



March 8, 2024

SUMMARY OF BILL AS AMENDED (015048): Establishes a franchise tax limitation credit in the amount of the difference between the Total National Franchise Tax (TNFT) and the Allowable National Franchise Tax (ANFT) to ensure that a taxpayer does not pay franchise taxes that subject the taxpayer to taxation on more than 100 percent of either the taxpayer's net worth or the taxpayer's real and tangible personal property.

Establishes that if a taxpayer receives a final court decree determining the franchise tax established through the *Franchise Tax Law of 1999*, for a tax year ending prior to January 1, 2024, violates the Commerce Clause of the United States Constitution by subjecting the taxpayer to multiple taxation, the sole remedy for the taxpayer is the issuance of a tax limitation credit for that tax year.

FISCAL IMPACT OF BILL AS AMENDED:

NOT SIGNIFICANT

The Governor's FY24-25 proposed budget includes a one-time appropriation of \$1,200,000,000 in FY23-24 and recognizes a decrease in recurring revenue of \$410,000,000, beginning in FY24-25.

Assumptions for the bill as amended:

- Under the current *Franchise Tax Law*, businesses are taxed at a rate of 0.25 percent times a base of net worth or real tangible property in Tennessee, whichever is greater, with a minimum tax of \$100.
- The ANFT equals the greater of an amount equal to \$0.25 per \$100 that would be apportioned to any state by application of the apportionment method or an amount equal to \$0.25 per \$100 of the actual value of the taxpayer's real or tangible property owned or used in any state within the U.S.
- The TNFT equals the sum of the Tennessee franchise tax plus the amount of a franchise tax measured by the taxpayer's net worth or by the taxpayer's real or tangible personal property in another state. If the tax imposed by another state is levied at a rate greater than \$0.25 per \$100, then only a fraction of the other state's franchise tax reflecting the amount levied by a rate of \$0.25 per \$100 is included in the TNFT.
- The tax limitation credit equals the amount by which the TNFT exceeds the ANFT. If the TNFT is less than or equal to ANFT, the tax limitation credit is zero.

- Based on information provided by DOR, due to the limited number of other states with a franchise tax and specific characteristics of such taxes, establishing a prospective tax limitation credit in the amount of the difference between the TNFT and ANFT will not significantly impact state franchise tax collections.
- The proposed legislation establishes that if a taxpayer receives a final court decree determining the Tennessee franchise tax violates the Commerce Clause of the United States Constitution by subjecting the taxpayer to multiple taxation, the sole remedy for the taxpayer is the issuance of a tax limitation credit for that tax year. A lookback period limitation is not established by this legislation.
- Pursuant to Tenn. Code Ann. § 67-1-1802, the Commissioner of the Department of Revenue is empowered and directed to refund to taxpayers all taxes collected or administered by the Commissioner that are paid in error or paid against any statute, rule, regulation or clause of the constitution of this state or of the United States, if a refund claim is filed within three years from December 31 of the year in which the payment was made. It is unknown whether the current statutory limitation would apply in the case a court determines the state's franchise tax violated the Commerce Clause of the United States Constitution.
- It is further unknown, whether any such court's ruling would limit the remedies to the tax limitation credit as provided under this legislation.
- The court is assumed to rule independently and the impact of this legislation, if any, would be to limit the potential liability to the amount of tax limitation credit, if the court upholds the remedy established in this legislation as appropriate. The court may deem alternative remedies as appropriate; however, such power and discretion are present under current law and are not impacted by this legislation.
- Ultimately, it is assumed that a court's decision will be made independent of this legislation and will not deviate from any such decision that would be made under current law. Therefore, the fiscal impact of this legislation is estimated to be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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