-year resident trust's Tennessee taxable income derived from sources within this state and the part-year resident trust's Tennessee taxable income, respectively.

(f) Any person exempt from federal income tax by reason of its purposes or activities shall be exempt from tax levied by this part, but such person is not exempt from the reporting and withholding requirements imposed by this part.

67-2-205.

(a) For purposes of the tax levied by this part, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes, and a taxpayer's method of accounting shall be the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, Tennessee taxable income shall be computed under such method that in the opinion of the commissioner fairly reflects income.

(b) If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of the tax under this part shall be similarly changed. If a taxpayer's method of accounting is changed for federal income tax purposes, the method of accounting for purposes of this part shall similarly be changed.

(c) In computing a taxpayer's Tennessee taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's Tennessee taxable income for the previous year was computed, there shall be taken into account those adjustments that are determined, under regulations adopted by the

commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

(d) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax that results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two (2) years, during which the taxpayer used the method of accounting from which the change is made. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year that is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments.

67-2-206.

(a) For purposes of this part, “Tennessee taxable income” for resident individuals is defined as Tennessee adjusted gross income reduced by the exemptions based on filing status provided in this section. Except as provided in Section 67-2-230, filing status and the number of claimed dependents for the tax levied by this part must be the same as the federal income tax filing status and number of dependents for the same taxable year.

(b) For each dependent other than the taxpayer or taxpayers, there is an exemption of two thousand five hundred dollars ($2,500) per dependent.

67-2-207.

(a) For purposes of this part, “Tennessee adjusted gross income” of a natural person (resident, nonresident, and part-year resident individual) is defined as the person’s federal adjusted gross income, adjusted as provided in this section.

(b) There shall be added to federal adjusted gross income the following amounts:

(1) To the extent not properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(2) To the extent included in gross income for federal income tax purposes for the taxable year, the total taxable amount of a lump sum distribution for the taxable year deductible from such gross income in calculating federal adjusted gross income; and

(3) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this subdivision (3) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

(c) There shall be subtracted from federal adjusted gross income the following amounts:

(1) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(2) The amount of any refund or credit for overpayment of taxes measured by income levied by this state, or any other state of the United States or the District of Columbia, to the extent properly includable in gross income for federal income tax purposes;

(3) To the extent properly includable in gross income for federal income tax purposes, any railroad retirement benefits with respect to which taxation by any state is prohibited by federal law;

(4) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee; and

(5) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this subdivision (5) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

67-2-208.

(a) The income of a nonresident individual derived from or connected with sources within this state shall be the sum of the net amount of items of income, gain, loss and deduction entering into the taxpayer's Tennessee adjusted gross income which are derived from or connected with sources within this state, including, but not limited to:

(1) Compensation paid to the taxpayer as an employee, independent contractor, or otherwise, for personal services performed in this state;

(2) Income from a business, trade or profession carried on in this state;

(3) The taxpayer's distributive share of partnership income, gain, loss and deduction, determined under Section 67-2-213;

(4) The taxpayer's pro rata share of S corporation income, gain, loss and deduction, determined under Section 67-2-213; and

(5) The taxpayer's share of estate or trust income, gain, loss and deduction, determined under Section 67-2-214.

(b) If a husband and wife determine their federal income tax on a joint return but determine their Tennessee income taxes separately, they shall determine their incomes derived from, or connected with, sources within this state separately as if their federal adjusted gross incomes had been determined separately.

(c) For purposes of this section, "derived from or connected with sources within this state" is defined as such term is defined in Section 67-2-211.

67-2-209.

(a) Tennessee taxable income of a resident trust or estate shall mean the taxable income of the fiduciary of such trust or estate as determined for purposes of the federal income tax, to which there shall be added or subtracted, as the case may be, the share of the trust or estate in the Tennessee fiduciary adjustment, as defined in subsection (c) of this section.

(b) If any trust or portion of a trust, other than a trust created by the will of a decedent, has one (1) or more nonresident noncontingent beneficiaries, the Tennessee taxable income of the trust shall be modified as follows:

The Tennessee taxable income of the trust shall be the sum of:

(1) All such income derived from or connected with sources within this state; and

(2) That portion of such income derived from or connected with all other sources, which is derived by applying to all such income derived from or connected with all other sources a fraction, the numerator of which is the number of resident noncontingent beneficiaries, and the denominator of which is the total number of noncontingent beneficiaries.

(c) “Tennessee fiduciary adjustment” means the net positive or negative total of the following items relating to income, gain, loss or deduction of a trust or estate:

(1) There shall be added together:

(A) Any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity, exclusive of such income from obligations issued by, or on behalf of, the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision

thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the State of Tennessee, in the income year such loss was recognized; provided that this item (B) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(C) To the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries, any interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this part.

(2) There shall be subtracted from the sum of such items:

(A) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee;

(C) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this item (C) shall apply

only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(D) The amount of any refund or credit for overpayment of income taxes levied by this state, to the extent properly includable in gross income for federal income tax purposes for the taxable year and to the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries for the preceding taxable year.

(d)

(1) The respective shares of a trust or estate and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the Tennessee fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the trust or estate.

(2) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary in the Tennessee fiduciary adjustment shall be in proportion to the beneficiary's share of the trust or estate income for such year, determined under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Tennessee fiduciary adjustment shall be allocated to the trust or estate.

(3) The commissioner may by regulation establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed as may be appropriate and equitable. Such other method may be used by the fiduciary whenever the allocation of the fiduciary adjustment pursuant to subdivisions (1) and (2) of this subsection would result in an inequity

that is substantial both in amount and in relation to the amount of the fiduciary adjustment.

(e) For purposes of this section, “derived from, or connected with, sources within this state” is defined as such term is defined in Section 67-2-211.

67-2-210.

(a) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident individual shall be the sum of the following:

(1) Tennessee adjusted gross income for the period of residence, computed as if the taxpayer’s taxable year for Tennessee income tax purposes were limited to the period of residence; and

(2) The income derived from, or connected with, sources within this state for the period of nonresidence determined in accordance with Section 67-2-208, as if the taxpayer’s taxable year for Tennessee income tax purposes were limited to the period of nonresidence.

(b) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident trust shall be the sum of the following:

(1) The share of Tennessee adjusted gross income for the period of residence, determined as if such trust were an individual whose taxable year for federal income tax purposes were limited to the period of residence, allocated to the trust in accordance with the methods of allocation set forth in Section 67-2-209; and

(2) The income derived from, or connected with, sources within this state for the period of nonresidence determined in accordance with Section 67-2-214 as if its taxable year for federal income tax purposes were limited to the period of nonresidence.

(c) For purposes of this section, “derived from or connected with sources within this state” is defined as such term is defined in Section 67-2-211.

67-2-211.

(a) For purposes of this part, except as may be otherwise provided in this part, the term “derived from or connected with sources within this state” is defined in this section.

(b) Items of income, gain, loss and deduction derived from or connected with sources within this state shall be those items attributable to:

(1) The ownership or disposition of any interest in real, tangible or intangible personal property in this state;

(2) A business, trade, profession or occupation carried on in this state; and

(3) In the case of a shareholder of an S corporation, the ownership of shares issued by such corporation, to the extent determined under Section 67-2-213.

(4) In the case of a partner, the ownership interest in the partnership, to the extent determined under Section 67-2-213.

(c) Items of income, gain, loss and deduction derived from or connected with Tennessee sources do not include such items attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in Tennessee.

(1) Intangible personal property is employed in a business, trade, profession or occupation carried on in this state if such property's possession and control have been localized in connection with a business, trade, profession or

occupation in Tennessee, so that the property's substantial use and value attach to and become an asset of such business, trade, profession or occupation.

(2) If intangible personal property of a nonresident is employed in a business, trade, profession or occupation carried on in Tennessee, the entire income from such property, including gains from its sale, regardless of where the sale is consummated, is income derived from or connected with sources within this state. Where a nonresident individual sells real or tangible personal property located in Tennessee, and as a result of such sale receives intangible personal property (for example, a note) that generates interest income or capital gain income, such interest income is generally not attributable to the sale of the real or tangible personal property but is attributable to the intangible personal property; however, such capital gain income is attributable to the sale of the real or tangible personal property located in Tennessee. Therefore, such interest income to a nonresident does not constitute income derived from or connected with Tennessee sources. However, interest income derived from an instrument received as a result of a sale of real or tangible personal property located in Tennessee, where the instrument is employed in a business, trade, profession or occupation carried on in this state, does constitute income derived from, or connected with, Tennessee sources.

(3) A nonresident individual, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer’s trade or business, shall not be deemed to carry on a trade, business, profession or occupation in this state solely by reason of the purchase or sale of intangible property, or the purchase, sale or writing of stock option contracts, or both, for the nonresident’s own account.

(d) Deductions with respect to net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with sources within this state, under regulations adopted by the commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(e) A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on within Tennessee by a nonresident individual:

(1) If the individual occupies, maintains or operates desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place where such nonresident's affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions outside Tennessee; or

(2) If activities in connection with the business are conducted in Tennessee with a fair measure of permanency and continuity.

(f) If a nonresident individual, or a partnership of which the nonresident individual is a member, carries on a business, trade, profession or occupation (as distinguished from personal services as an employee) both within and without Tennessee, the nonresident taxpayer may elect, or the commissioner may require the taxpayer, to allocate (as provided in subdivision (1) of this subsection), or to apportion (as provided in subdivision (2) of this subsection), to Tennessee on a fair and equitable basis, the items of income, gain, loss and deduction attributable to such business, trade, profession or occupation. For this purpose, compensation paid to nonresident employees and officers shall be attributed to Tennessee in accordance with the provisions of subsection (f) of this section. Once an individual elects, or the commissioner requires in writing, the use of either method (allocation or apportionment), the taxpayer shall continue to use that method unless, after application in writing to the commissioner, the commissioner makes a written determination that the method used no longer reflects income that is fairly

attributable to Tennessee. The methods to be used for allocation or apportionment are set forth in subdivisions (1) and (2) below.

(1) If the books of the business are kept so as regularly to disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction derived from, or connected with, Tennessee sources, the Tennessee nonresident income tax return of the nonresident individual shall disclose the total amount of such items, the net amount of such items allocated to Tennessee, and the basis upon which such allocation is made. If income is reported using this method, the taxpayer shall consistently allocate the amounts of income on returns filed with any other state in which the taxpayer carries on business where such states permit allocation on the basis of separate books and records.

(2) If the books and records of the business do not disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in Tennessee, such proportion shall be determined consistently with the provisions of Section 67-4-2012, unless the commissioner by rule provides for some other method of apportionment.

(g) The Tennessee adjusted gross income derived from, or connected with, Tennessee sources of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into the individual's Tennessee adjusted gross income, but only if, and to the extent that, the services were rendered within Tennessee.

(1) When a nonresident employee, who is compensated on an hourly, daily, weekly or monthly basis, is able to establish the exact amount of pay received for services performed in Tennessee, such amount is included in

Tennessee adjusted gross income derived from or connected with sources within this state.

(2) When no such exact determination of pay received for services performed in Tennessee is possible, the income of employees, who are compensated on an hourly, daily, weekly or monthly basis shall be apportioned to Tennessee by multiplying the total compensation wherever earned from the employment by a fraction, the numerator of which is the number of days spent working in Tennessee and the denominator of which is the total working days both within and without Tennessee. The product is included in Tennessee adjusted gross income derived from or connected with sources within this state. The term “total working days” does not include days on which the employee was not required to work, such as holidays, sick days, vacations and paid or unpaid leave. For purposes of this section, when a working day is spent working partly in Tennessee and partly elsewhere, it is considered one-half (1/2) of a day spent working in Tennessee.

(3) If a nonresident employee performs services for more than one employer both within and without Tennessee and is unable to determine the exact amounts earned or derived in Tennessee, such employee shall determine separately for each employer the compensation attributable to Tennessee sources. The sum of the amounts of compensation attributable to Tennessee sources shall be included in determining the Tennessee adjusted gross income derived from, or connected with, sources within this state.

(h) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from, or connected with, sources within this state.

(i) The Tennessee adjusted gross income derived from, or connected with, sources within Tennessee of a nonresident member of a professional athletic team includes that proportion of such individual's compensation received for services rendered as a member of such team that the duty days spent within Tennessee rendering services for such team in any manner during the taxable year bears to the total number of duty days rendering services for such team in any manner during the taxable year. In determining whether duty days are spent within Tennessee, travel days are duty days spent within Tennessee if Tennessee is the travel destination and are not duty days spent within Tennessee if Tennessee is not the travel destination; provided, when a game is scheduled to be played on a travel day, the duty day is considered to be spent where the game is scheduled to be played.

(j) For purposes of subsection (i), the following definitions apply.

(1) “Member of a professional athletic team” includes, but is not limited to, active players, players on the disabled list, and any other persons who are required to travel with and perform services on behalf of a professional athletic team, on a regular basis, including coaches, managers, trainers and equipment managers.

(2) “Duty days” means all days, from the first day of the official pre-season training period of the professional athletic team through the day of the last game, including post-season games, in which such team competes, or is scheduled to compete, during the taxable year. “Duty days” include game days, travel days and practice days. For a member of a professional athletic team who renders services for a team on a day that is not otherwise a “duty day” (e.g., representing a team at an all-star game), the member’s “duty days” include such a day. “Duty days” for any member joining a team during the season shall begin on the day such person becomes a member and for any member leaving a team

during the season shall end on the day such person ceases to be a member. “Duty days” do not include any try-out or pre-season cut days that a player shall survive in order to obtain a contract or any days for which a member is not compensated and is not rendering services for the team in any manner because such person has been suspended without pay and prohibited from performing any services for the team.

(3) “Duty days spent within Tennessee” means "duty days" on which a member of a professional athletic team renders services, or is available to render services, for the member’s team, within Tennessee. Days when a member is not available to render services for the team because of an injury are “duty days” for that member, but are not “duty days spent within Tennessee” for that member unless the team is based in Tennessee.

(4) “Compensation received for services rendered as a member of a professional athletic team” means the total compensation received for the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional compensation received for rendering services for the team on a date that is not otherwise a “duty day” (e.g., compensation for representing a team at an all-star game) during the taxable year. “Compensation received for services rendered as a member of a professional athletic team” includes, but is not limited to, salaries, wages, guaranteed payments except as otherwise provided herein, bonuses, strike benefits, severance pay, and termination pay. Bonuses are includable in “compensation received for services rendered as a member of a professional athletic team” if they are earned as a result of play during the season or for playing in championship, playoff or “all-star” games. Bonuses are also so

includable if paid for signing a contract, unless all of the following conditions are met; payment of the signing bonus by a team:

(A) Is solely in consideration of a nonresident athlete giving up amateur and free agent status and agreeing to be the exclusive property of the team;

(B) Is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team;

(C) Is separate from the payment of salary or any other compensation; and

(D) Is nonrefundable.

(k) It shall be presumed that the method provided under subsection (i) is a fair and equitable method of determining the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from, or connected with, sources within Tennessee. However, the portion of compensation received for services rendered as a member of a professional athletic team that is derived from, or connected with, sources within Tennessee may be determined on the basis of a method other than that provided under subsection (i), if:

(1) The member establishes, to the satisfaction of the commissioner, that another method is fairer and more equitable; or

(2) In the discretion of the commissioner, the commissioner determines that the method provided under subsection (j) does not fairly and equitably reflect the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from, or connected with, sources within Tennessee.

(l) In the case of a nonresident entertainer or athlete (other than a member of a professional athletic team), who is paid specifically for a performance or athletic event in Tennessee, the entire amount received is included in Tennessee adjusted gross income derived from, or connected with, sources within Tennessee if the entertainer or athlete is carrying on a business, trade, profession or occupation in Tennessee (and entertainer or athlete's presence for business in Tennessee is not casual and isolated).

(m) In the case of a nonresident entertainer who is not paid specifically for a performance in Tennessee, the entertainer's Tennessee adjusted gross income derived from, or connected with, sources within Tennessee includes that proportion of the entertainer's income received from performances within and without Tennessee that the number of performances that the entertainer gave (or, in the case of an understudy, was available to give) within Tennessee during the taxable year bears to the total number of performances that the entertainer was obligated to perform (or, in the case of an understudy, was obligated to be available to perform), under contract or otherwise, within and without Tennessee during the taxable year.

(n) In the case of a nonresident athlete (other than a member of a professional athletic team) who is not paid specifically for athletic events in Tennessee, the athlete's Tennessee adjusted gross income derived from, or connected with, sources within Tennessee includes that proportion of the athlete's income received from athletic events within and without Tennessee that the number of athletic events within Tennessee in which the athlete played during the taxable year bears to the total number of athletic events within and without Tennessee in which the athlete played during the taxable year.

(o) Income directly or indirectly derived by an athlete, entertainer or performing artist, from closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, taking place within this state as a result of the rendition of services by such athlete, entertainer or performing artist, shall

constitute income derived from, or connected with, sources within this state only to the extent that such transmissions were received or exhibited within this state.

67-2-212.

(a) In determining the Tennessee adjusted gross income of a resident partner of a partnership or a resident shareholder of an S corporation, any adjustments described in Section 67-2-207, which relates to an item of partnership or S corporation income, gain, loss or deduction, shall be made in accordance with the partner's distributive share or a shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's or shareholder's share of such item shall be determined in accordance with the partner’s or shareholder’s share, for federal income tax purposes, of partnership or S corporation taxable income or loss generally.

(b) Each item of partnership and S corporation income, gain, loss or deduction shall have the same character for a partner or shareholder under this part as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if it were realized directly from the source from which it was realized by the partnership or S corporation or as if it were incurred in the same manner as it was incurred by the partnership or S corporation.

(c) Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this part, the partner's distributive share of such item, and any modification required with respect thereto, shall

be determined as if the partnership agreement made no special provision with respect to such item.

67-2-213.

(a) The Tennessee adjusted gross income derived from, or connected with, sources within this state of a nonresident partner includes the partner's distributive share of all items of partnership income, gain, loss and deduction entering into federal adjusted gross income to the extent such items are derived from, or connected with, Tennessee sources.

(b) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital;

(2) Allocates to the partner, as income or gain from sources without Tennessee, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources without this state to partnership income or gain from all sources, except as authorized in subsection (c) of this section; or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources within this state than the partner's proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (c) of this section.

(c)

(1) The character of partnership or corporation items for a nonresident partner or S corporation shareholder shall be determined in accordance with Section 67-2-212.

(2) The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (b) of this section, having the principal purpose of avoidance or evasion of tax under this part, shall be determined under subsection (c) of Section 67-2-212.

(d) The commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from, or connected with, sources within this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as the commissioner may require.

(e) The Tennessee adjusted gross income derived from, or connected with, sources within this state of a nonresident individual, who is a shareholder of an S corporation doing business or, having the right to do business in this state, as defined in Section 67-4-2004(7), includes such shareholder's pro rata share of the S corporation's separately computed income or loss entering into federal adjusted gross income to the extent such income or loss is derived from, or connected with, Tennessee sources.

(f) The Tennessee adjusted gross income derived from, or connected with, sources within this state of a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in Section 67-4-2004(7), does not include such shareholder's pro rata share of the S corporation's nonseparately computed income or loss entering into federal adjusted gross income.

(g) With respect to a nonresident individual who is a shareholder of an S corporation doing business, or having the right to do business in Tennessee, as defined in Section 67-4-2004(7), the portion of such shareholder's pro rata share of the modifications described in Section 67-2-207 relating to the S corporation's:

(1) Separately computed income or loss that is derived from, or connected with, sources within Tennessee is to be determined so as to accord with the definition of the term “derived from, or connected with, sources within this state” set forth in Section 67-2-211;

(2) Nonseparately computed income or loss is considered to be derived from, or connected with, sources without Tennessee.

(h) With respect to a nonresident shareholder of an S corporation neither doing business nor having the right to do business in Tennessee, as defined in Section 67-4-2004(7), no portion of such shareholder's pro rata share of the S corporation's separately or nonseparately computed income or loss, or the adjustments described in Section 67-2-207 that relate to S corporation items of income or gain, is considered to be derived from, or connected with, sources within Tennessee.

67-2-214.

(a) The income derived from, or connected with, sources within this state of a nonresident trust or estate shall be determined as follows:

(1) There shall be determined its share of income, gain, loss and deduction from Tennessee sources under Section 67-2-213.

(2) There shall be added or subtracted, as the case may be, the amount derived from, or connected with, Tennessee sources of any income, gain, loss and deduction which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which is recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the trust or estate; provided that any short- or long-term capital loss shall not be included.

(b) Deductions with respect to net operating losses shall be based solely on income, gains, losses and deductions derived from, or connected with, sources within

this state, under rules or regulations of the commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

(c) The share of a nonresident trust or estate in trust or estate income, gain, loss and deduction derived from, or connected with, sources within this state; and the share of a nonresident beneficiary of any trust or estate, in trust or estate income, gain, loss and deduction derived from, or connected with, sources within this state; shall be determined as follows:

(1) There shall be determined the items of income, gain, loss and deduction which are derived from, or connected with, sources within this state, which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which enter into the definition of federal distributable net income of the trust or estate for the taxable year, including any such items from another trust or estate of which the subject trust or estate is a beneficiary. The determination of source shall be made in accordance with the provisions of Section 67-2-208 in the same manner as for a nonresident individual.

(2) The amounts determined under subdivision (1) of this subsection shall be allocated among the trust or estate and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(3) The amount allocated under subdivision (2) of this subsection shall have the same character under this part as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if it were realized directly from the source from which it was realized by the

trust or estate, or as if it were incurred in the same manner as it was incurred by the trust or estate.

(d)

(1) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary, including, solely for the purpose of this allocation, resident beneficiaries, in the net amount, determined under subdivision (1) of subsection (a) of this section, shall be in proportion to the beneficiary's share of the trust or estate income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the trust or estate.

(2) The commissioner may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the trust or estate in its income derived from sources within this state as may be appropriate and equitable. Such method may be used by the fiduciary whenever the allocation of such respective shares under subsections (c) and (d) of this section would result in an inequity that is substantial in amount.

67-2-215.

(a) Any resident individual or part-year resident individual of this state shall be allowed a credit against the tax otherwise due under this part in the amount of any income tax, levied on such resident or part-year resident for the taxable year by another state of the United States or the District of Columbia, on income derived from sources therein and which income is also subject to tax under this part.

(b) In the case of a resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from, or connected with, sources

in the other taxing jurisdiction bears to such taxpayer's Tennessee adjusted gross income under this part.

(c) In the case of a part-year resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due during the period of residency under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from, or connected with, sources in the other jurisdiction during the period of residency bears to such taxpayer's Tennessee adjusted gross income during the period of residency under this part, nor shall the allowance of the credit provided under this section reduce the tax otherwise due under this part to an amount less than what would have been due if the income subject to taxation by such other jurisdiction were excluded from Tennessee adjusted gross income.

(d)

(1) If, as a direct result of the change to or correction of a taxpayer's income tax return, filed with another state of the United States or the District of Columbia, by the tax officers or other competent authority of such jurisdiction, the amount of tax of such other jurisdiction that the taxpayer is finally required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the final determination of such amount, an amended return under this part, and shall concede the accuracy of such determination or state wherein it is erroneous. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax plus interest for any taxable year affected.

(2) If, as a direct result of a taxpayer filing an amended income tax return with another state of the United States or the District of Columbia, the amount of tax of such other jurisdiction that the taxpayer is required to pay is different than

the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the date of filing of such amended return, an amended return under this part and shall give such information as the commissioner may require. The commissioner may redetermine and the taxpayer shall be required to pay the tax plus interest for any taxable year affected.

(3) In the case of a redetermination of the tax owing to another state of the United States or the District of Columbia resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within three (3) years from the date of such determination by the other state or other such jurisdiction.

(e) A taxpayer shall not be allowed credit under this section if the taxpayer has claimed or will claim a credit against the income tax levied by the other jurisdiction for the tax paid or payable under this part.

(f) There shall be no credit for interest or penalties paid to another state or to the District of Columbia.

67-2-216.

(a)

(1) With respect to each of its nonresident partners or shareholders, each pass-through entity, doing business in this state or having income derived from, or connected with, sources within this state, shall for each taxable period, either:

(A) Timely file with the commissioner an agreement as provided in subdivision (2) of this subsection; or

(B) Make payment to the commissioner as provided in subdivision (3) or subdivision (4) of this subsection.

Any pass-through entity that timely files an agreement as provided in such subdivision (2) with respect to a nonresident partner or shareholder for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. Any pass-through entity which does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods.

(2) An agreement under this subdivision shall be an agreement, on a form as may be prescribed by the commissioner, by a nonresident partner or shareholder of the pass-through entity:

(A) To file returns in accordance with all applicable provisions of Title 67 and to make timely payment of all taxes levied on the partner or shareholder by this state measured by the income of the pass-through entity; and

(B) To be subject to personal jurisdiction in this state for purposes of the collection of all taxes, together with related additions to tax, interest and penalties, levied on the partner or shareholder by this state measured by the income of the pass-through entity.

Such an agreement shall be considered timely filed for a taxable period and for all subsequent taxable periods if it is filed on or before the date the annual return

for such taxable period is required to be filed pursuant to Section 67-2-218, including extensions.

(3) For S corporations, the payment shall be in an amount equal to the tax rate provided in Section 67-2-204 multiplied by the sum of:

(A) To the extent derived from, or connected with, sources within this state as reflected on the S corporation's annual return for the taxable period under Section 67-2-218, the amount of the subject shareholder's pro rata share of the S corporation's separately computed items, as defined in Section 1366 of the Internal Revenue Code; and

(B) To the extent derived from, or connected with, sources within this state as reflected on the S corporation's annual return for the taxable period under Section 67-2-218, the amount of such shareholder's pro rata share of the S corporation's nonseparately computed items, as defined in Section 1366 of the Internal Revenue Code, to the extent includable, if the shareholder is an individual, in the shareholder's Tennessee adjusted gross income, or, if the shareholder is a trust or estate, in shareholder's Tennessee taxable income.

(4) For pass-through entities other than S corporations, the payment shall be in an amount equal to the tax rate provided in Section 67-2-204 multiplied by, to the extent derived from, or connected with, sources within this state as reflected on the entity's annual return for the taxable period under Section 67-2-218, the amount of the subject partner's distributive share of the entity's income determined under Section 704 of the Internal Revenue Code.

(5) Any amount paid by the pass-through entity to this state with respect to any taxable period, pursuant to subdivision (3) or (4) of this subsection, shall be considered to be a payment by the partner or shareholder on account of the

tax measured by income levied on the partner or shareholder for such taxable period pursuant to this part. If the tax years of the pass-through entity and the partner, member or shareholder are different, then the payment by the pass-through entity shall be considered to be a payment by the partner, member or shareholder for the partner's, member's or shareholder's tax year which begins in the tax year of the pass-through entity. A pass-through entity shall be entitled to recover, by off-set or otherwise, a payment made pursuant to this subdivision from the partner or shareholder on whose behalf the payment was made. Any estimated tax installment shall be made on or before the due date of such installment pursuant to Section 67-2-219, and any other payment for a taxable period shall be made at or before the date the annual return for such taxable period is required to be filed pursuant to Section 67-2-218.

(b) In lieu of partners or shareholders of pass-through entities filing separate returns under Section 67-2-219, the commissioner may provide for the filing of a group return for electing nonresident partners or shareholders by a pass-through entity doing business in this state, as defined in Section 67-4-2004(7), or having income derived from, or connected with, sources within this state. As required by the commissioner, the pass-through entity as agent for the electing partners or shareholders shall make the payments of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners or shareholders. The provisions of this subsection shall also apply to trusts and estates, and whenever reference is made in this subsection to pass-through entities and partners, such reference shall be construed as including trusts, estates and beneficiaries thereof.

67-2-217.

(a) In lieu of members of professional athletic teams filing separate returns, under Section 67-2-219, the commissioner may provide for the filing of a composite return for

every qualifying nonresident member of a professional athletic team by such team, if such team is doing business in this state or the members of such team have compensation that is received for services rendered as members of such team and that is derived from, or connected with, sources within this state.

(b) If a professional athletic team is required to file a composite return pursuant to this section, the commissioner may require such team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under Section 67-2-222, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by such qualifying nonresident members.

(c) The commissioner may require a professional athletic team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under Section 67-2-222, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by:

(1) Every resident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team; and

(2) Every nonresident member who is not a qualifying nonresident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team and that is derived from, or connected with, sources within this state.

(d) Any amount paid by a professional athletic team to this state with respect to any taxable period pursuant to this section shall be considered to be a payment by the member on account of the income tax levied on the member for such taxable period pursuant to this part. The team shall be entitled to recover a payment made pursuant to this section from the member on whose behalf the payment was made.

(e) For purposes of this section, “qualifying nonresident member” means a member of a professional athletic team who is a nonresident individual for the entire taxable year, who does not maintain a permanent place of abode in Tennessee at any time during the taxable year, who does not have income derived from, or connected with, sources within this state other than compensation that is received for services rendered as a member of a professional athletic team and that is derived from, or connected with, sources within this state.

67-2-218.

(a) Each partnership having any income derived from sources in this state, determined in accordance with the provisions of this part, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each partner, whether or not a resident of this state, who would be entitled to share in the net income if distributed; the amount of the distributive share of each partner derived from, or connected with, sources within this state; the amount of the distributive share of each partner derived from, or connected with, sources without this state; and such other pertinent information as the commissioner may prescribe by regulations or instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. The partnership shall, on or before the day on which such return is filed, furnish to each person, who was a partner during the taxable year, a copy of such information as shown on the return. The provisions of this subsection shall also apply to trusts and estates, and their beneficiaries. Wherever reference is made in this subsection to partnerships and their partners, such reference shall be construed as including trusts and estates and their beneficiaries, respectively.

(b) Each S corporation doing business in this state, as defined in Section 67-4-2004(7), shall make a return for the taxable year setting forth all items of income, gain,

loss and deduction; the name, address and social security or federal employer identification number of each shareholder; the pro rata share of each shareholder of S corporation income derived from, or connected with, sources within this state; the pro rata share of each shareholder of S corporation income derived from, or connected with, sources without this state; and such other pertinent information as the commissioner may prescribe by regulations or instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. The S corporation shall, on or before the day on which such return is filed, furnish to each person, who was a shareholder during the taxable year, a copy of such information as shown on the return.

67-2-219.

(a) A taxpayer with Tennessee taxable income shall file a Tennessee tax return with the commissioner on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year, containing such information as the commissioner may reasonably require, and on forms as prescribed by the commissioner. The commissioner is authorized to require taxpayers to include with the return copies of their federal tax return, withholding statements, schedules and forms. The return shall coincide with the tax period covered by the taxpayer's federal return.

(b) Without assessment, notice or demand, the taxpayer shall pay any tax due to the commissioner on or before the due date of the return, without regard to any extension of time for filing the return.

(c) For purposes of this section, there shall be four (4) required installments for each taxable year. The due date for the first required installment is the fifteenth day of the fourth month of the taxable year. The due date for the second required installment is the fifteenth day of the sixth month of the taxable year. The due date for the third required installment is the fifteenth day of the ninth month of the taxable year. The due

date for the fourth required installment is the fifteenth day of the first month of the next succeeding taxable year.

(d)

(1) Except as provided in subdivision (2) of this subsection, the amount of any required installment shall be twenty-five percent (25%) of the required annual payment, as defined in subsection (o) of this section.

(2)

(A) In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection, the amount of such required installment shall be the annualized income installment, and any reduction in a required installment, resulting from the application of this subdivision, shall be recaptured by increasing the amount of the next required installment by the amount of such reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subdivision.

(B) In the case of any required installment, the annualized income installment is the excess, if any, of:

(i) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee taxable income for months in the taxable year ending before the due date for the installment; over

(ii) The aggregate amount of any prior required installments for the taxable year.

(C) For purposes of this subdivision (2), the applicable percentage for the first required installment is twenty-two and one-half percent

(22.5%), the applicable percentage for the second required installment is forty-five percent (45%), the applicable percentage for the third required installment is sixty-seven and one-half percent (67.5%), and the applicable percentage for the fourth required installment is ninety percent (90%).

(e) For purposes of subsection (f) of this section, the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. For purposes of subsection (f) of this section, the period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier: the fifteenth day of the fourth month of the next succeeding taxable year, or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subsection, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(f) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax an amount determined by applying interest at the rate prescribed by Section 67-1-801(a) to the amount of the underpayment for the period of the underpayment.

(g) The application of this section to taxable years of less than twelve (12) months shall be in accordance with regulations adopted by the commissioner.

(h) Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income tax levied under this part for the taxable year.

(i) If an individual has paid as an installment of estimated tax an amount in excess of the amount determined to be the correct amount of such installment, such amount shall be credited against any unpaid installment or against the tax. If the amount

already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, then, unless the individual has given written notice to the commissioner that such overpayment is to be refunded, such overpayment shall be credited against any installment of estimated tax due for the next succeeding taxable year.

(j)

(1) If the tax, reduced by the tax withheld under this part, shown on the return or otherwise, is five hundred dollars ($500) or less, no addition to tax shall be levied under subsection (f) of this section.

(2) No addition to tax shall be levied under subsection (f) of this section for any taxable year if:

(A) The preceding taxable year was a taxable year of twelve (12) months; and

(B) The individual did not have any liability for tax for the preceding taxable year and throughout such year the individual was:

(i) A resident individual; or

(ii) A nonresident individual or part-year resident individual with income, gain, loss or deduction derived from, or connected with, sources within this state.

(k) For purposes of applying this section, the tax withheld under this part shall be deemed a payment of estimated tax, and an equal part of such tax withheld shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which such tax was actually withheld, in which case the tax so withheld shall be deemed payments of estimated tax on the dates on which such tax was actually withheld.

(l) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be levied under subsection (f) of this section with respect to any underpayment of the fourth required installment for the taxable year.

(m) For purposes of this section, if an individual is a farmer or fisherman for any taxable year, the following provisions shall apply:

(1) There shall be only one (1) required installment for the taxable year;

(2) the due date for such installment shall be January 15 of the following taxable year;

(3) the amount of such installment shall be equal to the lesser of:

(A) Sixty-six and two-thirds percent (66.67%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66.67%) of the tax for such year; or

(B) If the preceding taxable year was a taxable year of twelve (12) months and the individual filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return for the preceding taxable year;

(4) If, on or before March 1 of the following taxable year, the farmer or fisherman files a return and pays in full the amount computed on the return as payable, no addition to tax shall be levied under subsection (f) of this section with respect to any underpayment of the required installment, as provided in subdivision (3) of this subsection, for the taxable year; and

(5) An individual is a farmer or fisherman for any taxable year if such individual is a farmer or fisherman, as defined in Section 6654(i)(2) of the Internal Revenue Code, for the taxable year.

(n)

(1) Except as otherwise provided in this subsection, this section shall apply to any trust or estate.

(2) With respect to any taxable year ending before the date two (2) years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent, or

(B) Any trust:

(i) All of which was treated under Sections 671 to 679, inclusive, of the Internal Revenue Code as owned by the decedent, and

(ii) To which the residue of the decedent's estate will pass under the will or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration.

(3) In the case of any trust or estate to which this section applies, for any required installment, the annualized income installment is the excess, if any, of:

(A) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee taxable income and the adjusted federal alternative minimum taxable income for months in the taxable year ending before the date one month before the due date for the installment, over

(B) The aggregate amount of any prior required installments for the taxable year.

(o) “Required annual payment” means the lesser of:

(1) Ninety percent (90%) of the tax shown on the return for the taxable year, or if no return is filed, ninety percent (90%) of the tax for such year; or

(2) If the preceding taxable year was a taxable year of twelve (12) months and the taxpayer filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return of the taxpayer for such preceding taxable year.

67-2-220.

(a) An extension of time of four (4) months in which to file any return, statement or other document due, or required under this part, will be granted, provided that on or before the original due date of the return, the taxpayer makes the request and pays taxes equal to one hundred percent (100%) of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department. The commissioner may require the filing of a tentative return and the payment of the tax reported to be due thereon in connection with any extension. Any additional tax which may be found to be due on the filing of a return, statement or other document as allowed by such extension shall bear interest at the rate prescribed by Section 67-1-801(a) from the original due date of such tax to the date of actual payment. Notwithstanding the provisions of Section 67-2-221, no penalty shall be imposed on account of any failure to pay the amount of tax reported to be due on a return, statement or other document within the time specified under the provisions of this part if the excess of the amount of tax shown on the return, statement or other document over the amount of tax paid on or before the original due date of such return, statement or other document is no greater than ten percent (10%) of the amount of tax shown on such return, statement or other document, and any balance due shown on such return, statement or other document is paid on or before the extended due date of such return, statement or other document.

(b) The commissioner may, in the commissioner's sole discretion, grant an additional extension of time of no more than two (2) months in which to file the return required by this part, on good and reasonable cause shown by the taxpayer before the due date of the return as extended under the provisions of subsection (a) of this section; provided, that if the taxpayer shows, within the time prescribed by this subsection, and on such form as may be prescribed by the commissioner, that the Internal Revenue Service has granted the taxpayer an extension of time to file the taxpayer's federal income tax return for the same taxable year, then the commissioner shall grant the taxpayer an extension of like amount to file the Tennessee tax return.

67-2-221.

(a) If any taxpayer fails to pay the amount of tax reported to be due on the taxpayer's return within the time specified under the provisions of this part, there shall be imposed a penalty equal to ten percent (10%) of such amount due and unpaid. Such amount shall also bear interest at the rate prescribed by Section 67-1-801(a) from the due date of such tax until the date of payment.

(b) The commissioner may waive all or part of the penalties provided under this part, subject to the provisions of Section 67-1-803.

(c) In case of each failure to file a statement of payment to another person required under the authority of this part, including the duplicate statement of tax withheld on wages on the date prescribed therefor, determined with regard to any extension of time for filing, there shall be paid, upon notice and demand by the commissioner, by the person so failing to file the statement, a penalty of five dollars ($5.00) for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not

exceed two thousand dollars ($2,000). The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

67-2-222.

(a) Each employer, maintaining an office or transacting business within this state and making payment of any wages taxable under this part to a resident or nonresident individual, shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this part with respect to the amount of such wages during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules or regulations promulgated by the commissioner.

(b) The commissioner may by rule or regulation require persons other than employers:

(1) To deduct and withhold taxes from payments made by such persons to residents of this state, nonresidents and part-year residents;

(2) To file a withholding return as prescribed by the commissioner; and

(3) To pay over to the commissioner, or to a depository designated by the commissioner, the taxes so required to be deducted and withheld, in accordance with a schedule established in such regulations.

(c) The commissioner may adopt regulations providing for withholding from:

(1) Remuneration for services performed by an employee for the employer that do not constitute wages;

(2) Wages paid to an employee by an employer not maintaining an office or transacting business within this state; or

(3) Any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this part if the employer and the employee, or, in the case of any other type of payment, the person making and the person receiving such payment, agree to such withholding. Such agreement shall be made in such form and manner as the commissioner may, by regulation, prescribe. For purposes of this part remuneration, wages or other payments with respect to which such an agreement is made shall be regarded as if they were wages paid to an employee by an employer maintaining an office or transacting business within this state to the extent that such remuneration or wages are paid or other payments are made during the period for which the agreement is in effect.

(d) Where any person who is not an employer is required by rule to withhold wages or other payments, the provisions of this section apply to such person as if the person were an employer and as if all amounts withheld were wages.

(e) Every employer, irrespective of whether or not such employer deducted and withheld the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts so provided and thereafter the tax, against which such amounts would have been credited, is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case shall the employer be relieved from liability for any penalties, interest or additions to the amounts required under this section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(f) Every employer subject to the provisions of this section shall file a return, in such form as shall be determined by the commissioner, and remit the amount withheld at the same times the employer is required under federal law and regulations to pay over federal taxes required to be deducted and withheld. Failure to remit timely the amount withheld shall subject the employer to those penalties and interest described in Section 67-1-801.

(g) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Tennessee for the payment thereof to the commissioner in the manner and at the time provided in this section. To secure the payment of any amounts withheld and not remitted as required by this section, the state shall have a lien upon all interests in property, either real or personal, tangible or intangible, owned or subsequently acquired by the employer, so long as any delinquency continues. The lien of the state shall be entitled to priority over any other lien of any kind whatsoever with regard to such trust fund taxes whether or not notice of the lien has been filed.

(h) All amounts deducted, withheld and remitted shall be considered as tax collected under the provisions of this section and no employee shall have any right of action against an employer in respect to any monies so deducted and withheld from wages and paid over to the commissioner in compliance or intended compliance with this section.

(i) Every employer required to deduct and withhold tax under this part from the wages of an employee shall furnish to each such employee in respect to the wages paid by such employer to such employee during the calendar year, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of wages paid by the employer to the employee, the amount

deducted and withheld as tax, and such other information as the commissioner shall prescribe.

(j) Every employer shall also file an annual statement with the commissioner summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and providing such other information required by the commissioner. The statement shall be filed on or before March 1 of the year following that for which the report is made and shall be on such forms as prescribed by the commissioner.

(k) Failure to file the statements required by subsection (j) of this section within the time prescribed therefor shall subject the employer to a penalty of five hundred dollars ($500) for each such failure, which shall be in addition to any criminal penalty otherwise provided for failure to file a return or for filing a false or fraudulent return. The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

(l) No later than fifteen (15) days after becoming subject to the withholding provisions of this section, every employer shall register with the department by completing and filing a registration information form prescribed by the commissioner. Whenever an employer ceases doing business, or for any other reason is no longer subject to the withholding provisions of this section, it shall so notify the commissioner within fifteen (15) days thereof. Any employer who fails timely to register or notify the commissioner shall be subject to a penalty of one thousand dollars ($1,000). The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

(m)

(1) Liability for taxes or withholding under this part may be challenged only upon compliance with the provisions of Section 67-1-1801 or Section 67-1-1802, except as provided in Section 67-2-236(a).

(2) No court shall enjoin payment, withholding or collection of the tax levied under this part, and no court shall enjoin or in any manner impede reporting, administration, or enforcement under this part, except that collection or withholding from a plaintiff in a suit instituted in compliance with Section 67-1-1801 shall be stayed upon that plaintiff's compliance with the provisions for stay set out in that section.

(n) The commissioner may establish by rule periodic filing and payment dates in those instances where the commissioner deems it to be in the best interests of the state to do so.

(o) Wages upon which tax is required to be withheld shall be taxable under this part as if no withholding were required, but any amount of tax actually deducted and withheld in any calendar year shall be deemed to have been paid to the commissioner on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

(p) The commissioner may adopt regulations requiring returns of information to be made and filed on or before April 15 of each year by any person making payment or crediting in any calendar year amounts of one hundred dollars ($100) or more, or ten dollars ($10) or more in the case of interest or dividends, to any person who may be subject to the tax levied under this part. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities compensations, remuneration, pensions, gambling winnings, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. The commissioner may also require that persons making the returns under this subsection furnish to their

payees, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of payment which has been reported to the commissioner in respect of such payee.

67-2-223. Employers shall also be subject to the provisions of Section 67-1-703 relative to payment in immediately available funds and electronic filings. Notwithstanding the provisions of Section 67-1-703 to the contrary, an employer who is required by federal law to file its return electronically or to make payment of withheld taxes in immediately available funds, shall file and pay its Tennessee return and liability in like manner.

67-2-224.

(a) If the amount of any taxpayer's adjusted gross income or taxable income reported on the taxpayer's federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, resulting in a change in the amount of tax due under this part, the taxpayer shall pay any additional tax due, plus interest, and file an amended return under this part, or such other form as the commissioner shall prescribe, reporting such change or correction, within ninety (90) days after the final determination of such change, correction, or renegotiation, and shall concede the accuracy of such determination or state wherein it is erroneous.

(b) Any taxpayer filing an amended federal income tax return shall also file within ninety (90) days thereafter an amended return under this part and pay any additional tax due, plus interest pursuant to Section 67-1-801.

(c) In the case of a redetermination of adjusted gross income by the Internal Revenue Service resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such

redetermination shall not expire prior to two (2) years from the date the commissioner or the commissioner's delegate is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within three (3) years from the date of such determination by the Internal Revenue Service.

67-2-225.

(a) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the secretary or the designee will assist in the overall administration of the tax levied by this part. The cost of the services performed by the secretary or the designee in such activities under the terms of any agreement may be paid from the appropriations for the general operations of the department of revenue.

(b) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the commissioner will assist in the overall administration of tax administration functions in respect to the federal income tax. Such agreement shall make provision for the payment by the United States of costs of the services performed on its behalf.

(c) The commissioner may enter into agreements with the secretary of the treasury of the United States to provide for the compliance with this part of each department or agency of the United States in withholding of state income taxes from the wages of federal employees and paying the same to this state.

(d) The commissioner may enter into agreements with the tax officers of other states, which require income tax to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of such states under this part. Such agreements may provide for recognition of anticipated

tax credits in determining the amounts to be withheld and, under regulations prescribed by said commissioner, may relieve employers in this state from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax officers of such other states grant similar treatment to residents of this state.

67-2-226.

(a) Any return, declaration, statement or other document required to be made pursuant to this part shall be signed if required by, and then in accordance with, regulations adopted or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) Any return, statement or other document required of a partnership shall be signed by one or more partners if required by and then in accordance with regulations adopted or instructions prescribed by the commissioner. The fact that a partner's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Any return, statement or other document required of an S corporation shall be signed by one or more officers if required by and then in accordance with regulations adopted or instructions prescribed by the commissioner. The fact that an officer's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the S corporation.

(d) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this part, including a copy of a federal income tax return, shall constitute a certification by the person making or filing

such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

67-2-227. Any person, required to collect or withhold, truthfully account for and pay over the tax levied under this part, who willfully fails to collect or withhold such tax or truthfully account for and pay over such tax, shall be liable for the total amount of the tax evaded, or not accounted for and paid over, plus interest thereon, and a penalty equal in amount to the total tax evaded, or not collected, or not accounted for and paid over.

67-2-228. A nonresident who withholds taxes in compliance with this part shall not be found to be doing business in this state solely by reason of such withholding.

67-2-229. No tax levied on any taxpayer by the provisions of this part shall be reduced, modified, obligated or expended as an incentive for any person to conduct, locate or expand any business in this state. Nothing in this section shall prohibit the general assembly from appropriating any funds for this purpose.

67-2-230. Any husband and wife who elect to file a joint return under the federal income tax for any taxable year shall be required to file jointly with respect to such taxable year for purposes of this part, in which event their tax liability shall be joint and several, except as otherwise provided in Section 67-2-231, and any husband and wife, who elect to file separately under the federal income tax for any taxable year, shall be required to file separately with respect to such taxable year for purposes of this part; provided:

(1) If either the husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Tennessee taxable incomes on separate forms as married individuals filing separately unless such husband and wife determine their federal taxable income jointly and both elect to determine their joint Tennessee taxable income as if both were residents; or

(2) If any husband and wife, both of whom are nonresidents, elect to file a joint return under the federal income tax for any taxable year, and only one (1) of them has income derived from, or connected with, sources within this state during such taxable year, only the spouse with income derived from or connected with sources within this state shall be required to file a return in this state; and if only the spouse with income derived from, or connected with, this state files such a return in this state, a separate tax shall be determined on such spouse's separate Tennessee taxable income as a married individual filing separately, unless such husband and wife both elect to determine their joint Tennessee taxable income as if both had income derived from or connected with sources within this state.

67-2-231.

(a) Any individual who has made a joint return under this part may elect to seek relief under the provisions of subsection (b) of this section and if such individual is eligible to elect the application of subsection (c) of this section, such individual may in addition to any election under subsection (b) of this section, elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c) of this section.

(b)

(1) Under procedures prescribed by Section 67-1-1801 for taxpayer conferences, if:

(A) A joint return has been made for a taxable year and on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(B) The other individual filing the joint return establishes that in signing the return such other individual did not know, and had no reason to know, that there was such an understatement;

(C) Taking into account all the facts and circumstances, it is inequitable to hold such other individual liable for the deficiency in tax for such taxable year attributable to such understatement or portion of such understatement, as the case may be; and

(D) Such other individual elects the application of this subsection, in such form as the commissioner may prescribe, not later than the date which is two (2) years after the date the commissioner has begun collection activities with respect to the individual making the election; then such other individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to such understatement.

(2) If the electing individual satisfies the conditions of subdivision (1) of this subsection except subdivision (1)(B), and establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, such individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

(c)

(1) If an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency that is

assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to such individual under subsection (d) of this section.

(2) The electing individual shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

(3) An individual shall be eligible to elect the application of this subsection if:

(A) At the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

(B) Such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the twelve (12) month period ending on the date such election is filed.

(4) If assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid.

(5) If the individual electing under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency or portion thereof which is not allocable to such individual under subsection (d) of this section, the election shall not apply to such deficiency or portion thereof, unless the individual with actual knowledge establishes that the electing individual signed the return under duress.

(6) The portion of the deficiency for which the individual electing under this subsection is liable shall be increased by the value of any disqualified asset transferred to the individual. For purposes of this section, "disqualified asset" means any property or right to property transferred to an electing individual with

respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax. Any transfer which is made after the date that is one (1) year before the date on which a notice of proposed deficiency assessment is sent, other than any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax, shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(d)

(1) The portion of any deficiency on a joint return allocated to an individual electing under subsection (c) of this section shall be the amount that bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under this subdivision bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency or portion thereof is attributable to the disallowance of a credit, and such item is allocated to one (1) individual under subdivision (3) of this subsection, such deficiency or portion thereof shall be allocated to such individual. Any such item shall not be taken into account under subdivision (1) of this subsection.

(3) Except as provided in subdivisions (4) and (5) of this subsection, any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year. If the allocation of any item is appropriate due to fraud of one (1) or both individuals, the commissioner

may provide for such allocation in a manner as prescribed in regulations adopted in accordance with Title 67, Chapter 1.

(4) If an exemption under Section 67-2-206 or a credit under Section 67-2-215 would be disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the joint filers appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either joint filer and such liability shall be allocated appropriately between the joint filers.

(e) The commissioner shall conduct an informal conference, determine what relief, if any, is available to an electing individual under this section, issue a conference decision, and give the individual written notification of the decision in the manner prescribed for informal conferences pursuant to Section 67-1-1801.

(f) The commissioner shall, by mail at the last known address, notify the non-electing individual filing the joint return of the election and offer that individual an opportunity to participate in any informal conference.

67-2-232.

The commissioner may provide that nonresident persons whose income derived from or connected with sources in this state is de minimis, are exempt from the tax levied by this part.

67-2-233. The taxes collected under this part shall be distributed as follows:

(a) The taxes collected under the provisions of this chapter shall be paid into the general fund of the state treasury.

(b) Notwithstanding the provisions of subsection (a), or any other law to the contrary, municipalities and counties shall be held harmless from any reduction in such

allocations that would result from the enactment of Section 18 of this act. Municipalities and counties shall continue to receive allocations in a percentage sufficient to provide the revenue that would have been provided if Section 18 of this act had not been enacted. The commissioner shall adjust the percentage allocation to the general fund as necessary to accomplish this allocation requirement.

67-2-234. A credit shall be allowed against the tax levied by this part in an amount equal to the amount of tax paid pursuant to the provisions of Tennessee Code Annotated, Title 67, Chapter 4, Part 17. The credit, irrespective of the method of accounting employed by the taxpayer in keeping such taxpayer's books, shall be taken in the year in which the tax is paid. The credit provided by this section shall be allowed only if the taxpayer furnishes to the commissioner all information necessary for the verification and computation of such credit as the commissioner may require. In no event shall any credit allowed by this subsection be refunded.

67-2-235. A resident individual who is a shareholder of a Subchapter S corporation that is incorporated and doing business in another state may deduct from the tax otherwise due under this chapter the tax paid to the other state as a result of such income, distributions or dividends; provided, that there exists a tax reciprocity agreement between Tennessee and the other state. In no case shall the credit permitted under this section exceed the tax that would be payable to this state.

67-2-236.

(a) Notwithstanding any provision of this part to the contrary, no later than thirty (30) days after the effective date of the act which enacts this part, each employer maintaining an office or transacting business within this state and making payment of any wages to a resident or nonresident individual, shall register with the department by completing and filing a registration information form prescribed by the commissioner. Prior to July 1, 2002, any person required to register for withholding may bring an action

for declaratory judgment concerning the constitutionality or validity of the tax levied in this part in the Chancery Court of Davidson County. Appeal of any such action shall be taken directly to the supreme court.

(b) This subsection shall apply to employers who, after good faith and reasonable effort to do so, are unable to deduct and withhold tax from wages, and remit such amounts to the department, as required by Section 67-2-222, during payroll periods that end on or before September 30, 2002.

(1) Notwithstanding any provision of this title to the contrary, the commissioner may waive, in the commissioner's sole discretion, upon written request by the employer, all or part of any tax, penalties or interest applicable to such failure to comply with Section 67-2-222, if the failure is not the result of gross negligence or willful disregard of the law; provided that neither tax, penalties nor interest shall be waived if the taxpayer deducts and withholds tax from any employee's wages and does not timely remit such amount to the department as required by Section 67-2-222.

(2) When the employer becomes able to deduct, withhold and remit tax as required by Section 67-2-222, which shall be no later than the first payroll period which ends after September 30, 2002, the employer shall deduct, withhold and remit tax in such amounts so as to result, so far as practicable, in withholding from the employee's wages during the remainder of the calendar year the total amount required by Section 67-2-222(a). The method of determining the amount to be withheld shall be prescribed by rules or regulations issued by the commissioner; provided that the amount of withholding necessary to bring the employee current shall be spread substantially equally over all remaining payroll periods of the calendar year.

(3) During each payroll period for which the employer is unable to deduct and withhold tax, the employer shall provide a written notice to each employee stating that tax has not been withheld as required by law.

(4) When the employer begins deducting and withholding tax, the employer shall provide to each employee from whose wages tax is withheld, during each payroll period for the remainder of the calendar year, a written statement substantially identical to the following: "I was unable to begin withholding tax from your wages as of July 1, 2002, as required by Tennessee law. Had I done so, the amount withheld for each payroll period would have been $[insert amount]. Because I was unable to do so, the amount which must be withheld and paid to the state during each payroll period for the remainder of the year is $[insert amount]."

(c) Notwithstanding any provision of this part to the contrary, for any taxable year ending on or before December 31, 2002, "required annual payment," for purposes of Section 67-2-219, means seventy percent (70%) of the tax shown on the return for the taxable year, or if no return is filed, seventy percent (70%) of the tax for such year.

(d) Notwithstanding any provision of this title to the contrary, the commissioner may waive all or part of any penalty imposed under this part and arising out of a taxable period ending on or before December 31, 2002, upon written request of the taxpayer, if the commissioner determines, in the commissioner's sole discretion, that the taxpayer has shown good and reasonable cause for the failure; provided that no penalty shall be waived if the failure is the result of gross negligence or willful disregard of the law.

SECTION 20.

(a) Except as provided in subsections (b) and (c), if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the

invalid provision or application, and to that end the provisions of this act are declared to be severable.

(b) If the Tax Reform and Relief Act of 2002 or the application thereof to all persons is held invalid, then:

(1) Sections 1-19 of this act are declared to be invalid and void;

(2) All of Tennessee Code Annotated, Title 67, Chapter 6, Parts 2 and 3, as it existed immediately before the effective date of Sections 1-19, shall be revived in its entirety on the first day of the month immediately succeeding the effective date of the court's order; and

(3) All of Tennessee Code Annotated, Title 67, Chapter 2, Part 1, as it existed immediately before the effective date of Sections 1-19 shall be revived in its entirety effective January 1 of the year of the effective date of the court's order.

SECTION 21. The commissioner is authorized to promulgate rules and regulations in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, to implement and administer the provisions of this act. Such rules, to the extent deemed necessary by the commissioner for timely implementation of this act, shall include public necessity and emergency rules.

SECTION 22. This act shall take effect July 1, 2002, the public welfare requiring it.