

SENATE BILL 1424

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 9,
Chapter 4 and Title 67, relative to taxation.

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

SECTION 1. Tennessee Code Annotated, Section 67-6-228(a), is amended by deleting the language "subsection (b)" and by substituting instead the language "subsections (b), (c), and (d)".

SECTION 2. Tennessee Code Annotated, Section 67-6-228, is amended by adding the following language as new subsections (c) and (d):

(c) In lieu of the rate of tax levied by subsection (a), except as otherwise provided in subsections (b) and (d), on and after June 15 immediately following the effective date of this section, the retail sale of food and food ingredients for human consumption shall be taxed at the rate of four and eight-hundred twenty-five thousandths percent (4.825%) of the sales price.

(d)

(1) If the commissioner of finance and administration certifies the existence of surplus Internet tax revenue pursuant to § 67-6-104 in any fiscal year, then there is levied a reduced rate of the tax on retail sales of food and food ingredients beginning on July 1 of the next fiscal year pursuant to subdivision (d)(2).

(2) The rate of tax levied in any fiscal year in which the commissioner of finance and administration certifies surplus Internet tax revenue shall be reduced by the percentage certified by the commissioner pursuant to § 67-6-104(a)(1)(D). By June 15 of any fiscal year in which the commissioner made the certification,

the commissioner of revenue shall publish the reduced rate of tax at which the retail sale of food and food ingredients shall be taxed beginning on July 1. The reduced rate shall remain in effect until such time as either the rate is again reduced pursuant to this subsection or the general assembly adjusts the rate. If no surplus Internet tax revenue is collected in any fiscal year and the commissioner of finance and administration determines in that fiscal year that, pursuant to § 67-6-104(a)(2)(B), anticipated Internet tax revenue is not sufficient to maintain the reduced tax rate for the next fiscal year, then it is the legislative intent that the rate of tax be adjusted on July 1 of the next fiscal year to offset the shortfall of state revenue.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 6, Part 1, is amended by adding the following language as a new section:

67-6-104.

(a) On or before November 15 of any year for which the rate of tax pursuant to § 67-6-228(c) or (d) is levied, the commissioner of finance and administration, in consultation with the commissioner of revenue, shall:

(1) Certify the following:

(A) Amount of accrued, recurring Internet tax revenue, as defined in § 67-6-102, collected as of November 1 of the year in which the certification is made;

(B) Amount of any surplus Internet tax revenue, as defined in § 67-6-102, collected as of November 1 of the year in which certification is made;

(C) Estimated amount of anticipated, recurring Internet tax revenue to be collected for the next fiscal year; and

(D) Percentage of a reduction in the rate of tax on retail sales of food and food ingredients pursuant to § 67-6-228 that would decrease state revenue for the next fiscal year in an amount equal to the amount of

any surplus Internet tax revenue for the fiscal year in which the certification is made; and

(2) Notify the governor, speaker of the senate, speaker of the house of representatives, chairs of the finance, ways and means committees of the senate and the house of representatives, and the executive director of the fiscal review committee of:

(A) The amounts certified pursuant to subdivision (a)(1); and

(B) A determination as to whether or not the amount of anticipated Internet tax revenue certified pursuant to subdivision (a)(1)(C) is sufficient to maintain the tax rate levied in the then current fiscal year pursuant to § 67-6-228(d) for the next fiscal year without resulting in a shortfall of state revenue.

(b) The total amount of Internet tax revenue collected in any fiscal year ending June 30 shall be allocated to the general fund. It is the intent of the general assembly that the Internet tax revenue be used for the sole purpose of funding the reductions to the rate of tax levied on retail sales of food and food ingredients pursuant to § 67-6-228(c) and (d).

SECTION 4. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following language as new, appropriately designated subdivisions:

() "Internet tax revenue" means the total amount of revenue derived from state sales and use tax imposed on remote sales that is collected for any fiscal year ending June 30, as determined by the commissioner of finance and administration;

() "Remote dealer" means a dealer that makes remote sales in this state;

() "Remote sale" means a sale into this state in which a remote dealer is required to pay, collect, or remit state sales and use taxes pursuant to:

(A) A written agreement pursuant to which the remote dealer and its retail affiliates shall collect state sales and use tax beginning immediately after the earliest of the events described in § 67-6-515(c), pursuant to such section as it existed prior to January 1, 2014; or

(B) A state law that requires state sales and use tax be collected and remitted, whether or not the remote dealer has substantial nexus with this state and that is enacted pursuant to a federal law authorizing states to collect such taxes; and

() "Surplus Internet tax revenue" means the amount by which Internet tax revenue collected during the then current fiscal year exceeds the estimated amount of anticipated, recurring Internet tax revenue to be collected for such fiscal year.

SECTION 5. Sections 5 - 8 of this act shall take effect upon becoming a law, the public welfare requiring it.

SECTION 6. Within fifteen (15) business days following the effective date of this section, the commissioner of revenue shall cause to be posted on the web site of the department sufficient notice of the provisions of this act including, but not limited to, the contingent effectiveness of such provisions and the continuing tax rate on food and food ingredients at the rate of five percent (5%) if neither of the two (2) alternative contingencies specified in Section 7 is satisfied.

SECTION 7.

(a) The provisions of Sections 1-4 of this act shall be contingent upon the happening of either of two (2) alternative contingencies described in subsection (b) or (c), and if either of such contingencies is satisfied, then the provisions shall take effect on the effective date specified in subsection (b) or (c), as appropriate.

(b)

(1) Upon satisfaction of the alternative contingency described in this subsection, Sections 1-4 of this act shall take effect June 1, 2014, the public welfare requiring it.

(2) The provisions of Sections 1-4 of this act shall be contingent upon accrued, recurring Internet tax revenue collected beginning in fiscal year 2013-2014 exceeding \$4,387,791, as determined by the commissioner of finance and administration pursuant to subdivision (b)(3).

(3) No later than May 15, 2014, the commissioner of finance and administration shall file notice with the chairs of the finance, ways and means committees of the house of representatives and the senate, the office of legislative budget analysis, executive director of the fiscal review committee, the secretary of state and the executive secretary of the Tennessee code commission stating the amount of accrued, recurring Internet tax revenue collected as of May 1 in fiscal year 2013-2014, and the estimated amount of anticipated, recurring Internet tax revenue to be collected for the next fiscal year. If Internet tax revenues in fiscal year 2013-2014 exceed \$4,387,791, then the provisions of Sections 1-4 of this act shall take effect pursuant to subdivision (b)(1).

(c)

(1) If the alternative contingency described in subsection (b) is not satisfied, then upon satisfaction of the alternative contingency described in this subsection, Sections 1-4 of this act shall take effect June 1, 2015, the public welfare requiring it.

(2) The provisions of Sections 1-4 of this act shall be contingent upon accrued, recurring Internet tax revenue collected beginning in fiscal year 2014-

2015 exceeding \$4,387,791, as determined by the commissioner of finance and administration pursuant to this subsection.

(3) No later than May 15, 2015, the commissioner of finance and administration shall file notice with the chairs of the finance, ways and means committees of the house of representatives and the senate, the office of legislative budget analysis, executive director of the fiscal review committee, the secretary of state and the executive secretary of the Tennessee code commission stating the amount of accrued, recurring Internet tax revenue collected as of May 1 in fiscal year 2014-2015. If such revenues exceed \$4,387,791, then the provisions of Sections 1-4 of this act shall take effect pursuant to subdivision (c)(1).

(d) If Internet tax revenues do not exceed \$4,387,791 in fiscal year 2013-2014 or fiscal year 2014-2015 and neither of the two (2) alternative contingencies in this section is satisfied, then Sections 1-4 of this act shall be void.

SECTION 8. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.