

SENATE BILL 704

By Tate

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 5; Title 6; Title 7; Title 8; Title 9; Title 39; Title
40 and Title 67, relative to taxation.

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

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is hereby amended by adding sections 2 through 8 of this act as a new part to be appropriately designated.

SECTION 2. This act shall be known and may be cited as the "Tennessee Employer Privilege Tax Act".

SECTION 3. The tax levied under this part is a state tax for state purposes only, and no county or municipality or taxing district shall have power to levy any like tax. All taxes collected under this part shall be distributed to the state's general fund.

SECTION 4. As used in this act, unless the context otherwise requires:

(1) "Compensation" means the total wage, salary, commission, drafting account, fee, retainer, or other remuneration paid by an employer to an employee. In the case of self-employed persons, partners, persons practicing a licensed profession, or other persons acting as their own employer, "compensation" means the net income, as defined by the applicable provision of the United States Internal Revenue Code, from the business or profession of such person.

(2) "Employee" means any person who for compensation of any kind, whether paid in the form of a wage, salary, commission, drawing account, fee, retainer, or otherwise, carries on an occupation, profession, or gainful employment of any sort or type within the state, but who does not reside in Tennessee. The term "employee"

includes all persons who receive compensation directly from themselves such as self-employed persons or persons engaged in the practice of a licensed profession.

(3) "Employer" means any person, firm, partnership, association, or corporation having an office or place of business or carrying on any business activity whatsoever within the state. It shall include self-employed persons, persons employed in licensed professions, and persons engaged in service type activities, in their individual capacities as their own employer. "Employer" does not include the United States, the state of Tennessee, any Tennessee county or municipality, employers of residential household help, or recognized religious organizations when employing persons for the conduct of religious services or the operation of a place of worship.

SECTION 5.

(a) Acting as an employer and paying compensation for services rendered by employees who do not reside in Tennessee are hereby declared to be taxable privileges. The Tennessee employer privilege tax is an accrued tax and is imposed for the exercise of such privileges during the period coinciding with the tax year covered by the return required.

(b) For the privilege of acting as an employer and paying compensation for services rendered by employees who do not reside in Tennessee, the Tennessee employer privilege tax is levied at the rate of three percent (3%) of the compensation of such employees.

SECTION 6. An employer may, if the employer chooses, recover from each employee the amount of the Tennessee employer privilege tax paid on account of the compensation received by that employee. Such recovery shall be limited to the amount or percentage tax which has been measured by the individual employee's compensation. Such recovery may be

retained by the employer prior to the receipt by the employee's compensation, providing a notation of this retainage is made to the employee.

SECTION 7.

(a) Supervision and collection of the Tennessee employer privilege tax shall be under the direction of the department of revenue, and such department is authorized and empowered to prescribe forms upon which employers shall make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such employers.

(b) The commissioner may, within the commissioner's discretion, require any employer to file with the employer's Tennessee employer privilege tax return, a copy of federal tax forms filed with the internal revenue service for the same tax year.

(c) All employers liable for the Tennessee employer privilege tax shall register with the department of revenue by completing and filing a registration information form prescribed by the department. Such form shall be filed with the department within sixty (60) days following July 1, 2009, or within fifteen (15) days following the date the employer becomes subject to the tax, whichever date occurs last.

SECTION 8. A monthly Tennessee employer privilege tax return shall be filed with the commissioner on or before the fifteenth day of the next succeeding month, and the appropriate tax shall be paid to the department at the time of filing such monthly return. If there is a deficiency or delinquency of any monthly return, a penalty in the amount of five percent (5%) for each month of underpayment or part thereof not to exceed a total of twenty-five percent (25%) and interest at the rate prescribed by § 67-1-801 shall be assessed.

SECTION 9. The commissioner of revenue is empowered and it is the commissioner's duty to collect the employer privilege tax, together with penalty and interest, levied hereunder from any officer, stockholder, partner, member, principal or employee of an employer that is out

of business or has dissolved, liquidated or otherwise terminated at a time when it has refused or failed to pay the privilege tax levied under this part; and any such officer, stockholder, partner, member, principal or employee who has received property belonging to the employer, but such collection shall be limited to the value of the property received.

SECTION 10. The commissioner of revenue is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 11. 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.

SECTION 12. This act shall take effect October 1, 2009, the public welfare requiring it.