

Texas' New "Margin Tax" Legislation

Feature	Current Law	New Law
Taxpayers	Corporations, Limited Liability Companies, Savings & Loan Associations (§ 171.001)	Partnerships (other than a general partnership of all natural persons), corporations, savings & loan associations, limited liability companies, business trusts, professional associations, business associations, joint ventures, joint stock companies, holding companies and other legal entities (§ 171.0002) (Sole proprietorships, certain passive entities, family limited partnerships and statutory exempt entities not taxed.) Likely legislative clarification that tax applies to limited liability partnerships.
Reporting Method	Separate Company	Combined - § 171.1014 provides complicated combined reporting rules.
Type of Tax	Privilege Tax - pay for annual privilege period based on activity in prior year, with additional "exit" tax.	Privilege Tax - basically same as current law except statute declares that tax is not a net income tax and that PL 86-272 protection is not available for out of state taxpayers.
Base	Whichever of capital or earned surplus bases results in greater tax. (§ 171.002)	"Margin" (§ 171.101) "Margin" is generally the lesser of (a) 70% of gross revenues or (b) gross revenues less the greater of (i) cost of goods sold or (ii) compensation of employees and partners up to \$300,000 per employee or partner.
Apportionment	Base is apportioned to Texas according to the ratio of Texas receipts to total receipts with sales of tangible personal property "thrown back" to Texas under certain circumstances. (§§ 171.103 and 171.1032)	Base is apportioned to Texas according to the ratio of Texas receipts to total receipts. No throwback. (§ 171.103) (Only Texas receipts of combined group members having nexus with Texas included in numerator. May be changed to include Texas receipts of entire group.)
Rate	.25% of Taxable Capital 4.5% of Taxable Earned Surplus (§ 171.002)	.5% of taxable margin for taxpayers in retail or wholesale trade. 1% of taxable margin for all other taxpayers. (§ 171.002)
Small Taxpayer Exemption	No tax due if tax less than \$100 or gross receipts under \$150,000 (§ 171.002)	No tax due if tax less than \$1,000 or total revenue <= \$300,000. (§ 171.002) (CPI adjusted in 2009 and later (§ 171.006)
Reporting	Annual report generally due May 15, with special rules for newly taxable entities (§§ 171.151 - 171.212.)	Essentially same as current law.
Credits and NOL Carry forwards	Various credits and NOL carry forwards permitted.	Credits generally carry forward. Current law NOL carryovers converted to credits against margin tax on a limited basis.
Effective Dates	2006 and 2007 reports filed under existing franchise tax.	2008 reports filed under margin tax. For calendar year accounting taxpayers, revenue after 12/31/06 will be subject to margin tax on 2008 return. Fiscal year entities subject to tax beginning as early as 6/1/06 (? 9/1/06). Exit tax applies to current taxpayers that cease doing business in 2007.

TEXAS MARGIN TAX – BASIC COMPUTATION

<u>Description</u>	<u>Reference</u>
(1) TOTAL REVENUE – ENTIRE BUSINESS ^A	§171.1011
(2) SUBTRACT EITHER: (A) Cost of Goods Sold, or (B) Total Cash Compensation ^B and Employee Benefits	§171.101(a)(1)(B)(ii) §171.1012 §171.1013
(3) = GROSS MARGIN (Limited to 70% Total Revenue)	§171.101(a)(1)(A)
(4) APPORTION TO TEXAS <u>TEXAS GROSS RECEIPTS^C</u> GROSS RECEIPTS – ENTIRE BUSINESS ^C	§171.106 §171.103 §171.105
(5) = TAXABLE MARGIN	§171.101
(6) TAX RATE 1% (.5% if retail/wholesale trade)	§171.002
(7) = TAX	
(8) CREDITS	§171.111 HB3 §§ 18, 19
(9) = FRANCHISE TAX PAYABLE N/A – Tax is less than \$1,000 N/A – Total revenue <= \$300,000	§171.002(d)(1) §171.002(d)(2)

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| A. Combined reporting required for certain affiliated groups. | §171.1014 |
| B. Cash Compensation limited to \$300,000 per individual. | §171.1013(c) |
| C. Gross receipts for apportioning margin differs from total revenue. | §171.103 / §171.1011 |

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