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Texas Comptroller of Public Accounts STAR System

201909001R

STATE OF TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS
FRANCHISE TAX

Section 3.584 Margin: Reports and Payments

- (a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.
- (b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Beginning date--
- (A) except as provided by subparagraph (B) of this paragraph:
- (i) for a taxable entity chartered or organized in this state, the date on which the taxable entity's charter or organization takes effect; and
- (ii) for a foreign taxable entity, the date on which the taxable entity begins doing business in this state; or
- (B) for a taxable entity that qualifies as a new veteran-owned business, as defined in §3.574 of this title (relating to Margin: New Veteran-Owned Businesses), the earlier of:
- (i) the fifth anniversary of the date on which the taxable entity was chartered, organized, or otherwise formed in Texas; or
- (ii) the date the taxable entity ceases to qualify as a new veteran-owned business.

(2) Primarily engaged in retail or wholesale trade--A taxable entity is primarily engaged in retail or wholesale trade only if:

(A) the total revenue from the taxable entity's activities in retail and wholesale trade is greater than the total revenue from its activities in trades other than retail and wholesale trade;

(B) less than 50% of the total revenue from the taxable entity's activities in retail or wholesale trade comes from the sale of products the taxable entity produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs, except for total revenue from activities in a retail trade described by Major Group 58 (Eating and Drinking Places) of the SIC Manual; and

(C) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity, or gas. For purposes of this subparagraph, selling telephone prepaid calling cards is not providing telecommunications services.

(3) Produce--To construct, manufacture, install during the manufacturing or construction process, develop, mine, extract, improve, create, raise, or grow either a product or a component of a product.

(A) A taxable entity produces a product that it sells if the taxable entity or an entity that is part of an affiliated group to which the taxable entity also belongs:

(i) asserts a software copyright with respect to the product or a component of the product;

(ii) asserts a patent right under Title 35 of the United States Code or comparable law of a foreign jurisdiction with respect to the product, a component of the product, or the packaging of the product; or

(iii) produces a component of the product, or acquires the product and makes a modification to the product, unless the taxable entity can demonstrate that the component or modification does not increase the sales price of the product by more than 10%.

(B) Except as provided in subparagraph (A) of this paragraph, a taxable entity does not produce a product that it sells if an unrelated party manufactures the product and all components of the product to the taxable entity's specifications .

(4) Product--Tangible personal property acquired or produced for sale.

(A) Tangible personal property--

(i) personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner;

- (ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and
- (iii) a computer program, as defined by Tax Code, §151.0031 ("Computer Program").

(B) Tangible personal property does not include:

- (i) intangible property; or
- (ii) services.

(5) Retail trade--

(A) for reports originally due on or after January 1, 2008, and before January 1, 2012, the activities described in Division G of the SIC Manual;

(B) for reports originally due on or after January 1, 2012, and before January 1, 2014:

- (i) the activities described in Division G of the SIC Manual; and
- (ii) apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual; and

(C) for reports originally due on or after January 1, 2014:

- (i) the activities described in Division G of the SIC Manual;
 - (ii) apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual;
 - (iii) the activities classified as Automotive Repair Shops, Industry Group 753 of the SIC Manual;
 - (iv) rental-purchase agreement activities regulated by Business & Commerce Code, Chapter 92;
 - (v) rental or leasing of tools, party and event supplies, and furniture, classified as Industry 7359 of the SIC Manual; and
 - (vi) heavy construction equipment rental or leasing activities, classified as Industry 7353 of the SIC Manual.
- (6) SIC Manual--The 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.
- (7) Wholesale trade--The activities described in Division F of the SIC Manual.
- (8) Unrelated party--With respect to a taxable entity, an entity that for any period during which the entity does not meet the requirements to be a member of the same affiliated group, as defined in §3.590(b)(1) of this title (relating to Margin: Combined Reporting), as such taxable entity.

(c) Reports and due dates.

(1) Initial report. For taxable entities with a beginning date prior to October 4, 2009, both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The taxable margin computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the taxable entity's first year of business. If the period used to compute business done for purposes of the initial report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the initial report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the initial report. The privilege period for the initial report is from the beginning date through December 31 of the year in which the initial report is originally due.

(2) First annual report. For taxable entities with a beginning date of October 4, 2009, or later, both the first annual report and payment of the tax due, if any, are due no later than May 15 of the year following the year the entity became subject to the tax (i.e., the beginning date). The taxable margin computed on the first annual report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is in the same calendar year as the beginning date. The privilege period for the first annual report is from the beginning date through December 31 of the year in which the first annual report is originally due.

(3) Annual report. The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The taxable margin computed on an annual report is based on the business done during the period beginning with the day after the last date upon which tax was computed under Tax Code, Chapter 171 on a previous report, and ending with the last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due, or, if there is no such ending date, then ending on December 31 of the calendar year before the calendar year in which the report is originally due. A taxable entity that uses a 52 - 53 week accounting year end and has an accounting year ending the first four days of January of the year in which the annual report is originally due may use the preceding December 31 as the date through which taxable margin is computed. If the period used to compute

business done for purposes of the annual report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the annual report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the annual report. The privilege period for an annual report is January 1 through December 31 of the year in which the annual report is originally due.

(4) Final report. A final tax report and payment of the additional tax are due within 60 days after the taxable entity no longer has sufficient nexus with Texas to be subject to the franchise tax. See §3.592 of this title (relating to Margin: Additional Tax) for further information concerning the additional tax imposed by Tax Code, §171.0011.

(5) Extensions.

(A) Annual report. See §3.585 of this title (relating to Margin: Annual Report Extension), for extensions of time to file an annual report, including the first annual report.

(B) Final report. A taxable entity will be granted a 45-day extension of time to file a final report, if the taxable entity:

- (i) requests the extension on or before the filing date;
- (ii) requests the extension on a form provided by the comptroller; and
- (iii) remits 90% or more of the tax reported as due on the final report.

(6) Nontaxable entities. See §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities) for information concerning nontaxable entities. Except for passive entities (see §3.582 of this title (relating to Margin: Passive Entities)), a nontaxable entity that has not notified the comptroller or the secretary of state that it is doing business in Texas, or that has previously notified the comptroller that it is not taxable, must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity. If an entity receives notification in writing from the comptroller asking for information to determine if the entity is a taxable entity, the entity must reply to the comptroller within 30 days of the notice.

(7) Passive entities. See §3.582 of this title, for information concerning the reporting requirements for a passive entity.

(8) Combined reporting. Taxable entities that are part of an affiliated group engaged in a unitary business must file a combined group report in lieu of individual reports, except that a public information report or ownership

information report must be filed for each member of the combined group with nexus. See §3.590 of this title for rules on filing a combined report.

(9) New veteran-owned businesses. See §3.574 of this title for information concerning the reporting requirements for a qualifying new veteran-owned business.

(10) Date of filing. See §3.13 (relating to Postmarks, Timely Filing of Reports, and Timely Payment of Taxes and Fees) for information concerning the requirements for timely filing.

(11) Receivership. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a taxable entity in receivership. A debtor in possession or the appointed trustee or receiver of a taxable entity in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax pursuant to the plan of reorganization or arrangement.

(d) Calculation of tax.

(1) Margin computation. A taxable entity's margin equals the least of the following calculations, if eligible:

(A) For reports originally due on or after January 1, 2008, and before January 1, 2014:

- (i) total revenue minus cost of goods sold;
- (ii) total revenue minus compensation; or
- (iii) 70% of total revenue.

(B) For reports originally due on or after January 1, 2014:

- (i) total revenue minus cost of goods sold;
- (ii) total revenue minus compensation;
- (iii) 70% of total revenue; or
- (iv) total revenue minus \$1 million.

(2) Rate. Except as provided by paragraph (6) of this subsection:

(A) For reports originally due on or after January 1, 2008, but before January 1, 2014:

- (i) a tax rate of 1.0% of taxable margin applies to most taxable entities; and
- (ii) a tax rate of 0.5% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(B) For reports originally due on or after January 1, 2014, but before January 1, 2015:

- (i) a tax rate of 0.975% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.4875% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(C) For reports originally due on or after January 1, 2015, but before January 1, 2016:

(i) a tax rate of 0.95% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.475% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(D) For reports originally due on or after January 1, 2016:

(i) a tax rate of 0.75% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.375% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(3) Annualized Total Revenue. When the accounting period on which a report is based is more or less than 12 months, a taxable entity must annualize its total revenue to determine its eligibility for the no tax due threshold, discounts, and E-Z Computation. The amount of total revenue used in the actual tax calculations will not change as a result of annualizing revenue. To annualize total revenue, an entity will divide total revenue by the number of days in the period upon which the report is based, and then multiply the result by 365. Examples are as follows:

(A) a taxable entity's 2010 franchise tax report is based on the period September 15, 2009 through December 31, 2009 (108 days), and its total revenue for the period is \$375,000. The taxable entity's annualized total revenue is \$1,267,361 (\$375,000 divided by 108 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity does not qualify for the \$1,000,000 no tax due threshold but is eligible to file using the E-Z computation. The discounts do not apply in years when the no tax due threshold is \$1,000,000;

(B) a taxable entity's 2010 franchise tax report is based on the period March 1, 2008 through December 31, 2009 (671 days), and its total revenue for the period is \$1,375,000. The taxable entity's annualized total revenue is \$747,951 (\$1,375,000 divided by 671 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity qualifies for the \$1,000,000 no tax due threshold and is eligible to file using the No Tax Due Information Report.

(4) No tax due. Effective September 1, 2015, No Tax Due Reports are required to be filed electronically. See §3.587(c)(8)(C) of this title (relating to Margin: Total Revenue) for the tiered partnership exception to filing No Tax Due Reports.

(A) A taxable entity owes no tax and may file a No Tax Due Report if its annualized total revenue is:

- (i) for reports originally due on or after January 1, 2008, but before January 1, 2010, \$300,000 or less;
- (ii) for reports originally due on or after January 1, 2010, but before January 1, 2012, \$1 million or less;
- (iii) for reports originally due on or after January 1, 2012, but before January 1, 2014, \$1,030,000 or less;
- (iv) for reports originally due on or after January 1, 2014, but before January 1, 2016, \$1,080,000 or less;
- (v) for reports originally due on or after January 1, 2016, but before January 1, 2018, \$1,110,000 or less; and
- (vi) for reports originally due on or after January 1, 2018, the amount determined under Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction).

(B) A taxable entity that has zero Texas receipts owes no tax and may file a No Tax Due Report.

(C) A taxable entity that has tax due of less than \$1,000 owes no tax; however, the entity cannot file a No Tax Due Report and must file a regular annual report or, if qualified, the E-Z Computation Report.

(5) Discount. A taxable entity is entitled to a discount of the tax imposed as follows.

(A) For reports originally due on or after January 1, 2008, but before January 1, 2010, if annualized total revenue is:

- (i) greater than \$300,000 and less than \$400,000, the discount is 80% of tax due;
- (ii) greater than or equal to \$400,000 and less than \$500,000, the discount is 60% of tax due;
- (iii) greater than or equal to \$500,000 and less than \$700,000, the discount is 40% of tax due;
- (iv) greater than or equal to \$700,000 and less than \$900,000, the discount is 20% of tax due.

(B) For reports originally due on or after January 1, 2010 there are no discounts.

(6) E-Z Computation.

(A) For reports originally due on or after January 1, 2008, and before January 1, 2016, a taxable entity with annualized total revenue of \$10 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.575% to apportioned total revenue and subtracting any applicable discount as provided by paragraph (5) of this subsection.

(B) For reports originally due on or after January 1, 2016, a taxable entity with annualized total revenue of \$20 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.331% to apportioned total revenue.

(C) No deductions to compute margin, credits, or other adjustments are allowed if a taxable entity chooses to compute its tax liability under the E-Z Computation.

(7) Tiered partnership provision. See §3.587 of this title for information concerning the tiered partnership provision.

(A) Eligibility for no tax due, discounts and the E-Z Computation. For eligible entities choosing to file under the tiered partnership provision, paragraphs (4), (5), and (6) of this subsection do not apply to an upper or lower tier entity if, before the attribution of total revenue by a lower tier entity to upper tier entities, the lower tier entity does not meet the criteria.

(B) Tiered Partnership Report. The lower tier entity must submit a report to the comptroller indicating its total revenue before attribution and the amount of total revenue that each upper tier entity must include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller indicating the lower tier entity's total revenue before attribution and the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity.

(e) Penalty and interest on delinquent taxes.

(1) Tax Code, §171.362 (Penalty for Failure to Pay Tax or File Report), imposes a 5.0% penalty on the amount of franchise tax due by a taxable entity that fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of \$1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. The annual rate of interest on delinquent taxes is the prime rate plus one percent, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2) When a taxable entity is issued an audit assessment or other underpayment notice based on a deficiency, penalties under Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 60 days after the date the notice of the determination is issued.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under Tax Code, §111.0081 (When Payment is Required), of 10% of the tax assessed will be added. For example, if a deficiency

determination is made in the amount of \$1,000 tax (plus the initial penalty and interest), but the total amount of the deficiency is not paid until the 71st day after the deficiency notice is issued, \$1,200 plus interest would be due (i.e., \$1,000 tax, \$100 initial penalty for not paying when originally due, \$100 penalty for not paying deficiency determination within 10 days after it became final, plus interest accrued to the date of payment at the applicable statutory rate).

(B) A petition for redetermination must be filed within 60 days after the date the notice of determination is issued, or the redetermination is barred.

(C) A decision on a petition for redetermination becomes final at the time a decision in a contested case is final under Government Code, Chapter 2001. The amount of a determination is due and payable 20 days after the decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under Tax Code, §111.0081, of 10% of the tax assessed will be added. Using the previous example, on the 21st day after the decision is final, \$1,200 plus interest would be due (i.e., \$1,000 tax, \$100 initial penalty, \$100 additional penalty and the applicable accrued interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for redetermination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under Tax Code, §111.022 (Jeopardy Determination), of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a taxable entity exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The taxable entity requesting waiver must furnish a detailed description of the circumstances that caused the late filing or late payment and the diligence exercised by the taxable entity in attempting to comply with the statutory requirements. See §3.5 of this title (relating to Waiver of Penalty or Interest) for additional information.

(6) If a taxable entity fails to comply with Tax Code, §171.212 (Report of Changes to Federal Income Tax Return), the taxable entity is liable for a penalty of 10% of the tax that should have been reported and had not previously been reported to the comptroller under Tax Code, §171.212. This penalty is in addition to any other penalty provided by law.

(f) Amended reports. In filing an amended report, the taxable entity must type or print on the top of the report the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment. Applicable penalties and interest must be reported and paid along with any additional amount of tax shown to be due on the amended report.

(1) A taxable entity may file an amended report for the purpose of correcting a mathematical or other error in a report, for the purpose of supporting a claim for refund, or to change its method of computing margin or, if qualified, to use the E-Z Computation.

(2) A taxable entity that has been audited by the Internal Revenue Service must file an amended franchise tax report within 120 days after the Revenue Agent's Report (RAR) is final, if the RAR results in changes to taxable margin reported for franchise tax purposes. An RAR is final when all administrative appeals with the Internal Revenue Service have been exhausted or waived. An administrative appeal with the Internal Revenue Service does not include an action or proceeding in the United States Tax Court or any other federal court.

(3) A taxable entity whose taxable margin is changed as a result of an audit or other adjustment by a competent authority other than the Internal Revenue Service must file an amended franchise tax report within 120 days after the adjustment is final. An adjustment is final when all administrative or other appeals have been exhausted or waived. For the purposes of this section, a competent authority includes, but is not limited to, the United States Tax Court, United States District Courts, United States Courts of Appeals, and United States Supreme Court.

(4) A taxable entity must file an amended franchise tax report within 120 days after the taxable entity files an amended federal income tax return that changes the taxable entity's taxable margin. A taxable entity is considered to have filed an amended federal income tax return if the taxable entity is a member of an affiliated group during a period in which an amended consolidated federal income tax return is filed.

(5) A final determination resulting from an Internal Revenue Service administrative proceeding (including an audit), or a judicial proceeding arising from an administrative proceeding, that affects the amount of franchise tax liability must be reported to the comptroller before the expiration of 120 days after the day on which the determination becomes final. See Tax Code, §111.206 (Exception to Limitation: Determination Resulting from Administrative Proceeding).

(6) Because the 10% penalty provided for in Tax Code, §171.212 only applies to deficiencies, failure to file an amended return in which a refund would result will not cause a 10% penalty to be imposed.

(g) Comptroller audit. During the course of an audit or other examination of a taxable entity's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with the examination, the comptroller may also examine any of the taxable entity's officers or employees under oath.

(h) Payment of determination. The payment of a determination issued to a taxable entity for an estimated tax liability shall not satisfy the reporting requirements set forth in Tax Code, Chapter 171, Subchapter E, concerning reports and records.

(i) Information report. Each taxable entity on which the franchise tax is imposed must file an information report.

(1) Public information report. For a taxable entity legally formed as a corporation, limited liability company, limited partnership, professional association, or financial institution, a public information report as described in Tax Code, §171.203 (Public Information Report), is due at the same time each initial and annual, including the first annual, report is due. An authorized person must sign the public information report on behalf of the taxable entity under a certification that:

(A) all information contained in the report is true and correct to the best of the authorized person's knowledge; and

(B) a copy of the report has been mailed to each person named in the report who is an officer, director, or manager and who is not employed by the taxable entity or a related (at least 10% ownership) taxable entity on the date the report is filed.

(C) A report that is filed electronically complies with the signature and certification requirements of this provision.

(2) Ownership information report. Taxable entities not required to file a public information report must file an ownership information report as described in Tax Code, §171.201 (Initial Report) and §171.202 (Annual Report) is due at the same time each initial and annual, including the first annual, report is due.

(3) Failure to file or sign a public information report or ownership information report shall result in the forfeiture of corporate or business privileges as provided by Tax Code, §171.251 (Forfeiture of Corporate Privileges) and §171.2515 (Forfeiture of Right of Taxable Entity to Transact Business in this State). If the corporate or business privileges are forfeited, each officer or director of the taxable entity may be liable for

each debt of the taxable entity that is created or incurred in Texas after the date on which the report is due and before the corporate or business privileges are revived, as provided by Tax Code, §171.255 (Liability of Directors and Officers).

(4) The provisions of paragraph (3) of this subsection, concerning forfeiture of corporate privileges do not apply to a banking taxable entity or a savings and loan association, as defined in Tax Code, §171.0001 (General Definitions).

(5) For purposes of this subsection:

(A) authorized person means, in the case of a corporation, an officer, director or other authorized person of the corporation;

(B) authorized person means, in the case of a limited liability company, a member, manager or other authorized person of the limited liability company;

(C) authorized person means, in the case of a limited partnership, a partner or other authorized person of the partnership;

(D) director includes a manager of a limited liability company, a general partner in a limited partnership and a general partner in a partnership registered as a limited liability partnership;

(E) authorized person also includes a paid preparer authorized to sign the report.

(6) Taxable entities that are members of a combined group and do not have nexus in Texas are not required to file an ownership information report or a public information report.

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