



Tennessee Franchise Refund Opportunity for Taxpayers Owning Real Estate

Proposed legislation in Tennessee, if enacted, will create a refund opportunity for taxpayers who paid franchise taxes based on the book value of their real and tangible personal property owned or used in the state.

Tennessee [House Bill 1893](#), introduced in January 2024, would eliminate the franchise tax alternative measure that is based on taxpayers' real and tangible personal property and would require payment of refunds for all open years for taxpayers who paid franchise taxes on the tangible property base.¹ Tennessee's Senate passed its almost identical counterpart, [Senate Bill 2103](#), on March 21, 2024, by a vote of 25 to 6.¹

Under current law, taxpayers doing business or having substantial nexus in Tennessee are subject to a franchise tax for the privilege of doing business in the state, in addition to all other taxes levied under other statutes. The franchise tax applies to corporations, limited liability companies, limited liability partnerships, limited partnerships, business trusts and REITs, among others. The franchise tax is levied at 0.25% of the greater of the taxpayer's apportioned net worth or the book value of all real and tangible property owned or used in Tennessee.²

For taxpayers in the real estate industry with significant real estate holdings located in Tennessee and using the alternative book value measure, the franchise tax is often substantial.

The Bill's direct reference to the internal consistency test may have been the impetus for the legislation. Tennessee's franchise tax has come under constitutional scrutiny, and state officials are concerned that the tax, which is based on assets rather than net worth, violates the Commerce Clause of the U.S. Constitution and poses "significant legal risk."³

The Bill provides that a refund must be claimed within three years from December 31 of the year in which the payment was made or within any period that is covered by an extension permitted by law. The amount of the refund would be equal to the amount of tax actually paid using the alternative measure, minus the amount of tax otherwise due using the net worth base, which is generally a

taxpayer's total assets less its total liabilities computed in accordance with Generally Accepted Accounting Principles ("GAAP").

Taxpayers who are subject to the Tennessee franchise tax should monitor the legislation and consider filing refund claims in advance of the passage of the legislation.

For any questions, please contact Sonja Castaldi of FTI Consulting's State and Local Tax ("SALT") group at sonja.castaldi@fticonsulting.com or by phone at +1 312.252.4041.

Endnotes

¹ Tenn. S.B.No. 2103, Tenn. 113th Gen. Assemb. (2023).

² [TN Code § 67-4-2106 \(2021\)](#).

³ Sher, Andy. "Revenue commissioner cites 'significant legal risk' over Tennessee franchise tax." *The Tennessee Journal*, January 11, 2024, <https://pro.stateaffairs.com/tn/economy-business/franchise-tax-legal-risk>.

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