

CHAPTER NO. 1019

HOUSE BILL NO. 4048

By Representative McMillan

Substituted for: Senate Bill No. 3930

By Senators Kyle, McNally

AN ACT to amend Tennessee Code Annotated, Title 45, Title 48, Title 55, Title 56, Title 57, and Title 67, relative to taxation.

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

SECTION 1. Tennessee Code Annotated, Section 67-4-2009, is amended by deleting the language in subdivision (4) and substituting instead the following:

(4)(A) There shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to one percent (1%) of the purchase price of industrial machinery purchased during the tax period covered by the return and located in Tennessee. For purposes of this section, "industrial machinery" means:

(i) "Industrial machinery" as defined by § 67-6-102; or

(ii) "Computer," "computer network," "computer software," or "computer system" as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the "required capital investment" in Tennessee described in § 67-4-2109(c)(1), if as a result of making such purchase and meeting the other requirements set forth in § 67-4-2109(c), the taxpayer qualifies for the job tax credit provided therein;

(B) The industrial machinery credit taken on any franchise and excise tax return, however, shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by any such return before the credit is taken;

(C) Any unused credit may be carried forward in any tax period until such credit is taken; however, such credit may not be carried forward for more than fifteen (15) years;

(D) If any such industrial machinery, for the purchase of which a tax credit has been allowed, is sold or removed from this state during its useful life according to the depreciation guidelines in effect for excise tax

purposes, the department shall be entitled to recapture a portion of the credit allowed by increasing the franchise and/or excise tax liability of any taxpayer, for the taxable period during which such machinery was sold or removed, in an amount equal to the percentage of useful life remaining on such industrial machinery at the time of sale or removal times the total credit taken on the purchase of such machinery;

(E) For purposes of the allowance of the credit against franchise and excise taxes under this section, any taxpayer who is a lessee of new industrial machinery and the original user thereof, including a lessee from an industrial development corporation as defined by title 7, chapter 53, or other tax exempt entity, shall be treated as having purchased such machinery during the tax period in which it is placed in service by the lessee, at an amount equal to its purchase price;

(F) If industrial machinery is leased for a period which constitutes less than eighty percent (80%) of its useful life, then the lessee shall be deemed to have purchased only a portion of such machinery, at an amount determined by multiplying the actual purchase price of the machinery by a fraction, the numerator of which is the lease term, and the denominator of which is the useful life of the leased machinery; and

(G) Notwithstanding any provision of law to the contrary, the industrial machinery franchise and excise tax credit provided in this subdivision (4) may be computed by a general partnership that operates a call center in Tennessee that is placed in service by such general partnership on or after June 30, 2003, and that would otherwise qualify for the credit provided in § 67-4-2109(c)(3). Such industrial machinery franchise and excise tax credit shall be computed as if the general partnership were subject to franchise and excise tax. With respect to the general partnership tax year during which a credit is so computed, a partner in such general partnership that is subject to franchise and excise tax and that directly holds a first tier ownership interest in such general partnership may take a percentage of such credit that equals the total amount of such credit for the general partnership multiplied by such partner's percentage interest in the general partnership on the last day of such general partnership tax year against such partner's franchise and excise tax liability for such partner's tax year that includes such last day. The industrial machinery franchise and excise tax credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section including carry forward provisions; provided, that in no case shall the credit or a carryover of a credit be taken by a business entity unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership.

(H) Notwithstanding any provision to the contrary, a taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national, or

regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one-hundred percent (100%) of its franchise and/or excise tax liability by the industrial machinery credit provided in this subdivision (4), or any carryforward thereof, if the commissioner of revenue and the commissioner of economic and community development determine that increasing the percentage of offset above that allowed by subdivision (4)(B) is in the best interests of the state. For purposes of this subdivision, “best interests of the state” includes, but is not limited to, a determination that the taxpayer established its headquarters or a warehousing or distribution hub in this state, or converted a regional headquarters or regional warehousing or distribution hub in this state into its national or international headquarters or a national or international warehousing or distribution hub, as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise and/or excise tax liability allowed to be offset, above that otherwise allowed by subdivision (4)(B), and the period during which the increased offset shall continue.

SECTION 2. Tennessee Code Annotated, Section 67-4-2109(c)(1), is amended by adding the following as new, appropriately designated subdivisions:

() “Average industrial wage” means the average industrial wage for all manufacturing sectors as reported in the Monthly Labor Report published by the Tennessee department of labor and workforce development;

() “Investment period” means a period not to exceed three years from the filing of the business plan related to the qualified business enterprise during which the required capital investment must be made;

() “Industrial wage jobs” means full-time employee jobs with wages equal to or greater than Tennessee’s average industrial wage for the month of January of the year during which the job was created;

SECTION 3. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by deleting the language in subdivision (l) and substituting instead the following:

(l)(i) If the business enterprise involves a required capital investment in excess of five hundred million dollars (\$500,000,000) and the creation of at least five hundred (500) net new industrial wage jobs during the investment period, the credit allowed in subdivision (c)(2) shall be five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period. In addition to the job tax credits allowed to the taxpayer under this subsection (c) during the investment period, an additional tax credit shall be allowed on an annual basis to offset the taxpayer’s franchise and excise tax liability under this chapter for a period of twelve (12) years beginning with the first tax year after the investment and job threshold criteria are met. The additional credit shall

equal five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period provided that such jobs remain filled by employees, at wages equal to or greater than Tennessee's average industrial wage for the month of January of the year during which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary. For purposes of this subdivision (c)(2)(I), a capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

(ii) If the business enterprise involves a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) and the creation of at least two hundred fifty (250) net new industrial wage jobs during the investment period, the credit allowed in subdivision (c)(2) shall be five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period. In addition to the job tax credits allowed to the taxpayer under this subsection (c) during the investment period, an additional tax credit shall be allowed on an annual basis to offset the taxpayer's franchise and excise tax liability under this chapter for a period of six (6) years beginning with the first tax year after the investment and job threshold criteria are met. The additional credit shall equal five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period provided that such jobs remain filled by employees, at wages equal to or greater than Tennessee's average industrial wage for the month of January of the year during which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary. For purposes of this subdivision (c)(2)(I), a capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

(iii) If the business enterprise involves a required capital investment in excess of one hundred million dollars (\$100,000,000) and the creation of at least one hundred (100) net new industrial wage jobs during the investment period, the credit allowed in subdivision (c)(2) shall be five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period. In addition to the job tax credits allowed to the taxpayer under this subsection (c) during the investment period, an additional tax credit shall be allowed on an annual basis to offset the taxpayer's franchise and excise tax liability under this chapter for a period of three (3) years beginning with the first tax year after the investment and job threshold criteria are met. The additional credit shall equal five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period provided that such jobs remain filled

by employees, at wages equal to or greater than Tennessee's average industrial wage for the month of January of the year during which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary. For purposes of this subdivision (c)(2)(I), a capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

(iv) The investment period for making the required capital investment may be extended by the commissioner of economic and community development for a reasonable period, not to exceed two (2) years, for good cause shown. For purposes of this subdivision (c)(2)(I), "good cause" includes, but is not limited to, a determination by the commissioner of economic and community development that the capital investment or jobs are a result of the credit provided in this subdivision (c)(2)(I).

SECTION 4. Tennessee Code Annotated, Section 67-4-2109(c)(2)(G), is amended by designating the existing language as subdivision (i) and adding the following language as subdivision (ii):

(ii) Notwithstanding subdivision (i), a taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national, or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one-hundred percent (100%) of its franchise and/or excise tax liability by job tax credits earned and not expended as of June 1, 2006, or any carryforward thereof, if the commissioner of revenue and the commissioner of economic and community development determine that increasing the percentage of offset permitted to the taxpayer is in the best interests of the state. For purposes of this subdivision, "best interests of the state" includes, but is not limited to, a determination that the taxpayer established its headquarters or a warehousing or distribution hub in this state, or converted a regional headquarters or regional warehousing or distribution hub in this state into its national or international headquarters or a national or international warehousing or distribution hub, as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise and/or excise tax liability allowed to be offset above that otherwise allowed by subdivision (i) and the period during which the increased offset shall continue.

SECTION 5. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new subsection:

() A taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224 shall be allowed a credit against the franchise tax imposed under this part equal to the rate of tax imposed under § 67-4-2007 multiplied by any net operating loss incurred by the taxpayer during the tax year covered by the return, or properly carried over from a previous tax year, in accordance with the provisions of § 67-4-2006; provided that the credit allowed in this subsection shall only be available if the taxpayer is unable to use the loss or loss carryover to offset net income during the current tax year for excise tax purposes. If a net operating loss or loss carryover is used to calculate a credit under this subsection, it shall no longer be available as a deduction for excise tax purposes, and under no circumstances shall the same net operating loss be used for both franchise and excise tax purposes. The credit in this subsection shall only be available upon a determination by the commissioner of revenue and the commissioner of economic and community development that the utilization of net operating losses or loss carryovers against the taxpayer's franchise tax liability is in the best interests of the state. For purposes of this subdivision, "best interests of the state" includes, but is not limited to, a determination that the taxpayer established its headquarters in this state or converted a regional headquarters in this state into its national or international headquarters as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the period during which the credit provided by this subsection shall be allowed to the taxpayer.

SECTION 6. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

() "Qualified new or expanded warehouse or distribution facility" means a new or expanded facility for the storage or distribution of finished tangible personal property; provided that such facility also meets all the qualifications necessary to allow the taxpayer to make purchases of material handling and racking systems exempt from sales and use tax under the definition of "industrial machinery" in § 67-6-102;

SECTION 7. Tennessee Code Annotated, Section 67-4-2006(c), is amended by adding the following as a new, appropriately designated subdivision:

() Notwithstanding subdivision (c)(1) to the contrary, a taxpayer that qualifies for the job tax credit provided in subdivision 67-4-2109(c)(2)(H) in connection with a required capital investment in excess of one billion dollars (\$1,000,000,000) shall be allowed to carry forward and deduct any qualified net operating loss until the loss is fully utilized, and shall not be limited to a carry-forward period of fifteen (15) years; provided that the commissioner of revenue and the commissioner of economic and community development determine that extending the period during which the loss can be utilized is in the best interests of the state. For purposes of this subdivision, "best interests of the state"

includes, but is not limited to, a determination that the taxpayer made the required capital investment as a result of such action.

SECTION 8. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new, appropriately designated subsection:

() (1) For purposes of this subsection:

(A) "Qualified expenses" means those expenses incurred in Tennessee that both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, are necessary for the production of a movie in Tennessee that is in the best interests of this state. For purposes of this subsection, "best interests of this state" includes, but is not limited to, a determination that production of the movie does not require that records be maintained pursuant to 18 U.S.C. § 2257 with respect to any performer portrayed in the movie;

(B) "Qualified production company" means any entity that incurs at least one million dollars (\$1,000,000) in qualified expenses; and

(C) "Qualified investor" means any entity that has established a headquarters facility as defined in § 67-6-224 that has invested in a qualified production company.

(2) A refund in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed to any qualified production company that has established a headquarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a refund equal to the amount of refund that the qualified production company would have been entitled to had it established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor's percentage ownership interest in the qualified production company.

(3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.

(5) Once the qualified production company has been notified of the approved amount, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for refund. Such refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund must be filed with the commissioner within three (3) years from December 31 of the year in which the qualified

expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

SECTION 9. Tennessee Code Annotated, Section 67-4-2105, is amended by deleting subsection (b) in its entirety and redesignating subsequent subsections accordingly.

SECTION 10. Tennessee Code Annotated, Section 67-4-2108(a)(1), is amended by deleting the second sentence in its entirety.

SECTION 11. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

“Publicly traded real estate investment trust” or “Public REIT” means an entity which has an election in effect under § 856(c)(1) of the Internal Revenue Code that files with the Securities and Exchange Commission and whose shares are traded on a national stock exchange.

SECTION 12. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following as a new section:

67-4-20__

There shall be exempt from the payment of the excise tax levied under this part any person treated as a partnership for federal tax purposes that directly or indirectly distributes one hundred percent (100%) of its net earnings or net losses to a publicly traded real estate investment trust.

SECTION 13. Tennessee Code Annotated, Section 67-4-2006(a)(4), is amended by deleting subdivision (C) and substituting instead the following:

(C) The amount contributed to qualified pension or benefit plans, including all plans described in 26 U.S.C. § 401, of any partner or member, provided, however, that this amount shall not create or increase any net loss; and

(D) As adjusted by subsections (b) and (c).

SECTION 14. Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following as a new subdivision (5) and redesignating subsequent subdivisions accordingly:

(5)(A) In the case of a person or taxpayer treated as a partnership for federal tax purposes that is directly or indirectly owned by a public REIT, “net earnings” or “net loss” is defined as an amount equal to the amount determined pursuant to the provisions of subdivision (a)(4), less the amount distributed either directly or indirectly to a public REIT, provided that a schedule indicating the name and federal identification number of the public REIT receiving the distribution is attached; and

(B) As adjusted by subsections (b) and (c).

SECTION 15. Tennessee Code Annotated, Section 67-4-2006(b)(1)(J), is amended by inserting the word “and” at the end of subdivision (ii), deleting the word “and” from the end of subdivision (iii), and deleting subdivision (iv) in its entirety.

SECTION 16. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by deleting subdivision (K) in its entirety and redesignating subsequent subdivisions accordingly.

SECTION 17. Tennessee Code Annotated, Section 67-4-2006(b)(2)(L), is amended by inserting the word “and” at the end of subdivision (ii), deleting the word “and” from the end of subdivision (iii), and deleting subdivision (iv) in its entirety.

SECTION 18. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by deleting subdivision (M) in its entirety and redesignating subsequent subdivisions accordingly.

SECTION 19. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting subsection (k) in its entirety.

SECTION 20. Tennessee Code Annotated, Section 67-4-2111, is amended by deleting subsection (k) in its entirety.

SECTION 21. Tennessee Code Annotated, Section 67-2-104, is amended by adding the following as a new, appropriately designated subsection:

() The income from stock in any publicly traded real estate investment trust, as defined in § 67-4-2004, is exempt from the tax imposed by this chapter.

SECTION 22. Tennessee Code Annotated, Section 67-4-2010, is amended by deleting the current language in its entirety and substituting instead the following:

(a) Any taxpayer having business activities that are taxable both inside and outside the state of Tennessee shall allocate or apportion its net earnings or losses as provided in this part. A taxpayer is considered taxable in another state only if the taxpayer is conducting activities in that state that, if conducted in Tennessee, would constitute doing business in Tennessee and would subject the taxpayer to either Tennessee’s franchise tax or excise tax.

(b) Nonbusiness receipts shall not be included in the numerator or denominator of any apportionment formula.

SECTION 23. Tennessee Code Annotated, Section 67-4-2110, is amended by deleting the current language in its entirety and substituting instead the following:

(a) Any taxpayer having business activities that are taxable both inside and outside the state of Tennessee shall allocate or apportion its net worth as provided in this part. A taxpayer is considered taxable in another state only if the taxpayer is conducting activities in that state that, if conducted in Tennessee, would constitute doing business in Tennessee and would subject the taxpayer to either Tennessee's franchise tax or excise tax.

(b) Nonbusiness receipts shall not be included in the numerator or denominator of any apportionment formula.

SECTION 24. Tennessee Code Annotated, Section 67-4-2109(i), is amended by deleting the language in subdivisions (1) and (2) and substituting instead the following:

(1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter, an amount equal to either:

(A) Five percent (5%) of a qualified loan or qualified long-term investment made to an eligible housing entity for any eligible activity; or

(B) Three percent (3%) annually of the unpaid principal balance of a qualified loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(2) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter, an amount equal to either:

(A) Ten percent (10%) of a grant, contribution, or qualified low-rate loan made to an eligible housing entity for any eligible activity; or

(B) Five percent (5%) annually of the unpaid principal balance of a qualified low-rate loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

SECTION 25. Tennessee Code Annotated, Section 67-4-2109(i), is amended by deleting the language in subdivision (8) and substituting instead the following:

(8) Any unused credit allowed under subdivision (i)(1)(A) or (i)(2)(A) may be carried forward for fifteen (15) years after the tax year in which the credit originated. Any unused credit allowed under subdivision

(i)(1)(B) or (i)(2)(B) shall not be carried forward beyond the tax year in which the credit originated.

SECTION 26. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new subsection:

() (1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax law, compiled in this part, and by the Excise Tax law, compiled in part 20 of this chapter, an amount equal to either:

(A) Five percent (5%) of a qualified loan or qualified long-term investment made to a community development financial institution that is certified by the United States Department of Treasury's Community Development Financial Institutions Fund; or

(B) Three percent (3%) annually of the unpaid principal balance of a qualified loan made to a community development financial institution that is certified by the United States Department of Treasury's Community Development Financial Institutions Fund as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(2) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax law, compiled in this part, and by the Excise Tax law, compiled in part 20 of this chapter, an amount equal to either:

(A) Ten percent (10%) of a grant, contribution, or qualified low-rate loan made to a community development financial institution that is certified by the United States Department of Treasury's Community Development Financial Institutions Fund; or

(B) Five percent (5%) annually of the unpaid principal balance of a qualified low-rate loan made to a community development financial institution that is certified by the United States Department of Treasury's Community Development Financial Institutions Fund as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(3) For purposes of this subsection, the following definitions shall apply:

(A) "Financial institution" has the definition as provided in § 67-4-2004;

(B) "Qualified loan" means a loan that is at least two percent (2%) below the prime rate, as published by the Wall Street

Journal at the time the loan is approved, that does not qualify as a qualified low-rate loan;

(C) “Qualified long-term investment” means an equity investment made for a period of more than five (5) years;

(D) “Qualified low-rate loan” means a loan that is at least four percent (4%) below the prime rate, as published by the Wall Street Journal at the time the loan is approved.

(4) Any unused credit allowed under subdivision () (1)(A) or () (2)(A) may be carried forward for fifteen (15) years after the tax year in which the credit originated. Any unused credit allowed under subdivision () (1)(B) or () (2)(B) shall not be carried forward beyond the tax year in which the credit originated.

SECTION 27. Tennessee Code Annotated, Section 67-4-2008(a)(5), is amended by deleting the first sentence and substituting instead the following:

Venture capital funds; provided, that for purposes of this part a venture capital fund is a limited liability company, limited liability partnership, or limited partnership, formed and operated for the exclusive purpose of buying, holding, and/or selling securities, including debt securities, primarily in non-publicly traded companies on its own behalf and not as a broker, and the capital of which fund is primarily derived from investments by entities and/or individuals that are not affiliated with the fund or investments by one or more affiliates if such affiliates also qualify as venture capital funds under this subdivision.

SECTION 28. Tennessee Code Annotated, Section 67-4-2006(b)(2)(Q), is amended by deleting the language in subdivision (i) and substituting instead the following:

(i) Seventy-five percent (75%) of the value of charitable donations, including those otherwise deductible under any other provision of this part, that are made to nonprofit corporations, associations and organizations that are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), to not-for-profit civic leagues or organizations that are exempt from federal income taxation under § 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(4)), and to associations and organizations that are exempt from federal income taxation under § 501(c)(5) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(5)), and meet all of the requirements of this subdivision (b)(2)(Q).

SECTION 29. Tennessee Code Annotated, Section 67-4-2109(h)(6), is amended by deleting the language “relocated to Tennessee” and substituting instead the language “initially filled in Tennessee”.

SECTION 30. Tennessee Code Annotated, Section 67-4-2004(1)(A)(iii), is amended by deleting the language “subdivision (1)(B)” and substituting instead the language “subdivision (1)(A)(ii)”.

SECTION 31. Tennessee Code Annotated, Section 67-4-2004(2)(D), is amended by deleting the word “have” and substituting instead the word “has”.

SECTION 32. Tennessee Code Annotated, Section 67-4-2007(f)(1)(C), is amended by deleting the language “67-4-2008(a)(8)” and substituting instead the language “67-4-2008(a)(9)”.

SECTION 33. Tennessee Code Annotated, Section 67-6-102(a)(32)(F)(i), is amended by adding the following language at the end of the subdivision:

However, “retail sale,” “sale at retail” and “retail sales price” do not include charges for or the value of the use of any time-share estate and do not include charges for or the value of the use of a perpetual interest in a trust, partnership, non-profit corporation or limited liability company that has as its substantial purpose the ownership and control of real property. Also, “retail sale,” “sale at retail” and “retail sales price” do not include amounts paid as a standard fee for the service of facilitating the exchange of one timeshare interval for another or the service of making a reservation for a timeshare interval via a reservation system.

SECTION 34. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as a new, appropriately designated subdivision:

() “Time-share estate” means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease.

SECTION 35. Tennessee Code Annotated, Section 67-6-206(b)(7), is amended by inserting the language “, aluminum sheet and foil,” after the words “primary aluminum”.

SECTION 36. Tennessee Code Annotated, Section 67-6-224(b)(7), is amended by deleting the language in subdivision (B) and substituting instead the following:

(B) The minimum investment may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, parking facilities, and landscaping, but shall not include land or inventory;

SECTION 37. Tennessee Code Annotated, Section 67-6-224(b), is amended by deleting the language in subdivision (11) and substituting instead the following:

(11) “Qualified tangible personal property” means building materials, machinery, equipment, furniture, and fixtures used exclusively

in the qualified headquarters facility and purchased or leased during the investment period. Qualified tangible personal property does not include supplies or repair parts. Qualified tangible personal property does not include any payments with respect to leases of qualifying tangible personal property that extend beyond the investment period. Qualified tangible personal property does not include any materials, machinery, equipment, furniture, or fixtures that replace tangible personal property that previously generated a credit under this section.

SECTION 38. Tennessee Code Annotated, Section 67-6-303(a), is amended by deleting the language in subdivision (1) and substituting instead the following:

(1)(A) There is exempt from the tax imposed by this chapter any sale of a motor vehicle which is sold in this state if such vehicle is registered in this state in accordance with the provisions of title 55 and such vehicle is sold to a reserve member of a uniformed service of the United States or a member of the Tennessee national guard who has been called into active military service of the United States, as defined in § 58-1-102, and is stationed outside the United States during hostilities in which such person is actually engaged and in which military personnel are entitled to combat compensation as determined by the United States department of defense. With respect to an individual, the exemption provided in this subdivision (a)(1)(A) shall apply from the effective date of official military orders assigning such individual to the combat zone and shall expire sixty (60) days after the effective date of official military orders releasing such individual from the combat zone.

(B) There is also exempt from the tax imposed by this chapter any sale of a motor vehicle which is sold in this state if such vehicle is registered in this state in accordance with the provisions of title 55 and such vehicle is sold to a member of a uniformed service, as defined in the Internal Revenue Code of 1954, who is stationed under orders of such member's branch of service at:

- (i) A military reservation located partially within the boundary of Tennessee and that of another state;
- (ii) A naval air station located entirely within this state; or
- (iii) An air force base engineering development center located entirely within this state.

SECTION 39. Tennessee Code Annotated, Section 67-6-303(a)(3), is amended by deleting the language "This exemption" and substituting instead the language "The exemption provided in subdivision (a)(1)(B)".

SECTION 40. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following language as a new, appropriately designated section:

67-6-3_____.

There is exempt from the tax imposed by this chapter the use of computer software that is developed and fabricated by an affiliated company. There is also exempt from the tax imposed by this chapter the repair of such computer software, provided that such repair is rendered by an affiliated company. For purposes of this section, companies are affiliated only if:

(1) either company directly owns or controls one hundred percent (100%) of the ownership interest of the other company; or

(2) one hundred percent (100%) of the ownership interest of both companies is owned or controlled by a common parent.

SECTION 41. Tennessee Code Annotated, Section 67-6-394, is amended by deleting the language in subsection (a) and substituting instead the following:

(a) A credit shall be granted, in the manner provided in subsection (b), for the amount of the sales tax due on a transaction accommodation fee included in the sales price of a sale or the gross proceeds of a lease.

SECTION 42. Tennessee Code Annotated, Section 67-6-394(c), is amended by deleting the language in subdivision (4) and substituting instead the following:

(4) "Transaction accommodation fee" means the standard charge made by a franchised motor vehicle dealer to a qualified motor vehicle manufacturer in consideration for selling or leasing a motor vehicle produced by the qualified manufacturer to one (1) of the qualified manufacturer's full-time employees. Records documenting the amount of the standard transaction accommodation fee must be maintained by the dealer in accordance with § 67-6-523.

SECTION 43. Tennessee Code Annotated, Section 67-6-542, is amended by deleting the current language and substituting instead the following:

67-6-542.

For the period of time that this state is an associate member of the Streamlined Sales and Use Tax Agreement, the commissioner shall have the authority to provide to volunteer sellers and certified service providers the monetary allowances required to be provided pursuant to Article VI of the Streamlined Sales and Use Tax Agreement; provided, however, Model 1 sellers under the Streamlined Sales and Use Tax Agreement shall not be entitled to the vendor's compensation set forth in § 67-6-

509. During such period, a certified service provider has, and is subject to, all of the rights, liabilities, duties and responsibilities imposed by this title as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases. During such period, notwithstanding any other provision to the contrary, a certified service provider and a Model 1 seller contracting with the certified service provider may accept electronic data in lieu of obtaining copies of Tennessee exemption certificates from purchasers seeking to exempt a sale from the tax imposed by this chapter; provided that the electronic data includes the same information that is included on the Streamlined Exemption Certificate, excluding a signature, and shall include the purchaser's Tennessee sales and use tax registration number and any tax exemption license registration number issued by this state to the purchaser.

SECTION 44. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following language as new, appropriately designated subdivisions:

() 'Certified service provider' means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

() 'Model 1 seller' means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

SECTION 45. Tennessee Code Annotated, Section 67-6-710, is amended by deleting subsection (h) and substituting instead the following:

(h)(1) Notwithstanding any provision of law to the contrary, the commissioner, based upon reporting of exempt sales under § 67-6-393 and any other data or information the commissioner deems relevant, shall substantially reimburse counties and municipalities for the loss of local tax under this part 7 resulting from the exemption provided by § 67-6-393. The amount of such reimbursement shall be approximately equal to the aggregate amount of local tax that would have been collected under this part on the sale or use of goods otherwise taxable but for the enactment of § 67-6-393.

(2) If the loss of local tax subject to reimbursement under this subsection (h) cannot be identified to a particular situs, the amount of such reimbursement shall be distributed to the counties based on the ratio of total local tax collections in the county under this part over the total local tax collections in all counties under this part. The amount received by the county under this subdivision (h)(2) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be

distributed to each municipality in the county based on the ratio of total collections in that municipality over the total collections in the county and shall be distributed to the county based on the ratio of total collections in the unincorporated portions of the county over the total collections in the county.

(3) Notwithstanding any provision of § 67-6-103 to the contrary, the distribution required by this subsection (h) shall be made from state sales tax collections prior to distribution under § 67-6-103; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4, of the Public Acts of 2002 shall be distributed pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in chapter 856 of the Public Acts of 2002.

SECTION 46. Tennessee Code Annotated, Section 67-4-602(b), is amended by deleting the first sentence and substituting instead the following:

There is levied a privilege tax on litigation of twenty-three dollars and seventy-five cents (\$23.75) in all civil cases in this state in chancery court, circuit court, probate court, general sessions court when exercising state court jurisdiction, or in any other court exercising state court jurisdiction in a civil case in this state other than the court of appeals or the supreme court.

SECTION 47. Tennessee Code Annotated, Section 67-4-602, is amended by adding the following as a new subsection immediately after subsection (c) and by redesignating the remaining subsections accordingly:

() There is levied a privilege tax on litigation of thirteen dollars and seventy-five cents (\$13.75) in all civil cases in this state in the court of appeals or the supreme court.

SECTION 48. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following as a new, appropriately designated section:

Section 67-4-10__.

(a) The commissioner is empowered and directed to refund the amount of any eligible bad debt credit incurred by a manufacturing distributor or wholesale dealer and jobber of tobacco products. No amount shall be refunded unless the debt has been found to be worthless and actually charged off for federal income tax purposes. If the taxpayer receives a refund pursuant to this section arising from any bad debt so charged off which is thereafter in whole or in part paid to the manufacturing distributor or wholesale dealer and jobber, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(b) For purposes of this section, "eligible bad debt credit" means the taxes attributable to any portion of a debt arising from a sale of tobacco products subject to tax under this part that is not otherwise deductible or excludable, that has become worthless or uncollectible, and that has been actually charged off for federal income tax purposes. A bad debt shall not include any interest on the wholesale price of a tobacco product, uncollectible amounts of property that remain in the possession of the manufacturing distributor or the wholesale dealer and jobber until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, accounts receivable that have been sold to a third party, or repossessed property.

(c) Any claim for an eligible bad debt credit under this section shall be submitted as a claim for refund supported by the following:

(1) A copy of the original invoice;

(2) Evidence that the tobacco products described in the invoice were delivered to the person who ordered them;

(3) Evidence that the person who ordered and received the tobacco products did not pay the manufacturing distributor or the wholesale dealer and jobber for the tobacco products and that the manufacturing distributor or the wholesale dealer and jobber used reasonable collection practices in attempting to collect the debt; and

(4) Evidence that the debt was written off for federal tax purposes.

SECTION 49. Tennessee Code Annotated, Section 67-4-1708(d), is amended by deleting the language "during the fiscal year" and substituting instead the language "during the three hundred sixty five (365) days prior to the due date of the tax set forth in § 67-4-1703(a)".

SECTION 50. Tennessee Code Annotated, Section 67-4-2802(3)(A), is amended by inserting the following language between the word and punctuation "marijuana," and the word "seven":

one (1) or more marijuana plants,

SECTION 51. Tennessee Code Annotated, Section 67-4-2803(a), is amended by deleting subdivision (2) and substituting instead the following language as new subdivisions (2) and (3) and by renumbering the remaining subdivisions accordingly:

(2) Three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (a)(1) or plants with foliage taxed under (a)(3);

(3) Three hundred fifty dollars (\$350) per plant, whether growing or detached from the soil, on each marijuana plant with foliage;

SECTION 52. Tennessee Code Annotated, Section 67-4-2803, is amended by adding the following as a new, appropriately designated subsection:

() For purposes of this part, a person constructively possesses an unauthorized substance when he or she has knowledge of the substance and the ability and intention to exercise control over the substance.

SECTION 53. Tennessee Code Annotated, Section 67-4-2805(b), is amended by adding the following language as a new subdivision (2) and renumbering the remaining subdivisions accordingly:

(2) One (1) or more marijuana plants;

SECTION 54. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (i) in its entirety and by substituting instead the following:

(i) Notwithstanding the provisions of this section to the contrary, revenue derived from state taxes imposed by this chapter shall be earmarked and allocated in accordance with the provisions of the courthouse square revitalization pilot project act of 2005, compiled in title 6, chapter 59; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to Acts 2002, ch. 856, §4, shall be apportioned and distributed pursuant to this subsection (i). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856.

SECTION 55. Notwithstanding any provision of §§6-59-104(d) or 6-59-105 to the contrary, six (6) projects may be selected for the courthouse square revitalization pilot project; provided that no more than two (2) projects may be selected from each grand division.

SECTION 56. Notwithstanding any provision of §§6-59-103(b) or 6-59-104(a) to the contrary, the amount of revenue apportioned and distributed to a municipality under the courthouse square revitalization pilot project act shall equal the amount of state tax revenue derived under title 67, chapter 6, from sales or use of goods, products and services within the revitalization zone.

SECTION 57. Tennessee Code Annotated, Section 67-4-2014(a), is amended by deleting the language "of this part" and substituting instead the language "of this part or chapter 2 of this title".

SECTION 58. Tennessee Code Annotated, Section 67-3-206, is amended by designating the present language as subsection (a) and by adding the following language as subsection (b):

(b) The provisions of this section shall cease to be effective until July 1, 2008, at which time this section shall have full effect of law.

SECTION 59. Tennessee Code Annotated, Section 67-6-530, is amended by deleting the section in its entirety.

SECTION 60. Tennessee Code Annotated, Section 67-6-393, is amended by adding the following as a new, appropriately designated subsection:

() In addition to the exemption in subsection (a), the items of tangible personal property subject to the exemption provided in this section shall also be exempt from the tax imposed by this chapter if sold between 12:01 a.m. on April 27, 2007 and 11:59 p.m. on April 29, 2007. The exemption provided in this subsection shall be subject to all of the provisions in subsections (a)-(f).

SECTION 61. Tennessee Code Annotated, Section 67-5-702(a)(2), is amended by deleting in its entirety the first sentence and by substituting instead the following:

For tax year 2006, the taxpayer's annual income from all sources shall not exceed twenty thousand dollars (\$20,000), or such other amount as set forth in the general appropriations act.

SECTION 62. Tennessee Code Annotated, Section 67-5-702(a)(3), is amended by deleting the language "eighteen thousand dollars (\$18,000)," and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 63. Tennessee Code Annotated, Section 67-5-702(b), is amended by deleting the language "eighteen thousand dollars (\$18,000)," wherever it appears and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 64. Tennessee Code Annotated, Section 67-5-703(a)(2), is amended by deleting in its entirety the first sentence and by substituting instead the following:

For tax year 2006, the taxpayer's annual income from all sources shall not exceed twenty thousand dollars (\$20,000), or such other amount as set forth in the general appropriations act.

SECTION 65. Tennessee Code Annotated, Section 67-5-703(a)(3), is amended by deleting the language "eighteen thousand dollars (\$18,000)," and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 66. Tennessee Code Annotated, Section 67-5-703(b), is amended by deleting the language "eighteen thousand dollars (\$18,000)," and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 67. Tennessee Code Annotated, Section 67-5-704(a)(2), is amended by deleting the language "one hundred fifty thousand dollars (\$150,000) and by substituting instead the language "one hundred seventy-five thousand dollars (\$175,000),".

SECTION 68. Tennessee Code Annotated, Section 67-5-704(a)(3), is amended by deleting the language "one hundred fifty thousand dollars (\$150,000) and by substituting instead the language "one hundred seventy-five thousand dollars (\$175,000),".

SECTION 69. Tennessee Code Annotated, Section 67-5-704(a)(4), is amended by deleting the language "one hundred fifty thousand dollars (\$150,000) and by substituting instead the language "one hundred seventy-five thousand dollars (\$175,000),".

SECTION 70. Sections 1, 2, 3, 4, 6, 7, 8, 22, 23, 27 and 29 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years beginning on or after January 1, 2006, the public welfare requiring it. Section 5 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years ending on or after December 31, 2003, the public welfare requiring it. Sections 9 through 21 of this act shall take effect on July 1, 2006, the public welfare requiring it. Section 45 of this act shall take effect on July 2, 2006, the public welfare requiring it. Section 48 of this act shall take effect on July 1, 2006, the public welfare requiring it, and shall apply to bad debts arising from invoices dated on or after July 1, 2006, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 26, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of June 2006


PHIL BREDESEN, GOVERNOR