



This Week in State Tax (TWIST)

May 1, 2023



TENNESSEE



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Tennessee: Significant Tax Changes Pending Enactment

A significant tax bill (Senate Bill 275 and House Bill 323) was recently presented to Governor Bill Lee for signature; the governor has indicated his intent to sign the bill. If enacted, the bill would make several changes to Tennessee's tax laws. On the excise (corporate income) tax side, for assets purchased on or after January 1, 2023, Tennessee would adopt IRC section 168 as it exists and applies under the Tax Cuts and Jobs Act. A provision requiring taxpayers to add back federal bonus depreciation would be revised to make clear it applies only to assets purchased before January 1, 2023. A new subtraction equal to the lesser of net earnings or \$50,000 would apply in computing net earnings under the excise tax law. However, this amount could not create a net loss. For franchise tax purposes, for tax years ending on or after December 31, 2024, a new exemption applies in computing the franchise tax base. Specifically, the measure of the tax would apply only to the actual value of the taxpayer's aggregate real or tangible property in excess of \$500,000. On the franchise and excise tax side, the bill phases in single sales factor apportionment. Currently, for both excise and franchise tax purposes, 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 would be weighted five times. That weighting for the receipts factor would increase 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, net earnings would be apportioned using the receipts factor only. If applying the revised law resulted 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) would be allowed to annually elect to apply the old method.

On the sales and use tax side, the bill would impose use tax (at the same rate as sales of tangible personal property at retail) on the repairing of tangible personal property or computer software, the laundering or dry cleaning of tangible personal property, the installing of tangible personal property that remains tangible personal property after installation, and the installing of 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 would be eliminated. A sales tax holiday for food and food ingredients would be held from August 1, 2023 through October 31, 2023. The bill also makes certain changes to the state's sourcing rules and business tax laws. Please stay tuned to TWIST for future legislative updates.



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