

# PUBLICATION

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## Potential Tax Refunds Resulting from Constitutional Issue with Franchise Tax

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Commissioner of the Tennessee Department of Revenue (Department), David Gerregano, recently testified before the Revenue Subcommittee of the Senate Finance, Ways and Means Committee, regarding the Department's proposed amended legislative fix to address the potential constitutional issue with the Tennessee franchise tax. The original legislation, House Bill 1893/Senate Bill 2103 as introduced, was reviewed in our January 24, 2024, publication. The Commissioner noted in that Subcommittee meeting that an amendment to the Bill will at some point be forthcoming.

Subject to the enactment of the Bill as yet to be amended, the following is our understanding of the proposed refund process based on comments made by the Commissioner to the Subcommittee on March 5, 2024, as well as points addressed by the Commissioner in previous interviews:

- **Refund Possibility** – Taxpayers that have filed a Franchise & Excise Tax Return for one or more of the 2020, 2021, 2022, and 2023 years where the franchise tax was computed based upon Schedule G (the alternative minimum measure using the taxpayer's real and tangible property values) may be entitled to a refund as to those years to the extent that the franchise tax paid based on Schedule G exceeds the franchise tax that would have otherwise been paid if the taxpayer had utilized Schedule F (which computes the tax using the taxpayer's net worth).
- **Special Refund Claim Form** – A refund claim must be filed on a Special Refund Claim form to be prescribed by the Department exclusively for the purposes of seeking a franchise tax refund pursuant to the Bill as yet amended and must not include a claim for refund on any other basis.
- **Amended Returns Required** – Before a taxpayer can file the Special Refund Claim form with the Department, the Commissioner has previously noted that the taxpayer will be required to amend the F&E Tax Return for each of those four years in which the taxpayer will be seeking a franchise tax refund. The amended Return will compute the franchise tax using only Schedule F.
- **Chronological Filing of Amended Returns** – According to the Commissioner, the Department wants the amended F&E Returns to be filed in chronological order with the amended Return for the earliest year filed first.
- **Amend Returns Only for Impacted Years** – In the event that a taxpayer paid the franchise tax based upon Schedule G for only a few of those four years, the Taxpayer would amend F&E Tax Returns just for those particular years using Schedule F.
- **Waiting Period After Amending a Return** – After the taxpayer has filed an amended Return, the Commissioner has noted that the taxpayer must wait at least 24 hours before filing the corresponding Special Refund Claim so as to allow the Department's computer system to process the amended Return.

- **Attachments Required for Special Refund Claim** –The Special Refund Claim form must be filed with the Department together with the Report of Debts as well as with a balance sheet on which the net worth for that year is computed. The Commissioner has acknowledged that even though the Department already has Schedule F that was filed with the Return, a separate balance sheet will be required with the Special Refund Claim form so as to reconfirm the computation of the Schedule F net worth on which the franchise tax is being computed in support of the requested refund.
- **2023 Tax Year** – As to the 2023 year, the Commissioner has stated that taxpayers must continue to file their F&E Tax Returns for that year using the higher tax base as between Schedule F and G, and pay the resulting tax to the Department for the year. Afterward, and assuming Schedule G is the higher tax base on the filed 2023 Return, the taxpayer must file an amended Return using only Schedule F, and then file with the Department the Special Refund Claim form as referenced above.
- **Notices From Department** – The Department has a list of all taxpayers that have filed F&E Tax Returns for those years on which the franchise tax was based upon Schedule G, and the Department intends to send an electronic notice and perhaps also a paper notice to those taxpayers alerting them to the fact that amended Returns must be first filed and then the Special Refund Claim must be thereafter filed as referenced above. The Commissioner has also stated that a notice may also be included on the taxpayer's account online within the Department setting forth this information.
- **Limited Period to File Special Refund Claim** – The general refund procedures under Tenn. Code Ann. Section 67-1-1802 would not apply to this franchise tax refund initiative, including that the normal time periods to file refund claims would not apply. As proposed for this franchise tax refund initiative, Taxpayers would have from May 1, 2024, through February 3, 2025, within which to file the Special Refund Claim. According to the Commissioner, the purpose of that relatively short time frame is for the State to quickly know the outside dollar amount that is exposed to being refunded.
- **When is a 'Claim' Filed** – Once an amended Return has been filed for a particular year and thereafter the corresponding Special Refund Claim form has also been timely filed for that year, the Commissioner has previously stated that the taxpayer has then met the requirements of filing a refund claim even if the Special Refund Claim has some minor deficiencies such as not including the Report of Debts. The Commissioner has noted that the Department intends to contact taxpayers in those situations so as to obtain the necessary information that was omitted from the Special Refund Claim form, but that the Department does not intend in those situations to contest the actual timely filing of the claim.
- **Tax Credits** – Where the taxpayer utilized tax credits to pay for part of the tax liability on the F&E Return, the Department will consider those credits as cash and generally intends to refund amounts attributable to the elimination of Schedule G as if the taxpayer had actually paid cash in lieu of the tax credits; however, there also will be situations where the Department will reinstate the credits rather than refunding cash to the taxpayer.

All of the foregoing is based upon commentary by the Commissioner on March 5, 2024, before the Revenue Subcommittee as well as based on points addressed by the Commissioner in previous interviews. **The actual language/interpretation of any final version of the Bill as amended, assuming passage by the Legislature, could be different in many respects from this commentary by the Commissioner.** We will strive to keep you advised as material developments occur.

Our attorneys and our dedicated [State Public Policy Advocacy Group](#) will be monitoring developments and can offer assistance to clients who desire to engage or be heard as part of the legislative process.

Additionally, please do not hesitate to contact [Carl E. Hartley](#), [Lang Wiseman](#), [William H.D. Fones Jr.](#), [Steven K. Wood](#), [Jacob D. Baggett](#), or your counsel at Baker Donelson, to address matters particular to your facts and circumstances.