

Income/Franchise:

Tennessee DOR Notices Explain New Law Adopting Single Sales Factor and TCJA Bonus Depreciation

Notice No. 23-11, Tenn. Dept. of Rev. (5/23); *Notice No. 23-07*, Tenn. Dept. of Rev. (5/23); *Notice No. 23-04*, Tenn. Dept. of Rev. (5/23); *Notice 23-05*, Tenn. Dept. of Rev. (5/23). The Tennessee Department of Revenue (Department) issued several new notices explaining the implementation of recently signed legislation that enacts several significant tax law changes [see H.B. 323, signed by gov. 5/11/23, and recently issued Multistate Tax Alert (May 12, 2023) for more details on the business tax and franchise and excise tax law changes in this legislation, as well as recently issued Multistate Tax Alert (May 16, 2023) for details on sales and use tax law changes in the bill relating to sourcing sales], including phasing in single sales factor apportionment for Tennessee franchise and excise tax purposes. In one notice, the Department explains that Tennessee generally moves from a three-factor apportionment formula to a single sales factor apportionment formula over a three-year period beginning with tax years ending on or after December 31, 2023. However, manufacturers that are already electing to apportion using a single sales factor “will continue to use that formula during the entire three-year phase-in period,” and these manufacturers will *not* be subject to the variable weighting of the sales factor during the three-year phase-in period. The Department also explains that taxpayers have the option to use Tennessee’s previous three-factor formula with triple-weighted sales if that formula results in a higher apportionment ratio *and* the taxpayer has net earnings rather than a net loss – noting that a taxpayer “might choose this option in order to fully utilize tax credits.”

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/notices/fae/23-11fe.pdf>

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/notices/fae/23-07fe.pdf>

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/notices/fae/23-04fe.pdf>

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/notices/fae/23-05fe.pdf>

URL: <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0323&GA=113>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-tennessee-enacts-several-changes-to-business-tax-and-franchise-and-excise-tax-laws.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-tennessee-enacts-changes-to-sales-and-use-tax-laws.pdf>

In another notice, the Department explains that new state law aligns Tennessee with the federal bonus depreciation provisions found in the federal Tax Cuts and Jobs Act of 2017 (the “TCJA”). Specifically, Tennessee taxpayers may take bonus depreciation deductions for assets purchased on or after January 1, 2023, for Tennessee excise tax purposes, in the year of the purchase if the taxpayer takes bonus depreciation on the asset for federal tax purposes; however, for assets purchased on or before December 31, 2022, bonus depreciation deductions continue to be disallowed. The notice also clarifies that because Tennessee is now coupled with the TCJA bonus depreciation provisions, Tennessee follows the TCJA five-year phase-out schedule of bonus depreciation for purposes of determining the bonus depreciation percentage applicable to assets purchased on or after January 1, 2023.

Another new notice addresses Tennessee’s new \$50,000 standard deduction from net earnings when calculating Tennessee excise tax for tax years ending on or after December 31, 2024. According to the

Department, this standard deduction applies to pre-apportioned, net earnings as calculated under Tenn. Code Ann. § 67-4-2006 (“adjusted net earnings”). Furthermore, the deduction cannot create or increase a net operating loss. Therefore, “for taxpayers with \$50,000 or less in pre-apportioned, adjusted net earnings, this deduction will reduce net earnings to \$0.” For tax years ending on or after December 31, 2024, another notice issued by the Department explains that the real and tangible property measure of the Tennessee franchise tax base, as computed under Tenn. Code Ann. § 67-4-2108 (the “minimum measure”), will apply to the value of the property that is in excess of \$500,000. Please contact us with any questions.

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