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Administrative/Voluntary Disclosure: Nevada: Proposed Changes to Voluntary Disclosure Program Rules Include Modified Business Tax

(LCB File No. R152-22) Proposed Amended Reg. sections 360.440, 360.444, and 360.446, Nev. Tax Comm. (4/23/24). The Nevada Tax Commission proposed changes to Nevada’s voluntary disclosure (VDA) program rules, some of which expand application of the VDA program to taxpayers subject to certain additional Nevada taxes and fees like Nevada’s modified business tax (MBT), which is a quarterly payroll-based tax on businesses paying wages to employees in Nevada. Other proposed VDA rule changes:

URL: <https://www.leg.state.nv.us/Register/2022Register/R152-22RP1.pdf>

1. Transfer from the Nevada Tax Commission to the Nevada Department of Taxation (Department) the responsibility for determining in the first instance whether the tax liability of a taxpayer has been voluntarily disclosed;
2. Revise the requirements to be met by a taxpayer or the taxpayer’s representative before the Department may make a determination of voluntary disclosure; and
3. Require a taxpayer whose tax liability has been determined not to have been voluntarily disclosed to file any additional returns and pay any tax, penalty or interest determined to be owed.

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Income/Franchise:

Federal: Bill Introduced in US House Seeks to Amend P.L. 86-272 by Defining Solicitation of Orders

H.R. 8021, introduced in US House of Representatives 4/16/24. Pending legislation known as the “Interstate Commerce Simplification Act of 2024” has been introduced in the US House of Representatives which, if enacted, would “amend Public Law 86 – 272 to expand the prohibition of State taxation relating to certain solicitation of orders.” Under this pending legislation, the phrase “solicitation of orders” is defined as “any business activity that facilitates the solicitation of orders even if that activity may also serve some independently valuable business function apart from solicitation.” According to a related press release from Congressman Scott Fitzgerald, who introduced this pending bill, the legislation is intended to “prevent states from applying their income tax to businesses who sell goods or services into a state but otherwise have no physical presence there.” Please contact us with any questions.

URL: <https://www.congress.gov/bill/118th-congress/house-bill/8021?q=%7B%22search%22%3A%228021%22%7D&s=1&r=1>

URL: <https://fitzgerald.house.gov/media/press-releases/fitzgerald-introduces-bill-protect-businesses-double-income-taxation>

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Income/Franchise:

Alabama: New Law Revises Pass-through Entity-Level Tax Election and Revocation Procedures

H.B. 187, signed by gov. 4/25/24. New law extends the due date for a qualifying pass-through entity to make Alabama's election to be taxed at the entity level [see previously issued Multistate Tax Alert, for more details on Alabama's pass-through entity tax election], or to revoke an existing pass-through entity tax election. Specifically, for tax years beginning on or after January 1, 2024, an electing (or revoking) pass-through entity must submit the appropriate form to the Alabama Department of Revenue (Department) on or before the due date for filing the applicable income tax return, including any extensions which have been granted following the close of that tax year for which the entity elects to be taxed (or no longer be taxed) as an electing pass-through entity. For tax years beginning on or after January 1, 2021, through December 31, 2023, an electing (or revoking) pass-through entity must submit the appropriate form to the Department on or before the fifteenth day of the third month following the close of that tax year for which the entity elects to be taxed (or no longer be taxed) as an electing pass-through entity. For tax years beginning on or after January 1, 2025, the legislation provides that such elections or revocations must be made on the timely filed return, including any extensions which have been granted. Note that for tax years beginning prior to January 1, 2025, such election must be made (or revoked) through the entity's "My Alabama Taxes" online account. Please contact us with any questions.

URL: <https://arc-sos.state.al.us/cgi/actdetail.mbr/detail?year=2024&act=%20113&page=bill>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alabama-passes-wide-ranging-tax-legislation-addressing-the-cares-act-and-federal-covid-relief.pdf>

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Income/Franchise:

Iowa: New Law Allows Banks to Elect Inclusion of Investment Subsidiaries on Franchise Tax Return

S.F. 2442, signed by gov. 5/1/24. Applicable for tax years beginning on or after January 1, 2025, new law permits a financial institution with an investment subsidiary to elect to include the income and expenses of the investment subsidiary on its Iowa franchise tax return. If such election is made, the inclusion of income and expenses of the investment subsidiary on all subsequent Iowa franchise tax returns is required so long as the investment subsidiary remains a subsidiary of the financial institution – unless, at the financial institution’s request, the Iowa Department of Revenue “determines that the filing of separate returns will more clearly disclose the taxable income of the investment subsidiary or financial institution.” Moreover, if such election is made, the legislation provides that the commercial domicile of an investment subsidiary included on the financial institution’s return “shall be that of the financial institution rather than the investment subsidiary.” The legislation also provides that, if such election is made, the financial institution is allowed a franchise tax deduction for expenses allocable to investment in the investment subsidiary. Please contact us with any questions.

URL: <https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=SF%202442&ga=90>

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Income/Franchise:

Kansas: New Law Modifies Adjustments Related to §163(j) and NOLs and Revises PTET

S.B. 410, signed by gov. 4/24/24. Newly signed legislation contains several tax-related measures, including provisions that clarify certain Kansas addition and subtraction adjustments for disallowed business interest expense under Internal Revenue Code (IRC) section 163(j) [see previously issued Multistate Tax Alert for details on Kansas’ conformity to certain provisions under the federal 2017 Tax Cuts and Jobs Act] to specify that the addition modification is applicable to interest expenses paid or accrued in previous tax years and carried forward and allowed as a deduction in the current tax year under IRC section 163. The newly signed legislation also clarifies that a subtraction modification is allowed for interest expense actually paid or accrued in the current tax year which was disallowed pursuant to the IRC section 163(j) limitation. Additionally, for tax year 2021, the legislation further clarifies that a subtraction modification is allowed for an amount equal to the sum of any interest expenses paid or accrued in tax years 2018, 2019 and 2020 less the sum of amounts allowed as a deduction pursuant to IRC section 163 in tax years 2018, 2019 and 2020. The legislation also creates a subtraction modification allowing taxpayers that carried back federal net operating losses (NOLs) in tax years

2018 through 2020 pursuant to the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act to subtract such amounts from their income for Kansas income tax purposes; taxpayers may carry forward such NOLs for up to twenty years, and eligible taxpayers are allowed an extension to file amended returns for tax years 2018 through 2020 until April 15, 2025.

[URL: https://www.kslegislature.org/li/b2023_24/measures/sb410/](https://www.kslegislature.org/li/b2023_24/measures/sb410/)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-kansas-legislature-overrides-governor-veto-to-enact-significant-indirect-and-income-tax-law-changes.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-kansas-legislature-overrides-governor-veto-to-enact-significant-indirect-and-income-tax-law-changes.pdf)

Some other provisions in the bill revise aspects of Kansas' elective pass-through entity tax [see previously issued Multistate Tax Alert for more details on Kansas' pass-through entity tax election] such as specifying that the tax rate for electing entities is the highest tax rate imposed by the Kansas individual income tax (rather than fixed at 5.7%). In addition, the bill modifies the calculation of taxable income for the pass-through entity tax election to the sum of each nonresident electing pass-through entity owner's pro rata or distributive share of the electing pass-through entity's income attributable to the State and each resident electing pass-through entity owner's pro rata or distributive share of the electing pass-through entity's income calculated as either the sum of income attributable to the State and income not attributable to the State; or income attributable to the State. The electing pass-through entity must use the same method of calculation for all resident electing pass-through entity owners. These various pass-through entity tax law changes are applicable retroactively for taxable years beginning on or after January 1, 2022. Please contact us with any questions.

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alert-kansas-enacts-pass-through-entity-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alert-kansas-enacts-pass-through-entity-tax-election.pdf)

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Income/Franchise:

Minnesota: Amended Return May be Warranted After Law Change to Claim Additional NOL Deduction

Net Operating Losses for Businesses, Minn. Dept. of Rev. (4/8/24). Pursuant to recently enacted legislation that postpones Minnesota's application of a 70% net operating loss (NOL) limitation by one year so that Minnesota's NOL limitation remains at 80% for the 2023 tax year [see H.F. 3769, signed by gov. 4/8/24, and *State Tax Matters*, Issue 2024-15, for more details on this recently signed legislation], the Minnesota Department of Revenue (Department) explains that those that filed a 2023 Minnesota corporate franchise tax return before this law change "may need to file an amended return to claim the additional NOL deduction." The Department also clarifies that Minnesota law does not distinguish between NOL carryovers generated before or after the law change – stating that for tax years beginning after December 31, 2017, and before January 1, 2024, the Minnesota NOL deduction is limited to 80% of a corporation's taxable income. For tax years beginning after December 31, 2023, the Department explains that Minnesota's NOL deduction is limited to 70% of a corporation's taxable income. Please contact us with any questions.

URL: <https://www.revenue.state.mn.us/net-operating-losses>

URL: <https://www.revisor.mn.gov/bills/bill.php?f=HF3769&b=house&y=2024&ssn=0>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240412_2.html

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Income/Franchise:

Montana DOR Proposes Rule Changes Reflecting Elimination of Tax Haven Jurisdictions List

MAR Notice No. 42-1077: Proposed Amended ARM 42.26.311 and Proposed Repeal of ARM 42.26.306, Mont. Dept. of Rev. (4/16/24). The Montana Department of Revenue proposed rule changes reflecting state corporate income tax legislation enacted in 2023 [see S.B. 246 (2023) and *State Tax Matters*, Issue 2023-21, for more details on this legislation] which removed "tax haven" corporations from the water's-edge group of affiliated corporations effective for tax periods beginning after December 31, 2022. The rule proposal reflects how C corporations in a unitary relationship with a taxpayer incorporated in a previously designated tax haven no longer need to have their income and apportionment factors included in the water's-edge combined filing

group. A related public hearing is scheduled for May 21, 2024, and any comments on the proposed changes are due by May 28, 2024. Please contact us with any questions.

URL: https://mtrevenue.gov/wp-content/uploads/dlm_uploads/2024/04/42-1077pro-arm.pdf

URL:
[http://laws.leg.mt.gov/legprd/LAW0203W\\$BSRV.ActionQuery?P_SESS=20231&P_BLTP_BILL_TYP_CD=SB&P_BILL_NO=246&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=](http://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20231&P_BLTP_BILL_TYP_CD=SB&P_BILL_NO=246&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=)

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230526_2.html

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Income/Franchise:

Nebraska: New Law Enhances Deductions for Qualified Property and R&D and Addresses Mobile Workforce

L.B. 1023, signed by gov. 4/23/24. Newly signed legislation contains several tax-related measures, including enhanced state income tax deductions for certain costs of qualifying business assets and research and development expenditures in response to now-expired provisions under the federal 2017 Tax Cuts and Jobs Act, which had allowed businesses to fully and immediately deduct expenses for certain business machinery and equipment, as well as research or experimental expenditures. Specifically, under the new state law, Nebraska taxpayers may recover some costs of expenditures for business assets that constitute qualified property or qualified improvement property (QIP) under Internal Revenue Code (IRC) section 168 by immediately deducting 60% of the full cost of such expenditures in the tax year in which the eligible property is placed in service, applicable for taxable years beginning or deemed to begin on or after January 1, 2026. This new deduction is allowed only to the extent that such costs have not already been deducted in determining an individual's federal adjusted gross income or, for corporations, federal taxable income. Furthermore, if a taxpayer does not expense such costs under the new deduction in the taxable year in which the eligible property is placed in service, the taxpayer may elect to depreciate the costs over a five-year irrevocable term.

URL: https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=55302

For taxable years beginning or deemed to begin on or after January 1, 2026, the legislation also provides that a taxpayer may elect to treat certain IRC section 174-related research and experimental expenditures (specifically, those defined under 26 C.F.R. 1.174-2) which are paid or incurred by the taxpayer during the taxable year in connection with the taxpayer's trade or business as expenses that are not chargeable to the capital account – and such expenditures “shall be allowed as a deduction, notwithstanding any changes to the Internal Revenue Code related to the amortization of such research or experimental expenditures.” This new Nebraska deduction is allowed only to the extent that such research or experimental expenditures have not already been deducted in determining an individual's federal adjusted gross income or, for corporations, federal taxable income. Furthermore, if a taxpayer does not fully deduct such research or experimental

expenditures in the taxable year in which the expenditures are paid or incurred, the taxpayer may elect to amortize these expenditures over a five-year irrevocable term.

Other provisions in the bill address Nebraska income tax liability and withholding requirements for some nonresident individuals earning wages in Nebraska, including adopting a bright-line seven-day “safe harbor” threshold for employers to determine nonresident state income tax withholding requirements in certain circumstances. The legislation revises computation of Nebraska-sourced income for certain telecommuting nonresident individuals, as well as aspects of Nebraska’s “convenience of the employer” rule. Please contact us with any questions.

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Income/Franchise:

New Hampshire: Adopted Rules Reflect IRC §163(j) Decoupling and Market-Sourcing Apportionment for Financial Institutions

Revised Rev 303.06 and 304.10, N.H. Dept. of Rev. Admin. (4/26/24). The New Hampshire Department of Revenue Administration (Department) adopted an administrative rule reflecting state legislation enacted in 2023 [see S.B. 189 (2023) / Chapter 169 and *State Tax Matters*, Issue 2023-31, for more details on this legislation] that permits a New Hampshire business profits tax (BPT) taxpayer to fully deduct its business interest expense in the year it is incurred, thereby decoupling from the limitations on the deduction of business interest expense under Internal Revenue Code (IRC) section 163(j), for tax years beginning on or after January 1, 2024. Specifically, added text provides the following:

URL: https://www.revenue.nh.gov/laws/documents/rev303.06_rev304.10_adopted_text_04262024.pdf

URL: https://www.gencourt.state.nh.us/bill_Status/billinfo.aspx?id=770&inflect=2

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_6.html

“A business organization with a fiscal tax period that begins before, and ends on or after, January 1, 2024 and has a carry forward of disallowed business interest under section 163(j) of the IRC at the end of such fiscal tax period, shall be allowed as a deduction of such disallowed business interest expense, under RSA 77-A:4, XX, in 3 equal parts over 3 consecutive years, beginning with the first taxable period commencing on or after the end of said fiscal period.”

The Department also adopted changes to its rule on computing special industry apportionment of financial institutions to reflect the market-based sourcing apportionment methodology adopted by 2019 state legislation. Please contact us with any questions.

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Income/Franchise:

New York City: Public Input Sought on Proposed Rules Implementing Business Corporation Tax

Notice: Business Corporation Tax Regulations, N.Y.C. Dept. of Fin. (4/25/24). The New York City (City) Department of Finance (Department) announced that it will host two virtual discussion sessions in May to “hear feedback from tax practitioners and policy advocates” as it develops regulations to implement the City’s business corporation tax (BCT), which was enacted in 2015 and applies for tax years beginning on or after January 1, 2015. In doing so, the Department notes that the New York State Department of Taxation and Finance published a new set of regulations on December 27, 2023 to implement its Article 9-A business corporation franchise tax and that while the City’s new regulations will be “substantially similar” to the State’s, there will be “several notable differences.” The Department’s posted “detailed description of the issues” provides a brief summary of the “major areas” in which the City may depart from State policies, listing the following:

URL: <https://www.nyc.gov/site/finance/business/business-corporation-tax.page>

URL: <https://www.nyc.gov/assets/finance/downloads/pdf/24pdf/bct-regs-write-up.pdf>

- Allocation of flow-through income from partnerships;
- Clear and convincing evidence;
- Allocation of income from passive investment customers;
- Billing address safe harbor; and
- Real estate mortgage investment conduits.

The Department’s two virtual discussion sessions are scheduled to be held on May 14, 2024 at 10:00 am, and May 15, 2024 at 2:00 pm. Participants must register to attend these virtual sessions and may submit written comments prior to them. According to the Department, participants may comment on the differences between the City’s forthcoming proposed regulations and the State’s regulations, or any other matter related to the City’s proposed regulations. Please contact us with any questions.

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Income/Franchise:

Oklahoma: New Law Revises Pass-Through Entity-Level Tax Election Procedure

H.B. 3559, signed by gov. 4/29/24. Pursuant to Oklahoma law providing pass-through entities an election to pay Oklahoma income tax at the entity level [see H.B. 2665 (2019) for more details on the legislation enacting this election], recent legislation permits certain entities to make such election under existing procedures, or by filing an income tax return prior to, but not later than, the due date of the applicable income tax return, including any extensions. Please contact us with any questions.

URL: <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb3559&Session=2400>

URL: <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb2665&Session=1900>

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Income/Franchise:

Tennessee DOR Schedules Webinar on Franchise Tax Refunds Pursuant to Bill Repealing Alternative Property Base

Free Webinar on Schedule G Franchise Tax Refunds, Tenn. Dept. of Rev. (4/30/24). Pursuant to recently passed legislation that is expected to be signed into law – which, if enacted, would eliminate the Tennessee statutory provision requiring that the franchise tax base must not be less than the actual value of the real or tangible property owned or used by a taxpayer in the State, and authorizes refunds for taxpayers who properly file a refund claim on the prescribed forms for taxes previously paid using the real and tangible property base measure of the franchise tax [see S.B. 2103 / H.B. 1893 (2024), and recently issued Multistate Tax Alert for more details on this Tennessee franchise tax legislation] – the Tennessee Department of Revenue (Department) announced that it will host a free webinar on May 7 at 9 am Central time to discuss “schedule G franchise tax refunds and the implications of Tennessee House Bill 1893.” According to the announcement, Department staff will address “how this legislation will remove the franchise tax property measure and create statutory provisions for taxpayer refunds.” Participants must register to attend the webinar. Please contact us with any questions.

URL: <https://www.tn.gov/revenue/news/2024/4/30/free-webinar-on-schedule-g-franchise-tax-refunds.html>

URL: <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2103>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-tennessee-general-assembly-passes-bill-repealing-franchise-tax-alternative-property-base.pdf>

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Sales/Use/Indirect:

Illinois DOR Explains Remote Seller Economic Nexus and Applying Trailing Nexus on Rolling Quarterly Basis

General Information Letter ST-24-0014-GIL, Ill. Dept. of Rev. (3/27/24). Responding to a question about Illinois’ stance on economic nexus for an out-of-state remote seller and “trailing nexus,” the Illinois Department of Revenue (Department) issued a general information letter stating that if a remote retailer is no longer required to remit Illinois state and local retailers’ occupation taxes under applicable state law, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin remitting state and local retailers’ occupation taxes. Specifically, for each quarter ending on the last day of March, June, September, and December, the remote retailer must examine its sales for the immediately preceding twelve-month period to determine whether it met either of the tax remittance thresholds under 86 Ill. Adm. Code 131.115(a)(1) – that is, either:

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0014-GIL.pdf>

1. Cumulative gross receipts from sales of tangible personal property to purchasers in Illinois of \$100,000 or more; or
2. 200 or more separate transactions from the sale of tangible personal property to purchasers in Illinois in the immediately preceding four quarters.

If either threshold is met during that twelve-month lookback period, the Department explains that the seller must remit state and local retailers' occupation taxes for the following twelve-month period. At the end of that twelve-month period, "it must examine its sales to determine if it must continue to remit tax." Please contact us with any questions.

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Sales/Use/Indirect:

New Mexico: Payroll Services Performed Out-of-State Deemed Incidental to Taxable In-State Employment Services

Case No. A-1-CA-40686, N.M. Ct. App. (4/29/24). In a case involving an out-of-state employment agency that served as the employer of New Mexico-based contractors hired for a third-party company and which also performed certain payroll services for the third-party company from outside New Mexico, the New Mexico Court of Appeals (Court) held that the employment agency was responsible for assessed New Mexico gross receipts tax (GRT) on reimbursed amounts from the third-party company for the prior tax periods at issue (*i.e.*, for the periods from January 31, 2013, to April 30, 2019), including on the markup fees received for the payroll services it performed. In doing so, the Court reasoned that the payroll services performed by the agency outside New Mexico were incidental to its employment of the contractors in New Mexico – that is, the agency employed contractors who performed services in New Mexico and the consumption of the out-of-state payroll services was by those same in-state employees – and thus the reimbursed amounts were subject to the GRT. Under the facts, the contractors were paid by the employment agency and the third-party company would then reimburse the employment agency for those same amounts plus a markup fee. The Court also held that because the agency was *not* a disclosed agent under N.M. Stat. Ann. section 7-9-3.5(A)(3)(f), it was responsible for the assessed GRT and did not qualify for exemption. Please contact us with any questions.

URL: <https://coa.nmcourts.gov/wp-content/uploads/sites/43/2024/04/April-29-2024-Talbridge-Corporation-v.-New-Mexico-Taxation-Revenue-Department-No.-A-1-CA-40686.pdf>

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Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the archive.

Archive: <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive.html?id=us:2em:3na:stm:awa:tax>

Tennessee General Assembly passes bill repealing franchise tax alternative property base

On April 25, 2024, Senate Bill 2103 (S.B. 2103) was passed by the Tennessee General Assembly. It is currently awaiting the Governor's signature, which is generally expected to be imminent. Applicable to tax years ending on or after January 1, 2024, S.B. 2103 eliminates the statutory provision requiring that the Tennessee franchise tax base must not be less than the actual value of the real or tangible property owned or used by a taxpayer in the State, and authorizes refunds for taxpayers who properly file a claim for refund on special prescribed forms for taxes previously paid using the real and tangible property base measure of the franchise tax. This legislation was passed following the adoption of a House and Senate Conference Committee report that resolved differences between the two chambers on S.B. 2103 and its companion bill, H.B. 1893.

This Multistate Tax Alert summarizes the relevant provisions in S.B. 2103.

[Issued April 29, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-tennessee-general-assembly-passes-bill-repealing-franchise-tax-alternative-property-base.pdf>

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