

Texas Margin Tax – Summary

(July 2007)

Feature	Prior Law	New Law
Taxpayers	Corporations, limited liability companies, savings & loan associations, banking corporations (§171.001)	Any legal entity unless specifically exempted (§171.0002). Exempted: sole proprietorship; general partnership directly and exclusively owned by “natural persons” and not having limited liability; passive entity; exempt entities; certain grantor trusts; certain estates of natural persons; an escrow; certain REITs and REMICs; certain self-insurance trusts; 401(a) trusts; 501(a)(9) entities.
Reporting method	Separate company – each entity files a tax return and pays tax on its activities	Combined group (§171.1014) – taxable entities that are members of an affiliated group (>50% ownership) and engaged in a unitary business file a single return based on combined activity
Type of tax	Privilege tax based on activity in prior year, with additional "exit" tax.	Same. PL 86-272 protection not available for out of state taxpayers.
Base	Greater of capital or earned surplus (§171.002)	“Margin” (§171.101) “Margin” = revenue minus the greater of (a) 30% of revenue (b) cost of goods sold, or (c) compensation (limited to \$300,000 per employee/partner) and benefits.
Apportionment	Base is apportioned to Texas according to the ratio of Texas receipts to total receipts (§171.103). Sales of tangible personal property "thrown back" to Texas under certain circumstances (§171.1032).	Same gross receipts formula. Throw back rule repealed. Joyce rule: only Texas receipts of combined group members having nexus with Texas are included in numerator (§171.103(b)).
Rate	.25% of taxable capital 4.5% of taxable earned surplus (§171.002)	1% of taxable margin, except taxpayers engaged in retail or wholesale trade pay 0.5% (§171.002) Discounts: If total revenue is \$300k - \$900k (adjusted by CPI beginning 2010), rate is discounted from 80% to 20% (§171.0021) EZ tax: If total revenue not > \$10,000,000, can elect to pay tax of 0.575% on apportioned revenue (171.1016)
Small taxpayer exemption, discounts, etc.	No tax due if tax less than \$100 or gross receipts under \$150,000 (§171.002)	No tax due if tax < \$1,000 or total revenue < = \$300,000 (adjusted by CPI beginning 2010) (§§171.002, 171.006).
Reporting	Annual report generally due May 15, with special rules for newly taxable entities (§§171.151 - 171.212.)	Same as current law.
Credits and NOL carryforwards	Various credits and NOL carryforwards	Credits generally grandfathered (HB3, §18, 19). N/A to EZ tax. Special transition rules for NOL carryovers (§171.111)
Effective dates	2006 and 2007 reports filed under existing franchise tax.	2008 reports filed under margin tax. Newly taxable entities (e.g., limited partnerships) are not taxed on activities prior to 6/1/06, and are not taxed on activities prior to 1/1/07 if they cease doing business after 6/30/07 and before 1/1/08. HB3 §22, HB3928 §35.



Texas Margin Tax – Basic Computation

Description	Reference
(1) TOTAL REVENUE – ENTIRE BUSINESS^A	§171.1011
(2) – DEDUCTIONS - greater of: (a) Cost of goods sold, or (b) Wages and cash compensation ^B and employee benefits	§171.101(a)(1)(B)(ii) §171.1012 §171.1013
(3) = MARGIN (limited to 70% total revenue)	§171.101(a)(1)(A)
(4) x TEXAS APPORTIONMENT FACTOR: $\frac{\text{Texas gross receipts}^C}{\text{Gross receipts from entire business}^C}$	§171.106 §171.103 §171.105
(5) = TAXABLE MARGIN	§171.101
(6) x TAX RATE (a) 1% (.5% if retail/wholesale trade) (b) Less discount if revenue <\$900,000	§171.002 §171.0021
(7) = TAX	
(8) – CREDITS	§171.111 HB3 §§18, 19
(9) = FRANCHISE TAX PAYABLE (a) N/A if tax < \$1,000 or total revenue <= \$300,000 (b) EZ tax election if revenue <= \$10,000,000 (0.575% x apportioned revenue)	§171.002(d) §171.1016

- A. Combined reporting required for certain affiliated groups (§171.1014). Exclude distributive share of income from other taxable entities. Revenue from property sales measured by net gain, rather than gross proceeds. Special rules for certain “flow-through funds.”
- B. Wages and cash compensation includes a natural person’s allocable share of a partnership’s, LLC’s, or S corporation’s income, and is limited to \$300,000 per person. No deduction for payments to undocumented workers. Special rules for staff leasing arrangements.
- C. Gross receipts for apportioning margin can differ from total revenue (§171.103 / §171.1011).

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