



MULTISTATE INCOME/FRANCHISE TAX

Tennessee General Assembly passes bill repealing franchise tax alternative property base Tax Alert

Overview

On April 25, 2024, Senate Bill 2103 ([S.B. 2103](#)) was passed by the Tennessee General Assembly. It is currently awaiting the Governor's signature, which is generally expected to be imminent. Applicable to tax years ending on or after January 1, 2024, S.B. 2103 eliminates the statutory provision requiring that the franchise tax base must not be less than the actual value of the real or tangible property owned or used by a taxpayer in the state, and authorizes refunds for taxpayers who properly file a claim for refund on special prescribed forms for taxes previously paid using the real and tangible property base measure of the franchise tax. This legislation was passed following the adoption of a House and Senate Conference Committee report that resolved differences between the two chambers on S.B. 2103 and its companion bill, H.B. 1893. **As highlighted in more detail below, claims for refund must be done under special process, which has not yet been released, and may be filed beginning May 15, 2024 at the earliest.**

This Tax Alert summarizes the relevant provisions in S.B. 2103.

Changes to Tennessee measure of franchise tax following adoption of Conference Committee report

- Taxpayers subject to the franchise tax in Tennessee currently pay tax on the greater of either the net worth apportioned to the state (the net worth tax base) or the real or tangible property owned or used in the state (the minimum tax base), but in no case less than a minimum tax of \$100. S.B. 2103 amends Tenn. Code Ann. § 67-4-2105(a) and other relevant code sections by deleting the language "or real or tangible personal property owned or used, as the case may be," wherever it appears, and eliminates Tenn. Code Ann. § 67-4-2108 (the minimum tax base) entirely.
- S.B. 2103 authorizes the Commissioner of the Tennessee Department of Revenue (the "Commissioner") to issue refunds to affected taxpayers equal to the amount of tax actually paid minus the amount

of tax otherwise due under the law without regard to the minimum tax base, subject to the following provisions:

- 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, and the refund claim must be filed between May 15, 2024 and November 30, 2024;
- The claim for refund must be filed on a form prescribed by the Commissioner and must not include a claim for refund on any other basis. The prescribed form must include a statement that upon acceptance of an issued refund, the taxpayer knowingly waives any claim by the taxpayer or right to file suit alleging that the franchise tax is unconstitutional by failing the internal consistency test;
- Credits applied on the return must be reinstated but not paid as a refund;
- The Commissioner may audit the refund claim, appropriately adjusting or denying the claim, or audit the amount of tax otherwise due within the applicable statute of limitations;
- A refund due must first be used to offset any outstanding tax liabilities;
- A denial of a refund claimed is subject to the remedies provided in Tenn. Code Ann. § 67-1-1802;
- The interest rate established by 26 U.S.C. § 6621(a)(1) for a large corporate overpayment in the amount of the federal short-term rate plus five-tenths (0.5) of a percentage point must be added to the amount refunded beginning 90 days from the date the Commissioner receives the refund claim and proper proof to verify the refund or credit is due and payable;
- For the period from May 31, 2025 through June 30, 2025, the Department of Revenue (the “Department”) must publish on its website the name of each taxpayer issued a refund and the applicable range corresponding to the total amount refunded to the taxpayer. The applicable refund ranges are \$750 or less, more than \$750 but less than \$10,000, and more than \$10,000.
- If a taxpayer has filed a refund claim but has not been issued a refund by May 31, 2025, the Department must publish on its website the name of the taxpayer with the range omitted and designated as “pending”; and,
- Attorney fees must not be added to the amount of refund due.
- S.B. 2103 requires that all refunds must be paid from an appropriately designated fund established by the Commissioner of the Department of Finance and Administration.

Other provisions

- S.B. 2103 requires the Office of the Attorney General to review and approve the Department’s process for reviewing refund claims before the Department is authorized to review and approve such claims.
- S.B. 2103 additionally allows taxpayers to annually elect to use the minimum tax base, provided that the election must result in a higher tax levied for the tax period under Tenn. Code. Ann. § 67-4-2106, and the taxpayer waives any claim that the minimum tax base is unconstitutional by failing the internal consistency test.
- S.B. 2103 further requires a suit that contains a claim or allegation that the franchise tax is unconstitutional by failing the internal consistency test to be filed on or before November 30, 2024.
- S.B. 2103 provides that a suit challenging the denial or deemed denial of a claim for refund must be filed in the chancery court of Sumner County. The complaint must be signed by the taxpayer under the penalties of perjury, affirming that the taxpayer or affiant believes that

the Department's denial of the refund being challenged is unjust, illegal, or incorrect and that the suit is brought in good faith.

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