Franchise and Excise Tax Legislation

Industrial Machinery Credit

Public Chapter 602 revises Tennessee’s economic development tax incentives by providing tiers of industrial machinery credit based on the level of Tennessee investment. The act establishes tiered criteria and benefits for the credit. If the taxpayer makes a required capital investment in excess of $1,000,000,000 during the investment period, the credit allowed equals 10% of the purchase price of industrial machinery located in Tennessee and purchased in the process of making the required capital investment. If the taxpayer makes a required capital investment in excess of $500,000,000 during the investment period, the credit allowed equals 7%. If the taxpayer makes a required capital investment in excess of $250,000,000 during the investment period, the credit allowed equals 5%. If the taxpayer makes a capital investment in excess of $100,000,000 during the investment period, the credit allowed equals 3%. The investment period during which the required capital investment must be made cannot exceed three years from the filing of the business plan related to the required capital investment. The three-year 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 years, for good cause shown. Effective date: Upon becoming law.

Job Tax Credit

Public Chapter 602 modifies the job tax credit by establishing a credit for a qualified business enterprise that involves a required capital investment of $10,000,000 and the creation of at least 100 net new full-time headquarters staff employee jobs that pay at least 150% of Tennessee’s average occupational wage. The credit allowed is $5,000 for each net new full-time headquarters staff employee job created during the investment period. An additional credit is allowed on an annual basis for a period of three years, beginning with the first tax year after the investment and job threshold criteria are met. The additional credit equals $5,000 for each job created during the investment period, provided that the jobs remain filled by employees, at wages equal to or greater than 150% of Tennessee’s average occupational wage for the month of January of the year in which the credit is being taken. This annual credit may be used to offset up to 100% of the taxpayer’s franchise and excise tax liability for that year, but any unused annual credit will not be carried forward beyond the year in which the credit originated. Effective date: Upon becoming law.
Job Tax Credit and Tiers of Economically Distressed Counties

Public Chapter 602 modifies the job tax credit by providing that the Department of Economic and Community Development shall designate each county determined to be economically distressed as a tier one, tier two or tier three economically distressed county. Such designation shall be based on unemployment, per capita income and poverty levels. A list of counties designated by tiers will be published annually. A qualified business enterprise located in a tier one, two or three economically distressed county will receive a $4,500 credit for each net new full-time employee job. A qualified business enterprise located in a tier two county will receive an additional annual credit of $4,500 for each net new full-time employee job, and the annual credit shall be allowed for a period of three years, beginning with the first tax year after the initial job tax credit is created. A qualified business enterprise located in a tier three county will receive an additional annual credit of $4,500 for each net new full-time employee job, and the annual credit shall be allowed for a period of five years, beginning with the first tax year after the initial job tax credit is created. The annual credit may be used to offset up to 100% of the franchise and excise tax liability, but it may not be carried forward beyond the year in which the credit originated. Effective date: Upon becoming law.

Headquarters Relocation Credit

Public Chapter 602 revises Tennessee’s economic development tax incentives by providing tiered levels of headquarters relocation credits based on the level of Tennessee job creation. The credit is equal to any qualified headquarters facility relocation expenses incurred by the taxpayer during the investment period for establishing a qualified headquarters facility, but is limited to a specified dollar amount (based on the number of jobs created) multiplied by the number of headquarters staff employee positions relocated by the taxpayer. Effective date: Upon becoming law.

Tennessee Rural Opportunity Fund Credit

Public Chapter 602 creates a credit in an amount equal to 10% of a financial institution’s contribution to the Tennessee Rural Opportunity Fund. The credit is allowed each year for a period of 10 years, beginning with the tax year in which the contribution is made. Any unused credit cannot be carried forward beyond the tax year in which the credit originated. The loaning of funds by the taxpayer to the Tennessee Rural Opportunity Fund shall constitute a contribution. However, at the close of the tenth year of the period during which the credit is allowed the taxpayer must forgive the loan or the credit plus interest will be recaptured. Effective date: Upon becoming law.

Excise Tax and S Corporations

Public Chapter 602 closes a loophole that allowed an S corporation that made an election under Section 338(h)(10) of the Internal Revenue Code to treat a sale of its stock as an asset sale, without including the resulting gain or loss in its Tennessee net earnings. The S corporation is
now required to include in net earnings or loss any gain or loss attributable to the Section 338(h)(10) election. Effective date: October 1, 2007, applying to all transaction occurring on or after that date.

**Recognition of Gain on Assets Having a Higher Tennessee Basis**

Public Chapter 602 provides, for Tennessee excise tax purposes, that a company must recognize gain or loss on the sale of an asset based on the asset’s federal tax basis without any adjustment as a result of the taxpayer not having been subject to Tennessee excise tax during any portion of the period during which the taxpayer took depreciation expense on the asset for federal income tax purposes. Effective date: Upon becoming law.

**Sales and Use Tax Legislation Streamlined Sales and Use Tax**

Public Chapter 357 enacted in 2003 and Public Chapter 959 enacted in 2004 made numerous changes to the Retailers’ Sales Tax Act to bring Tennessee into compliance with the national streamlined sales and use tax project. Those changes were scheduled to become effective on July 1, 2007. Public Chapter 602 delays the effective date of those changes. The following provisions will become effective on January 1, 2008: 1) most of the streamlined sales tax uniform definitions; 2) provisions concerning the registration of farmers for sales tax exemption purposes; 3) provisions concerning the optional centralized registration system; and 4) provisions concerning the optional use of certified service providers or certified automated systems for sales tax collection and remittance. In contrast, the following provisions will become effective on July 1, 2009: 1) the requirement that sales delivered or shipped to the customer be sourced to the delivery or shipping destination; 2) modifications to the single article limitation on local option sales taxes; 3) use of a single return covering multiple dealer locations and 4) implementation of certain privilege taxes in lieu of sales tax. Effective dates: January 1, 2008 and July 1, 2009.

**Headquarters Facility Credit**

Public Chapter 602 applies the existing sales tax headquarters credit to projects involving an investment of $10,000,000 in a new, expanded or remodeled building along with the creation of at least 100 new fulltime headquarters staff employee jobs that pay at least 150% of Tennessee’s average occupational wage. Effective date: Upon becoming law.

**Data Centers – Industrial Machinery and Electricity**

Public Chapter 602 expands the industrial machinery exemption to include computer systems, computer networks, software and related peripheral devices when such equipment is used in the operation of a qualified data center. A qualified data center is a newly constructed, expanded or remodeled building that house high-tech computer systems and involve a required capital investment in excess of $250,000,000 during a 3-year period along with the creation of at least 25 net new full-time employee jobs that pay at least 150% of Tennessee’s average
occupational wage. The bill also applies a reduced sales tax rate of 1.5% on purchases of electricity by a qualified data center. Effective date: Upon becoming law.

**Trailers and Semi Trailers**

**Exemption for Vehicles Sold to Military Personnel**

Public Chapter 142 allows the registration of any privately owned trailer or semi trailer that is not required to be registered but which the owner desires to be registered. The act also allows persons registering such trailers and semi trailers to obtain personalized plates. The act further directs that proceeds received from the sale of personalized trailer plates be expended for the development and maintenance of public horseback riding trails. Effective date: July 1, 2007.

**Certificate of Title**

Public Chapter 484 provides that an application for certificate of title submitted by a licensed motor vehicle dealer can, in lieu of a signature, be accompanied by a power of attorney granting the motor vehicle dealer authority to sign the application on behalf of the owner. Effective date: July 1, 2007.

Public Chapter 602 rewrites and expands the sales tax exemption applicable to motor vehicles purchased by members of the military. The exemption now applies to any active member of the United States Army, Navy, Air Force, Marines, Coast Guard or any member of the active guard and reserve program (AGR) who is stationed anywhere in Tennessee or anywhere on the Fort Campbell base. The exemption also applies to a member of the Tennessee national guard or a reservist who has been called to active duty and stationed in a combat zone, with such exemption beginning on the effective date of orders assigning the individual to the combat zone and ending 90 days after the effective date of orders releasing the individual from the combat zone. Effective date: Upon becoming law.

**Motor Vehicle Manufacturer’s Incentive Payments**

Public Chapter 602 removes motor vehicle manufacturer’s incentive payments from the “sales price” of a motor vehicle for purposes of calculating sales tax. Effective date: Applies to sales and use tax assessments made on or after January 1, 2004.

**Energy for Residential Use**

Public Chapter 602 clarifies that propane sold over the counter at the location of the seller in small portable tanks is subject to sales tax regardless of use. However, propane sold over the counter in cylinders with a capacity of 100 pounds or more is exempt from sales tax if documentation is presented to show that the propane is purchased for residential use. Effective date: Upon becoming law.
Electronic Filing

Public Chapter 602 lowers the threshold for mandatory electronic filing of sales tax returns and electronic payment of the tax due. In 2002, it became mandatory to file sales and use tax returns electronically if a taxpayer was required to pay its sales and use tax in readily available funds. Electronic filing of these returns has reduced errors and lowered processing costs. Under this bill, the requirement to file sales and use tax returns electronically and pay in readily available funds applies to any taxpayer whose average monthly tax liability is $2,500 or more. The Commissioner has authority to waive these electronic payment and filing requirements in extenuating circumstances. Effective date: Upon implementation by the Commissioner.

Beginning August 1st, the Department of Revenue will offer payment warehousing for sales and use taxes. This feature will allow taxpayers to file a return upon its completion while delaying the accompanying payment until it is due.

Refund Legislation

Public Chapter 602 modifies the time period in which a taxpayer can file a lawsuit to challenge the denial of a refund claim. Under prior law, suit had to be filed within six months after the denial or deemed denial of the refund claim (the claim is deemed denied if the Department has taken no action on the claim within six months of the date filed). Following this change in the law, suit must be filed within one year after the date the refund claim is filed. The earliest point in which suit can be filed remains the date that the refund is denied or deemed denied. Effective date: Upon becoming law.