



MULTISTATE INCOME/FRANCHISE TAX

## Tennessee repeals franchise tax's alternative property base and authorizes refunds

### Tax Alert

### Overview

On May 10, 2024, Tennessee Senate Bill 2103 ([S.B. 2103](#)) was enacted into law, eliminating the alternative property base provisions in the franchise tax law. As a result, beginning with tax years ending on or after January 1, 2024, the franchise tax in Tennessee will only be measured on a taxpayer's net worth apportioned to the state. S.B. 2103 also authorizes refunds for the difference between the franchise tax paid using the real and tangible property base and the franchise tax due using the apportioned net worth base for open tax years for taxpayers who properly file a claim for refund on the forms prescribed by the Tennessee Department of Revenue ("Department") between May 15, 2024 and November 30, 2024.

See our previous [Tax Alert](#) for an overview of the relevant provisions in S.B. 2103. This Tax Alert provides taxpayer considerations now that this bill has been enacted.

### Taxpayer considerations

- This legislation eliminates one measure of the franchise tax base but does not eliminate the franchise tax in its entirety. Taxpayers operating in the state will continue to owe franchise tax based on the amount of net worth apportionment to Tennessee for the privilege of doing business in the state.
- Only taxpayers that pay franchise tax on the real and tangible property base are impacted by this legislation. Taxpayers that historically have paid on the net worth base are not entitled to a refund. The refund amount for eligible taxpayers will be the difference between the tax paid under the real and tangible property base and the tax due under the apportioned net worth base.
- Taxpayers that used credits to offset the franchise tax will have eligible credits restored for use on future returns, subject to credit carryforward limitations.
- The elimination of the real and tangible property base is effective beginning with the 2024 tax year with a special refund process

established for prior periods; therefore, taxpayers that have not yet filed their 2023 franchise and excise tax returns must still report franchise tax based on the applicable law, including the property base, for the 2023 tax year and then file a refund claim for the difference between the two tax bases.

- The legislation provides that the tax subject to refund must have been reported on a return filed on or after January 1, 2021, covering a tax period that ended on or after March 31, 2020. This means that returns covering tax year 2020, except for fiscal years ending prior to March 31<sup>st</sup>, are generally eligible for the refund. Returns for tax years 2021 through 2023 are also generally eligible for the refund provided all other qualifications for the refund are met.
- Taxpayers choosing to pursue refunds must file the claim between May 15, 2024 and November 30, 2024 using the forms and process that the Department prescribes, available on the Department's [website](#). See also [Notice #24-05](#) for additional information on the refund procedure.
- The refunds claimed under the provisions of S.B. 2103 must only include this particular franchise tax issue. Taxpayers that need to amend their franchise and excise tax return for other issues must amend separately outside of this process.
- Taxpayers that are impacted by this legislation should reach out to a tax professional to discuss their refund options and the implications of this legislation. The window for filing refund claims is limited to 6 ½ months, meaning taxpayers interested in pursuing refunds will need to act fairly quickly.
- S.B. 2103 includes an election that taxpayers may make to continue paying franchise tax on the real and tangible property base provided that it results in more tax due than the apportioned net worth base. Taxpayers may want to consider this election if they have excess credits that will otherwise expire.
- To be eligible for this franchise tax refund, Taxpayers must agree to a statement included in the refund claim form whereby they knowingly waive any claim or right to file suit alleging that the franchise tax is unconstitutional by failing the internal consistency test. Taxpayers claiming refunds will also have their names and specified range of the refund amount posted to the Department of Revenue's website for a one-month period. The refund ranges are \$750 or less, more than \$750 but less than \$10,000, and more than \$10,000. Taxpayers should take these provisions into consideration before deciding to pursue a refund claim.

## Get in touch

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