

Revised Texas
Franchise Tax



Susan Combs
Texas Comptroller
of Public Accounts



Franchise Tax Legislative & Filing Update 2009

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Presented by:
Janet Spies, Franchise Tax Policy
Comptroller of Public Accounts
(512) 463-4612, (800) 531-5441, ext. 3-4612
janet.spies@cpa.state.tx.us

Legislation - 81st Session

➤ **HB 4765**

HB 4765 increases the no tax due threshold from \$300,000 to \$1 million effective for reports originally due in 2010 and 2011. The threshold is \$600,000 for reports due on or after January 1, 2012. Discounts are adjusted accordingly once the \$600,000 threshold is in effect.

➤ **HB 4611**

Lending institutions report gross proceeds of sales of loans or securities for apportionment purposes if they are treated as “securities available for sale” or “trading securities” under FAS 115. Effective for reports due on or after January 1, 2010.

➤ **SB 1442**

Revises the Business Organizations Code which will require all taxable entities to provide a tax clearance letter before dissolution, reinstatement, etc. Effective September 1, 2009.

Legislation - 81st Session

➤ **HB 469**

Establishes incentives for carbon dioxide sequestration. It is limited to three projects implemented in connection with the construction of a new facility and requires approval from the Railroad Commission. While this legislation is effective September 1, 2009, the Comptroller may not issue a credit until after September 1, 2013.

➤ **HB 1474**

Exempts bingo units from the franchise tax. Units are defined in the Occupations Code and include units formed by licensed entities. Effective October 1, 2009.

➤ **SB 636**

Provides an exclusion from total revenue for payments made to persons providing services, labor or materials in connection with the provision of destination management services, as defined by Section 151.0565. This provision is effective for reports originally due on or after January 1, 2010.



Overview of Franchise Tax

Tax is imposed on:

- Corporations
- Limited Liability Companies
- Partnerships (general, limited and limited liability)
- Business Trusts
- Professional Corporations & Associations
- Business Associations
- Other Legal Entities

Entities not subject to tax include:

- Sole Proprietorships, except SMLLCs
- General Partnerships/Joint Ventures directly owned by natural persons
- Exempt entities under Subchapter B of Chapter 171
- Qualifying Grantor trusts
- Estates of Natural Persons
- REMICS and certain REITS
- Passive Entities as defined in TTC 171.0003



Tax Base - Margin

Margin equals the least of the following three calculations:

- Total revenue minus cost of goods sold
- Total revenue minus compensation
- Total revenue times 70 percent

A taxable entity, including a combined group, with \$10 million or less in annualized total revenue may choose to use the E-Z computation as an alternative to computing margin.



Total Revenue -

is determined based on revenue reported for federal income tax minus statutory exclusions.

Cost of Goods Sold -

includes costs related to the acquisition and production of tangible personal property and real property. This amount does not generally equal cost of goods sold reported for federal tax purposes.

Compensation -

includes W-2 wages and cash compensation paid to officers, directors, owners, partners and employees limited to \$300,000 per person. Also includes benefits.



Apportionment -

Texas gross receipts divided by everywhere gross receipts. Everywhere gross receipts will generally equal total revenue.

Tax Rate -

1 percent for most taxable entities; 0.5 percent for qualifying wholesalers and retailers.

E-Z Computation -

Taxable entities with \$10 million or less in annualized Total Revenue may choose to use E-Z instead of computing margin. Tax rate is 0.575 percent.

Discounts – 2008 & 2009 reports

A taxable entity that has annualized total revenue of less than \$900,000 is eligible for a discount of 20% to 80% (exception for entities using tiered partnership provisions) of tax due. The discount rates, based on annualized total revenue, are:

- > \$300,000, but < \$400,000 = 80% of tax due
- ≥ \$400,000, but < \$500,000 = 60% of tax due
- ≥ \$500,000, but < \$700,000 = 40% of tax due
- ≥ \$700,000, but < \$900,000 = 20% of tax due

No Tax Due – 2008 & 2009 reports

Taxable entities with annualized total revenue of \$434,782* or less and taxable entities that compute a tax due of less than \$1,000 will owe no tax. (These entities must file a report.)

* A taxable entity that qualifies to use the E-Z computation with \$434,782 in total revenue will owe less than \$1,000 in tax after a discount of 60%.



General Filing Information

Use WebFile to file your franchise tax forms online:

- *free, secure and accurate*
- *automatically loads the forms you need*
- *immediate confirmation of your filing!*

You'll need your WebFile number if you're a first-time filer, or your password if you filed franchise tax electronically last year.

NOTE: A WebFile confirmation is like a return receipt – means we got your report.

Use Smart PDF forms to file if you:

- *Don't have your WebFile number or password handy?*
- *Need to file for multiple taxpayers?*
- *Want the form to automatically calculate?*

Using the Smart PDF Franchise Tax Report Forms answers all these needs to help you efficiently complete and submit your franchise tax reports to the Comptroller's office.

Filing Method Alternative:

We encourage use of WebFile and Smart PDF forms for more efficient processing; however, if you are unable to file using these methods, you can use our Simple PDF Reports for 2009.



Third Party Software Providers

A list of software developers and product versions that are currently approved to reproduce substitute 2009 Texas Franchise Tax forms is available on the Comptroller's website.

Vendor software approved for 2008 Texas Franchise Tax Forms should not be used after December 2008 for filing 2008 or 2009 reports. Using old versions of the software could result in invalid information being posted to a taxpayer's account.

The approved vendor software for 2009 can be used for report years 2008 and 2009, and contains corrections for issues identified in the 2008 version. **Information on how vendor substitute forms should print:**

- A 2D barcode should print in the lower portion of each form directly below the Texas Comptroller Official Use Only print. Contact the software vendor if your forms fail to print a 2D barcode.
- In the upper left corner a version title 'TX2009' should print on every form and must match the approved version number. The agency has provided an approved version number ('Ver. 1.X'); the X is the approved version. If the approved version printed on your forms does not match the version number on the table contact the vendor or download the latest software.

Important Note About Tax Preparation Software

The Comptroller's approves only the placement of the data on the forms, the form calculations and the values populated in the 2D barcode. The accuracy of how data is gathered and processed through the software programs is the responsibility of the software developer, distributor and user.

Form Packets

No Tax Due

05-163 No Tax Due Information Report
05-102 Public Information Report
05-167 Ownership Information Report
05-175 Tiered Partnership Report

EZ Computation

05-169 EZ Computation Report
05-102 Public Information Report
05-167 Ownership Information Report
05-170 Payment Form
05-166 Affiliate Schedule
05-175 Tiered Partnership Report

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

Extension

05-164 Extension Request
05-165 Extension Affiliate List

Note: When you use the smart forms, all possible forms for the filing type you have selected are presented; as you electronically enter data in the fields, forms that are not applicable will be withdrawn.


All Forms

➤ Taxpayer Number

If the Comptroller's office has assigned a taxable entity a taxpayer ID number for any tax type, please use that number when completing this report. If no number has been assigned, enter the FEI number of the taxable entity. Do not enter the SOS file number in this box. Combined groups – enter the Comptroller assigned ID number or the FEI number of the reporting entity. On the affiliate schedule leave the taxpayer ID number blank if the affiliate does not have its own Texas taxpayer ID number or FEI number.

➤ Accounting Period vs. Privilege Period

By statute, these dates are different. Tax due for the privilege period of 2009 is based on an accounting period ending in 2008. AYE date must be 2008 on the 2009 annual report.

TEXAS FRANCHISE TAX REPORT - Page 1							
 Comptroller of Public Accounts FORM		05-158-A (Rev. 1-08/2) ■ Tcode 13250 Annual		<input type="button" value="Print Form"/>			
■ Taxpayer number		■ Report year	Due date	Privilege period covered by this report			
<input type="text"/>		2009	05/15/2009	01/01/2009 — 12/31/2009			
Taxpayer name						Secretary of State file number or Comptroller file number	
Mailing address							
City		State	Country	ZIP Code	Plus 4	Blacken circle if the address has changed ■ <input type="radio"/>	
Blacken circle if this is a combined report ■ <input type="radio"/>		Blacken circle if Total Revenue is adjusted for Tiered Partnership Election, see 171.1015. ■ <input type="radio"/>					
Blacken circle if this is a Corporation or Limited Liability Company <input type="radio"/>			Blacken circle if this is an Entity other than a Corporation or Limited Liability Company <input type="radio"/>				
Accounting year begin date		Accounting year end date		SIC code		NAICS code	
m m d d y y		m m d d y y					
<input type="text"/>		<input type="text"/>		<input type="text"/>		<input type="text"/>	

All Forms

➤ SIC Code


Please enter the SIC code that applies to the business activity of the taxable entity. A combined group should review the activities conducted by all members of the group to determine the primary business activity and use an applicable SIC code.

➤ Blacken Circle

Means Blacken Circle! An 'X' in the circle is easily missed when the document is processed.

➤ Corporation/LLC vs. other than Corporation/LLC

This determination is based on the LEGAL FORMATION of the entity – not on its status for filing federal income tax reports.

TEXAS FRANCHISE TAX REPORT - Page 1						
 Comptroller of Public Accounts FORM		05-158-A (Rev. 1-08/2)		Tcode 13250 Annual		
Taxpayer number		Report year	Due date	Privilege period covered by this report		
<input type="text"/>		2009	05/15/2009	01/01/2009 — 12/31/2009		
Taxpayer name				Secretary of State file number or Comptroller file number		
Mailing address						
City	State	Country	ZIP Code	Plus 4	Blacken circle if the address has changed <input type="radio"/>	
Blacken circle if this is a combined report <input type="radio"/>		Blacken circle if Total Revenue is adjusted for Tiered Partnership Election, see 171.1015. <input type="radio"/>				
Blacken circle if this is a Corporation or Limited Liability Company <input type="radio"/>			Blacken circle if this is an Entity other than a Corporation or Limited Liability Company <input type="radio"/>			
Accounting year begin date		Accounting year end date		SIC code	NAICS code	
m m d d y y <input type="text"/>		m m d d y y <input type="text"/>		<input type="text"/>	<input type="text"/>	

Extensions (05-164 & 05-165)


➤ EFT Filers

A taxable entity that is a mandatory EFT filer must make its extension payment via EFT. Please do not mail an extension form if you are a mandatory EFT filer.

Combined Groups – if the reporting entity or any member of the combined group for the 2009 report has received an EFT notification, the extension payment for the combined group must be made via EFT. The reporting entity for the group **MUST** mail the affiliate list (05-165), but do not mail a copy of the extension form (05-164).

➤ Combined Groups – Affiliate List

Please carefully consider whether an affiliate has nexus when completing form 05-165. If the no-nexus circle is **NOT** blackened, a franchise tax responsibility will be created for the affiliate. A nexus questionnaire will be mailed and an information report will be due.

 Comptroller of Public Accounts FORM 05-165 (1-08) Tcode 13298			TEXAS FRANCHISE TAX EXTENSION AFFILIATE LIST	
■ Reporting entity taxpayer number <input type="text"/>	■ Report year <input type="text" value="2009"/>	Reporting entity taxpayer name <input type="text"/>		
LEGAL NAME OF AFFILIATE		AFFILIATE'S TEXAS TAXPAYER NUMBER (if none, enter FEI number)	BLACKEN CIRCLE IF AFFILIATE DOES NOT HAVE NEXUS IN TEXAS	
1.			<input checked="" type="radio"/>	


No Tax Due Report (05-163)

➤ Combined Groups

May not file form 05-163. A combined group must file a form 05-158 A & B or E-Z Computation form 05-169.

➤ Election

Do not blacken any circle in the election section on the form – leave blank.

TEXAS FRANCHISE TAX NO TAX DUE INFORMATION REPORT						
 Comptroller of Public Accounts FORM 05-163 (1-08) Tcode 13255 Annual					<input type="button" value="Print Form"/>	
Taxpayer number		Report year	Due date	Privilege period covered by this report		
<input type="text"/>		2009	05/15/2009	01/01/2009 — 12/31/2009		
Taxpayer name				Secretary of State file number or Comptroller file number		
Mailing address						
City	State	Country	ZIP Code	Plus 4	Blacken circle if the address has changed	
					<input type="checkbox"/>	
Election		1. COST OF GOODS SOLD		2. COMPENSATION		3. 70% OF REVENUE
(Must blacken only one circle)		<input type="radio"/>		<input type="radio"/>		<input type="radio"/>
			SIC code		NAICS code	
			<input type="text"/>		<input type="text"/>	
Blacken circle if Total Revenue is adjusted for Tiered Partnership Election, see 171.1015.					<input type="checkbox"/>	
Blacken circle if this is a Corporation or Limited Liability Company				Blacken circle if this is an Entity other than a Corporation or Limited Liability Company		
<input type="checkbox"/>				<input type="checkbox"/>		

No Tax Due Report (05-163)

➤ Item 2

If the taxable entity has \$434,782 or less in annualized total revenue, blacken this circle.

➤ Item 4

Do not blacken this circle – it will not affect any business loss carryover that an entity might be entitled to.

➤ Items 5a and 5b

Must be completed by all entities completing this report form – including passive entities.

➤ Item 6

All entities, other than passive entities, must complete this item.

If you select any of the questions below, you qualify to use this **No Tax Due Information Report:**
(Blacken all circles that apply)

1. Is this a passive entity as defined in Chapter 171 of the Texas Tax Code? (See instructions)	1. ■ <input type="radio"/>		
2. Does the entity have \$300,000 or less in Total Revenue? (See instructions)	2. <input type="radio"/>		
3. Does the entity have zero Texas Gross Receipts?	3. <input type="radio"/>		
4. Did you use the 2008 Temporary Credit for Business Loss Carryforwards?	4. ■ <input type="radio"/>		
5a. Accounting year begin date	5a. ■ <input type="text" value="m m d d y y"/>	5b. Accounting year end date	5b. ■ <input type="text" value="m m d d y y"/>
6. TOTAL REVENUE (Whole dollars only)	6. ■ <input type="text"/>		

E-Z Computation (05-169)

➤ Qualification

A taxable entity with less than \$10 million in annualized total revenue may choose to pay franchise tax using the EZ computation.

➤ Item 9

Enter amounts that are allowed as exclusions/subtractions from revenue. DO NOT include COGS, Compensation or the 30% revenue deduction in item 9 – Not Allowed!!

REVENUE <i>(Whole dollars only, Items 1 -12)</i>	
1. Gross receipts or sales	1. <input type="text"/>
2. Dividends	2. <input type="text"/>
3. Interest	3. <input type="text"/>
4. Rents	4. <input type="text"/>
5. Royalties	5. <input type="text"/>
6. Gains/losses	6. <input type="text"/>
7. Other income	7. <input type="text"/>
8. Total gross revenue <i>(Add Items 1 thru 7)</i>	8. <input type="text"/> 0
9. Deductions from gross revenue	9. <input type="text"/>
10. TOTAL REVENUE <i>(Item 8 minus Item 9) (If less than zero, enter 0)</i>	10. <input type="text"/> 0

Long Form (05-158 A & B)

➤ **Items 1, 2, 3, 4, and 5**

May not be negative numbers. Note: If rental income is passed through from a partnership to a partner, the rental income could be negative. Please report negative rent in item 7.

➤ **Item 9**

Amounts reported on this line are only those exclusions/subtractions from revenue allowed under Chapter 171. See Rule 3.584 for a listing of excludable items.

REVENUE <i>(Whole dollars only)</i>	
1. Gross receipts or sales	1. <input type="text"/>
2. Dividends	2. <input type="text"/>
3. Interest	3. <input type="text"/>
4. Rents	4. <input type="text"/>
5. Royalties	5. <input type="text"/>
6. Gains/losses	6. <input type="text"/>
7. Other income	7. <input type="text"/>
8. Total gross revenue <i>(Add Items 1 thru 7)</i>	8. <input type="text"/> 0
9. Deductions from gross revenue	9. <input type="text"/>
10. TOTAL REVENUE <i>(Item 8 minus Item 9) (If less than zero, enter 0)</i>	10. <input type="text"/> 0

Long Form (05-158 A & B)

➤ Cost of Goods Sold – in general

Please be aware that COGS for franchise tax is substantially different from COGS for federal income tax reporting. COGS is allowed only for those entities that sell real or tangible personal property in the ordinary course of business (there are statutory exceptions for entities in rental/leasing of motor vehicles, heavy construction equipment and rail car rolling stock).

➤ Cost of Goods Sold – item 12

You may include up to 4% of all indirect and administrative overhead costs. 4% is the cap – allowable deductions up to this amount must be allocable to acquisition or production of goods. See Rule 3.588 for additional information.

➤ Cost of Goods Sold – item 13

This should include ONLY amounts related to compensation for undocumented workers and active duty personnel. No other amounts should be included.

COST OF GOODS SOLD <i>(Whole dollars only)</i>	
11. Cost of goods sold	11. <input type="text"/>
12. Indirect or administrative overhead costs <i>(Limited to 4%)</i>	12. <input type="text"/>
13. Other <i>(See instructions)</i>	13. <input type="text"/>
14. TOTAL COST OF GOODS SOLD <i>(Add items 11 thru 13)</i>	14. <input type="text" value="0"/>

Long Form (05-158 A & B)

➤ Tax Rate – item 29

The default tax rate is always 1 percent. Only those entities that have an SIC code in Division F or G and meet the statutory criteria in 171.002(c) are eligible for the 0.5 percent tax rate. Please review this item to make sure that the appropriate tax rate for your entity is reflected. The 0.5 percent rate will be disallowed if an SIC code is not entered on page 1.

➤ Tax Credits – item 31

Credits will be disallowed if form 05-160 is not completed! DO NOT enter prior payments on this line. Prior payments should be reflected on the payment coupon (form 05-170).

TAX DUE	
29. Tax rate (See instructions for determining the appropriate tax rate)	29. <input type="text" value="0.0000"/>
30. Tax due (Multiply Item 28 by the tax rate in Item 29) (Dollars and cents)	30. <input type="text" value="0.00"/>
TAX ADJUSTMENTS (Dollars and cents)	
31. Tax credits (Item 23 from Form 05-160)	31. <input type="text"/>
32. Tax due before discount (Item 30 minus Item 31)	32. <input type="text" value="0.00"/>
33. Discount (See instructions)	33. <input type="text" value="0.00"/>
TOTAL TAX DUE (Dollars and cents)	
34. TOTAL TAX DUE (Item 32 minus Item 33) (Do not include payment if this amount is less than \$1,000)	34. <input type="text" value="0.00"/>

Long Form (05-158 A & B)

➤ Discounts – item 33

Discounts are allowed for taxable entities that have annualized total revenue of less than \$900,000 (there is an exception for entities electing tiered partnership treatment).

➤ Total Tax Due – item 34

An amount will be computed and shown on this page even if the amount is less than \$1,000. If using Smart.pdf, or WebFile, a payment coupon will not be presented if this amount is less than \$1,000. Note: If total revenue is \$300,000 or less, a payment coupon will be presented, however not tax is due. No Tax Due rules are different if tiered partnership provisions are used – see slide 24.

TAX DUE	
29. Tax rate (See instructions for determining the appropriate tax rate)	29. ■ 0.0000
30. Tax due (Multiply Item 28 by the tax rate in Item 29) (Dollars and cents)	30. ■ 0.00
TAX ADJUSTMENTS (Dollars and cents)	
31. Tax credits (Item 23 from Form 05-160)	31. ■
32. Tax due before discount (Item 30 minus Item 31)	32. ■ 0.00
33. Discount (See instructions)	33. ■ 0.00
TOTAL TAX DUE (Dollars and cents)	
34. TOTAL TAX DUE (Item 32 minus Item 33) (Do not include payment if this amount is less than \$1,000)	34. ■ 0.00



Information Reports

➤ Public Information Report – PIR (05-102)

This form is to be filed by legally formed corporations, limited liability companies (LLCs) and financial institutions. How an entity files for federal income tax purposes has no effect on the information report that must be filed. (i.e. Professional Associations typically file as corporations for federal tax reporting purposes. A PA should file an OIR, not a PIR.) Information provided on this form is public information.

➤ Ownership Information Report – OIR (05-167)

The Ownership Information Report (OIR) is to be filed for each taxable entity other than a legally formed corporation, limited liability company or financial institution. This includes professional associations, partnerships and trusts. Information on this report is confidential information.

Report the name, title, and mailing address of each general partner and each person or entity that owns an interest of ten percent or more of the taxable entity as of the date that the report is filed.

Professional associations should check the member box and report the members of their executive committee. Trusts should report their trustee information and not check any box (member or partner). Associations should report information for the individuals who have authority to sign a contract on behalf of the association and not check any box (member or partner). All other entities should report their executive board members and check the member box. If there is no FEI number for the owner(s), please leave the field blank. (Do not enter any social security numbers.)

Combined Reporting

➤ Mandatory

For taxable entities that have a common owner of greater than 50% and are unitary!

➤ Who is in? Who is out?

A combined group consists of all taxable entities that are unitary, even those that do not have nexus in Texas. The group does not include passive entities, exempt entities, and 80/20 companies.

➤ Who files the combined group report?

The group must select a reporting entity (RE) – is typically the “parent entity” but may be the affiliate that does the most business in Texas in the first year that any member of the group has nexus.

➤ Initial, annual, or final reports for the combined group:

Generally a combined group will file ONLY annual reports. There is an exception for a group where all members become no longer subject to the tax on margin on the same day – then a final combined report will be due. No initial reports for the group or any affiliate UNLESS the accounting period for a member does not fall within the accounting period of the group.

➤ Payment of the tax

All affiliates, including the RE, are jointly and severally liable for the tax. Any affiliate can make a payment, just be sure to use the taxpayer ID number of the RE.

Combined Reporting

➤ Accounting Period of the Combined Group

The accounting period listed on page 1 of the franchise tax report should be the accounting period of the group as a whole – NOT the accounting period of the RE.

Example: Newly formed (10/01/2008) Texas entity is determined to be the parent of the group and will be the RE. The group has an accounting year end of 12/31/2008.

Result: On page 1 of the combined group report, the accounting period should reflect the period of the group – 01/01/2008 through 12/31/2008. On the affiliate schedule, the RE will list itself as an affiliate and reflect their accounting period of 10/01/2008 through 12/31/2008.

➤ Affiliate List (extension) vs. Affiliate Schedule (with report)

Please pay close attention to these two documents.

- Make sure that all entities on the affiliate list are on the affiliate schedule when the return is filed. If an affiliate was on the list but should not have been, the RE **MUST** submit a note in writing stating that the affiliate should not have been on the list or on the schedule – that an error was made.
- Make sure that affiliate's nexus indicator is the same on both the List and the Schedule. If the indicator is different, the affiliate or RE will receive a nexus questionnaire, a franchise tax responsibility will be created, and an information report will be due.
- If it is later discovered that an affiliate was left off of both the list and/or the schedule, the RE needs only to file an additional affiliate schedule and amend only page 1 and 2 of the report form if necessary. Do not resubmit all affiliate schedules.

Combined Reporting

➤ Affiliate Schedule - Form 05-166

- Item 2 – Taxpayer ID number – if this affiliate is a disregarded entity and does not have an FEI number of its own (uses its parents FEI) leave blank.
- Item 4 – Blacken this circle IF the group chooses to treat the affiliate as a disregarded entity for Texas franchise tax reporting purposes. Blackening this circle does NOT change the physical nexus of the affiliate for item 5, but does affect the computation of Texas gross receipts. If disregarded for franchise tax, then both the RE and the affiliate will be deemed to have nexus for apportionment purposes only. IF Item 4 is blackened, skip items 8-11 for the disregarded affiliate.
- Item 5 – If the affiliate (including disregarded entities) has physical presence in Texas do not blacken this circle. If circle is not blackened a PIR or OIR must be filed.
- Legal formation of the entity determines which box to complete at the bottom of the affiliate information. Corporation, LLC or financial institution? Blacken first circle. Not a corporation, LLC, or financial institution? Blacken second circle. This indicates which information report (OIR vs. PIR) must be filed.
- Reporting Entity MUST be listed as an affiliate.

Reporting entity must be included on Affiliate Schedule.

1. Legal name of affiliate <input type="text"/>		2. Affiliate taxpayer number (if none, use FEI number) <input type="text"/>		3. Affiliate NAICS code <input type="text"/>	
4. Blacken circle if this is a disregarded entity <input type="radio"/>	5. Blacken circle if this affiliate does NOT have NEXUS in Texas <input type="radio"/>	6. Affiliate reporting begin date m m d d y y <input type="text"/>		7. Affiliate reporting end date m m d d y y <input type="text"/>	
8. Gross receipts subject to throwback in other states (before eliminations) <input type="text"/>			9. Gross receipts everywhere (before eliminations) <input type="text"/>		
10. Gross receipts in Texas (before eliminations) <input type="text"/>			11. Cost of goods sold or compensation (before eliminations) <input type="text"/>		
Blacken circle if this is a Corporation or Limited Liability Company <input type="radio"/>			Blacken circle if this is an Entity other than a Corporation or Limited Liability Company <input type="radio"/>		

Tiered Partnerships

➤ Definitions

- **Tiered partnership arrangement** – means an ownership structure in which any of the interests in one taxable entity treated as a partnership or an S corporation for federal income tax purposes (a “lower tier entity”) are owned by one or more other taxable entities (an “upper tier entity”).
- **Upper tier entity** – owner of an interest in a partnership or S corporation.
- **Lower tier entity** – a partnership or S corporation that is owned by one or more taxable entities.
- **Taxable entity** – corporation, LLC, partnership, trust, etc. See slide 2.

➤ Mandatory or choice?

Tiered partnership provisions are NOT mandatory. They do not apply just because one entity owns an interest in a partnership or S corporation. Under these provisions, revenue is passed (deductions – compensation & COGS – are NOT) from the lower tier to the upper tier and must be included in the upper tier’s computation of total revenue. All lower and upper tier entities MUST file franchise tax reports.

NOTE: If the lower tier is a member of a combined group, tiered partnership provisions may NOT be used.

Tiered Partnerships

➤ When should I blacken this circle?

Blacken circle on upper and lower tier reports ONLY if the lower tier chooses to pass revenue to upper tier. DO NOT blacken circle just because you own an interest in a partnership or S corporation.

Blacken circle if Total Revenue is adjusted for Tiered Partnership Election, see 171.1015.



➤ Requirements

- Revenue may be passed only to upper tier entities that are subject to Texas franchise tax.
- Revenue MUST be passed to taxable entities based on ownership percentage.
- Deductions (COGS, Compensation) may NOT be passed to an upper tier entity.
- The upper tier entity may file a no tax due report ONLY IF the lower tier entity had less than \$300,000 in annualized total revenue before revenue is passed to the upper tier.
- The upper tier entity may use the E-Z Computation ONLY IF the lower tier had \$10 million or less in annualized total revenue before revenue is passed to the upper tier.
- The upper tier may take a discount ONLY IF the lower tier had less than \$900,000 in annualized total revenue. The actual discount percentage (20%, 40%, 60% or 80%) used by the upper tier entity cannot be greater than the discount percentage that would have been allowed for the lower tier before revenue was passed.
- All taxable entities involved in a tiered partnership relationship MUST file a franchise tax report, an information report, and the 05-175 tiered partnership report.

Miscellaneous

➤ Passive Entities

There was no way for the Comptroller's office to know which partnerships (general, limited and limited liability) or non-business trusts qualified as passive entities for the 2008 report year.

Now that we have the data, those entities that qualified as passive and filed a no tax due report for report year 2008 will NOT receive a 'return due notification letter' for 2009 and will not have a 2009 report due UNLESS, the entity no longer qualifies as passive. Criteria for passive entities can be found in Texas Tax Code Section 171.0003 and franchise tax rule 3.582.

➤ Qualifying REITS under Texas Tax Code Section 171.0002(c)(4)

A Real Estate Investment Trust (REIT) that meets the statutory criteria is not considered a taxable entity. This could include legally formed corporations. If the qualifying REIT is a corporation, please file the no tax due report form (05-163) along with a public information report (form 05-102). Blacken the circle on the form for a passive entity, complete all other required fields, and HANDWRITE on the form "REIT qualified under 171.0002(c)(4).

➤ IRS Forms

Should only be submitted to the Comptroller's Office IF a report is being amended as a result of an RAR. Do not submit IRS forms with the annual report.



Miscellaneous

➤ Amended Reports

Amended 2008 franchise tax reports may be filed for the following reasons:

- To correct a mathematical or other error;
- To support a claim for refund; or
- To change the method of computing margin to 70% of total revenue OR if qualified, the E-Z Computation.

Note: after the due date of the report, a taxable entity may NOT amend to change its method of computing margin to cost of goods sold (COGS) or compensation.

➤ Collection Actions

If a combined report is not complete, the status of all affiliates will be affected. If not corrected, the right to do business for all affiliates can be revoked. If revoked, Reinstatement must be done for each separate entity – we cannot reinstate the group as a whole.

Contact Us

- Via Snail Mail at:
Susan Combs
Texas Comptroller
Post Office Box 13528, Capitol Station
Austin, Texas 78711-3528
- Via E-mail at:
tax.help@cpa.state.tx.us
- Via phone:
(800) 252-1381
- Comptroller's Website:
www.window.state.tx.us