

Amendment No. 1 to HB0644

Sargent
Signature of Sponsor

AMEND Senate Bill No. 603*

House Bill No. 644

by deleting the amendatory language of SECTION 2 and substituting instead the following:

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(A) "Substantial nexus in this state" means any direct or indirect connection of the taxpayer to this state such that the taxpayer can be required under the Constitution of the United States to remit the tax imposed under this part. Such connection includes, but is not limited to, any of the following:

(i) The taxpayer is organized or commercially domiciled in this state;

(ii) The taxpayer owns or uses its capital in this state;

(iii) The taxpayer has systematic and continuous business activity in this state that has produced gross receipts attributable to customers in this state; or

(iv) The taxpayer has bright-line presence in this state. A person has bright-line presence in this state for a tax period if any of the following applies:

(a) The taxpayer's total receipts in this state during the tax period, as determined consistent with § 67-4-2012, exceed the lesser of five hundred thousand dollars (\$500,000) or twenty-five percent (25%) of the taxpayer's total receipts everywhere during the tax period;

(b) The average value of the taxpayer's real and tangible personal property owned or rented and used in this state during

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the tax period, as determined consistent with § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the average value of all the taxpayer's total real and tangible personal property; or

(c) The total amount paid in this state during the tax period by the taxpayer for compensation, as determined consistent with § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the total compensation paid by the taxpayer.

(B) Notwithstanding subdivision (a)() (A), no company that is treated as a foreign corporation under the Internal Revenue Code and that has no income effectively connected with a United States trade or business shall be considered to have a "substantial nexus in this state." For these purposes, whether a company has income effectively connected with a United States trade or business shall be determined in accordance with the provisions of the Internal Revenue Code;

AND FURTHER AMEND in SECTION 4, by deleting the amendatory language "All persons with substantial nexus in this state during the tax period and engaged in this state in any vocation, occupation, business, or business activity enumerated, described, or referred to in § 67-4-708(1)–(5)" and substituting instead the language "Except as otherwise provided in this part, all persons with substantial nexus in this state during the tax period and engaged in this state in any vocation, occupation, business, or business activity set forth as taxable under § 67-4-708(1)–(5)".

AND FURTHER AMEND by deleting the amendatory language of SECTION 5 and substituting instead the following:

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(A) “Substantial nexus in this state” means any direct or indirect connection of the taxpayer to this state such that the taxpayer can be required under the Constitution of the United States to remit the tax imposed under this part and part 21 of this chapter. Such connection includes, but is not limited to, the following:

(i) The taxpayer is organized or commercially domiciled in this state;

(ii) The taxpayer owns or uses its capital in this state;

(iii) The taxpayer has systematic and continuous business activity in this state that has produced gross receipts attributable to customers in this state;

(iv) The taxpayer licenses intangible property for use by another party in this state and derives income from that use of intangible property in this state; or

(v) The taxpayer has bright-line presence in this state. A person has bright-line presence in this state for a tax period if any of the following applies:

(a) The taxpayer’s total receipts in this state during the tax period, as determined under § 67-4-2012, exceed the lesser of five hundred thousand dollars (\$500,000) or twenty-five percent (25%) of the taxpayer’s total receipts everywhere during the tax period;

(b) The average value of the taxpayer’s real and tangible personal property owned or rented and used in this state during

the tax period, as determined under § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the average value of all the taxpayer's total real and tangible personal property; or

(c) The total amount paid in this state during the tax period by the taxpayer for compensation, as determined under § 67-4-2012, exceeds the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of the total compensation paid by the taxpayer.

(B) Notwithstanding subdivision () (A), no company that is treated as a foreign corporation under the Internal Revenue Code and that has no income effectively connected with a United States trade or business shall be considered to have a "substantial nexus in this state";

(C) To the extent a company that is treated as a foreign corporation under the Internal Revenue Code has income effectively connected with a United States trade or business, such company's net earnings and net worth for purposes of the taxes imposed by this part and part 21 of this chapter shall be its net earnings and net worth connected with its United States trade or business, and only property used in, payroll attributable to, and receipts effectively connected with such company's United States trade or business shall be considered for purposes of calculating such company's apportionment fraction.

(D) For purposes of subdivisions () (B) and (C), whether a company has income effectively connected with a United States trade or business and the amount of its net earnings and net worth connected with its United States trade or business shall be determined in accordance with the provisions of the Internal Revenue Code;

AND FURTHER AMEND in SECTION 8, by deleting the amendatory language “Receipts from sales” from the first sentence in subdivision (i)(1) and substituting instead the language “Sales”.

AND FURTHER AMEND by adding to the amendatory language in SECTION 8 the following as a new subdivision (i)(4):

(4) If the application of this subsection (i) to a tax year results in a lower apportionment factor than under the application of the apportionment method in subsection (i) as it was in effect prior to January 1, 2016, then a taxpayer may annually elect to apply the apportionment method in subsection (i) as in effect prior to January 1, 2016; provided, however, that the election must result in a higher apportionment factor for the tax year, and the taxpayer must have net earnings, rather than a net loss, for that tax year as computed under § 67-4-2006.

AND FURTHER AMEND in SECTION 9, by deleting the amendatory language “in this state” from subdivision (b)(1) and substituting instead the language “made in this state during the tax period to all distributors”.

AND FURTHER AMEND in SECTION 9, by deleting the amendatory language “made in this state by the taxpayer to a distributor that are resold” from subdivision (b)(3) and substituting instead the language “made in this state by the taxpayer to any distributor, whether or not affiliated with the taxpayer, that are resold”.

AND FURTHER AMEND in SECTION 11, by deleting the amendatory language “Receipts from sales” from the first sentence in subdivision (i)(1) and substituting instead the language “Sales”.

AND FURTHER AMEND by adding to the amendatory language in SECTION 11 the following as a new subdivision (i)(4):

(4) If the application of this subsection (i) to a tax year results in a lower apportionment factor than under the application of the apportionment method in this subsection (i) as it was in effect prior to January 1, 2016, then a taxpayer may annually elect to apply the apportionment method in this subsection (i) as in effect prior to January 1, 2016; provided, however, that the election must result in a higher

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

AND FURTHER AMEND by deleting the amendatory language of SECTION 13 and substituting instead the following:

(2) For purposes of subdivision (a)(1), use of computer software includes the access and use of software that remains in the possession of the dealer who provides the software or in the possession of a third party on behalf of such dealer. If the customer accesses the software from a location in this state as indicated by the residential street address or the primary business address of the customer, such access shall be deemed equivalent to the sale or licensing of the software and electronic delivery of the software for use in this state. If the sales price or purchase price of the software relates to users located both in this state and outside this state as indicated by a residential street or business address, the dealer or customer may allocate to this state a percentage of the sales price or purchase price that equals the percentage of users in this state. Any dealer that purchases computer software only for the purpose of reselling access and use of such software as described in this subdivision (a)(2) shall be entitled to purchase such software exempt from the tax imposed by this chapter, subject to the same rules that apply generally to any sale of tangible personal property for resale; provided, however, that software purchased by a qualified data center for access and use by an affiliated company, as defined by § 67-6-395(c), shall be deemed to be used and consumed by the qualified data center and not resold to the affiliated company. Nothing in this subdivision (a)(2) shall be construed to impose a tax on any services that are not currently subject to tax under this chapter, such as, but not limited to, information services, payment processing services, payroll processing services, data processing services, billing and collection services, Internet access, the storage of data, digital codes, or computer software, or the service of converting, managing, and distributing digital products.

AND FURTHER AMEND by deleting SECTION 6 in its entirety and renumbering the remaining sections accordingly.

AND FURTHER AMEND by deleting the last section in its entirety and substituting instead the following sections:

SECTION 17. Tennessee Code Annotated, Section 67-1-803(a), is amended by deleting subdivision (2) and substituting instead the following:

(2) Under no circumstances, however, shall this authority be deemed to extend to any interest payable under the law in connection with any case of tax deficiency or delinquency.

SECTION 18. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following as a new, appropriately designated subsection:

() Notwithstanding subsection (b), the commissioner is authorized to establish by rule an alternative methodology for calculating the required minimum quarterly estimated payments due under this section; provided, that the taxpayer shall have the option to elect such methodology established by the commissioner or the methodology set forth in subsection (b).

SECTION 19. Tennessee Code Annotated, Section 67-4-2013(b)(3), is amended by adding the following language as a new subdivision (H) and redesignating existing subdivision (H) and remaining subdivisions accordingly:

(H) Receipts equal to the net gain or income from the sale of a security made by a person who is a dealer in such security within the meaning of 26 U.S.C. § 475 shall be attributed to Tennessee if such person's customer is located in Tennessee and such receipt is not otherwise attributed under subdivision (b)(3)(G). For purposes of this subdivision (b)(3)(H), a customer is in this state if the customer is an individual, trust, or estate that is a resident of this state and, for all other customers, if the customer's commercial domicile is in this state. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer

shall be deemed to be a customer in this state if the billing address of the customer, as shown in the records of the dealer, is in this state;

SECTION 20. Tennessee Code Annotated, Section 67-4-2013(b)(3)(I), as redesignated, is amended by deleting the language “§ 67-4-2012(i)” and substituting instead the language “§ 67-4-2012(i)(1)(C)”.

SECTION 21. Tennessee Code Annotated, Section 67-4-2013(b)(3)(L), as redesignated, is amended by deleting the language “(b)(3)(A)–(J)” at the end of the subdivision and substituting instead the language “(b)(3)(A)–(K)”.

SECTION 22. Tennessee Code Annotated, Section 67-4-2118(c), is amended by adding the following language as a new subdivision (8) and redesignating existing subdivision (8) and remaining subdivisions accordingly:

(8) Receipts equal to the net gain or income from the sale of a security made by a person who is a dealer in such security within the meaning of 26 U.S.C. § 475 shall be attributed to Tennessee if such person’s customer is located in Tennessee and the receipt is not otherwise attributed under subdivision (c)(7). For purposes of this subdivision (c)(8), a customer is in this state if the customer is an individual, trust, or estate that is a resident of this state and, for all other customers, if the customer’s commercial domicile is in this state. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this state if the billing address of the customer, as shown in the records of the dealer, is in this state;

SECTION 23. Tennessee Code Annotated, Section 67-4-2118(c)(9), as redesignated, is amended by deleting the language “§ 67-4-2111(i)” and substituting instead the language “§ 67-4-2111(i)(1)(C)”.

SECTION 24. Tennessee Code Annotated, Section 67-4-2118(12), as redesignated, is amended by deleting the language “(c)(1)–(10)” at the end of the subdivision and substituting instead the language “(c)(1)–(11)”.

SECTION 25. Tennessee Code Annotated, Section 67-6-395, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) There is exempt from the tax imposed by this chapter the use of computer software that is developed and fabricated by an affiliate company, regardless of whether such software is accessed and used as described in § 67-6-231(a)(2) or delivered by other means.

SECTION 26. Sections 2, 3, 4, 5, 6, 8, and 9 of this act shall take effect January 1, 2016, the public welfare requiring it, and shall apply to all tax years beginning on or after January 1, 2016. Sections 7, 10, 19, 20, 21, 22, 23, and 24 of this act shall take effect July 1, 2016, the public welfare requiring it, and shall apply to all tax years beginning on or after July 1, 2016. Sections 11, 12, 13, 15, and 25 of this act shall take effect July 1, 2015, the public welfare requiring it. Section 17 of this act shall take effect July 1, 2016, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.