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# AN OVERVIEW OF THE REVISED TEXAS FRANCHISE (“MARGIN”) TAX

APRIL 2016



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# TEXAS MARGIN TAX UPDATE

- Overview of “Margin” Tax
- What’s New
- Taxable Entities
- Combined Reporting
- Computation of Taxable Margin Components
- Apportionment
- Other Provisions
- ASC 740, Compliance and Audit Highlights
- Recent Cases and Developments
- Texas Margin Tax Optimization



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# OVERVIEW OF THE MARGIN TAX

- Virtually all entities subject to tax, including limited partnerships
- Change: Generally, based on total revenues minus costs of goods sold or compensation (capped at \$360,000 per individual for report years 2016 and 2017)
- Mandatory unitary combined reporting
- Single gross receipts factor
- Change: Tax rate 0.75% (for reports originally due on or after 1/1/16, previously 1.00%-0.95%) for most businesses; 0.375% (for reports originally due on or after 1/1/16, previously 0.50%- 0.475%) for retailers and wholesalers
- Many special rules





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## WHAT'S NEW FOR 2016??

- RATES (next slide)
- ELECTRONIC FILING OF NO TAX DUE REPORTS:
  - Required beginning 1/1/16
- \$1 MILLION (TOTAL REVENUE) NO TAX DUE THRESHOLD:
  - \$1,110,000 for Reports Originally Due 1/1/16 through 1/1/18
- COMPENSATION DEDUCTION LIMITED:
  - \$360,000 PER PERSON (1/1/16-1/1/18)
- REPORTING REQUIREMENTS OF LPs and PROFESSIONAL ASS'Ns:
  - File Public Information Reports instead of Ownership Information Reports (to Comptroller still)



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## WHAT'S NEW? LOWER RATE – H.B. 32 (2015)

- On June 15, 2015, Texas Governor Greg Abbott signed H.B. 32 (Franchise Tax Reduction Act of 2015) permanently reducing the Texas Franchise Tax (Margin Tax) rates by 25%
- Rates:
  - Retail/wholesale rate now 0.375% (was 0.5%)
  - All other taxpayers now 0.75% of taxable margin (was 1%)
  - EZ tax rate now 0.331% (was 0.575%)
    - Threshold is no more than \$20 million in total revenue (was \$10 million)
- When:
  - Reports originally due on or after January 1, 2016.



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# LOWER RATE? – 2016 Proposed Rule §3.584

§3.584. *Margin: Reports and Payments. (b) Definitions...*

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

(A) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity, or gas.

(B) 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; and

(C) 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 those businesses under Major Group 58 (eating and drinking establishments). **For purposes of this subparagraph only:**

(i) A taxable entity produces the product that it sells if the taxable entity acquires the product and makes modifications to the product that increase the sales price of the product by more than 10%.

(ii) A taxable entity produces the product that it sells if the taxable entity manufactures, develops, or creates tangible personal property that is incorporated into, installed in, or becomes a component part of the product that it sells. For example:

(I) A taxable entity produces an electronic device that it sells when the taxable entity produces a computer program, such as an application or operating system, that is installed in the device, even if the device is manufactured by an unrelated party.

(II) A taxable entity produces a drug that it sells when the taxable entity produces the active ingredient in the drug, even if the drug is manufactured by an unrelated party.

(iii) A taxable entity does not produce a product that it sells if the product is manufactured by an unrelated party to the taxable entity's specifications.



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# LOWER RATE? – 2016 Proposed Rule §3.584

## Retailers/Wholesalers - Didn't Realize you were a Producer/Manufacturer?

### (i) 'MODIFICATIONS' THAT INCREASE SALES PRICE BY 10%:

- Car Dealers: Tint, pin-striping, and VIN etching (better not add those bigger wheels...)
- “Modifications” - Means any Changes (not “material” or “substantial”)
  - Plural – what if you make one change?
- **Causal** Relationship to Price Increase?
  - Is it “modifications that (cause) increase” or “modifications that (precede) increase”?
  - What if Price Increases 10%, but Modifications are itemized and increase 9%?
  - What if “Sales Price” increases by 10%, but Modifications add **No Value**?
  - What if “Sales Price” increase 10% and Modifications has **unknown impact**?
    - Are Modifications **presumed** to increase sales price if sales price is increased 10%? [Add a ribbon. Move to better store. Increase price 10%.]
    - Retailer - Does a “Sales Price” increase **starting price** become the wholesale purchase price for a retailer in that circumstance??

### (ii) INCORPORATED INTO/COMPONENT PART:

- No materiality threshold
- AT&T/Verizon/Etc. better stop installing apps on iPhones...



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## New - H.B. 3230 – Credit for Rehab. of Historic Structures

- Beginning on January 1, 2015, a tax credit for rehabilitation of certified historic structures is available
- Equals 25 percent of total eligible costs and expenses incurred
- Credit may be earned by any property owner
- **Freely transferrable to other entities**
- Credit is also available for costs incurred by certain tax exempt entities
- Change is effective for reports originally due on or after January 1, 2016





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## New - H.B. 2896 – Broadcaster Apportionment

- Numerator of the apportionment factor includes receipts arising from licensing income from broadcasting or otherwise distributing film programming by any means only if the legal domicile of the broadcaster's customer is in Texas.
- The term "broadcaster" does not include a cable service provider or a direct broadcast satellite service, but does include:
  - Television station licensed by the Federal Communications Commission;
  - Television broadcast network;
  - Cable television network; or
  - Television distribution company
- "Customer" defined as a person, including a licensee, that has a direct connection or contractual relationship with the broadcaster under which the broadcaster derives revenue
- "Film programming" defined as all or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience
- "Programming" defined as news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works
- Change to Texas Tax Code §171.106 is effective for reports originally due on or after January 1, 2018



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# ENTITIES SUBJECT TO TAX

Tax imposed on each “taxable entity” doing business or chartered and organized in the state including, but not limited to (legal form, not federal classification):

- Partnerships
- Corporations
- Banking Corporations
- Limited Liability Companies
- Business Trusts
- Joint Ventures
- Holding Companies

# ENTITIES NOT SUBJECT TO TAX



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## Includes:

- Most sole proprietorships (not check-the-box)
- General partnerships owned entirely by natural persons
- Passive Entities (as defined)
- Certain REITS and qualified REIT subsidiaries
- Real estate mortgage investment conduits
- Certain other entities per Tex. Tax Code 171.0002(b)



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# PASSIVE ENTITIES

- Must be either a partnership or a trust (other than a business trust)  
Federal gross income must consist of at least 90 percent of income from the following sources, including, but not limited to;
  - Dividends
  - Interest
  - Royalties, bonuses, or delay rental income from mineral properties
  - Net gains from sale of real property, certain commodities, securities
  - Distributive shares of partnership income (if greater than zero)
  - Other types of income specified in statute
- Not eligible for exclusion if more than 10% of federal gross income from active trade or business
  - Active business includes receiving royalties from licensing to affiliates using intangibles in active trade or business
- Rental income, gains from sale of TPP and certain intangible property not qualifying passive income



# PASSIVE ENTITIES

- However, a taxable entity that owns an interest in a passive entity not includible in a group report is required to report the net distributive income from the passive entity in its total taxable revenue
  - But only to the extent that the net income of the passive entity was not generated from the margin of another taxable entity



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# REITS



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- REITs and REIT subsidiaries not subject to tax
  - But only if they do not have direct holdings in real estate other than office space
  - Real estate must be held through limited partnerships or other entities
- If REIT or REIT subsidiary has direct holdings in real estate, it is subject to tax
- Limited partnerships would also be subject to tax
- Thus, benefit of exemption somewhat limited



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# COMBINED REPORTING

- Required for businesses engaged in a unitary business
  - Constitutional law precedent - “unitary” factors:
    - Functional integration
    - Centralized management
    - Economies of Scale
    - Flow of Value
  - Definition adapted from MTC Reg. IV.1(b)(1)(A)
    - Vertical integration or
    - Horizontal integration or
    - Functionally integrated through strong centralized management
    - Rebuttable presumption of unitary relationship amongst “affiliated” entities
- Ownership requirement is > 50% of the combined voting power of all classes of stock or > 50% of the capital, profits or beneficial (or member) interests for non-corporate entities



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# COMBINED REPORTING

- Presumption (rebuttable) of unity (if affiliated)
- 80/20 exclusion
  - If 80 percent or more of entity's property and payroll outside the US
  - If no property or payroll and 80 percent of gross receipts outside US
- Combined margin computed on pre-apportionment basis
  - Each member of group computes total revenue, COGS and compensation as if filing separately
  - COGS, compensation, and corresponding items of revenue between members of a combined group are subtracted
  - Similar process for computing combined apportionment factor





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## GENERAL COMPUTATION OF TAX (LESSER OF...)

**Total Revenue from Entire  
Business**  
minus  
**Costs of Goods Sold**  
or  
**Compensation**  
or  
**\$1,000,000**  
X  
**Sales Factor**  
X  
**Tax Rate**  
=  
**Tax**

**OR**

**Total Revenue from Entire  
Business**  
X  
**70 percent**  
X  
**Sales Factor**  
X  
**Tax Rate**  
=  
**Tax**



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# TAX DISCOUNTS

- No-Tax-Due Threshold:
  - \$300,000 (reports due 1/1/08-12/31/2009)
  - \$1,000,000 (1/1/10-12/31/11)
  - \$1,030,000 (1/1/12-12/31/13)
  - \$1,080,000 (1/1/14-12/31/15)
  - \$1,110,000 (1/1/16- 12/31/17)
- Percentage Discount (reports due 1/1/08-12/31/09):
  - 60% (\$400k-\$500k), 80% (300k-400k)
  - 40% of tax due if total revenue > \$500,000 & < \$700,000
  - 20% of tax due if total revenue ≥ \$700,000 & < \$900,000
- E-Z Computation - Combined groups with total revenue of less than or equal to \$20 million (*previously \$10 million*) may elect to pay a gross receipts tax
  - Computation:
$$\frac{\text{Total Revenue} \times \text{Apportionment Factor} \times .331\%}{\text{Margin Tax}}$$
  - May subtract applicable discount
  - No other offsets to tax allowed (e.g. deduction, credit)



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# COMPUTATION OF TAX KEY POINTS

- Total revenue generally based on federal entity classification
- Each term is statutorily defined
  - Example-Costs of goods sold does not follow Treas. Reg. 1.263A-1
    - Certain items included for federal may not be included for Texas purposes
- Election to deduct costs of goods sold or compensation made on annual report
  - Timing
  - Can be changed each year
  - Entities filing a combined report must make a single election for the combined group (**can** change on amended return –policy change, then statutory change in 2013 H.B. 500)



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# CALCULATION OF TOTAL BUSINESS REVENUE

- Amounts “reportable as income”, not amounts “entered”
- For entities treated as corporations and partnerships add amounts from federal returns
  - Corporations
    - Form 1120 Lines 1(c), 4-10
  - Partnerships
    - Form 1065 Lines 1(c), 4, 6, 7
    - Schedule K, Lines 3a, 5-11
    - Form 8825, Line 17
  - Rules provide specific line references for other entity types
  - Texas is required to accept amount properly reported on proper form, including 1120-F
- Special rules apply for certain businesses (staff leasing – “professional employer organization” effective 9-1-13, management companies, health care, oil and gas)
- For combined groups, total revenue is determined as if separate federal returns had been filed





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# CALCULATION OF TOTAL BUSINESS REVENUE

- Exclusion of loan principal repayments to lending institutions
- Exclusions of flow through funds mandated by contract (Further defined effective 1-1-14) as:
  - Sales commissions to nonemployees, including split-fee real estate commissions
  - The basis as determined under the IRC of securities underwritten; and
  - Subcontracting payments under contract or subcontract entered into by the taxable entity to provide services, labor, or materials in connection with actual or proposed design, construction, remodeling, remediation, or repair of improvements on real property.
- Many other exclusions – including item of revenue without “sufficient unitary connection”/nonbusiness exclusion
- Allowable subtractions including, but not limited to;
  - Bad debts expensed for federal income tax purposes
  - Foreign royalties and dividends, including IRC Sec. 78 gross-up and subpart F income
  - Allowable deductions (i.e. dividends received deductions) from Schedule C to the extent included in total revenues
  - Net distributive income from partnerships, LLC’s treated as partnerships, and S Corporations
  - Items attributed to disregarded entities
  - Certain dividends and interest from federal obligations



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# CALCULATION OF COST OF GOODS SOLD

## Some Included Costs

Labor  
Materials  
Handling  
Storage  
Depreciation related to  
production  
Certain rental expenses  
Certain licensing or franchising  
fees  
Taxes related to production

## Some Excluded Costs

Selling  
Distribution  
Advertising  
Income taxes  
Officer's compensation  
Interest  
Outbound transportation



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# COST OF GOODS SOLD

- “Direct costs of acquiring or producing goods” (Direct COGS)
  - Specifically: Labor, materials, handling, storage, depreciation, depletion, amortization, R&D, production taxes, renting/leasing, repairs, IDCs, seismic, obsolescence, etc.
- COGS generally available to those who produce “goods” sold in the ordinary course of business (e.g. manufacturers, producers, extractors, wholesalers, retailers)
  - “Goods” include real and tangible personal property (oil and gas wells are considered real property – COGS for drillers and oil field service companies)
- COGS can generally be subtracted with respect to real or tangible personal property (not services)
  - Exceptions for “lending institutions” and others
- Indirect and administrative costs allocable to the acquisition or production of goods are deductible
  - Deduction limited to 4% of total indirect and administrative costs



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# COST OF GOODS SOLD

- Entity renting or leasing property generally not allowed a COGS deduction
  - Certain industry specific exceptions apply
    - Motor vehicle leasing/renting
    - Heavy construction equipment leasing/renting
    - Railcar leasing/renting
- Lending institutions that offer loans to public can deduct interest expense as COGS
- COGS deduction can only be taken if entity has beneficial ownership of goods (all facts and circumstances considered)
  - Exception:  
“A member of a combined group may claim as costs of good sold those costs that qualify under Section 171.1012 if the goods for which the costs are incurred are owned by another member of the combined group”

# COST OF GOODS SOLD

- Payments made to related parties not included in combined report may only be deducted if at “arm’s-length” terms
- Federal/Texas COGS – Key Differences
  - IRC Sec. 197 costs included – favorable to taxpayers making taxable acquisitions of business
  - IRC Sec. 174 costs included – favorable to taxpayers with intensive research activities
  - Interest expense (except for qualifying lending institutions)
- Taxable entities are allowed to elect to expense or capitalize costs in determining COGS



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# COGS – BONUS DEPRECIATION

- Memorandum from Tax Policy, STAR Document Accession No. 201401856L (1-30-14) – No bonus depreciation in COGS
  - Texas adopts 2007 version of IRC
  - Franchise tax depreciation recalculated using method available in 2007
  - Also results in adjusted basis for federal and Texas franchise tax may be different (yes, may have federal gain on sale and Texas gain)
- Problem: Not consistent with instructions with gains/losses coming directly from federal form



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# CALCULATION OF COMPENSATION DEDUCTION

- Wages and cash compensation
  - All Medicare Wages and Tips from W-2 Forms plus;
    - “Net distributive income” from entities treated as partnerships and S Corporations if received by natural person
      - Captures partner income
    - Stock awards and options
- Wages and cash compensation deduction is capped at \$360,000 per individual
  - Computed on employee-by-employee basis
  - Limits deduction for highly compensated individuals



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# CALCULATION OF COMPENSATION DEDUCTION

- Plus, all benefits provided to employees, officers, directors, partners, and owners if deductible for federal income tax purposes
  - Examples of deductible benefits include worker's compensation, retirement, health care
  - \$360,000 cap does not apply to benefits



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# APPORTIONMENT

- Based on existing single gross receipts factor
- Determination of gross receipts from business in state generally follows existing law with some differences
  - No throwback rule
- *Joyce* method adopted
  - Only taxable entities which individually have nexus with Texas may have gross receipts sourced to Texas
- Analysis of *Finnegan* method no longer required to be disclosed
- Receipts from members of combined group generally subtracted
- “Everywhere gross receipts” will generally equal “total revenue” – from Comptroller
- Still Location of Payor



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## OTHER PROVISIONS – TEMPORARY CREDIT

- Applies to unutilized and unexpired business losses
  - First 10 years: Business losses [Section 171.110(e)]
    - x 4.5%
    - x 2.25%
    - = amount of credit per year
  - Second 10 years: Business losses [Section 171.110(e)]
    - x 4.5%
    - x 7.75%
    - = amount of credit per year
  - Must have notified Comptroller on Form 05-172 by May 15, 2008, applies for 20 consecutive privilege periods
  - Credits may be carried forward, but not past 2027





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## OTHER PROVISIONS – RATE OF TAX

- Rate generally 0.75% of taxable margin (1%-0.95% for reports due prior to 2016)
- 0.375% rate for entities primarily engaged in retail or wholesale trade (0.5%-0.475% prior to 2016)
  - Primarily engaged in retail or wholesale if all three conditions met:
    - Total revenue from retail or wholesale trade (defined Division F and G of 1987 SIC) is greater than revenues from other trades
    - Less than 50 percent of its qualifying wholesale and retail revenues comes from sales of products it or its affiliates produce (provision does not apply to restaurants or drinking establishments)
    - Entity does not provide telecommunications, electricity, gas or other utilities



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# OTHER PROVISIONS – R&D CREDIT

- If research and development credit established under old franchise tax (prior to 1-1-08), credit can be carried forward.
- For reports originally due on and after 1-1-14, a credit is provided for qualified research expense (“QRE”) (as defined by IRC Sec. 41) conducted in Texas and is equal to:
  - 5% of the difference between QRE during current tax period and 50% of the average amount of QRE in prior three tax periods.
  - 2.5% of current tax period QRE (if no QRE in any of three prior tax periods)
  - 6.25%/3.125% if QRE with one or more public or private institutions of higher education for the performance of qualified research.
- Cannot exceed 50% of franchise tax due on the report
- Unused credit carryforward for up to 20 consecutive reports
- Also Clean Energy Project Credit (eff. 1-1-09)



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# OTHER PROVISIONS – FILING DATE

- Due date:
  - May 15<sup>th</sup>, if no extension (if first extension to 8-15, must pay 90% of current tax or 100% of prior year)
  - August 15<sup>th</sup>, if proper first extension (if second extension to 11-15, must pay 100% of current year)
  - November 15<sup>th</sup> if proper second extension
- Second extension required for taxpayers with mandatory EFT payments (most taxpayers)
- “Properly Extended”
- Fiscal Year Taxpayers – Due Date?



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# HOUSE BILL 500 (6.14.13)

- Reduced Rates (temporary – previous slides) (no longer effective)
- Minimum Deduction of \$1 Million
- Expands COGS Deduction:
  - Pipeline companies, movie theaters eligible
  - (include direct and indirect labor costs that are eligible to be capitalized under Sec. 263A or Sec. 460 – without regard to whether taxpayer capitalized on federal return)
  - Labor costs include W-2 wages, IRS Form 1099 for temporary labor, payroll taxes, pension contributions, employee benefit expenses (including per diem)
  - Taxpayers can change deduction under amended report or audit
  - Clarifies – property taxes are direct COGS if building and equipment used to “acquire, produce or store” goods
- Expanded Revenue Exclusions (subcontractor payments, transporters vis waterways, pharmacy networks, and many others)
- Internet hosting sourced to TX based on location of customer
- *Finnigan* reporting canceled
- Retail or wholesale electric utilities are prohibited from being included in a combined group with non-utilities



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# TEXAS FRANCHISE TAX RULES

- §3.581 Taxable and Nontaxable Entities
- §3.582 Passive Entities
- §3.583 Exemptions
- §3.584 Reports and Payments
- §3.585 Annual Report Extensions
- §3.586 Nexus
- §3.587 Total Revenue (amended eff. 9-30-12)
- §3.588 Cost of Goods Sold (amended eff. 6-5-13)
- §3.589 Compensation
- §3.590 Combined Reporting
- §3.591 Apportionment
- §3.592 Additional Tax
- §3.593 Franchise Tax Credits
- §3.594 Temporary Credit for Business Loss Carryforwards
- §3.595 Transition
- §3.598 Tax Credit for Certified Rehabilitation of Certified Historic Structures (adopted 8-6-15)
- §3.599 Research and Development Activities Credit (adopted 4-15-15)

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=34&pt=1&ch=3&sch=V&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=3&sch=V&rl=Y)





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## ADDITIONAL RELEVANT PROVISIONS

- Internal Revenue Code definition is updated to reflect the 1986 Code in effect for federal tax years beginning January 1, 2007
- Reports and Payments
  - General same as old law
  - EFT requirements and due dates will become more widely applicable given reduced threshold of \$10,000
    - EFT Requirement based on amount reported/paid in preceding tax year
    - EFT/credit card through Webfile or through approved electronic software providers available for payments from \$10,000-\$99,999
    - EFT through TEXNET only for \$100,000 or above
- Link to new statutes and Rules
  - [http://www.window.state.tx.us/taxinfo/franchise/ft\\_revised.html](http://www.window.state.tx.us/taxinfo/franchise/ft_revised.html)



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# ASC 740 (FORMERLY FAS 109)

- Is the Margin Tax an income tax? *[For ASC 740 – yes]*
- Should Margin Tax be included in your current state rate? *[Yes – at 0.75%, Q2 2015 event – **returns** due after 1-1-16]*
- What about the deferred rate? *[0.75.% - Q2 2015 event]*
- Do we have to calculate Margin Tax separately or can it be included in 50-state income tax spreadsheets based on FTI? *[talk to your auditor]*
- What is my state rate if book income is negative but we will pay Margin Tax? *[talk to your auditor]*
- We have negative taxable margin. How do I book my Texas NOL? *[You don't. There is none.]*
- Do I book cumulative temporary differences for items in COGS? *[Depreciation, capitalized expenses, etc.]*
- What if we don't know whether COGS or Compensation will be used in any given year?



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# COMPLIANCE CHECKLIST

- Don't forget Public Information Reports (SOS)
- Due Date is 5/15, NOT Fed + 2 months (fiscal)
- Don't forget the second extension
  - First extension to 8/15
  - Second extension to 11/15
- Electronic Payments (EFT) mandatory for \$10,000 or more
- Any addition to Reporting Group, you may not have "prior year exception" for extension payments
  - 100% of last year's liability not available for initial extension
- Texas has no quarterly estimated payments, only extension
  - i.e. – if no extension payment is necessary for other states, please don't forget Texas
- Affiliate Lists (suggest no changes from extension to filing)



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# RECENT CASES AND DEVELOPMENTS





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## AMERICAN MULTI-CINEMA, INC. V. HEGAR, NO. 03-14-00397-CV, TEX. APP. AUSTIN (4-30-15)

- On April 30, 2015, the Texas Third Court of Appeals determined that AMC could include its exhibition costs in its Texas cost of goods sold (COGS) deduction.
- In making this determination, the Court concluded that exhibited films represent tangible personal property, rather than intangible property or a service, because films are 'perceptible to the senses.'
- Potential impact would imply that many service providers would be able to take COGS deduction.
- Impact analysis from the Comptroller = \$1.5 billion a year; 4 year impact = \$6 billion
- Motion for Rehearing Pending (reply briefs filed)





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## Texas Comptroller of Public Accounts Policy Division, subject Tax Code Section 171.1012(c)(9)

- Texas Comptroller's Tax Policy Division released a policy memorandum to the Audit Division on May 13, 2015
- Policy Change regarding the costs of goods sold (COGS) deduction for taxpayers that do not produce the goods they sell.
- Taxpayer may include research, experimental, engineering, and design activities in the COGS deduction, regardless of whether the taxpayer is the producer of goods.



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## Gulf Copper & Manufacturing Corp. v. Hegar (2016)

- Offshore Rig Repair Co. Wins
- Texas district court upholds Gulf Copper's positions on:
  - Revenue Exclusion for Real Property Subcontractors and
  - Cost of Goods Sold
- The court rejected the Comptroller's argument that a fee-sharing contract is required to exclude revenues paid to subcontractors.
- The court allowed the Cost of Goods Sold deduction, which included:
  - costs to remove defective offshore oil rigs parts and
  - costs to install the new components
- Comptroller expected to appeal the decision.



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# IN RE: NESTLE USA INC (2012)

- Challenging 1% rate (vs. 0.5% rate)
- Nestle's argument:
  - Violates Texas constitution requirement that taxation must be "equal and uniform"
  - Calculation of retail activity should be based on in-state only activity (Nestle had primarily retail in Texas)
- Texas Supreme Court ruled in favor of Comptroller
  - Retail/wholesale classification and others appropriate for an occupation tax



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# TITAN TRANSPORTATION, LP V. COMBS (2014)

- Excluding payments made to subcontractors from total revenue
- Titan obligated by contract to share proceeds with subcontractors
- “Flow-through payments” exclusion
- Court of Appeals ruled in favor of Titan, declining to accept the Comptroller’s strict interpretation that funds had to be “mandated by contract to be distributed” to the subcontractors
- Texas Supreme Court declined to review



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## GRAPHIC PACKAGING CORP. V. COMPTROLLER, 3RD DIST. NO. 03-14-00197-CV (7/28/15)

- MTC 3-factor vs. 1-factor
- On July 28, 2015, the Texas Court of Appeals, Third District ruled that the Texas Franchise Tax is not a tax imposed on net income for Multistate Tax Compact purposes and therefore the compact's three-factor apportionment formula provisions were not available to the taxpayer.
- Other cases challenged
- Comptroller has issued rules against as well
- Several other cases on topic





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## HALLMARK MARKETING CO. LLC V. HEGAR (CASE NO. 14-1075, TX SUP. CT.)

- Texas Supreme Court finds for Hallmark - reversing lower court rulings (4/15/2016)
- **“Net Gains” means “Net Gains”** (and not “net loss”):
  - “We hold that Tax Code section 171.105(b) does not require Hallmark to include a net loss from the sale of investments and capital assets in its apportionment-factor denominator.”
- Background:
  - \$628 million in investment losses and capital asset writedowns
  - Law includes only “net gain” from sale of investments or capital assets [TTC Sec. 171.105(b), Rule 3.591]
  - Comptroller’s position was to **INCLUDE** loss in total revenue (because loss also included in apportionment – resulting in higher sales factor)



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# TEXAS MARGIN TAX IN 2016 AND BEYOND...

- Will it survive 2017 Legislative Session? (bullet point used to have “2015” and rate was cut by 25% last year)
- Numerous calls/proposals to eliminate the tax in 2015 legislative session (will those proposals reemerge?)
- Eliminating margin tax would improve Texas’ ranking on State Business Tax Climate Index from 10<sup>th</sup> to 3<sup>rd</sup> best (Tax Foundation)
- Will price of crude blues offset flush rainy day fund?
- Replace with What? - Don’t forget constitutional prohibition against income tax



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# TEXAS MARGIN TAX OPTIMIZATION

- *Joyce* Planning – exclude receipts factor of no nexus affiliate (captive marketing)
- COGS Planning (captive manufacturing/ purchasing companies)
- Apportionment Planning – Location of Payor
- Non-Unitary Income – excluded from base and apportionment, no mechanism for allocation

**QUESTIONS?**

# APPENDIX



# FORMS

- Long Form
  - 05-158-A Franchise Tax Report Page 1
  - 05-158-B Franchise Tax Report Page 2
  - 05-160 Credits Summary Schedule
  - 05-102 Public Information Report
  - 05-167 Ownership Information Report
  - 05-170 Payment Form
  - 05-166 Affiliate schedule
  - 05-175 Tiered Partnership Report
  - 05-177 Common Owner Information Report
  - 05-178 Research and Development Activities Credits Schedule
  - 05-180 Historic Structure Credit Supplement for Credit Claimed on Report
- Extension
  - 05-164 Extension Request
  - 05-165 Extension Affiliate List
- No Tax Due
  - 05-163 No Tax Due Information Report
- EZ Computation
  - 05-169 EZ Computation Report

■ Tcode 13250 Annual

Taxpayer number										Report year		Run date	
										2 0 1 6		05/16/2016	
Payor name												Secretary of State file number or comptroller file number	
Mailing address													
City			State			County			ZIP code plus 4			Check to circle if the address has changed <input type="checkbox"/>	
<input type="checkbox"/> Check to circle if this is a combined report. <input type="checkbox"/> Check to circle if Total Revenue is adjusted for Tiered Partnership Effect (no. see instructions)													
<input type="checkbox"/> Is this entity a corporation, limited liability company, professional association, limited partnership or financial institution? <input type="checkbox"/> Yes <input type="checkbox"/> No													

W Franchise months, see instructions for annualized revenue

Accounting year begin date**	Accounting year end date	SIC code	NAICS code

REVENUE (Where shown only)													
1. Gross receipts or sales	1.											0	0
2. Dividends	2.											0	0
3. Interest	3.											0	0
4. Rents (can be negative amount)	4.											0	0
5. Royalties	5.											0	0
6. Gains/losses (can be negative amount)	6.											0	0
7. Other income (can be negative amount)	7.											0	0
8. Total gross revenue (Add items 1 thru 7)	8.											0	0
9. Exclusions from gross revenue (see instructions: (from 8 minus from 9a) less (from items 9b-9d))	9.											0	0
10. TOTAL REVENUE	10.											0	0
COST OF GOODS SOLD (Where shown only)													
11. Cost of goods sold	11.											0	0
12. Indirect or administrative overhead costs (see instructions)	12.											0	0
13. Other (see instructions)	13.											0	0
14. TOTAL COST OF GOODS SOLD (Add items 11 thru 13)	14.											0	0
COMPENSATION (Where shown only)													
15. Wages and cash compensation	15.											0	0
16. Employee benefits	16.											0	0
17. Other (see instructions)	17.											0	0
18. TOTAL COMPENSATION (Add items 15 thru 17)	18.											0	0

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	VL/DL	<input type="checkbox"/>
	PM Date	

TCODE 13251 Annual

Taxpayer number	Report year	Due date	Taxpayer name
<input type="text"/>	2 0 1 6	05/16/2016	<input type="text"/>

**MARGIN** (Whole dollars only)

19. **70% revenue** (Item 19 x .70) 0 0

20. **Revenue less COGS** (Item 16 - Item 14) 0 0

21. **Revenue less compensation** (Item 20 - Item 18) 0 0

22. **Revenue less \$1 million** (Item 10 - \$1,000,000) 0 0

23. **MARGIN** (see instructions) 0 0

**APPORTIONMENT FACTOR**

24. **Gross receipts in Texas** (Whole dollars only) 0 0

25. **Gross receipts everywhere** (Whole dollars only) 0 0

26. **APPORTIONMENT FACTOR** (Multiply item 24 by item 25, round to 4 decimal places) 0 0

**TAXABLE MARGIN** (Whole dollars only)

27. **Apportioned margin** (Multiply item 23 by item 26) 0 0

28. **Allowable deductions** (see instructions) 0 0

29. **TAXABLE MARGIN** (Item 27 minus item 28) 0 0

**TAX DUE**

30. **Tax rate** (see instructions for determining the appropriate tax rate) 0 0

31. **Tax due** (Multiply item 29 by the tax rate to item 26) (Dollars and cents) 0 0

**TAX ADJUSTMENTS** (Dollars and cents) (Do not include prior payments.)

32. **Tax credits** (Item 23 from Form 05-160) 0 0

33. **Tax due before discount** (Item 31 minus item 32) 0 0

34. **Discount** (see instructions, applicable to report years 2005 and 2008) 0 0

**TOTAL TAX DUE** (Dollars and cents)

35. **TOTAL TAX DUE** (Item 33 minus item 34) 0 0

Do not include payment if item 35 is less than \$1,000 or if annualized total revenue is less than the no tax due threshold (see instructions). If the entity makes a Limited partnership election, ANY amount in item 35 is due. Complete Form 05-170 if making a payment.


Firm or type name	Accounting firm number ( ) -
I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief.	<b>Mail original to:</b> Texas Comptroller of Public Accounts P.O. Box 149348 Austin, TX 78714-9348
<b>sign here</b>	
Date	

Instructions for each report year are online at [www.comptroller.texas.gov/taxinfo/taxforms/05-forms.html](http://www.comptroller.texas.gov/taxinfo/taxforms/05-forms.html). If you have any questions, call 1-800-252-1981.

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VE/DE	<input type="radio"/>
FM Date	<input type="text"/>





### Texas Franchise Tax Credits Summary Schedule

Code 13254 Annual Franchise

Taxpayer number	Report year	Taxpayer name
	2 0 1 6	

#### Part A - Credit Limit

1. Tax due before credits (Item 17 of the tax report, Form 09-13042)	1.	
2. Credit limit (per 29.502(a)(5))	2.	

#### Part B - Credits Available

3. Investment credit installment from prior years	3.	
4. Investment credit carried forward from prior years	4.	
5. Investment credit available (MAI from 3, plus item 4)	5.	
6. Jobs creation credit carried forward from prior years	6.	
7. Research credit carried forward from prior years	7.	
8. Unused temporary credit for Business Loss Carryforward (BLC) from prior years	8.	
9. R & D activities credit available (limit) (from Form 05-178)	9.	
10. Eligible historic structure credit	10.	
11. Historic structure credit carried forward from prior years	11.	
12. Historic structure credit available (maximum 10% of item 11)	12.	
13. 1992 Temporary credit	13.	

#### Part C - Credits Claimed

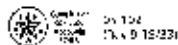
14. Investment credit claimed <i>(Amount cannot exceed the credit available from 3 or the credit available in item 5.)</i>	14.	
15. Jobs creation credit claimed <i>(Amount cannot exceed the credit limit in item 6 or the credit available in item 6.)</i>	15.	
16. Research credit claimed <i>(Amount cannot exceed the credit limit in item 7 or the credit available in item 7.)</i>	16.	
17. Temporary credit for BLC from this year only	17.	
18. Unused temporary credit for BLC from prior years claimed <i>(Amount cannot exceed the credit available in item 8.)</i>	18.	
19. R & D activities credit claimed <i>(Amount cannot exceed the credit available in item 9 or the credit available in item 9.)</i>	19.	
20. Historic structure credit claimed <i>(Amount cannot exceed the credit available in item 12.)</i>	20.	
21. 1992 Temporary credit less additional tax due	21.	
22. Other (see instructions)	22.	
23. Total credits claimed (Add items 14, 15, 16, 17, 18, 19, 20, 21 and 22) <i>(This total must be less than 32 of the tax report, Form 05-13042.)</i>	23.	

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VF/DF	
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Form 3054  
TX-09-182231

### Texas Franchise Tax Public Information Report

To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP),  
Professional Associations (PA) and Financial Institutions

Code 13196 Franchise

Franchise number

Report year

2 0 1 6

You have certain rights under Chapter 552 and 553, Government Code, to access, request and download information from records maintained by the Comptroller at 1-800-252-1331.

Owner name \_\_\_\_\_

Mailing address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP code plus 4 \_\_\_\_\_

Blocker title if the mailing address has changed

Secretary of State (SOS) file number or  
Comptroller file number \_\_\_\_\_

Blocker title if there are currently no changes from previous year. If no information is to be reported, complete the applicable information in sections A, J and K.

Principal office \_\_\_\_\_

Principal place of business \_\_\_\_\_

You must report selected officers, members, general partners and managers information as of the date you complete this report.

***Please sign below!*** This report must be signed to satisfy franchise tax requirements.



1000000050015

**SECTION A** Name, title and mailing address of each officer, director, member, general partner or manager.

Name	Title	Director	Term expiration
<input type="checkbox"/> YES	at	on	of
Mailing address	City	State	ZIP Code
Name	Title	Director	Term expiration
<input type="checkbox"/> YES	m	m	d
Mailing address	City	State	ZIP Code
Name	Title	Director	Term expiration
<input type="checkbox"/> YES	a	o	f
Mailing address	City	State	ZIP Code

**SECTION B** Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which the entity owns an interest of 10 percent or more.

Name of owned business (corporation, LLC, LP, PA or financial institution)	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned business (corporation, LLC, LP, PA or financial institution)	State of formation	Texas SOS file number, if any	Percentage of ownership

**SECTION C** Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in the entity.

Name of owner (parent corporation, LLC, LP, PA or financial institution)	State of formation	Texas SOS file number, if any	Percentage of ownership
--	--------------------	-------------------------------	-------------------------

Register with the Comptroller's office online by the deadline you must use to make this report. An exemption on how long the term of a franchise manager or general partner, registered office agent or registered agent is not applicable.

Agent \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

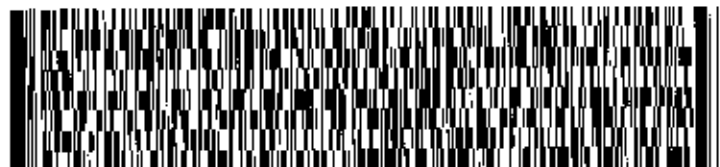
Office \_\_\_\_\_

The information on this form is required by Section 7.003 of the Tax Code for each corporation, LLC, LP, PA or financial institution that files a Texas Franchise Tax Report. All additional copies for Sections A, B and C, if necessary, must be made available for public inspection.

I declare that the information on this document and any attachments is true and correct to the best of my knowledge and belief as of the date and request that a copy of this report has been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is duly employed by this or any other corporation, LLC, LP, PA or financial institution.

Sign here \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_ Area code and phone number ( ) - \_\_\_\_\_

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VE/DE  PIR/ND





### Texas Franchise Tax Ownership Information Report

For Non-Franchise Entities Other Than Corporations, Limited Liability Companies, Limited Partnerships,  
Professional Associations or Financial Institutions

Code 13197

<input type="checkbox"/> Report year <b>2 0 1 6</b>		For Answer instructions, refer to Chapter 552 and 555, Government Code sections 5601 and 5601.1. This form may also be downloaded from the Internet at 7-800-252-1381.	
Taxpayer name		<input type="checkbox"/> Mailing address is the mailing address has changed.	
Mailing address		Country	Secretary of State (SSS) file number or Corporation # or number
City	State	ZIP code plus 4	

**SECTION A.** Enter the information required for each general partner of a partnership or each trustee of a trust. Also, provide the information for each person or entity that owns an interest of 10 percent or more in this entity.

Name	What type of owner? (Bastion only one)	<input type="radio"/> GENERAL PARTNER <input type="radio"/> LIMITED PARTNER <input type="radio"/> OTHER	FFE number Percentage of ownership
Mailing address	City	State	ZIP code plus 4
Name	What type of owner? (Bastion only one)	<input type="radio"/> GENERAL PARTNER <input type="radio"/> LIMITED PARTNER <input type="radio"/> OTHER	FFE number Percentage of ownership
Mailing address	City	State	ZIP code plus 4
Name	What type of owner? (Bastion only one)	<input type="radio"/> GENERAL PARTNER <input type="radio"/> LIMITED PARTNER <input type="radio"/> OTHER	FFE number Percentage of ownership
Mailing address	City	State	ZIP code plus 4

**SECTION B.** Enter the information required for each entity, if any, in which this partnership, association, trust or other entity owns an interest of 10 percent or more.

Name of entity (subsidiary corporation or entity)	State of formation	FFE number	Percentage of ownership
Name of entity (subsidiary corporation or entity)	State of formation	FFE number	Percentage of ownership

Registered agent and office, or agent for service of process (see instructions if you need to make this field)

Agent:

City

State

ZIP code plus 4

The above information is authorized by Section 171.201(a)(2), Section 171.201(a)(3), 171.202(a)(4) and 171.354 for each entity.  
 Use additional forms (05-167) for Sections A and B as necessary.

I declare the information in this document and any attached exhibits and returns to be true to the best of my knowledge and belief, as of the date below.

(sign here)
  Title
  Date
  Account or file number

Mail original to:  
 Texas Comptroller of Public Accounts  
 P.O. Box 149348  
 Austin, TX 78714-9348

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VE/DF




**Code 13050 Annual Franchise**

<b>Tagger number</b> <input type="text"/>	<b>Report year</b> <input type="text" value="2"/> <input type="text" value="0"/> <input type="text" value="1"/> <input type="text" value="6"/>	<b>File date</b> <input type="text"/>
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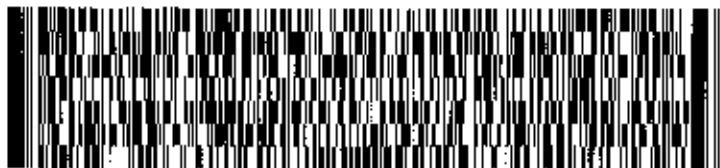
**Taxpayer name**

<b>1. Total tax due on this report</b> <small>(Item 25 from Form 05-158-B or Item 17 from Form 05-169)</small>	<b>1.</b> <input type="text"/>
<b>2. Enter prior payment</b> (see instructions)	<b>2.</b> <input type="text"/>
<b>3. Net tax due</b> (Item 7 on Form 05-169)	<b>3.</b> <input type="text"/>
<b>4. Penalty</b> (see instructions)	<b>4.</b> <input type="text"/>
<b>5. Interest</b> (see instructions)	<b>5.</b> <input type="text"/>
<b>6. TOTAL AMOUNT DUE AND PAYABLE</b> (Add Items 1, 4 and 5) <small>Make amount payable to TEXAS COMPTROLLER</small>	<b>6.</b> <input type="text"/>

Taxpayers who paid \$10,000 or more during the preceding fiscal year (Sept. 1 thru Aug. 31) are required to electronically pay their form of tax. For more information visit [www.comptroller.texas.gov/webform/franchise.html](http://www.comptroller.texas.gov/webform/franchise.html).

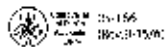
Mail original to:  
 Texas Comptroller of Public Accounts  
 P.O. Box 149348  
 Austin, TX 78714-9348

Instructions for each report year are online at [www.comptroller.texas.gov/ashinfo/axform/05-form.shtml](http://www.comptroller.texas.gov/ashinfo/axform/05-form.shtml). If you have any questions, call 1-800-254-1287.

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WF/DC	<input type="radio"/>
PM Date	<input type="text"/>





Texas Franchise Tax Affiliate Schedule

Teotle 13253 Annual Franchise

Reportability taxpayer number	2016	Reportability taxpayer name
-------------------------------	------	-----------------------------

Reporting entity must be included on Affiliate Schedule. Affiliate reporting period dates must be within combined group's accounting period dates.

1. Legal name of affiliate		2. Affiliate taxpayer number (if one, use FE number)		3. Affiliate NAICS code	
4. Blacken circle if entity is disregarded for franchise tax		5. Blacken circle if this affiliate does NOT have NEXUS in Texas		6. Affiliate reporting begin date	
8. Gross receipts subject to throwback in other states (before eliminations)		9. Gross receipts everywhere (before eliminations)		7. Affiliate reporting end date	
10. Gross receipts in Texas (before eliminations)		11. Cost of goods sold or compensation (before eliminations)			

1. Legal name of affiliate		2. Affiliate taxpayer number (if one, use FE number)		3. Affiliate NAICS code	
4. Blacken circle if entity is disregarded for franchise tax		5. Blacken circle if this affiliate does NOT have NEXUS in Texas		6. Affiliate reporting begin date	
8. Gross receipts subject to throwback in other states (before eliminations)		9. Gross receipts everywhere (before eliminations)		7. Affiliate reporting end date	
10. Gross receipts in Texas (before eliminations)		11. Cost of goods sold or compensation (before eliminations)			

1. Legal name of affiliate		2. Affiliate taxpayer number (if one, use FE number)		3. Affiliate NAICS code	
4. Blacken circle if entity is disregarded for franchise tax		5. Blacken circle if this affiliate does NOT have NEXUS in Texas		6. Affiliate reporting begin date	
8. Gross receipts subject to throwback in other states (before eliminations)		9. Gross receipts everywhere (before eliminations)		7. Affiliate reporting end date	
10. Gross receipts in Texas (before eliminations)		11. Cost of goods sold or compensation (before eliminations)			

The reportability of a combined group with a temporary credit for business loss carryforwards presence for full and/or affiliates must submit common owner information. This information must be provided to satisfy franchise tax reporting requirements. See Form 001, www.sos.texas.gov/affiliates/affiliates.htm for more information. An information report (Form 005 167 or Form 005 167) must be filed for each affiliate that is organized in Texas or that has a physical presence in Texas.

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VE/DE	<input type="radio"/>	FM	<input type="radio"/>
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Trade 13756 Annual Franchise

<input type="checkbox"/> Taxpayer number	<input type="checkbox"/> Report year	Taxpayer name
<input type="text"/>	<input type="text" value="2016"/>	

1. Lower tier total revenue before election			<input type="text" value="00"/>	
<input type="checkbox"/>				
2. Partner taxpayer number (If none, use 99 number)			3. Amount of revenue being passed	
<input type="text"/>			<input type="text" value="00"/>	
4. Legal name of partner			5. State of formation	
<input type="text"/>			<input type="text"/>	
Mailing address			6. Has partner circle if lower tier partner <input type="checkbox"/> <input type="radio"/>	
City			7. Has partner circle if upper tier partner <input type="checkbox"/> <input type="radio"/>	
State			Country	
City			ZIP Code	
City			Plus 4	

1. Lower tier total revenue before election			<input type="text" value="00"/>	
<input type="checkbox"/>				
2. Partner taxpayer number (If none, use 99 number)			3. Amount of revenue being passed	
<input type="text"/>			<input type="text" value="00"/>	
4. Legal name of partner			5. State of formation	
<input type="text"/>			<input type="text"/>	
Mailing address			6. Has partner circle if lower tier partner <input type="checkbox"/> <input type="radio"/>	
City			7. Has partner circle if upper tier partner <input type="checkbox"/> <input type="radio"/>	
State			Country	
City			ZIP Code	
City			Plus 4	

1. Lower tier total revenue before election			<input type="text" value="00"/>	
<input type="checkbox"/>				
2. Partner taxpayer number (If none, use 99 number)			3. Amount of revenue being passed	
<input type="text"/>			<input type="text" value="00"/>	
4. Legal name of partner			5. State of formation	
<input type="text"/>			<input type="text"/>	
Mailing address			6. Has partner circle if lower tier partner <input type="checkbox"/> <input type="radio"/>	
City			7. Has partner circle if upper tier partner <input type="checkbox"/> <input type="radio"/>	
State			Country	
City			ZIP Code	
City			Plus 4	

If the lower tier entity's total annual total revenue is greater than the no-tax due threshold before passing any revenue to upper tier entities, the lower and upper tier entities are not eligible to file a No Tax Due information Report form 05-165.

Use additional forms (05-175) to report information as necessary.

Texas Comptroller Official Use Only

V5/DF	<input type="radio"/>	FM	<input type="radio"/>
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US 177  
REV. 12/11

# Texas Franchise Tax Common Owner Information Report

Trade 13257 Franchise

Report on behalf of entity (franchise owner)										Report year	Reporting entity taxpayer name
										2 0 1 6	

The common owner is the entity or individual that owns more than 50 percent (directly or indirectly) of each affiliate of the combined group. *Note: The reporting entity is not necessarily the common owner.*

## Common Owner Identification

Identification number (Enter only ONE of the following, whichever Texas taxpayer number, federal employer identification number or Social Security number.)

1. Texas taxpayer number	1.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
OR													
2. Federal employer identification number	2.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
OR													
3. Social Security number	3.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Federal Privacy Act:** Disclosure of your Social Security number is required and authorized under law for the purpose of tax administration and identification of any individual affected by applicable law. 42 U.S.C. § 405(a)(2)(D); Tex. Govt. Code §§ 402.011 and 402.078. Release of information on this form in response to a public information request will be governed by the Public Information Act, Chapter 602, Government Code, and applicable federal law.

## Common Owner Name

Common owner business name		Common owner first name, middle initial, last name	
Mailing address			
City	State	ZIP code	

## Date

Enter the date this entity or individual became the common owner of the combined group. (The start date is not the same as the combined group accounting period date or the privilege period.)

Blacken this circle if this entity or individual is still the common owner

Common owner start date	Common owner end date (If applicable)																
<table border="1"> <tr><td>m</td><td>d</td><td>y</td><td>y</td></tr> <tr><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td></tr> </table>	m	d	y	y	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<table border="1"> <tr><td>m</td><td>d</td><td>y</td><td>y</td></tr> <tr><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td></tr> </table>	m	d	y	y	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
m	d	y	y														
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>														
m	d	y	y														
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>														

Print or type name	Area code and phone number
<input type="text"/>	<input type="text"/>
Delete just the information in this document and any attached exhibits and insert it into any other document. Date: <input type="text"/>	Mail original to: Texas Comptroller of Public Accounts P.O. Box 149340 Austin, TX 78714-0340

Instructions for each report year are online at [www.comptroller.texas.gov/tax/info/taxforms/03](http://www.comptroller.texas.gov/tax/info/taxforms/03) for 03-14. If you have any questions, call 1-800-252-1281.

Under Chapter 602, Government Code, you are entitled to review, adjust and correct information we have on file about you. With written acceptance in accordance with Chapter 602, Government Code, an original submission for correction for a recent year, subsequent submissions of the 000000 or unique number listed on this form.

**Texas Comptroller Official Use Only**

	<table border="1"> <tr> <td>VF/DP</td> <td><input type="radio"/></td> </tr> </table>	VF/DP	<input type="radio"/>
VF/DP	<input type="radio"/>		



05-170  
06-11  
Code 3759 Annual

**Texas Franchise Tax Research and Development Activities Credits Schedule**

Taxpayer number: \_\_\_\_\_  
 Report year: **2 0 1 6**  
 Expayer name: \_\_\_\_\_

**Qualified research expenses in Texas (QRET)**

1a. Total QRET for the period covered by this report	1a. ■																
1b. QRET under higher education contracts for the period covered by this report	1b. ■																
2a. Total QRET in 1st preceding tax period	2a. ■																
2b. QRET under higher education contracts for the 1st preceding tax period	2b. ■																
3a. Total QRET in 2nd preceding tax period	3a. ■																
3b. QRET under higher education contracts for the 2nd preceding tax period	3b. ■																
4a. Total QRET in 3rd preceding tax period	4a. ■																
4b. QRET under higher education contracts for the 3rd preceding tax period	4b. ■																

**Credit Calculation for Entities with 3 preceding periods of QRET (if entity has no QRET in one or more of the 3 preceding periods, skip to item 10)**

5. Average QRET for preceding periods (Average of amounts in items 2a, 3a, and 4a)	5. ■																
6. Average QRET x 50% (Multiply item 5 by 0.50)	6. ■																
7. Difference between items 6 and 6, if less than zero, enter zero	7. ■																
8. Credit amount in item 7 if zero, multiply item 7 by 5% (0.05); otherwise, leave item 8 blank and calculate credit in item 9	8. ■																
9. Credit amount in item 7 if greater than zero, multiply item 7 by 6.25% (0.0625)	9. ■																

**Credit Calculation for Entities with no QRET in one or more of the 3 preceding periods (if entity has 3 preceding periods of QRET, skip to item 11)**

10. Credit amount in item 10 if 3 years, multiply item 10 by 2.5% (0.025); otherwise, leave item 10 blank and calculate credit in item 11	10. ■																
11. Credit amount in item 11 if greater than zero, multiply item 11 by 3.125% (0.03125)	11. ■																

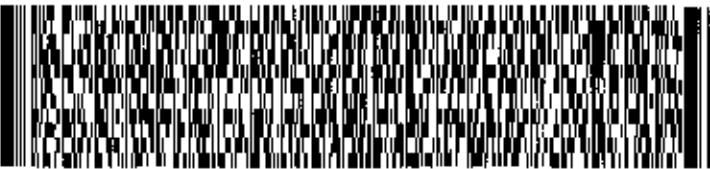
**Research and Development (R & D) Activities Credit**

12. R & D activities credit (enter amount in column 8, 9, 10 or 11)	12. ■																
13. R & D activities credit carried forward from prior years	13. ■																
14. R & D activities credit available (Add items 12 and item 13)	14. ■																

**R & D Employment in Texas for the Period Covered by this Report**

15. Average number of research and development positions	15. ■																
16. Average salary of research and development positions	16. ■															0 0	

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