

# This Week in State Tax (TWIST)

April 29, 2024



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## Tennessee: Franchise Tax Refund Agreement Reached

On Thursday April 25, 2024, the Tennessee House and Senate adopted the Conference Committee Report on House Bill No. 1893 / Senate Bill No. 2103, which revises the state's franchise tax structure and, more importantly, authorizes refunds for taxpayers that paid franchise tax on the value of their real and tangible personal property owned or used in Tennessee. Governor Bill Lee is expected to sign the legislation. Additional details on the changes and the process for filing refunds are below.

**Background:** Historically, the Tennessee franchise tax was imposed on the greater of apportioned net worth, or the actual value of real and tangible personal property owned or used in Tennessee. Due to pending lawsuits in Tennessee over the constitutionality of the property measure, it was recommended that the property measure be repealed, and refunds be issued to taxpayers. The Governor's proposed budget earmarked approximately \$1.5 billion for refunds. As the session progressed, the House and Senate disagreed on key details related to payment of the refunds. A conference committee was convened to work out the differences with just days left before the Legislature was to adjourn.

**Conference Committee Report:** Effective for tax years ending on or after January 1, 2024, Tenn. Code Ann. section 67-4-2108, which sets forth the alternative franchise tax measure based on real and tangible personal property, is repealed. A new section of law sets forth the process for granting refunds to taxpayers that previously paid on the property measure. Specifically, the Commissioner is required to issue refunds in the amount of franchise tax actually paid minus the tax that would have otherwise been due under the net worth base. "Tax actually paid" includes any credits applied on the return, which will be reinstated but not refunded.

Franchise tax refunds will be paid for taxes reported to the Department on returns filed on or after January 1, 2021 covering tax periods that ended on or after March 31, 2020. In general, refunds will be available for a three-year period. Importantly, claims for refund under the new legislation must be filed between May 15, 2024 and November 30, 2024. Upon acceptance of a refund, taxpayers must agree to waive the right to file a lawsuit alleging that the franchise tax is unconstitutional because it fails the internal consistency test. Further, any lawsuits filed alleging that the franchise tax fails the internal consistency test must be filed on or before November 30, 2024.

During the negotiations, the House was adamant that the names of taxpayers that are ultimately issued refunds be publicly disclosed. As a result, the final legislation requires that, during the period from May 31, 2025 and June 30, 2025, the Department must publish the names of each taxpayer issued a refund and the dollar range of the refund on its website. The applicable ranges are: \$750 or less; more than \$750 but less than or equal to \$10,000; and more than \$10,000. Attorneys' fees will not be added to the refund amount. All refunds are required to be paid through a fund established by the Commissioner of Finance and Administration. The section of the Act governing refunds takes effect upon enactment.

**Contacts and Next Steps:** The Department of Revenue will be issuing further guidance on the procedures for filing refund claims and the timing of when refunds will be processed. Further, the conference committee report requires the Office of the Attorney General to review and approve the Department's process for reviewing refund claims before the Department will be able to review and approve such claims. Because the repeal of the alternative franchise tax measure based on real and tangible personal property was repealed retroactively to January 1, 2024, taxpayers should take that into account when determining their estimated tax payments for 2024. Please contact **John Harper** or **Taylor Sorrells** with questions.

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