

# *State of Tennessee*

## **PUBLIC CHAPTER NO. 950**

**SENATE BILL NO. 2103**

**By Johnson, Yager, Jackson, Stevens, Taylor**

Substituted for: House Bill No. 1893

By Lamberth, Cochran, Burkhardt, Raper

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 1 and Title 67, Chapter 4, relative to franchise taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2105(a), is amended by deleting the language "or real or tangible personal property owned or used, as the case may be," wherever it appears.

SECTION 2. Tennessee Code Annotated, Section 67-4-2108, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, Part 21, is amended by adding the following as a new section:

### **67-4-2122.**

(a) If a taxpayer paid the tax levied by this part as a result of the minimum tax base in § 67-4-2108, as that section existed prior to the effective date of this act, then the commissioner shall issue a refund equal to the amount of tax actually paid minus the amount of tax otherwise due pursuant to this part without regard to § 67-4-2108, as that section existed prior to such date; provided, however, that the refund is subject to the following provisions:

(1) The tax subject to refund must have been reported to the department 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 pursuant to this section between May 15, 2024, and November 30, 2024;

(2) The claim for refund, including information necessary to determine the proper amount due, must be filed on a form prescribed by the commissioner exclusively for the purpose of seeking a refund pursuant to this section and must not include a claim for refund on any other basis. The form must include a statement that upon acceptance of a refund issued pursuant to this section, the taxpayer knowingly waives any claim by the taxpayer or the right to file suit alleging that the franchise tax in this part, or any provision of this part, including § 67-4-2108 as that section existed prior to the effective date of this act, is unconstitutional by failing the internal consistency test. A claim on any other basis must be filed separately under § 67-1-1802. The commissioner is also authorized to refund, in accordance with this section, a claim timely filed under § 67-1-1802 and filed prior to January 1, 2024, that alleges that the franchise tax in this part, or any provision of this part, is unconstitutional by failing the internal consistency test. The commissioner is not authorized to make a refund under this section unless a claim is filed;

(3) As used in this section, "tax actually paid" includes any credits applied on the return. Credits must be reinstated but not paid as a refund;

(4) This section does not prevent the commissioner from auditing the refund claim, appropriately adjusting or denying the claim, or auditing the amount of tax otherwise due under this part within the applicable statute of limitations;

(5) A refund due under this section must first be used to offset any outstanding tax liabilities and is subject to the report of debts requirements in § 67-1-1802(a)(1)(B);

(6) A denial of a refund claimed under this section is subject to the remedies provided in §§ 67-1-1802(b) and 67-1-1802(c);

(7) Interest at the 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 under this section beginning ninety (90) days from the date the commissioner receives the refund claim and proper proof to verify that the refund or credit is due and payable;

(8) Notwithstanding § 67-1-1702 or another law to the contrary, for purposes of administering the franchise tax refund, the department shall publish on the department's website, only for the period from May 31, 2025, through June 30, 2025:

(A) The name of each taxpayer issued a refund and the applicable range corresponding to the total amount refunded to the taxpayer. The applicable ranges are: seven hundred fifty dollars (\$750) or less; more than seven hundred fifty dollars (\$750) but less than or equal to ten thousand dollars (\$10,000); and more than ten thousand dollars (\$10,000); or

(B) If a taxpayer has filed a refund claim but has not been issued a refund by May 31, 2025, the name of the taxpayer as required by this subdivision (a)(8) with the range omitted and designated as "pending"; and

(9) Attorneys' fees must not be added to the amount of refund due.

(b) All refunds paid pursuant to this section must be paid from an appropriately designated fund established by the commissioner of finance and administration. Except as otherwise provided in this subsection (b), any unexpended balance at the end of a fiscal year shall not revert to the general fund but must be carried forward to be expended in the subsequent fiscal year. On or before June 30, 2025, the commissioner of finance and administration and the commissioner of revenue must jointly certify to the chairs of the finance, ways and means committees of the senate and the house of representatives the amount claimed pursuant to subsection (a). On July 1, 2025, any funds in excess of the certified amount shall revert to the general fund. The fund specified in this subsection (b) expires upon final payment of all refunds due pursuant to this section, and any remaining balance shall revert to the general fund. It is the legislative intent that the beginning balance in the fund must be from funds appropriated by the general assembly in the general appropriations act for the purposes of this section.

(c) The office of the attorney general and reporter must review and approve the department's process for reviewing refund claims under this section before the department is authorized to review and approve such claims.

(d) On or before December 31, 2024, the department of revenue shall report in writing to the chairs of the finance, ways and means committees of the senate and the house of representatives, and to the directors of the office of legislative budget analysis, the total number of refund claims filed and the total amount paid pursuant to this section.

SECTION 4. Tennessee Code Annotated, Section 67-1-801(b)(1), is amended by designating the existing language as subdivision (b)(1)(A) and adding the following language as new subdivision (b)(1)(B):

(B) Notwithstanding subdivision (b)(1)(A), interest must not be added to any refund paid pursuant to § 67-4-2122 until ninety (90) days from the date the commissioner receives the refund claim and proper proof to verify that the refund or credit is due and payable.

SECTION 5. Tennessee Code Annotated, Section 67-1-801(b)(3), is amended by designating the existing language as subdivision (b)(3)(A) and adding the following language as new subdivision (b)(3)(B):

(B) Notwithstanding subdivision (b)(3)(A), the rate of interest is the 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 for any refund issued based on the allegation that the franchise tax in chapter 4, part 21, of this title or any provision of chapter 4, part 21, is unconstitutional by failing the internal consistency test.

SECTION 6. Tennessee Code Annotated, Section 67-1-1803(d), is amended by adding the following language to the end of the first sentence immediately preceding the period:

; provided, that, attorneys' fees and expenses must not be awarded or paid for any amount awarded or denied based on an allegation that the franchise tax in chapter 4, part 21, of this title, or any provision of chapter 4, part 21, of this title, is unconstitutional by failing the internal consistency test

SECTION 7. Tennessee Code Annotated, Section 67-4-2111(b)(1), is amended by deleting the language "as defined in § 67-4-2108(a)(6)".

SECTION 8. Tennessee Code Annotated, Section 67-4-2111(b), is amended by deleting the language "as defined in § 67-4-2108(a)(6)(B)" in subdivisions (b)(2)(A)(i) and (b)(3)(A).

SECTION 9. Tennessee Code Annotated, Section 67-4-2111, is amended by adding the following new subsection:

(n) For purposes of this section:

(1) "Exempt inventory" means that portion of a taxpayer's finished goods inventory in excess of fifty million dollars (\$50,000,000) for fiscal years beginning on or after July 15, 1996; forty million dollars (\$40,000,000) for fiscal years beginning on or after July 15, 1997; and thirty million dollars (\$30,000,000) for fiscal years beginning on or after July 15, 1998; and

(2) "Finished goods inventory" means tangible personal property that is:

(A) Owned by the taxpayer;

(B) Stored in a facility used primarily for manufacturing, warehousing, or distribution of such inventory;

(C) Held for wholesale or retail sale by the taxpayer, but not sold over-the-counter to consumers at the location where stored;

(D) Shown as inventory on the taxpayer's books and records kept in accordance with generally accepted accounting principles; and

(E) In need of no further fabrication or processing by or for the taxpayer, except, in the case of configuring, testing, or packaging of computer products.

SECTION 10. Tennessee Code Annotated, Section 67-4-2115(a), is amended by deleting the language "On any return where the franchise tax is prorated, annualization of rent paid shall be required when determining the minimum franchise tax measure under § 67-4-2108."

SECTION 11. Tennessee Code Annotated, Section 67-4-2115(a), is amended by deleting the language "and annualization of rent paid".

SECTION 12. Tennessee Code Annotated, Section 67-4-2115(b), is amended by deleting the language ", or the minimum franchise tax base under § 67-4-2108,".

SECTION 13. Tennessee Code Annotated, Section 67-4-2115(b), is amended by deleting the language "or the average monthly value of the real and tangible property owned in Tennessee".

SECTION 14. Tennessee Code Annotated, Section 67-4-2115(b), is amended by deleting the language ", or the book value of the real and tangible property owned in Tennessee as of the final day of each month of the tax period,".

SECTION 15. Tennessee Code Annotated, Section 67-4-2118(d)(4), is amended by deleting the subdivision and substituting instead the following:

(4) The unitary members of the financial institution affiliated group shall report and pay the franchise tax computed under this section on a combined return. As such, the unitary group shall pay franchise tax on its combined apportioned equity. The nonunitary members of the financial institution affiliated group shall report and pay the franchise tax computed

under this section on a separate entity basis. As such, the nonunitary members shall pay franchise tax on the apportioned net worth, as calculated on a consolidated basis.

SECTION 16. Tennessee Code Annotated, Section 67-4-2121(a), is amended by deleting the language "or real and tangible personal property owned or used in Tennessee".

SECTION 17. Tennessee Code Annotated, Title 67, Chapter 4, Part 21, is amended by adding the following as a new section:

**67-4-2123.**

If the application of this part to a tax period results in a lower tax base than the minimum tax base under § 67-4-2108, as that section existed prior to the effective date of this act, and as it applied to tax periods ending before December 31, 2023, then a taxpayer may annually elect to use the minimum tax base in § 67-4-2108 as it applied to tax periods ending before December 31, 2023; provided, however, the election must result in a higher tax levied for the tax period under § 67-4-2106, and the taxpayer waives any claim that the minimum tax base under § 67-4-2108 is unconstitutional by failing the internal consistency test.

SECTION 18. Tennessee Code Annotated, Section 67-1-1803, is amended by adding the following as a new subsection:

(h) Notwithstanding this part or another law to the contrary, a suit that contains a claim or allegation that the franchise tax in chapter 4, part 21, of this title, or any provision of that part, including § 67-4-2108 as that section existed prior to the effective date of this act, is unconstitutional by failing the internal consistency test must be filed on or before November 30, 2024.

SECTION 19. Tennessee Code Annotated, Section 67-1-1802(c), is amended by adding the following as a new subdivision (4):

(4) Notwithstanding this subsection (c), a suit challenging the denial or deemed denial of a claim for refund under § 67-4-2122 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.


SECTION 20. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 21. Sections 1, 2, and 7-16 of this act take effect upon becoming a law, the public welfare requiring it, and apply to tax years ending on or after January 1, 2024. All other sections of this act take effect upon becoming a law, the public welfare requiring it.


SENATE BILL NO. 2103

PASSED: April 25, 2024

  
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RANDY McNALLY  
SPEAKER OF THE SENATE

  
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CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 10<sup>th</sup> day of May 2024

  
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BILL LEE, GOVERNOR