



## Document: Tenn. Code Ann. § 67-6-104

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## Tenn. Code Ann. § 67-6-104

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Current through the 2019 Regular Session.

[TN - Tennessee Code Annotated](#) [Title 67 Taxes And Licenses](#) [Chapter 6 Sales and Use Taxes](#) [Part 1 General Provisions](#)**67-6-104.** Apportionment of sales and use tax revenue to commercial development districts in rural, economically distressed counties.

(a) It is the intent of this section to address rural, economically distressed counties experiencing persistent high unemployment and traditionally low levels of family income by apportioning and distributing sales and use tax revenue to commercial development districts in those counties.

(b) For purposes of this section:

(1) "Base tax revenues" means the revenues generated, if any, from the collection of state and local sales and use taxes from all businesses within the certified commercial development district as of the end of the fiscal year of this state immediately prior to the year in which the county, municipality, or industrial development corporation is entitled to receive an allocation of tax revenue pursuant to this section;

(2) "Commercial development district" means one (1) or more parcels of real property located within an eligible county, in which it is reasonably anticipated and projected that state and local sales and use taxes will increase, or be newly generated in the case of a district in which no base tax revenues have been previously generated, as a result of the development of the real property by an amount in excess of the increases in the collection of state and local sales and use tax revenues reasonably projected to occur within that area without regard to the development of the real property. Prior to December 31, 2014, "commercial development district" shall include the development of an area comprised of property acquired from the state by an eligible county or an industrial development corporation established by such eligible county, which property was used by the state as a correctional facility. On and after December 31, 2014, "commercial development district" may include the development of an area comprised of property acquired from the state by an eligible county or an industrial development corporation established in such eligible county, which property was used by the state as a correctional facility. Each commercial development district shall be certified by the commissioner of finance and administration;

(3) "Eligible county" means:

(A) Prior to December 31, 2014, a county that meets one (1) or more of the following criteria as of December 31, 2014:

(i) Has a per capita income of eighty percent (80%) or less of the national average;

(ii) Has an unemployment rate that is, for the most recent twenty-four-month period for which data are available, at least one percent (1%) greater than the national average unemployment rate, or, for the most recent twelve-month period for which data are available, at least two percent (2%) greater than the state average unemployment rate;

(iii) Has experienced, or is about to experience, a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, as determined by the commissioner of finance and administration, the commissioner of economic and community development, and the commissioner of revenue; or

(iv) Has an area comprised of property acquired from the state by an eligible county or an industrial development corporation established in such eligible county, which property was used by the state as a correctional facility; or

(B) On and after December 31, 2014, a distressed rural county that will be identified using a consistent methodology based on a set of broadly available measures of economic well-being that could include county unemployment rate, rate of job growth, personal income per capita, property tax base per capita, percent high school graduates, and percent below poverty. Using this consistent methodology, the commissioner of finance and administration, the commissioner of economic and community development, and the commissioner of revenue shall determine which counties are eligible counties and shall publish a list of the eligible counties meeting the criteria in this subdivision (b)(3)(B) by July 1 of each year;

(4) "Proprietary information" means commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the commissioner under this section, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(5) "Trade secrets" means any materials or processes used directly or indirectly in the business of a person or entity submitting information or documentation related to such materials or processes to the commissioner under this section, and that give the person or entity an advantage or an opportunity to obtain an advantage over competitors who do not know or use them.

(c) In order to receive an allocation of sales and use tax revenues under this section, an eligible county or a municipality located within the eligible county, or an industrial development corporation established by such eligible county or municipality, must submit a completed





**(d)** The application shall include, but not be limited to, the following information:

- (1)** A list of tax parcels composing the proposed commercial development district, including owners and parcel numbers, from which the sales and use tax revenues will be generated;
- (2)** A map, survey or drawing clearly identifying the boundaries of the proposed commercial development district area;
- (3)** Written confirmation of the current zoning of the proposed commercial development district;
- (4)** A description of the financing for the project to be located within the proposed commercial development district;
- (5)** The number of jobs that the applicant estimates will be created in the proposed commercial development district and the wages, salaries and other compensation that will be paid to those persons holding the jobs;
- (6)** The estimated development and construction costs of the project to be located in the proposed commercial development district;
- (7)** A certification from the county that it complied with the criteria required to be eligible;
- (8)** A resolution or other official action from the governing body of the eligible county requesting consideration of the application and approval of the proposed commercial development district and acknowledging that an increment of sales and use taxes from future activities within the commercial development district will be applied as payments on the indebtedness financing the commercial development district;
- (9)** If the commercial development district is located in a municipality within an eligible county, a resolution or other official action by the governing body of the municipality requesting consideration of the application and approval of the proposed commercial development district and acknowledging that an increment of sales and use taxes from future activities within the commercial development district will be applied as payments on the indebtedness financing the commercial development district;
- (10)** An affidavit, on a form provided by the department of finance and administration, signed by the applicant certifying that the proposed commercial development district cannot proceed without the availability of financing under this section along with supporting documentation establishing the need for and the amount of the financing; and
- (11)** Such financial and other information as may be necessary for the commissioner of finance and administration to evaluate the application.

**(e)** No action shall be taken with respect to an application until the commissioner of finance and administration determines that the commissioner has received all information that may be relevant or necessary in determining the qualifications of the applicant and the proposed commercial development district.

**(f)** Each commercial development district shall be certified by the commissioner of finance and administration. Once the commissioner of finance and administration has received all of the information required by subsection (d), the commissioner may certify, in the commissioner's discretion, the proposed commercial development district as a commercial development district. Each commercial development district shall include at least five million dollars (\$5,000,000) in planned capital improvements. Prior to certifying the commercial development district, the commissioner must determine that the commercial development district is not economically feasible without the tax revenue allocation contemplated in this section. In evaluating the information submitted with the application the commissioner may consider normal underwriting criteria such as debt capacity, ability to repay, equity and other capital at risk for the project, and the proposed terms of the contemplated indebtedness.

**(g)**

**(1)** Notwithstanding the allocations provided for in § 67-6-103(a), if real property located in an eligible county is acquired and developed as a commercial development district, and is certified by the commissioner of finance and administration as a commercial development district, then an amount shall be apportioned and distributed to the county, the municipality, or the industrial development corporation equal to the amount of state sales tax revenue derived from five and one-half percent (5.5%) of the tax rate imposed pursuant to § 67-6-202 on all sales in the commercial development district and the amount of local sales tax revenue not dedicated for school purposes pursuant to § 67-6-712(a)(1) derived from all sales in the commercial development district in excess of base tax revenues; provided, that an apportionment and distribution of such amount is authorized under this section for any commercial development district in which no sales and use taxes have been generated for at least five (5) years prior to the apportionment and distribution. Such amount distributed shall be for the exclusive use of the county, municipality or industrial development corporation and shall be used solely for the purpose of paying the indebtedness, principal and interest, and closing costs incurred by the county, municipality or industrial development corporation in financing the commercial development district. For eligible counties as defined in subdivision (b)(3)(A), the period for such distributions shall be twenty (20) years. For eligible counties as defined in subdivision (b)(3)(B), the commissioner of finance and administration shall determine the period in which distributions will be necessary to provide the financing hereunder, and the period for such distributions shall not exceed twenty (20) years. The distributions shall cease upon the expiration of the applicable distribution period or upon satisfaction of the financing of the commercial development district, whichever occurs first. Following the expiration of the distribution period, all amounts that would have otherwise been distributed to the county, the municipality, or the industrial development corporation shall be allocated as provided elsewhere without regard to this section.

**(2)** Notwithstanding any provision of this section to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Section 9, Chapter 529 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Section 4, Chapter 856 of the Public Acts of 2002, shall be distributed to the eligible county, the municipality or the industrial development corporation for the financing contemplated in this section. The revenue shall continue to be allocated as provided in Chapter 529 of the Public Acts of 1992, and Chapter 856 of the Public Acts of 2002, respectively.

**(3)** If, at the close of any fiscal year, the revenue from the tax is not sufficient to meet the total debt service of the eligible county, the municipality, or the industrial development corporation for indebtedness incurred with respect to the commercial development district, the balance, if any, of the debt service not paid by revenue from the tax at the end of the fiscal year shall be accumulated in a separate deficit account. If the revenue from the tax in any fiscal year exceeds the total of the debt service requirements of the commercial development district for that year, the surplus revenue thus accruing shall be retained by the eligible county, the municipality, or the industrial development corporation as a sinking fund for any future debt service requirements of the commercial development district or, alternatively, to reduce the then outstanding balance of the indebtedness.

**(h)** The apportionment and distribution of state sales and use taxes to the county, municipality, or industrial development corporation, as





within ninety (90) days of the end of each fiscal year for which the county, municipality or industrial development corporation is entitled to receive an allocation and payment pursuant to this chapter.

(i) The fact that an eligible county filed an application with the commissioner of finance and administration, whether an application was approved, the number of jobs created by a commercial development district, and the wages, salaries and other compensation that will be paid to the persons holding those jobs shall be available for public inspection pursuant to title 10, chapter 7. Any financial information, including, but not limited to, proprietary information and trade secrets contained in an application, or submitted with any accompanying documents or information filed with the application pursuant to this section, shall be confidential and shall not be open to the public for inspection, notwithstanding the public records provisions of title 10, chapter 7. Such financial information, proprietary information and trade secrets shall not be disclosed to any person, except that the commissioner of finance and administration is authorized to make the following disclosures:

(1) Within the department of finance and administration, the department of revenue, and the department of economic and community development in the course of their official duties; and

(2) To the comptroller of the treasury or the comptroller's designee for the purpose of an audit of the department of finance and administration, the department of revenue, or the department of economic and community development.

(j) In addition to other powers and duties prescribed by law, the commissioner of finance and administration shall monitor the financing of commercial development districts pursuant to this section, but the transfer of sales and use tax revenues to pay indebtedness shall be vested with the eligible county, the municipality within the eligible county, or the industrial development corporation established by an eligible county or the municipality. The commissioner shall report annually to the finance, ways and means committees of the senate and the house of representatives, and the state and local government committee of the senate and the state government committee of the house of representatives, regarding each allocation of tax revenues pursuant to this section.

(k) The commissioner of finance and administration is authorized to require an eligible county with a commercial development district to file a report with the department of finance and administration. A report filed by an eligible county may include, but is not limited to, an analysis detailing the progress of the commercial development district, the number of jobs generated by the commercial development district, the wages, salaries and other compensation paid to those holding the jobs, and such additional information as requested by the commissioner of finance and administration.

(l) The department of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this section. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(m) The tax revenue allocation available pursuant to this section applies to eligible counties or municipalities located in such eligible counties, or industrial development corporations established by such eligible counties or municipalities, that:

(1)

(A) In the case of property located in eligible counties as defined in subdivision (b)(3)(A), have filed an application with the commissioner of finance and administration prior to December 31, 2014; or

(B) In the case of property located in eligible counties as defined in subdivision (b)(3)(B), have filed an application with the commissioner of finance and administration on or after December 31, 2014, and prior to December 31, 2020; and

(2) Have received the approval of a commercial development district from the commissioner of finance and administration on or before June 30, 2021.

## History

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Acts 2014, ch. 985, § 1; 2018, ch. 896, §§ 1, 2.

TENNESSEE CODE ANNOTATED

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