



TaxNewsFlash

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Tennessee: Proposed legislation authorizing franchise tax refunds

Corporations, limited partnerships, limited liability companies, and business trusts registered in Tennessee or doing business in Tennessee are subject to the state's franchise and excise taxes. The franchise tax is imposed at a rate of 0.25% on the greater of (1) apportioned net worth, or an alternative measure based on the (2) book value of real and tangible personal property owned or used in Tennessee. The excise tax is imposed at a rate of 6.5% on net earnings or income for the tax year.

Potential refunds

The constitutionality of Tennessee's franchise tax alternative measure based on real and tangible personal property is being challenged. Opponents of the alternative measure argue that the interaction of the alternative measure with the apportioned net worth base violates the dormant U.S. Commerce Clause's internal consistency test. In other words, if other states were to pass a similar tax, then multiple taxation would result. In response to this challenge, and on the recommendation of the Attorney General's Office and Department of Revenue, Tennessee's Governor Bill Lee announced plans to propose legislation that would repeal the state's franchise tax alternative measure to provide tax relief to businesses that are invested in the state and potentially provide refunds for any excess of franchise tax paid under the alternative measure over the franchise tax based on apportioned net worth for open years.

On January 22, 2024, [Tennessee House Bill 1893](#) [PDF 24 KB] was introduced, which deletes the franchise tax alternative measure based on real and tangible personal property and authorizes the Commissioner to refund taxpayers, who file a claim for refund, the amount of tax actually paid minus tax otherwise due under the apportioned net worth base. "Tax actually paid" includes any credits applied on the return, which would be reinstated but not refunded. The proposed legislation also authorizes refund claims filed prior to January 1, 2024 if the claim was due to unconstitutionality under the internal consistency test. Interest will be paid as specified beginning 90 days from the date the Commissioner receives proper proof to verify the refund or credit is due, but no attorney's fees will be paid.

Next steps

While the legislation is still proposed at this juncture, taxpayers may wish to consider the effect of the proposed legislation on any estimated tax or extension payments. If the proposed legislation is passed with the refund provisions intact, then a refund claim must be made on a special form provided by the Commissioner within three years from December 31 of the year in which the payment was made or within any period covered under extension. It is recommended that taxpayers let the legislative process unfold before filing refund claims. In other words, if the legislation does not advance, there may still be a position to file a refund claim based on the pending litigation. Specifically, taxpayers will have until December 31, 2024 to file protective claims for Tennessee franchise and excise tax returns filed in 2021.

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