

SENATE BILL 945

By Hensley

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 4, Part 7, relative to privilege taxes.

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

SECTION 1. Tennessee Code Annotated, Section 67-4-703, is amended by deleting the section in its entirety and by substituting instead the following:

67-4-703.

(a)

(1) The commissioner is authorized to prescribe all rules necessary for the administration of this part, and for the collection of the taxes imposed by this part.

(2) Rules not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(3) A copy of all such rules shall be furnished to every collector in printed form, and shall be furnished to any taxpayer upon request.

(b) The commissioner is empowered to examine the books and records of any person subject to this part, and it is the commissioner's duty to promptly notify the county clerk, in the case of a county, and the proper city tax collector, in the case of a municipality, of any changes in amounts due by such person as determined by examination made by the commissioner.

SECTION 2. Tennessee Code Annotated, Section 67-4-707, is amended by deleting the language "may be called by the state" and by substituting instead the language "shall be for the use and benefit of the taxing unit".

SECTION 3. Tennessee Code Annotated, Section 67-4-710(b), is amended by deleting the subsection in its entirety.

SECTION 4. Tennessee Code Annotated, Section 67-4-711(a)(8), is amended by deleting subdivision (E) in its entirety.

SECTION 5. Tennessee Code Annotated, Section 67-4-713, is amended by adding the following language as new subsections:

(c) The credit authorized in subdivision (a)(3) is allowable only on returns filed with, and taxes paid to, each respective governmental entity to which personal property taxes are paid as a result of assessments made under chapter 5, part 5 of this title.

(d) In permitting or allowing credits to be taken in accordance with this section, responsible local governmental unit collectors shall use county and/or incorporated municipality records to determine if personal property taxes claimed as a credit have actually been paid. No credit shall be disallowed by any local governmental unit official or collector solely as a result of the taxpayer's failure to produce a written receipt or document evidencing payment from the applicable county or incorporated municipality, or both.

(e)

(1) The amount of any credit allowable under this section, but not permitted or allowed by any local governmental unit official, shall be refunded by the responsible appropriate local governmental unit official to each person to whom the credit has not been properly permitted or allowed.

(2) It is the duty of the responsible appropriate local governmental unit officials to furnish proper claim forms and to refund to each person the amount of any credit that has been disallowed.

(3) If the appropriate local governmental unit official fails to make a refund in accordance with this subsection (e) within six (6) months of the delinquency date for any person taxable under this part, then the commissioner shall notify

the state treasurer of the amount of refunds not made by the appropriate local governmental unit official.

(4) Upon receiving notification from the commissioner, the state treasurer shall withhold and transfer to an appropriate account from any amount due such local governmental unit by the state a sufficient amount to cover the amount of refunds not made by appropriate local governmental unit officials.

(5) From such amounts withheld by the state treasurer, the commissioner shall then refund, in accordance with prescribed procedures, to each person the amount for which each person has not been allowed credit and has not been refunded by appropriate local governmental unit officials.

(6) Any action for refund under this section must comply with chapter 1, part 9 of this title.

(f) The credit provided in subdivision (a)(3) shall be allowed only for taxes paid either during the tax period covered by the return or prior to the delinquency date set out in § 67-4-715(b) for the filing of such return. Prior to allowing such credit, a copy of the receipt showing payment has been made of such personal property tax must be attached to the application claiming credit for such payment.

SECTION 6. Tennessee Code Annotated, Section 67-4-715, is amended by deleting the section in its entirety and by substituting instead the following:

67-4-715.

(a) The taxes levied by this part that are collected and administered by the commissioner pursuant to §§ 67-4-705 and 67-4-706(c), or by the county clerk, in the case of taxes owed to the county, and to the city official designated as the collector of such tax by city charter or ordinance, in the case of taxes owed to a municipality, shall be due and payable annually on the following dates:

- (1) December 31 for persons taxable under § 67-4-708(1);
- (2) March 31 for persons taxable under § 67-4-708(2);
- (3) June 30 for persons taxable under § 67-4-708(3);
- (4) September 30 for persons taxable under § 67-4-708(4); and
- (5) December 31 for persons taxable under § 67-4-708(5).

(b) For the purpose of ascertaining the amount of tax payable under this part, it shall be the duty of all persons to transmit to the commissioner, county clerk, or designated city official, as applicable, on forms prescribed by the commissioner, a return for each county, in the case of taxes levied by the county, and a return for each city, in the case of taxes levied by the city, showing the gross receipts arising from all sales taxable under this part during the period covered by each return. The return shall also include the applicable deductions or credits specifically allowed under this part and any other information required by the commissioner, county clerk, or designated city official to determine the amount of tax properly due. The returns shall be transmitted to the commissioner, county clerk, or designated city official, as applicable, on or before the following dates:

- (1) February 28 for persons taxable under § 67-4-708(1);
- (2) May 31 for persons taxable under § 67-4-708(2);
- (3) August 31 for persons taxable under § 67-4-708(3);
- (4) November 30 for persons taxable under § 67-4-708(4); and
- (5) February 28 for persons taxable under § 67-4-708(5).

(c) At the time of transmitting to the commissioner, county clerk, or designated city official the return required by this part, the person shall remit to the commissioner with the return the amount of tax due under the applicable provisions of this part, and failure to so remit the tax shall cause the tax to become delinquent.

(d) Each taxpayer who operates more than one (1) place of business in a county or city may apply to the county clerk or designated city official, whichever is applicable, for permission to file a consolidated tax return for all business locations in a single taxing jurisdiction.

(e) The failure of any person to secure the forms mentioned in this section shall not relieve the person from the payment of the tax at the time and in the manner provided in this section.

SECTION 7. Tennessee Code Annotated, Section 67-4-716, is amended by deleting the section in its entirety and by substituting instead the following:

67-4-716.

(a) When any person fails to file any form, statement, report, or return required to be filed with the commissioner or any other collector of the taxes imposed under this part, after being given written notice of the tax, the commissioner or collector is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or collector.

(b) An assessment made by the commissioner or other collector pursuant to this authority shall be binding as if made upon the sworn statement, report, or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy of the tax except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

SECTION 8. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by adding the following language as a new section:

67-4-717. Any municipal official of any municipality of the state responsible for the collection and recording of taxes levied under this part, for collecting and recording amounts from the business tax, may charge a fee of five dollars (\$5.00), except this fee may not be charged to persons paying the annual minimum tax under this part, if paid on the same date as the respective and related return is filed.

SECTION 9. Tennessee Code Annotated, Section 67-4-718(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) The commissioner or the local tax collection officers, whichever is applicable, may, for good cause shown, grant not more than one (1) extension of time, not to exceed thirty (30) days, for a person liable for the business tax to file that person's tax return and pay the tax shown to be due.

SECTION 10. Tennessee Code Annotated, Section 67-4-719, is amended by deleting the section in its entirety and by substituting instead the following:

67-4-719.

(a)

(1) In addition to all other available methods of collection, the county clerk, in the case of taxes owed to the county, and the proper city tax collector, in cases of taxes owed to a municipality under this part, may retain, by written contract, an attorney or agent to collect or to institute proceedings to collect delinquent business taxes, interest, and penalties, upon such terms as the county clerk or city tax collector deems appropriate. The costs of collection, including, but not limited to, the court costs and the reasonable compensation for the attorney or agent, as approved by the court, are the responsibility of the delinquent taxpayer. The court shall disburse any taxes collected to the appropriate county clerk or designated city official, and the county clerk or

designated city official shall disburse such taxes according to the disbursement formula established by law.

(2) The county clerk, in the case of taxes owed to the county, and the designated city official, in cases of taxes owed to a municipality under this part, shall notify the taxpayer by mail to the taxpayer's last known address fifteen (15) days prior to turning delinquent taxes over to an attorney or agent retained for collection or instituting proceedings to collect such taxes. The notice shall state that the tax is delinquent, and if not paid within ten (10) days will be subject to additional costs of collection including court costs. The notice shall also include the rate of penalty and interest.

(3) If the clerk or city official retains an attorney or agent to assist in the collection of taxes imposed by this part, the attorney or agent is deemed to be a tax collector for the purpose of having access to all statements, reports, or returns of a taxpayer and is subject to § 67-4-722.

(4) This subsection (a) is local in effect and shall be implemented in a particular municipality or county only upon the adoption of a resolution by a two-thirds (2/3) vote of the governing body of the municipality or county.

(b) The commissioner and in the case of taxes owed to the state, the county clerk in the case of taxes owed to a county, and the designated city official in the case of taxes owed to a municipality, are empowered and it is their duty when any tax becomes delinquent under this part, to issue a distress warrant for the collection of tax, interest and penalty from each delinquent taxpayer, in accordance with the procedures used by other county officials in the collection of delinquent ad valorem personal property taxes as prescribed in § 67-4-215 or other relevant statutes.

(c) If the county clerk, in the case of a county, or the designated city official, in the case of a municipality, fails to collect the tax, interest, and penalty from any delinquent taxpayer, then it shall be the duty of the commissioner, at any time after the tax has become delinquent for more than six (6) months, to collect the tax, interest, and penalty from the delinquent taxpayer in accordance with the procedure specified in chapter 1, part 14 of this title; provided, however, that the county clerk, in the case of a county, or the designated city official, in the case of a municipality, may collect the tax at any time before the commissioner notifies the taxpayer of an audit of the taxpayer or takes any other action authorized under chapter 1, part 14 of this title to collect the tax.

(d) Any tax, interest, and penalty collected from a delinquent taxpayer by the commissioner under chapter 1, part 14 of this title shall be allocated to the state and paid into the state treasury.

SECTION 11. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by adding the following language as a new section:

67-4-720. The local tax collection officer may, under the same criteria and requirements as used by the commissioner of revenue, waive the payment of penalty on any tax due.

SECTION 12. Tennessee Code Annotated, Section 67-4-721(c), is amended by deleting subdivision (3) and by substituting instead the following language:

(3) The purchaser shall have no liability for the taxes, interest, or penalties, if the department, or the county clerk, in the case of counties, and designated city official, in the case of cities, whichever is applicable, releases the former owner, owners, or assigns from the original liability for the taxes, interest, or penalty through payment of the amount due and settlement with the department or county clerk or city official.

SECTION 13. Tennessee Code Annotated, Section 67-4-721(d), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(d) A purchaser who, in good faith and without knowledge of any false statement in the affidavit, receives from the seller at the time of the purchase an affidavit stating under oath of the penalties of perjury the amount of the taxes, interest, and penalty due and unpaid by the seller to the department, or county clerk or city official, whichever is applicable, through the date of the purchase, or a statement that there are no due and unpaid taxes, interest, and penalty, who in good faith withholds and sets aside from the purchase money to be paid to the seller an amount sufficient to pay the amount of the taxes, interest, and penalty shown to be due and unpaid in the seller's affidavit, and who tenders a copy of the seller's affidavit by registered or certified mail or by personal service to the tax enforcement division of the department, or to the county clerk or city official, whichever is applicable, shall be entitled to a release from the commissioner, or county clerk or city official, from any liability, in excess of that shown on the affidavit, for the payment of the taxes, interest, and penalty accrued and unpaid on account of the operation of the business by any former owner or assigns, unless the commissioner, or county clerk or city official, notifies the purchaser of the correct tax liability at the return address provided by the purchaser within fifteen (15) days of receipt of the affidavit.

SECTION 14. Tennessee Code Annotated, Section 67-4-721(e)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) Succeeding transfers by the same licensee, within the same annual taxable period, shall submit a final return and payment within fifteen (15) days to the commissioner, or county clerk, in the case of taxes owed to the county, or designated city official, in the case of taxes owed to the municipality or incorporated metropolitan government. In addition, the licensee shall be required to obtain a new business license for the new location as set forth in § 67-4-723.

SECTION 15. Tennessee Code Annotated, Section 67-4-722(a), is amended by deleting the language "or the commissioner's duly authorized agents" and by substituting instead the language ", county clerk, designated city official, or any person duly authorized by the commissioner or such officials".

SECTION 16. Tennessee Code Annotated, Section 67-4-722(c), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(c)

(1) All statements, reports, or returns of taxpayers and all audits of their records and files made as authorized by this part are confidential. Additionally, it is unlawful for anyone to make known in any manner any information contained in the statements, reports, or returns except as follows:

(A) To the taxpayer personally;

(B) To an attorney or other agent duly authorized by the taxpayer;

(C) To employees of the department or of the other tax collectors for the purpose of checking, comparing, and correcting returns;

(D) To any collection, regulatory, or inspection agency of this state, the United States, or another state; or

(E) In accordance with proper judicial order or as otherwise required by law.

(2) A violation of this subsection (c) is a Class A misdemeanor.

SECTION 17. Tennessee Code Annotated, Section 67-4-723, is amended by deleting subsection (b) and redesignating the remaining subsections accordingly.

SECTION 18. Tennessee Code Annotated, Section 67-4-723(c), is amended by deleting the language " § 8-21-701" and substituting instead the language "§§ 8-21-701 and 67-4-717".

SECTION 19. Tennessee Code Annotated, Section 67-4-724, is amended by deleting the section in its entirety and by substituting instead the following:

67-4-724.

(a)

(1) Each local collector of each county and/or incorporated municipality shall be required to pay the commissioner fifteen percent (15%) of the total amount collected under the provisions of this part. This subdivision (a)(1) does not apply to any amount collected by a local collector of a county or incorporated municipality, or both, pursuant to a local government field audit and related collection effort. This subdivision (a)(1) does not apply to any amount collected by a local collector of a county and/or incorporated municipality pursuant to increased revenues directly attributable to the amendments to § 67-4-709(b) by chapter 856, § 9(a) of the Public Acts of 2002.

(2) Each local collector of each county or incorporated municipality, or both, shall pay the commissioner all increased revenues directly attributable to the amendments to former § 67-4-709(b) by Chapter 856, § 9(a) of the Public Acts of 2002.

(b)

(1) Each local collector of each county or incorporated municipality, or both, shall maintain a complete record of collections made under this part and shall report such collections to the commissioner, upon forms prescribed by the commissioner, on each May 31, for the period from June 1 through May 31.

(2) The commissioner may examine the records of a local collector under chapter 1, part 14 of this title, to ensure that the proper amount of tax is collected and that the total amount of tax collected is paid to the department.

(3) The commissioner may collect any tax from a local collector or the local collector's surety under chapter 1, part 14 of this title when an examination of the records of the collector reflects that tax due to the state has been collected by the collector but not paid to the department.

(c) Each collector shall make the reports or payments, or both, required by this section within twenty (20) days after the due date of such required report and/or payment.

(d)

(1) If each report is not filed as required and payments not made as specified in this section, interest and penalty shall be imposed as provided by chapter 1, part 8 of this title.

(2) The commissioner may, under § 67-1-803, waive the penalty provided for in subdivision (d)(1) where assessed on or after June 1, 1977.

SECTION 20. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by adding the following language as a new section:

67-4-726.

(a) Any incorporated municipality and/or metropolitan government that has levied the taxes authorized by this part may, by resolution of its governing body, designate the department as its agent in the administration and collection of such taxes; and if the department determines that such administration and collection of local business taxes are feasible, it may agree to act as such agent, subject to such rules and regulations as the department may promulgate. Such rules and regulations shall include a schedule showing when taxes shall be remitted to the incorporated municipality or metropolitan government, or both, and the cost of collection as determined by the commissioner.

(b) Any incorporated municipality or metropolitan government that has designated the department as its agent in the administration and collection of the taxes authorized by this part may, by resolution of its governing body, terminate it any time after sixty (60) days from the passage of such resolution. Such agency can resume local administration and collection of the taxes levied by this part.

SECTION 21. This act shall take effect January 1, 2014, the public welfare requiring it.