



This Week in State Tax (TWIST)

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TENNESSEE



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Tennessee: Significant Tax Changes Enacted

The Tennessee Works Tax Act (House Bill 323), which makes significant changes to Tennessee tax laws, was signed into law by Governor Bill Lee on May 11, 2023. The Department of Revenue has already issued several notices addressing various aspects of the revised laws. While the bill does not reduce excise or franchise tax rates, a new subtraction equal to the lesser of net earnings or \$50,000 applies in computing net earnings under the excise tax law. This amount cannot create a net loss. Tennessee's franchise tax is based on the greater of the taxpayer's net worth or the book value of real or tangible personal property owned or used in Tennessee (the minimum measure). For franchise tax purposes, for tax years ending on or after December 31, 2024, only the actual value of the taxpayer's aggregate real or tangible property in excess of \$500,000 is used to compute the minimum measure. The \$500,000 exclusion does not apply to the net worth franchise tax base. On the excise (corporate income) tax side, for assets purchased on or after January 1, 2023, Tennessee adopts IRC section 168 as it exists and applies under the Tax Cuts and Jobs Act. As such, for assets acquired during the 2023 tax year, bonus depreciation will be 80 percent and will phase out by 20 percent each year until fully phased out for the 2027 tax year. A provision requiring taxpayers to add back federal bonus depreciation is revised to make clear it applies only to assets purchased before January 1, 2023. For purposes of both the franchise and excise tax, single sales factor apportionment is phased in over three years. Currently, taxpayers are required to use a three-factor formula with the receipts factor weighed three times. Under the bill, for tax years ending on or after December 31, 2023, but before December 31, 2024, the receipts factor is weighted five times. The weighting for the receipts factor increases to eleven for tax years ending on or after December 31, 2024, but before December 31, 2025. For tax years ending on or after December 31, 2025, the state is fully transitioned to a single receipts factor formula. If applying the revised law results in a lower apportionment ratio than the current method under which the receipts factor is weighted three times, a taxpayer with net earnings (not a net loss) is allowed to annually elect to apply the old method. A taxpayer might utilize this option to fully use tax credits. In addition, the carryforward period for franchise and excise tax credits is increased to 25 years, an increase from the previous period of 15 years.

On the sales and use tax side, the bill imposes use tax (at the same rate as sales of tangible personal property at retail) on repairing tangible personal property or computer software, the laundering or dry cleaning of tangible personal property, installing tangible personal property that remains tangible personal property after installation, and installing computer software, when such repair, cleaning, or installation occurs at a place of business outside this state and the serviced tangible personal property or computer software is delivered by the seller to the purchaser or the purchaser's designee within the physical limits of Tennessee. Exemptions for certain magazines and books and cooperative direct mail advertising are eliminated and a sales tax

holiday for food and food ingredients will be held from August 1, 2023 through October 31, 2023. During this period, food and food ingredients may be purchased tax free. However, food and food ingredients purchased from a micro market or vending machine remain subject to sales tax. Notice #23-09 provides guidance for how dealers should report exempt sales during the holiday period. Finally, the bill adds a new section to the state's sales tax code to address sourcing of various types of sales.

Finally, House Bill 323 makes certain changes to the Business Tax law, as discussed in Notice #23-08. One of the changes is to increase the business tax filing threshold from \$10,000 to \$100,000 per jurisdiction. Therefore, taxpayers with less than \$100,000 in annual gross receipts are not required to file an annual business tax return. Businesses with annual gross receipts of more than \$3,000 but less than \$100,000 within a jurisdiction are required to obtain a minimal activity license from the local county and/or incorporated municipality. A separate minimal activity license is required for each location within the jurisdiction. Businesses with annual gross receipts of \$100,000 or more within a jurisdiction are required to obtain a standard business license from the county and/or incorporated municipality for each location within the jurisdiction. When the taxpayer files the return and pays the business tax due, the county clerk and/or appropriate city official will automatically renew the license at no additional cost. These Business Tax changes apply to tax years ending on or after December 31, 2023.

Under current law, the Business Tax does not apply to a person engaged in the manufacture of goods, wares, merchandise or other articles of value, from a location that is subject to Tennessee ad valorem taxation. Effective upon enactment, this exemption is expanded to include a person primarily engaged in the fabrication or processing of tangible personal property for resale and consumption off the premises with respect to the sales of such property made from the manufacturing location or from a storage or warehouse facility that is situated within a ten-mile radius of the manufacturing location. Please contact [Taylor Sorrells](#) with questions on the franchise and excise tax changes and [Justin Stringfield](#) with sales and use or Business Tax questions.



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