



# 2010 Texas Franchise Tax Report Information and Instructions

Form 05-394 (Rev.5-10/3)

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## GENERAL INFORMATION

This booklet summarizes the Texas franchise tax law and rules and includes information that is most useful to the greatest number of taxpayers preparing Texas franchise tax reports. It is not possible to include all requirements of the Texas Tax Code (Chapter 171). Taxpayers should not consider this tax booklet as authoritative law. Additional information about Texas franchise tax can be found online at [www.window.state.tx.us/taxinfo/franchise](http://www.window.state.tx.us/taxinfo/franchise).

### What's New for 2010?

The threshold to qualify to file a No Tax Due Information Report has increased to \$1 million. This change was authorized by House Bill 4765 which passed during the 81st regular session of the Texas Legislature. The \$1 million threshold is for franchise tax reports originally due in 2010 and 2011.

Taxable entities that become subject to the franchise tax on or after October 4, 2009, will file a first annual report in lieu of an initial franchise tax report. If a taxable entity became subject to the franchise tax from October 4, 2009, through December 31, 2009, the entity will have a first annual report due on May 17, 2010. Entities that become subject to the tax during calendar year 2010 will have a first annual report due on May 16, 2011. The first annual report will be based on the accounting period beginning on the date the entity became subject to the tax and ending on the last accounting period ending date for federal income tax reporting purposes in the calendar year before the year the report is originally due.

### ENTITIES SUBJECT TO TAX

The franchise tax is imposed on the following entities that are either organized in Texas or doing business in Texas:

- corporations
- limited liability companies (LLC)
- banks
- state limited banking associations
- savings and loan associations
- S corporations
- professional corporations
- partnerships (general, limited and limited liability)
- trusts
- professional associations
- business associations
- joint ventures
- other legal entities

The tax is not imposed on:

- sole proprietorships (except for single member LLCs);
- general partnerships where direct ownership is composed entirely of natural persons (except for limited liability partnerships);
- entities exempt under Subchapter B of Chapter 171;
- certain unincorporated passive entities;
- certain grantor trusts, estates of natural persons and escrows;
- real estate mortgage investment conduits (REMICs) and certain qualified real estate investment trusts (REITs);
- a nonprofit self insurance trust created under Insurance Code Chapter 2212;
- a trust qualified under Internal Revenue Code Section 401(a);
- a trust exempt under Internal Revenue Code Section 501(c)(9).

See Rule 3.581 for information on non-taxable entities.

## EXEMPT ENTITIES

Some entities may be exempt from the franchise tax. The exemptions vary depending upon the type of organization. Exemptions are not automatically granted to an entity. For more information on franchise tax exemptions go to [www.window.state.tx.us/taxinfo/taxpubs/tx96\\_1045.html](http://www.window.state.tx.us/taxinfo/taxpubs/tx96_1045.html).

*Note: An entity that qualifies as a passive entity is not considered an exempt entity.*

## PASSIVE ENTITIES

Partnerships (general, limited, and limited liability) and trusts (other than business trusts) may qualify as a passive entity and not owe any franchise tax for a reporting period if at least 90 percent of the entity's federal gross income (as reported on the entity's federal income tax return), for the period upon which the tax is based, is from the following sources:

- dividends, interest, foreign currency exchange gain, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlements or termination payments with respect to a financial instrument, and income from a limited liability company;
- distributive shares of partnership income to the extent that those distributive shares of income are greater than zero;
- net capital gains from the sale of real property, net gains from the sale of commodities traded on a commodities exchange, and net gains from the sale of securities; and
- royalties from mineral properties, bonuses from mineral properties, delay rental income from mineral properties and income from other nonoperating mineral interests including nonoperating working interests.

Passive income does not include rent or income received by a nonoperator from mineral properties under a joint operating agreement, if the nonoperator is a member of an affiliated group and another member of that group is the operator under the same joint operating agreement.

An entity that filed as passive on a prior report will not be required to file a subsequent franchise tax report, as long as the entity continues to qualify as passive.

A partnership or trust that qualifies as a passive entity for the period upon which the franchise tax report is based, and is not registered with the Comptroller's office or with the Texas Secretary of State's office, will not be required to register with or file a franchise tax report with the Comptroller's office.

Any passive entity, whether or not it is registered with the Comptroller's office or with the Secretary of State's office, that no longer qualifies as a passive entity must file a Nexus Questionnaire (Form AP-114) or a Business Questionnaire (Form AP-224) to register with the Comptroller's office and file a franchise tax report for the period in which the entity does not qualify as passive and any subsequent periods until the entity once again qualifies and files a No Tax Due Information Report as a passive entity.

## DISREGARDED ENTITIES

An entity's treatment for federal income tax purposes does not determine its responsibility for Texas franchise tax. Therefore, partnerships, LLCs and other entities that are disregarded for federal income tax purposes, are considered separate legal entities for franchise tax reporting purposes. The separate entity is responsible for filing its own franchise tax report unless it is a member of a combined group. If the entity is a member of a combined group, the reporting entity for the group may elect to treat the entity as disregarded and will not unwind its operations from its "parent" entity. In this instance, it will be presumed that both the "parent" entity and disregarded entity have nexus in Texas for apportionment purposes only. If the disregarded entity has physical presence in Texas, it will be required to file the appropriate information report (Form 05-102 or 05-167).

## MARGIN

Unless a taxable entity qualifies and chooses to file using the E-Z computation, the tax base is the taxable entity's margin and is computed in one of the following ways:

- Total Revenue times 70%
- Total Revenue minus Cost of Goods Sold (COGS)
- Total Revenue minus Compensation

A taxable entity must make an annual election to deduct COGS or compensation by the due date of the franchise tax report, the extended due date, or the date the report is filed, whichever is latest. The election to use COGS or compensation is made by filing the franchise tax report using one method or the other. This is an annual election and is effective for the entire period upon which the tax is based.

After the due date or the extended due date of the report, a taxable entity may not amend its report to change its election to COGS or compensation. However, a taxable entity may amend its report to change its method of computing margin from COGS or compensation to 70% of total revenue or, if eligible, the E-Z computation.

## TAX RATES

The franchise tax rates are:

- 1.0% (.01) for most entities
- 0.5% (.005) for qualifying wholesalers and retailers
- 0.575% (.00575) for those entities with \$10 million or less in annualized total revenue using the E-Z computation

Qualifying retailers and wholesalers are those entities that fall under Divisions F or G of the 1987 Standard Industrial Classification manual ([www.osha.gov/pls/imis/sicsearch.html](http://www.osha.gov/pls/imis/sicsearch.html)) who are primarily engaged in retail and/or wholesale trade.

An entity is primarily engaged in retail and/or wholesale trade if:

- 1) the total revenue from its activities in retail and wholesale trade is greater than the total revenue from its activities in trades other than the retail and wholesale trades;
- 2) except for eating and drinking places as described in Major Group 58 of Division G, less than 50 percent of the

total revenue from activities in retail and wholesale trade comes from the sale of products it produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs; and

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

## ANNUALIZED TOTAL REVENUE

To determine an entity's eligibility for the \$1 million no tax due threshold and qualification for the E-Z computation, an entity must annualize its total revenue if the period upon which the report is based is not equal to 12 months (365 days).

*Note: The amount of total revenue used in the tax calculations will NOT change as a result of annualizing revenue. Total revenue will equal the prescribed amounts for the period upon which the tax is based.*

To annualize total revenue, an entity will divide total revenue by the number of days in the period upon which the report is based, then multiply the result by 365.

Examples:

- 1) A taxable entity's 2010 franchise tax report is based on the period 09-15-2009 through 12-31-2009 (108 days), and its total revenue for the period is \$400,000. The taxable entity's annualized total revenue is \$1,351,852 (\$400,000 divided by 108 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity would NOT qualify for the \$1 million no tax due threshold, but is eligible to file using the E-Z computation. The entity will report \$400,000 as total revenue for the period.
- 2) A taxable entity's 2010 franchise tax report is based on the period 03-01-2008 through 12-31-2009 (671 days), and its total revenue for the period is \$1,375,000. The taxable entity's annualized total revenue is \$747,951 (\$1,375,000 divided by 671 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity would qualify for the \$1 million no tax due threshold, and is eligible to file using the No Tax Due Information Report (Form 05-163). The entity will report \$1,375,000 as total revenue for the period.

## MINIMUM FRANCHISE TAX

There is no minimum tax requirement under the franchise tax provisions. An entity that calculates an amount of tax due that is less than \$1,000 or that has annualized total revenue less than or equal to \$1 million is not required to pay any tax. (See note for tiered partnership exception.) The entity, however, must submit all required reports to satisfy its filing requirements.

If an entity meets the \$1 million no tax due threshold in the previous paragraph, it may file a No Tax Due Information Report, Form 05-163.

*Note: A tiered partnership election is not allowed if the lower tier entity, before passing total revenue to the upper tier entities, has \$1 million or less in annualized total revenue or owes less than \$1,000 in tax. If the election is made and revenue is passed, both the upper and lower tier entities will owe any amount of tax that is calculated as due even if the*

*amount is less than \$1,000 or annualized total revenue after the tiered partnership election is less than \$1 million.*

## E-Z COMPUTATION

Entities with \$10 million or less in annualized total revenue may choose to file using the E-Z Computation Report, Form 05-169.

Combined groups are eligible for the E-Z computation. Upper and lower tier entities, when the tiered partnership election has been made, will qualify for the E-Z computation only if the lower tier entity would have qualified for the E-Z computation before passing total revenue to the upper tier entities. Entities using the E-Z computation forego any credits for that report year, including the temporary credit for business loss carryforwards and economic development credits.

The franchise tax rate for entities choosing to file using the E-Z computation is 0.575% (.00575). No deduction is allowed for COGS or compensation when choosing the E-Z computation.

## DISCOUNTS

Discounts do not apply for the 2010 and 2011 franchise tax reports because the no tax due threshold of \$1 million exceeds the total revenue to which the discounts would apply (\$900,000).

## DUE DATES

If the due date (original or extended) of a report falls on a Saturday, Sunday or legal holiday included on the list published before January 1 of each year in the *Texas Register*, the due date will be the next business day.

Annual Reports - due May 15 of each report year.

Initial Reports- due one year and 90 days after the entity is organized in Texas or the date a non-Texas entity begins doing business in Texas.

An initial report will not be required for taxable entities that become subject to the franchise tax on or after October 4, 2009. These entities will owe a first annual report that will be due on May 15 of the year following the year the entity became subject to the franchise tax.

## ESTIMATED TAX

Texas law does not require the filing of estimated tax reports or payments.

## ANNUAL REPORTS

Report Year

The year in which the franchise tax report is due. The 2010 annual report is due May 17, 2010.

Privilege Period

January 1 through December 31. For entities that became subject to the tax from October 4, 2009, through December 31, 2009, the privilege period begins on the entity's beginning date and ends on December 31, 2010.

### Accounting Period

Accounting Year Begin Date:

Enter the day after the ending date on the previous franchise tax report. For example, if the 2009 annual franchise tax report had an ending date of 12-31-08, then the beginning date on the 2010 annual report should be 01-01-09.

For entities that became subject to the tax from October 4, 2009, through December 31, 2009, enter the date the entity became subject to the tax.

Accounting Year End Date:

Enter the last accounting period ending date for federal income tax purposes in the year before the year the report is originally due.

Entities that became subject to the tax from October 4, 2009, through December 31, 2009, and have a federal accounting year end date that is prior to the date the entity became subject to the tax, will use the day they became subject to the franchise tax as the accounting year end date on the first annual report. This results in a zero report.

Example: An entity became subject to the tax on 10-05-09. The entity's federal accounting year end date is 08-31. Since the federal accounting year end date of 08-31-09 is prior to the date the entity first became subject to the tax, both the accounting period begin and end date on the 2010 annual report will be 10-05-09. This results in a zero report. On the 2011 annual report, the entity will file with an accounting period 10-05-09 through 08-31-10.

If an entity's previous franchise tax report was an initial report and the accounting year end date was in the same calendar year that the initial report was due, the accounting year end date requirements for the subsequent annual report results in an end date that is prior to the accounting year begin date. In this case, the accounting year begin date should also be used for the accounting year end date. This results in a zero report.

Example: An entity filed a 2009 initial report with an accounting year end date of 06-30-09. On the 2010 annual report, the accounting year begin date will be 07-01-09. Their last federal accounting year end date in the year prior, 06-30-09, is before the begin date. Therefore, both the accounting period begin and end date on the 2010 annual report will be 07-01-09. This results in a zero report. On the 2011 annual report, the entity will file with an accounting period of 07-01-09 through 06-30-10.

### Combined Groups

For the period that a combined group exists, the combined group will file only annual reports. For any accounting period that an entity is not part of a combined group, the entity must file a separate report.

## **INITIAL REPORTS**

*(applies only to taxable entities that began doing business in Texas before October 4, 2009)*

### Report Year

The year in which the franchise tax report is due.

### Privilege Period

For an initial report, the privilege period will cover an initial period which begins on the date that the entity is organized in Texas or, if a non-Texas entity, the date it begins doing business in Texas. The initial period ends on the day before the first anniversary of the beginning date. An initial report will also cover a second period which begins on the first anniversary of the beginning date and ends on the subsequent December 31. In addition, if an entity had a beginning date between October 3, 2008, and January 1, 2009, then the initial report will include the first annual privilege period. This could make the cumulative privilege period up to 27 months on an initial report.

### Accounting Period

Accounting Year Begin Date:

Enter the date a Texas entity was formed or the date a non-Texas entity began doing business in Texas.

Accounting Year End Date:

Enter the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report.

Example 1: The entity's last normal accounting period ending date is 12-31-09. The entity's beginning date in Texas is 04-03-09. The original due date of the initial report is 07-01-10. Sixty days before the original due date would be 05-02-10. The entity's normal accounting period ending date of 12-31-09 occurs at least 60 days before 07-01-10. Therefore, the entity must use 12-31-09 as its ending date. The accounting period used on the initial report will be 04-03-09 through 12-31-09.

Example 2: The entity's normal accounting period ending date is 06-30. The entity's beginning date in Texas is 04-03-09. The original due date of the initial report is 07-01-10. Sixty days before the original due date is 05-02-10. The entity's normal accounting period ending date of 06-30-10 does not occur at least sixty days prior to the original due date of 07-01-10. Therefore, the entity must use 06-30-09 as the ending date. The accounting period used on the initial report will be 04-03-09 through 06-30-09.

### Combined Groups

A combined group will not file an initial report. For the period that a combined group exists, the combined group will file only annual reports regardless of whether the reporting entity or any or all of the members of the combined group would have been required to file an initial report if filing as a separate entity.

Except as provided below, if an entity is part of a combined group, it will not report its data on a separate initial report, but will include its data with the combined group's report for the corresponding accounting period. The entity should return

its *Franchise Tax Initial Report Filing Notice* to the Comptroller identifying the reporting entity of the combined group.

If the entity (before it was a member of a combined group) has an accounting year begin date that is before the accounting year begin date that will be used by the combined group, then it will be required to file a separate initial report for the data from its accounting year begin date through the day before the accounting year begin date that will be used by the combined group.

A newly formed member of a combined group that leaves the combined group during the accounting period that would be covered by its initial report is required to file a separate initial report for the period beginning on the date it leaves the group through the date of its normal accounting year end that is at least 60 days prior to the original due date of its initial report.

*Note: As indicated previously, initial reports will not be filed by entities that became subject to the franchise tax on or after October 4, 2009.*

## **FINAL REPORTS**

An entity that ceases doing business in Texas for any reason (i.e. termination, withdrawal, merger, etc.) is required to file a final franchise tax report (Forms 05-158-A and 05-158-B, 05-163 or 05-169) and pay an additional tax if due.

### Due Date

A final report is due 60 days after the entity ceases doing business in Texas.

### Accounting period

Accounting Year Begin Date:

The day after the ending date on the previous franchise tax report.

Accounting Year End Date:

The date the taxable entity ceases doing business in Texas. For a Texas entity, the ending date is the effective date of termination, merger or conversion into a non-taxable entity. For a non-Texas entity, the ending date is the date the entity ceases doing business in Texas.

Example: A Texas entity filed a 2010 annual franchise tax report using a 12-31-09 accounting year ending date. The entity wants to end its existence on 08-03-10. To obtain a certificate of account status for termination, the entity must file a final report and pay tax for the accounting period from 01-01-10 through 08-03-10. If the entity is not terminated until 08-16-10, the entity must file an amended final report. The amended final report is due the 60th day after 08-16-10, the date the entity terminated.

Taxable entities must satisfy all tax requirements or state in the appropriate articles which entity will be responsible for satisfying all franchise tax requirements, before they may terminate legal existence in Texas. All documents required by the Texas Secretary of State to terminate legal existence in

Texas must be received in that office before 5:00 p.m. on December 31 to avoid liability for the next annual franchise tax report. If December 31 falls on a weekend, the documents must be received by 5:00 p.m. on the last working day of the year. Postmark dates will not be accepted. You may refer to [www.window.state.tx.us/taxinfo/franchise/close\\_reinstate.html](http://www.window.state.tx.us/taxinfo/franchise/close_reinstate.html) for more information on filing requirements. This section does not apply to financial institutions.

Non-Texas entities that have not registered with the Texas Secretary of State's office, but have been doing business in Texas, must satisfy all franchise tax requirements to end their responsibility for franchise tax. The entity must notify the Comptroller's office in writing and include the date the entity ceased doing business in Texas.

### Combined Groups

If every member of a combined group ceases doing business in Texas, a final report will need to be filed and paid before a taxable entity will receive clearance from the Comptroller for termination, cancellation, withdrawal or merger. In all other cases, a combined group will not file a final report.

Except as provided below, if the entity that ceases doing business in Texas is part of a combined group, the data that should be reported on the final report will be included in the combined group's report for the corresponding accounting period. The entity should use Form 05-359, Request for Certificate of Account Status to identify the reporting entity of the combined group.

An entity that joins a combined group and then ceases doing business in Texas in the accounting year that would be covered by a final report is required to file a final report for the data from the accounting year begin date through the date before it joined the combined group. The period beginning with the date the entity joined the combined group through the date the entity ceased doing business in Texas will be reported on the combined group's annual report for the corresponding period.

A member of a combined group that leaves the combined group and then ceases doing business in Texas during the accounting year that would be covered by a final report is required to file a final report for the data from the date the entity left the combined group through the date that the entity ceased doing business in Texas.

## **CHANGE IN ACCOUNTING PERIOD**

Texas law does not provide for the filing of short period franchise tax reports. A change in a federal accounting period or the loss of a federal filing election does not change the beginning and ending dates of an accounting period for franchise tax reporting purposes. The keys to the period upon which the tax is based are the beginning and ending dates. The beginning date will be the day after the ending date on the prior franchise tax report, and the ending date will be the last federal tax accounting period end date in the year prior to the year in which the report is originally due.

Example 1: A fiscal year entity changes its accounting year end from 09-30-09 to a calendar year end of 12-31-09. Because of the change in the federal accounting period, the entity is required to file a short period federal return covering the period 10-01-09 through 12-31-09. For franchise tax reporting purposes, the entity would file its 2010 report based on the period beginning 10-01-08 through 12-31-09, combining the relevant information from the two federal income tax reports.

Example 2: A calendar year entity lost its S election under the Internal Revenue Code on June 27, 2009. As a result, the entity was required to file a short period federal S return for the period 01-01-09 through 06-27-09. The entity did not change its accounting year end and filed a second short period federal return for the period 06-28-09 through 12-31-09. For franchise tax reporting purposes, the entity would include the period 01-01-09 through 12-31-09 on its 2010 annual report and would combine the relevant information from the two federal reports.

## **EXTENSION OF TIME TO FILE**

Please see extension requirements for combined reports and EFT filers in the respective sections of these instructions.

If an entity cannot file its annual report, including the first annual report, by the original due date, it may request an extension of time to file the report. If granted, the extension for a non-EFT filer will be through November 15, 2010. The extension payment must be at least 90 percent of the tax that will be due with the report or 100 percent of the tax reported as due on the prior franchise tax report (provided the prior report was filed on or before May 14, 2010). The extension request must be made on Form 05-164 and must be postmarked on or before May 17, 2010. If a timely filed extension request does not meet the payment requirements, then penalty and interest will apply to any part of the 90 percent not paid by May 17, 2010 and to any part of the 10 percent not paid by November 15, 2010.

A taxable entity that became subject to the franchise tax on or after October 4, 2009, filing its first annual report, may not use the 100% extension option.

A separate entity that was included in a 2009 combined group report may not use the 100% extension option.

*Note: A combined group must file the Extension Request (Form 05-164) and an Affiliate List (Form 05-165) to have a valid extension for all members of the group.*

## **ELECTRONIC FUNDS TRANSFER (EFT)**

Taxable entities that paid \$10,000 or more in franchise tax during the preceding state fiscal year are required to electronically transmit franchise tax payments to the Comptroller's office for the subsequent year. Additional information about EFT requirements are outlined in Rule 3.9 concerning electronic filing and electronic fund transfers.

The extended due date for mandatory EFT filers is different from that of other franchise taxpayers. An EFT filer may extend the filing due date from May 17, 2010, to August 16, 2010, by timely making their extension payment online using tax type code 13080 (Franchise Tax Extension). Mandatory EFT filers must remit at least 90 percent of the tax that will be due with the report or 100 percent of the tax reported as due on the prior franchise tax report, provided the prior year's report was filed on or before May 14, 2010.

An EFT filer may request a second extension to November 15, 2010 to file the report by paying online before August 16, 2010 the balance of the amount of tax that will be reported as due on November 15, 2010 using tax type Code 13080 (Franchise Tax Extension) or by submitting a paper Form 05-164, Extension Request, if the entity has paid all of the tax due with its first extension.

If an online extension payment is made, the taxable entity should NOT submit a paper Form 05-164, Extension Request.

### Combined Groups

If any one member of a combined group receives notice that it is required to electronically transfer franchise tax payments, then the combined group is required to electronically transfer payments. The payment must be remitted as discussed above, however, the combined group must mail an Extension Affiliate List (Form 05-165) to the Comptroller's office.

## **PENALTIES AND INTEREST**

A penalty of five percent of the tax due shall be imposed on an entity that fails to pay the tax or file a report when due. If the entity fails to file the report or pay the tax within 30 days after the due date, an additional five percent penalty shall be imposed.

Delinquent taxes accrue interest beginning 60 days after the date the tax is due. The interest rate to be charged is the prime rate plus one percent, as published in *The Wall Street Journal* on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

Late EFT payments are subject to the same penalties noted above. Also, failure to follow the EFT requirements could result in an additional 5 percent penalty being assessed.

## **FORFEITURE**

If an entity does not file its franchise tax report and required information report and/or does not pay tax, penalty or interest due within 45 days of the due date, its powers, rights, and its right to transact business may be forfeited. Entities that fail to file or pay within 120 days of the forfeiture of the right to transact business are subject to having their registration forfeited.

Upon the forfeiture of the right to transact business, the officers and directors of the entity become personally liable for each debt of the entity that is created or incurred in this

state after the due date of the report and/or tax and before the privileges are restored. Texas Tax Code Section 171.255.

## **COMBINED REPORTING**

Taxable entities that are part of an affiliated group engaged in a unitary business shall file a combined group report in lieu of individual reports. The combined group is a single taxable entity for purposes of calculating franchise tax due and completing the required tax reports.

An affiliated group is a group of entities (with or without nexus in Texas) in which a controlling interest (more than 50%) is owned by a common owner, either corporate or noncorporate, or by one or more of the member entities.

An affiliated group can include:

- pass-through entities, including partnerships;
- limited liability companies taxed as partnerships under federal law;
- S corporations; and
- disregarded entities under federal law.

A combined group cannot include:

- taxable entities that conduct business outside the United States if 80 percent or more of the taxable entity's property and payroll are assigned to locations outside the United States;
- insurance companies that pay the gross premium tax;
- an entity exempt under Chapter 171, Subchapter B; or
- passive entities; however, the pro rata share of net income from a passive entity shall be included in the total revenue to the extent it was not included in the margin of another taxable entity. (See the section on Passive Entities for additional information.)

A unitary business is defined as a single economic enterprise that is made up of separate parts of a single entity or of a commonly controlled group of entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. All affiliated entities are presumed to be engaged in a unitary business.

See franchise tax rule 3.590 for more detailed information on combined reporting.

### Reporting Entity

The combined group's choice of an entity that is:

- 1) the parent entity, if it is a part of the combined group, or
- 2) the entity that is included within the combined group, is subject to Texas' taxing jurisdiction, and has the greatest Texas business activity during the first period upon which the first combined group report is based, as measured by the Texas receipts after eliminations for that period.

The reporting entity shall file a combined report on behalf of the group together with all reports and schedules required by the Comptroller.

### Combined Report

A combined group shall include all taxable entities without regard to the \$1 million no tax due threshold on total revenue. For example, even if an entity in a combined group on its own has less than or equal to \$1 million in total revenue, that entity must still be included in the report for the combined group.

Unless a combined group qualifies and chooses to file using the E-Z computation, the combined group's margin is computed in one of the following ways:

- Total Revenue times 70%
- Total Revenue minus Cost of Goods Sold (COGS)
- Total Revenue minus Compensation

A combined group must make an annual election to deduct COGS or compensation by the due date of the franchise tax report, the extended due date or the date the report is filed, whichever is latest. The election to use COGS or compensation is made by filing the franchise tax report using one method or the other. This is an annual election and is effective for the entire period upon which the tax is based. The election is effective for all members of the combined group.

After the due date or the extended due date of the report a combined group may not amend its report to change its election to COGS or compensation. However, a combined group may amend its report to change its method of computing margin from COGS or compensation to 70% of total revenue or, if eligible, the E-Z computation.

A combined group may qualify to use the E-Z computation if its combined annualized total revenue is \$10 million or less.

A combined group shall look at the total revenue of the group to determine the applicable tax rate. If the revenue from retail and/or wholesale activities is greater than the revenue from all other activities, then the group may qualify as a retailer and/or wholesaler and may use the .5% (0.005) tax rate as long as it meets all the criteria specified for the .5% (0.005) rate. See Tax Rates, page 2.

### Accounting Period of the Combined Group

The combined group's accounting period is generally determined as follows:

- if two or more members of a group file a federal consolidated return, the group's accounting period is the federal tax period of the federal consolidated group;
- in all other cases, the accounting period is the federal tax period of the reporting entity.

See the accounting period beginning and ending date requirements in the annual, initial and/or final report sections.

The accounting year begin and end dates entered on page one of the franchise tax report must reflect the full accounting period on which the combined group report is based. Do not enter the accounting period begin and end dates of the reporting entity.

If the federal tax period of a member differs from the federal tax period of the group, the reporting entity will determine the portion of that member's revenue, cost of goods sold, compensation, etc. to be included by preparing a separate income statement based on federal income tax reporting methods for the months included in the group's accounting period.

*Note: The affiliates' accounting year begin and end dates on the affiliate schedule must be within the accounting year begin and end dates entered on page one of the franchise tax report. For example, a combined group selects a newly formed entity (formed 07-01-2009) as the reporting entity. The combined group's franchise tax report is based on the accounting period 01-01-2009 through 12-31-2009. On page one of the franchise tax report, the accounting year begin date is 01-01-2009 and the accounting period end date is 12-31-2009. On the affiliate schedule, the newly formed entity will be listed with an accounting year begin date of 07-01-2009 and an accounting year end date of 12-31-2009.*

#### Newly Formed or Acquired Entities

When a combined group acquires or forms another taxable entity during the period upon which the combined group's report is based, it will be presumed that the newly acquired or formed entity is unitary and will be included in the combined filing.

See initial, annual and final report sections of these instructions for additional information.

#### Combined Total Revenue

A combined group shall determine its total revenue by:

1. calculating the total revenue of each of its members as if the member were an individual taxable entity without regard to the \$1 million no tax due threshold (See instructions for Items 1-9 on Form 05-158-A to compute total revenue on an individual entity basis.);
2. adding together the total revenues of the members determined under (1); and
3. subtracting, to the extent included in (2), items of total revenue received from a member of the combined group.

#### Combined Cost of Goods Sold

A combined group that elects to subtract cost of goods sold shall determine that amount by:

1. calculating the cost of goods sold for each of its members as if the member were an individual taxable entity (See instructions for Items 11-13 on Form 05-158-A to compute COGS on an individual entity basis.);
2. adding together the amounts of cost of goods sold determined under (1); and
3. subtracting from the amount determined under (2) any cost of goods sold amounts paid from one member of the combined group to another member of the combined group, but only to the extent the corresponding item of total revenue was subtracted.

#### Combined Compensation

A combined group that elects to subtract compensation shall determine that amount by:

1. calculating the compensation for each of its members as if each member were an individual taxable entity (See instructions for Items 15-17 on Form 05-158-A to compute compensation on an individual entity basis.);
2. adding together the amounts of compensation determined under (1); and
3. subtracting from the amount determined under (2) any compensation amounts paid from one member of the combined group to another member of the combined group, but only to the extent the corresponding item of total revenue was subtracted.

If any employee, officer, director, etc. is paid by more than one member of the combined group, that individual's compensation is capped at \$320,000 per 12 month period upon which the report is based when computing the compensation deduction for the group.

#### Combined Apportionment

Texas Gross Receipts of a combined group include only receipts for entities within the group that have nexus in Texas. Receipts from transactions between members that are excluded from revenue may not be included in Texas Gross Receipts. However, Texas Gross Receipts will include certain sales of tangible personal property made to third party purchasers if the tangible personal property is ultimately delivered to a purchaser in Texas without substantial modification. For example, drop shipments made by a member of a combined group from a Texas location to a Texas purchaser would be included in Texas receipts based on the amount billed to the third party purchaser if the seller is also a member of the combined group and the seller does not have nexus.

Gross Receipts Everywhere for a combined group should include receipts for all entities within the group, regardless of whether the entities have nexus in Texas. Receipts from transactions between members that are excluded from revenue may not be included in Gross Receipts Everywhere.

#### Combined Extensions

A combined group may only use the 100% extension option if the combined group has lost a member or if the members of the combined group are the same as they were on the last day of the period upon which the report due in the previous calendar year was based.

A combined group must timely submit Forms 05-164 and 05-165 along with the required payment to request an extension of time to file its report. Please see the Extensions and EFT sections of this booklet for additional information.

#### Liability for the Tax

Each taxable entity identified on the Affiliate Schedule, Form 05-166, is jointly and severally liable for the franchise tax of the combined group [Texas Tax Code, Sec. 171.1014(i)]. Notice of any such tax liability shall be sent to the reporting entity at the address listed on the report and shall be deemed sufficient and adequate notice of such liability to each

member of the combined group. Separate notice to each member shall not be required.

## **TIERED PARTNERSHIP ELECTION**

A “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”). A tiered partnership arrangement may have two or more tiers.

The tiered partnership election, under Texas Tax Code Sec.171.1015, is not mandatory; it is a filing option for entities in a tiered partnership arrangement. The tiered partnership election is not an alternative to combined reporting. Combined reporting is mandatory for taxable entities that meet the ownership and unitary criteria. Therefore, the tiered partnership election is not allowed if the lower tier entity is included in a combined group. Additionally, the tiered partnership election is not allowed if the lower tier entity, before passing total revenue to the upper tier entities, has \$1 million or less in annualized total revenue or owes less than \$1,000 in tax.

The tiered partnership election allows the lower tier entity to pass its total revenue to its upper tier entities. The upper tier entities then report this passed revenue with their own total revenue. It is important to note that this election does not allow the lower tier entity to pass its deductions for cost of goods sold or compensation to the upper tier entities.

The requirements for filing under the tiered partnership election are:

- All taxable entities involved in the tiered partnership election must file a franchise tax report, a Public Information Report (Form 05-102) or Ownership Information Report (Form 05-167), and the Tiered Partnership Report (Form 05-175).
- Both the upper and the lower tier entities must blacken the tiered partnership election circle on their tax reports.
- Total revenue may be passed only to upper tier entities that are subject to the Texas franchise tax.
- Total revenue must be passed to upper tier taxable entities based on ownership percentage.
- Deductions (cost of goods sold or compensation) may not be passed to upper tier entities.
- The upper and lower tier entities may use the E-Z Computation (Form 05-169) only if the lower tier entity has \$10 million or less in annualized total revenue before total revenue is passed to the upper tier entities.

Both the upper and lower tier entities will owe any amount of tax that is calculated as due even if the amount is less than \$1,000 or annualized total revenue after the tiered partnership election is less than \$1 million.

If the upper and lower tier entities have different accounting periods, the upper tier entity must allocate the total revenue reported from the lower tier entity to the accounting period on which the upper tier entity’s report is based.

## **CREDITS**

### 2008 Temporary Credit for Business Loss Carryforwards

A taxable entity is eligible for the credit if the entity was, on May 1, 2006, subject to the franchise tax. The credit is based on business loss carryforwards that were created on the 2003 and subsequent franchise tax reports that were not exhausted or expired on a report due before January 1, 2008. Business loss carryforwards must have been used to offset any positive amount of earned surplus, even in years when no tax was due or the tax due was based on taxable capital.

Each eligible taxable entity must have preserved its right to take the credit on or before the due date of its 2008 report.

The taxable entity (including combined groups) must elect to claim the credit on or before the original or extended due date of the report on which the credit will be taken. The election is made by actually taking the credit on a completed report form filed on or before the original or extended due date.

A taxable entity that is a combined group is allowed to take a credit for eligible members of the combined group (i.e., the member was subject to the franchise tax on May 1, 2006, and preserved the right to take the credit). If a member of a combined group changes combined groups the business loss carryforward of that member will no longer be included in the temporary credit calculation of the group and the related share of any temporary credit carried over from a previous year is lost to the group. There is no proration for a partial year.

See Rule 3.594 for additional information regarding this credit.

### Economic Development Credits

A taxable entity that established a research and development or job creation credit on a franchise tax report originally due prior to January 1, 2008, may claim any unused credit carried forward to offset the tax on margin.

A taxable entity that established a capital investment credit on a franchise tax report originally due prior to January 1, 2008, may claim any unused installments and credit carried forward to offset the tax on margin.

*Note: An enterprise project that established a capital investment credit on a 2008 franchise tax report may carry forward any unused credit to offset the tax on margin. See Rule 3.593 for additional information.*

## **AMENDED REPORTS**

If an entity needs to amend a report, it must file all pages of the report (as originally filed) along with a cover letter explaining the reason for the amendment. The entity must write “AMENDED” on the top of the report and submit supporting documentation. See Rule 3.584 for additional information.

# INSTRUCTIONS FOR COMPLETING TAXPAYER INFORMATION INCLUDED ON TEXAS FRANCHISE TAX FORMS

**Taxpayer number:**

Enter the taxpayer identification number that has been assigned to your entity by the Comptroller's office. If you do not have an assigned number, enter your federal employer identification (FEI) number.

**Due date:**

For annual filers, enter May 17, 2010. If you are filing an initial or final report, enter the due date that was provided in the letter you received.

**Privilege period:**

See the privilege period information in the annual or initial report sections.

**Secretary of State file number or Comptroller file number:**

The number assigned to the entity by the SOS or Comptroller.

**Taxpayer name:**

The legal name of the entity filing the report.

**Report year:**

The year the report is due.

**Mailing address:**

The mailing address of the entity filing the report. If there is a change of address for this entity, please blacken the circle as indicated.

**Combined Report:**

If this report is being filed on behalf of an affiliated group of entities engaged in a unitary business, please blacken the circle accordingly.

**Accounting year begin date:**

See the accounting year begin date requirements in the annual, initial and/or final report sections. Also see the accounting period information in the combined reporting sections.

**Entity type:**

Blacken circle if this entity is legally formed as a corporation, limited liability company or financial institution.

**Tiered Partnership:**

If you are making a tiered partnership election and are the upper tier entity including revenue passed to you by the lower tier entity or if you are the lower tier entity excluding revenue passed to an upper tier entity, blacken this circle and complete form 05-175. Do not blacken this circle just because you own an interest in another entity.

**Accounting year end date:**

See the accounting year end date requirements in the annual, initial and/or final report sections. Also see the accounting period information in the combined reporting section.

**SIC code:**

Enter the code that is appropriate for the taxable entity or the code that reflects the overall business activity of a combined group. The 1987 Standard Industrial Classification (SIC) codes can be found at [www.osha.gov/pls/imis/sicsearch.html](http://www.osha.gov/pls/imis/sicsearch.html).

**Entity type:**

Blacken circle if this entity is legally formed as a partnership, association, trust or entity other than a corporation, limited liability company, or financial institution.

**NAICS code:**

Enter the code that is appropriate for the taxable entity or the code that reflects the overall business activity of a combined group. The North American Industry Classification System (NAICS) codes can be found at [www.census.gov/epcd/www/naics.html](http://www.census.gov/epcd/www/naics.html).

**TEXAS FRANCHISE TAX REPORT - Page 1**

Comptroller of Public Accounts FORM 05-158-A (Rev. 1/08/2) Tcode 13250 Annual

<input type="checkbox"/> Taxpayer number		<input type="checkbox"/> Report year		Due date		Privilege period covered by this report	
Taxpayer name		Mailing address				Secretary of State file number or Comptroller file number	
City		State	Country		ZIP Code	Plus 4	Blacken circle if the address has changed <input type="checkbox"/>
Blacken circle if this is a combined report <input type="checkbox"/>		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 <input type="checkbox"/>			Blacken circle if this is an Entity other than a Corporation or Limited Liability Company <input type="checkbox"/>				
Accounting year begin date		Accounting year end date		SIC code		NAICS code	
m m d d y y		m m d d y y					

# SPECIFIC LINE INSTRUCTIONS FOR EACH REPORT INCLUDED IN THIS BOOKLET

## FORM 05-102 TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

**Filing Requirements:** Each corporation, LLC and financial institution that has a franchise tax responsibility must file a public information report (PIR) to satisfy their filing obligation. The PIR is due on the date the franchise tax report is due. The report must be completed and signed by an officer, director or other authorized person of the corporation, LLC or financial institution. A separate PIR is to be filed for each corporation, each LLC and each financial institution that files a separate franchise tax report or that is part of a combined group (unless the corporation, LLC or financial institution does not have physical presence in Texas).

Even if the franchise tax report is filed and all taxes paid, the right to transact business may be forfeited for failure to file the completed and signed PIR. The effects of forfeiture include the denial of the corporation's or LLC's right to sue or defend in a Texas court, and each officer and director becomes personally liable for certain debts of the corporation or LLC. (*Tex. Tax Code Secs. 171.251, 171.252 and 171.255*) Forfeiture provisions do not apply to financial institutions. (*Tex. Tax Code Secs. 171.259 and 171.260*)

Changes to the registered agent or registered office must be filed directly with the Secretary of State, and cannot be made on this form. The changes can be made online or on forms downloaded from their Web site at [www.sos.state.tx.us/corp/forms\\_option.shtml](http://www.sos.state.tx.us/corp/forms_option.shtml).

If there are no changes to the information in Section A of this report, then blacken the circle as indicated and complete Sections B and C. If no information is displayed or preprinted on this form, complete all applicable items.

### Section A:

Report the name, title, and mailing address of each officer and director of the corporation, LLC or financial institution as of the date the report is filed. If ALL the preprinted information in Section A is correct, blacken the circle located below the mailing address on the form. Otherwise, mark through any incorrect information and type or print the correct information next to the incorrect item or, if Section A is blank, complete Section A.

Domestic profit corporations and domestic professional corporations must list all officers, which must include the president and secretary, and all directors. One person may hold all offices. Domestic non-profit corporations must list all officers. Different persons must hold the offices of president and secretary. There is a minimum of three directors. Domestic limited liability companies must list all managers

and, if the company is member-managed, list all members. All officers, if any, must be listed. Non-Texas entities must list all officers and directors that are required by the laws of the state or country of incorporation or organization.

### Sections B and C:

Complete both sections as applicable for the entity for which this report is filed.

#### *Processing, Accessing, and Correcting Information Reported on the PIR:*

Reports filed by Texas corporations or LLCs and corporations or LLCs with a Certificate of Authority are sent to the Secretary of State, as required by law. After processing, officer and director information from the report is made available on the Comptroller's Certificate of Account Status Web site, <http://ecpa.cpa.state.tx.us/coa/Index.html>. If the information is not available online, you may request a copy of the most recent PIR by contacting us at [open.records@cpa.state.tx.us](mailto:open.records@cpa.state.tx.us), or write to:

COMPTROLLER OF PUBLIC ACCOUNTS  
Open Records Section  
P. O. Box 13528  
Austin, Texas 78711-3528

Changes to officer and director information that occur after the report is filed, should be reported to the Comptroller on the next PIR the corporation, LLC or financial institution is required to file. The Comptroller will not accept changes during the year, except as noted below.

An individual whose name was included on the report, but who was not an officer or director on the date the report was filed, may file a sworn statement to that effect with the Comptroller. A corporation, LLC or financial institution that made an error on its PIR may file an amended PIR with a cover letter explaining the error.

### Signature Block:

Report may be signed by an officer, director or other authorized person. This includes a paid preparer authorized to sign the report.

## FORM 05-158-A TEXAS FRANCHISE TAX REPORT – PAGE 1

**Filing Requirements:** Any entity (including a combined group) that does not qualify to file using the E-Z computation or that does not have \$1 million or less in total revenue (qualifying to file the No Tax Due Information Report) should file this report.

A taxable entity must make an annual election to deduct COGS or compensation by the due date of the franchise

tax report, the extended due date or the date the report is filed, whichever is latest. The election to use COGS or compensation is made by filing the franchise tax report using one method or the other. This is an annual election and is effective for the entire period upon which the tax is based.

After the due date or the extended due date of the report, a taxable entity may not amend its report to change its election to cost of goods sold or compensation. However, a taxable entity may amend its report to change its method of computing margin from COGS or compensation to 70% of total revenue or, if eligible, the E-Z computation.

The instructions for Items 1-7 and 9 below are for taxable entities that are filing as a separate entity and not as part of a combined group. A combined group should follow these specific instructions for each member of the group and then add across each item to determine the amounts that will be reported for the group. Intercompany eliminations should be reported on Item 9 as an exclusion from revenue.

The amounts referenced in the instructions presume that a separate federal income tax return was filed by each separate taxable entity. If a taxable entity was part of a federal consolidated return or was disregarded for federal tax purposes and is not being treated as disregarded for franchise tax purposes, report the amounts on Items 1-7 and 9 as if the entity had filed a separate return for federal income tax purposes.

The instructions for Items 11-13 and 15-17 below are also for taxable entities that are filing as a separate entity and not as part of a combined group. A combined group should follow these specific instructions for each member of the group, add across each item, and then subtract any intercompany eliminations to determine the amounts that will be reported. Eliminations may be made only to the extent that the related items of revenue were eliminated.

*Note: The line items indicated in this section refer to the specific lines as they were on the 2006 Internal Revenue Service (IRS) forms. It is possible that IRS forms have changed for subsequent federal tax years. Total revenue should be based on the equivalent line numbers from the corresponding federal report.*

#### **Item 1. Gross receipts or sales**

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from line 1c, Form 1120.
- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 1c, Form 1120S.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 1c, Form 1065.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount from line 3, Schedule C, Form 1040.
- For a taxable entity that is a single member LLC filing as a sole proprietorship for federal tax purposes, enter the amount from line 3, Schedule C, Form 1040.
- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is

substantially equivalent to the amounts discussed in this section.

#### **Item 2. Dividends**

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from line 4, Form 1120.
- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 5a, Schedule K, Form 1120S.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 6a, Schedule K, Form 1065.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount from line 2a, Form 1041.
- To the extent dividends earned by the LLC are included for a taxable entity registered as a single member LLC and filing as a sole proprietorship for federal tax purposes, enter the amount associated with dividends from line 6, Schedule C, Form 1040.
- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is substantially equivalent to the amounts discussed in this section.

#### **Item 3. Interest**

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from line 5, Form 1120.
- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 4, Schedule K, Form 1120S.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 5, Schedule K, Form 1065.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount from line 1, Form 1041.
- To the extent interest earned by the LLC is included for a taxable entity registered as a single member LLC and filing as a sole proprietorship for federal tax purposes, enter the amount associated with interest from line 6, Schedule C, Form 1040.
- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is substantially equivalent to the amounts discussed in this section.

#### **Item 4. Rents**

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from line 6, Form 1120.
- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 3a, Schedule K, Form 1120S and the amounts from line 17 and 19, Form 8825.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 3a, Schedule K, Form 1065 and the amount from line 17, Form 8825.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount from line 3, Form 1040, Schedule E.
- For a taxable entity that is a single member LLC filing as a sole proprietorship for federal tax purposes, enter the

amount from line 3, Form 1040, Schedule E, to the extent that it relates to the LLC.

- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is substantially equivalent to the amounts discussed in this section.

*Note: Do not include in Item 4 net rental income (loss) passed through from a partnership or S corporation on IRS Form K-1; report this amount in Item 7. This amount must also be included in Item 9 when subtracting “net distributive income from a taxable entity treated as a partnership or as an S corporation for federal tax purposes.”*

#### **Item 5. Royalties**

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from line 7, Form 1120.
- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 6, Schedule K, Form 1120S.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 7, Schedule K, Form 1065.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount from line 4, Form 1040, Schedule E.
- For a taxable entity that is a single member LLC filing as a sole proprietorship for federal tax purposes, enter the amount from line 4, Form 1040, Schedule E, to the extent that it relates to the LLC.
- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is substantially equivalent to the amounts discussed in this section.

#### **Item 6. Gains/losses**

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from lines 8 and 9, Form 1120.
- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 4, Form 1120S and lines 7, 8a, and 9, Schedule K, Form 1120S.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 6, Form 1065 and lines 8, 9a, and 10, Schedule K, Form 1065.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount associated with gains/losses from lines 4 and 7, Form 1041.
- For a taxable entity that is a single member LLC filing as a sole proprietorship for federal tax purposes, enter the amount from line 16, Form 1040, Schedule D, to the extent that it relates to the LLC; and the amount from line 17, Form 4797, to the extent that it relates to the LLC.
- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is substantially equivalent to the amounts discussed in this section.

#### **Item 7. Other income**

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from line 10, Form 1120 to the extent not already included; and any total revenue passed from a lower tier entity under the tiered partnership election.

- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 5, Form 1120S; line 10, Schedule K, Form 1120S to the extent not already included; and any total revenue passed from a lower tier entity under the tiered partnership election.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 4 and line 7, Form 1065; the amount from line 11, Schedule K, Form 1065 to the extent not already included; the amount from line 11, plus line 2 or line 45, Form 1040, Schedule F; and any total revenue passed from a lower tier entity under the tiered partnership election.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount from line 8, Form 1041 to the extent not already included; the amount from line 6, Form 1040, Schedule C, that has not already been included; the amount from line 32 and line 37, Form 1040 Schedule E; the amount from line 11, plus line 2 or line 45, Form 1040, Schedule F; and any total revenue passed from a lower tier entity under the tiered partnership election.
- For a taxable entity that is a single member LLC filing as a sole proprietorship for federal tax purposes, enter the ordinary income or loss from partnerships, S corporations, estates and trusts from Form 1040 Schedule E, to the extent that it relates to the LLC; enter the amount from line 11, plus line 2 or line 45, Form 1040, Schedule F, to the extent that it relates to the LLC; enter the amount from line 6, Form 1040, Schedule C, that has not already been included; and any total revenue passed from a lower tier entity under the tiered partnership election.
- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is substantially equivalent to the amounts discussed in this section.

#### **Item 8. Total gross revenue**

Total the amounts entered on items 1 through 7.

#### **Item 9. Exclusions from gross revenue**

Only the following items may be excluded from gross revenue. See Rule 3.587 for additional information.

##### *Bad Debt Expense*

- For a taxable entity filing as a corporation for federal tax purposes, enter the amount from line 15, Form 1120.
- For a taxable entity filing as an S corporation for federal tax purposes, enter the amount from line 10, Form 1120S.
- For a taxable entity filing as a partnership for federal tax purposes, enter the amount from line 12, Form 1065.
- For a taxable entity registered as a single member LLC and filing as a sole proprietorship for federal tax purposes, enter the amount associated with bad debt expense from line 27, Schedule C, Form 1040.
- For a taxable entity filing as a trust for federal tax purposes, enter the amount associated with bad debt expense from line 15a, Form 1041.
- For a taxable entity filing a federal tax form other than those mentioned above, enter an amount that is substantially equivalent to the amounts discussed in this section.

### *Foreign Dividends and Foreign Royalties*

Enter the amount of foreign royalties and foreign dividends, including amounts reported under Section 78 or Sections 951-964, Internal Revenue Code, to the extent included in gross revenue.

### *Net Distributive Income*

- A taxable entity's pro rata share of net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes. Net distributive income for the calculation of total revenue is the net amount of income, gain, deduction, or loss of the pass-through entity that is included in the federal taxable income of the taxable entity. (If this amount is negative, it will be added in computing total revenue.)
- A taxable entity that owns an interest in a passive entity shall not enter an amount on this item to deduct the taxable entity's share of the net income of the passive entity unless the income was included in the computation of the total revenue of another taxable entity. See Rule 3.587.

*Note: For an upper tier entity using the tiered partnership election, the total revenue passed by the lower tier entity to the upper tier entity cannot be deducted as net distributive income.*

### *Schedule C Dividends Received*

For a taxable entity reporting a Schedule C dividends received deduction, enter the amount reported on line 29b, Form 1120.

### *Revenue from Disregarded Entities*

A taxable entity may exclude, to the extent included in gross revenue (Items 1-7 above), its share of income directly attributable to an entity that is treated as disregarded for federal income tax purposes but that is not treated as disregarded for franchise tax purposes. A taxable entity cannot exclude its share of income directly attributable to an entity that is treated as disregarded for federal income tax purposes and is treated as disregarded for franchise tax reporting purposes.

### *Flow-through Funds*

To the extent included in gross revenue:

- A taxable entity may exclude an amount for flow-through funds mandated by: (1) law, (2) fiduciary duty or (3) contract (limited to sales commissions to non-employees, the tax basis of securities underwritten, and a taxable entity's flow-through payments to subcontractors for the design, construction, repair or improvement of real property or the location of boundaries to real property);
- A taxable entity that provides legal services may exclude an amount equal to the following flow-through funds:
  - damages due the claimant;
  - funds subject to a lien or other contractual obligation arising out of the representation, other than fees owed to the attorney;
  - fees paid to another attorney not within the same taxable entity;
  - reimbursement of case expenses; and
  - \$500 per case for providing pro bono legal services.

### *Dividends & Interest from Federal Obligations*

Enter the amount of dividends and interest from federal obligations. See Rule 3.587(b).

### *Other Deductions*

To the extent included in gross revenue:

- A taxable entity that qualifies as a lending institution may enter an amount equal to the principal repayment of loans.
- A taxable entity that is a staff leasing services company may enter an amount equal to payments received from a client company for wages, payroll taxes, employee benefits and workers' compensation benefits for the assigned employees. A staff leasing services company cannot exclude payments received from a client company for payments made to independent contractors assigned to the client company and reportable on Internal Revenue Service Form 1099.
- A taxable entity that is a health care provider may enter 100% of revenues (including copayments, deductibles and coinsurance) from Medicaid, Medicare, CHIP, workers' compensation claims and TRICARE, and actual costs for uncompensated care (healthcare institutions may enter only 50% of such revenues). See Tax Code Section 171.1011(p)(2).
- A taxable entity that is a management company may enter an amount equal to reimbursements of specified costs incurred in its conduct of the active trade or business of a managed entity.
- A taxable entity may enter amounts received that are directly derived from the operation of a facility that is located on property owned or leased by the federal government and managed or operated primarily to house members of the armed forces of the United States.

### *Intercompany eliminations – combined reports*

To the extent included in total revenue, subtract items of total revenue received from members of the combined group.

### *Tiered partnership election*

For a lower tier entity that makes the tiered partnership election, enter the total revenue passed to the upper tier entities.

### **Item 10. Total Revenue**

Item 8 minus Item 9. If less than zero, enter zero. If the annualized total revenue is less than or equal to \$1 million, and the entity is not an upper or lower tier entity making the tiered partnership election, stop here and file Form 05-163, No Tax Due Information Report. If the annualized total revenue is \$10 million or less, the entity may choose to file using the E-Z Computation (Form 05-169).

*Note: The tiered partnership election is not allowed if the lower tier entity, before passing total revenue to the upper tier entities, has \$1 million or less in annualized total revenue or owes less than \$1,000 in tax. An upper or lower tier entity making a tiered partnership election qualifies to use the E-Z computation only if the lower tier entity would have qualified for the E-Z computation before passing total revenue to the upper tier entities.*

## Item 11. Cost of goods sold

“Goods” are defined as real or tangible personal property sold in the ordinary course of business. Tangible personal property includes computer programs as well as films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property. Tangible personal property does not include items that are rented in the ordinary course of business, intangible property, or services.

A taxable entity may make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods. A taxable entity that is a member of a combined group may subtract allowable costs as cost of goods sold if the goods for which the costs are incurred are owned by another member of the combined group. A payment made to an affiliated entity who is not a member of the combined group may only be included in COGS if the transaction is made at arm’s length.

A taxable entity that is subject to Internal Revenue Code, 263A, 460 or 471 may choose to expense or capitalize allowable costs associated with the goods purchased or produced. All other taxable entities will expense allowable costs associated with the goods purchased or produced.

**Expensing COGS** – An entity that elects to expense allowable costs will have no beginning or ending inventory. The entity should include all allowable costs as described below for the accounting period on which the report is based.

**Capitalized COGS** – If the entity elects to capitalize COGS, the calculation will include those allowable costs that were in inventory at the beginning of the period upon which the tax is based plus allowable costs capitalized during the period minus allowable costs in ending inventory at the end of the period.

*Note: Generally COGS for franchise tax reporting purposes will not equal the amount used for federal income tax reporting purposes or for financial accounting purposes. Typically, this amount cannot be found on a federal income tax report or on an income statement. It is a calculated amount specific to franchise tax.*

Cost of goods sold includes all direct costs of acquiring or producing the goods, including:

- labor costs including W-2 wages, IRS Form 1099 wages, temporary labor, payroll taxes and benefits;
- cost of materials that are an integral part of specific property produced;
- cost of materials that are consumed in the course of performing production activities;
- handling costs, including costs attributable to processing, assembling, repackaging, and inbound transportation;
- storage costs (except for the rental of a storage facility), including the costs of carrying, storing or warehousing property;
- depreciation, depletion, and amortization, reported on the federal income tax return on which the report under this chapter is based, to the extent associated with and necessary for the production of goods, including recovery

described by Internal Revenue Code, §197, and property described in Internal Revenue Code, §179;

- the cost of renting or leasing equipment, facilities, or real property used for the production of the goods, including pollution control equipment and intangible drilling and dry hole costs;
- the cost of repairing and maintaining equipment, facilities, or real property directly used for the production of the goods, including pollution control devices;
- costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Internal Revenue Code, §174;
- geological and geophysical costs incurred to identify and locate property that has the potential to produce minerals;
- taxes paid in relation to acquiring or producing any material, or taxes paid in relation to services that are a direct cost of production;
- the cost of producing or acquiring electricity sold; and
- a contribution to a partnership in which the taxable entity owns an interest that is used to fund activities, the costs of which would otherwise be treated as cost of goods sold of the partnership, but only to the extent that those costs are related to goods distributed to the contributing taxable entity as goods-in-kind in the ordinary course of production activities rather than being sold by the partnership.

In addition to the items listed above, cost of goods sold includes the following costs in relation to the taxable entity’s goods:

- deterioration of the goods;
- obsolescence of the goods;
- spoilage and abandonment, including the costs of rework, reclamation, and scrap;
- if the property is held for future production, preproduction direct costs allocable to the property, including storage and handling costs, unless specifically excluded below;
- postproduction direct costs allocable to the property, including storage and handling costs, unless specifically excluded below;
- the cost of insurance on a plant or a facility, machinery, equipment, or materials directly used in the production of the goods;
- the cost of insurance on the produced goods;
- the cost of utilities, including electricity, gas, and water, directly used in the production of the goods;
- the costs of quality control, including replacement of defective components pursuant to standard warranty policies, inspection directly allocable to the production of the goods, and repairs and maintenance of goods; and
- licensing or franchise costs, including fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right directly associated with the goods produced.

Cost of goods sold does not include:

- any amounts excluded from revenue;
- officers’ compensation;
- the cost of renting or leasing equipment, facilities, or real property that is not used for the production of the goods;
- selling costs, including employee expenses related to sales;

- distribution costs, including outbound transportation costs;
- advertising costs;
- idle facility expense;
- rehandling costs;
- bidding costs, which are the costs incurred in the solicitation of contracts ultimately awarded to the taxable entity;
- unsuccessful bidding costs, which are the costs incurred in the solicitation of contracts not awarded to the taxable entity;
- interest, including interest on debt incurred or continued during the production period to finance the production of the goods;
- income taxes, including local, state, federal, and foreign income taxes, and franchise taxes that are assessed on the taxable entity based on income;
- strike expenses, including costs associated with hiring employees to replace striking personnel; however, costs of goods sold does include the wages of the replacement personnel, costs of security, and legal fees associated with settling strikes; and
- costs of operating a facility that is located on property owned or leased by the federal government and managed or operated primarily to house members of the armed forces of the United States.

*Note: A taxable entity renting motor vehicles, heavy construction equipment or railcar rolling stock may use cost of goods sold for costs related to the property rented. Lending institutions that make loans to the public may deduct interest expense as a cost of goods sold. A client company that contracts with a staff leasing services company may include in cost of goods sold payments to the staff leasing services company to the extent the payments relate to assigned employees that provide labor or services described as cost of goods sold in Tax Code Sec. 171.1012.*

#### **Item 12. Indirect or administrative overhead costs**

A taxable entity may subtract, as part of COGS, indirect/administrative overhead costs, including all mixed service costs, such as security services, legal services, data processing services, accounting services, personnel operations, and general financial planning and financial management costs, that it can demonstrate are allocable to the acquisition or production of goods. This amount is limited to 4% of total indirect/administrative overhead costs. Any costs specifically excluded from the computation of COGS may not be included in indirect or administrative overhead costs.

#### **Item 13. Other**

The only allowable amounts to be entered on this line are related to undocumented worker compensation and compensation of active duty personnel. These amounts will offset one another. The result can be either a negative (undocumented worker compensation) or a positive number (active duty personnel compensation).

#### *Undocumented Worker Compensation*

A taxable entity must exclude from cost of goods sold any compensation for undocumented workers for the period upon which the tax is based. Undocumented worker means

a person who is not lawfully entitled to be present and employed in the United States.

#### *Compensation of Active Duty Personnel*

A taxable entity may include, as an additional cost, the wages and cash compensation paid during the period upon which the report is based to an individual for the period the individual is serving on active duty as a member of the armed forces of the United States if the individual is a resident of this state at the time the individual is ordered to active duty, plus the cost of training a replacement for the individual.

#### **Item 15. Wages and cash compensation**

Wages and cash compensation means the following amounts paid to officers, directors, owners, partners and employees for the accounting period, limited to \$320,000 per person, prorated for the period upon which the tax is based:

- Medicare wages and tips on Form W2;
- net distributive income reported to a natural person from a limited liability company treated as a sole proprietor for federal income tax purposes, regardless of whether it is a positive or negative amount;
- net distributive income reported to natural persons from partnerships, trusts and limited liability companies treated as partnerships for federal income tax purposes, regardless of whether it is a positive or negative amount;
- net distributive income reported to natural persons from limited liability companies and corporations treated as S corporations for federal income tax purposes, regardless of whether it is a positive or negative amount.
- stock awards and stock options deducted for federal income tax purposes.

If an employee, officer, director, etc. is paid by more than one member of the combined group, that individual's compensation is capped at \$320,000, per 12 month period upon which the tax is based.

Net distributive income for the calculation of compensation is the amount of income, gain, deduction and loss relating to a pass-through entity or disregarded entity reportable to the owner for the tax year of the entity regardless of whether an actual distribution was made.

#### *To compute Net Distributive Income from a partnership:*

From IRS Form 1065 K-1, add boxes 1, 2, 3, 4, 5, 6a, 7, 8, 9a, 10 and 11. Subtract from that result the sum of boxes 12, 13 and 16, Code L (Foreign taxes).

#### *To compute Net Distributive Income from an S corporation:*

From IRS Form 1120S K-1, add boxes 1, 2, 3, 4, 5a, 6, 7, 8a, 9 and 10. Subtract from that result the sum of boxes 11, 12 and 14, Code L (Foreign taxes).

Wages and cash compensation DOES NOT include:

- payments on IRS Forms 1099;
- amounts excluded from gross revenue;
- an employer's share of employment taxes;

- amounts paid to an employee whose primary employment is directly associated with the operation of a facility that is located on property owned or leased by the federal government and managed or operated primarily to house members of the armed forces of the United States.

*Note: A staff leasing services company may only include wages and cash compensation paid to the entity's own employees, and may not include wages, benefits, workers' compensation benefits or payroll taxes of assigned employees. A taxable entity that is a client company that contracts with a staff leasing services company may include amounts paid to the staff leasing services company relating to the assigned employees for wages as defined by Item 15 (Wages & Cash Compensation) and Item 17 (Other – Compensation of Active Duty Personnel), and may include amounts paid for employee benefits including workers' compensation benefits, as defined by Item 16 (Employee Benefits). The client company may not include any administrative fee, payroll taxes or other amounts related to the assigned employees. In addition, the client company may not include as compensation any amounts reported on IRS Forms 1099.*

*Note: A management company may not include as wages or cash compensation any amounts reimbursed by a managed entity. A managed entity includes as compensation reimbursements made to the management company for wages and compensation as if the reimbursed amounts had been paid to employees of the managed entity.*

#### **Item 16. Employee benefits**

Enter the cost of benefits provided to officers, directors, owners, partners and employees, including workers' compensation, health care and retirement benefits. The deduction for employee benefits is not limited to \$320,000 per person but is only deductible to the extent deductible for federal income tax purposes.

#### **Item 17. Other**

The only allowable amounts to be entered on this line are related to undocumented worker compensation and compensation of active duty personnel. These amounts will offset one another. The result can be either a negative (undocumented worker compensation) or a positive number (active duty personnel compensation).

#### *Undocumented Worker Compensation*

A taxable entity must exclude from compensation any wages and cash compensation paid to undocumented workers for the period upon which the tax is based. Undocumented worker means a person who is not lawfully entitled to be present and employed in the United States.

#### *Compensation of Active Duty Personnel*

A taxable entity may include, as an additional cost, the wages and cash compensation paid during the period upon which the report is based to an individual for the period the individual is serving on active duty as a member of the armed forces of the United States if the individual is a resident of this state at the time the individual is ordered to active duty, plus the cost of training a replacement for the individual.

## **05-158-B**

## **TEXAS FRANCHISE TAX REPORT – PAGE 2**

### **Item 19. Revenue**

Multiply item 10 times 70%. If less than zero, enter zero.

### **Item 20. Revenue**

Item 10 minus Item 14 – COGS. If less than zero, enter zero.

### **Item 21. Revenue**

Item 10 minus Item 18 – Compensation. If less than zero, enter zero.

### **Item 22. Margin**

Enter the lowest amount from Items 19, 20, or 21.

### **Item 23. Gross receipts in Texas**

Texas gross receipts and gross receipts everywhere should be reported for the same accounting period used in the calculation of total revenue. Gross receipts means all revenues reportable by a taxable entity on its federal tax return, without deduction for the cost of goods sold, or other costs incurred, unless otherwise provided for by law.

Gross receipts in Texas means:

- sales of tangible personal property when the property is delivered or shipped to a purchaser within Texas;
- sales of real property located in Texas, including royalties from oil, gas, or other mineral interests;
- services performed within Texas;
- rentals of property situated in Texas;
- royalties from use of patents or copyrights within Texas;
- revenues from the use of trademarks, franchises, or licenses within Texas. These revenues include receipts from the sale or license of computer software or programs if the legal domicile of the payor is Texas;
- the net gain/loss from the sales of investments or capital assets. If both Texas and out-of-state sales have occurred, then a separate calculation of net gains and losses on Texas sales must be made. If the combination of net gains and losses results in a net loss, the taxable entity should net the loss against other receipts, but not below zero. In no instance shall the apportionment factor be greater than 1. Net gain/loss on sales of intangibles held as capital assets or investments is apportioned to the location of the payor. Examples of intangibles include, but are not limited to, stocks, bonds, futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill, and general receivable rights.
- membership or enrollment fees paid for access to benefits are considered gross receipts from the sale of an intangible asset and will be a Texas gross receipt if the payor is legally domiciled in Texas;
- receipts from the servicing of loans secured by real property are Texas gross receipts if the real property is located in Texas; and
- the pro rata share of net income from a passive entity if the passive entity's principal place of business is in Texas.

Any item of revenue that is excluded from total revenue under Texas law or United States law is not included in Texas gross receipts or gross receipts everywhere. For example, a taxable entity should not include in Texas gross receipts:

- income excluded because of IRC Sections 78 or 951-964;
- dividends and/or interest received from federal obligations; or
- dividends for which a deduction is allowed on Schedule C, Form 1120.

In addition, a taxable entity that is a combined group should not include in Texas gross receipts any revenues generated by a member of the group without nexus in Texas. However, Texas gross receipts will include certain sales of tangible personal property made to third party purchasers if the tangible personal property is ultimately delivered to a purchaser in Texas without substantial modification. For example, drop shipments made by a member of a combined group from a Texas location to a Texas purchaser would be included in Texas receipts based on the amount billed to the third party purchaser if the seller is also a member of the combined group and the seller does not have nexus.

**BANKING CORPORATIONS & SAVINGS AND LOAN ASSOCIATIONS** - Dividends and interest received by a banking corporation or savings and loan association are Texas receipts if they are paid by a corporation incorporated in Texas or if they are paid by an entity or person legally domiciled in Texas. A banking corporation should exclude from its Texas receipts interest earned on federal funds and interest earned on securities sold under an agreement to repurchase that are held in a correspondent bank domiciled in Texas.

#### **Item 24. Gross receipts everywhere**

Any amounts not included in total revenue (Item 10) must not be included in computing gross receipts everywhere. Therefore, gross receipts everywhere should equal the amount reported in Item 10 unless the taxable entity is a health care provider, health care institution, law firm, lending institution or security broker dealer.

Gross receipts everywhere include:

- all sales of tangible personal property;
- all rentals;
- all services;
- all royalties;
- all other business receipts;
- all dividends and interest; and
- the net gain/loss from the sales of investments or capital assets.

A capital asset is any asset, other than an investment, which is held for use in the production of income, and is subject to depreciation, depletion or amortization. An investment is any non-cash asset not a capital asset.

#### **Item 25. Apportionment factor**

If Texas gross receipts in item 23 are zero, enter zero. If Item 23 and Item 24 are the same and greater than zero,

enter 1.0000. Otherwise, divide Item 23 by Item 24 and round to 4 places past the decimal.

#### **Item 26. Apportioned margin**

Multiply item 22 by Item 25. If less than zero, enter zero.

#### **Item 27. Allowable deductions**

Each of the following deductions may be subtracted from apportioned margin:

- A taxable entity may deduct 10 percent of the amortized cost of a solar energy device if the device meets the criteria in Sec. 171.107(b). The deduction may not reduce apportioned margin below zero, and no carryover of unused deductions is allowed.
- A taxable entity may deduct 10 percent of the amortized cost of equipment used in a clean coal project if the equipment meets the criteria in Sec. 171.108(b). The deduction may not reduce apportioned margin below zero, and no carryover of unused deductions is allowed.

#### **Item 28. Taxable margin**

Item 26 minus item 27.

#### **Item 29. Tax rate**

Enter the appropriate tax rate:

- .01 (1.0%) for most entities
- .005 (0.5%) for qualifying wholesalers and retailers (see Tax Rates, page 2)

*Note: If the SIC code on Form 05-158-A does not fall into Division F or G of the Standard Industrial Classification Manual, a 0.5% tax rate will be denied when the report is processed.*

#### **Item 30. Tax due**

Item 28 multiplied by Item 29.

#### **Item 31. Tax credits**

Carry the amount of allowable tax credits forward from franchise tax Form 05-160.

#### **Item 32. Tax due before discount**

Item 30 minus Item 31. If less than zero, enter zero.

#### **Item 33. Discount**

Discounts do not apply for the 2010 and 2011 franchise tax reports because the no tax due threshold of \$1 million exceeds the total revenue to which the discounts would apply (\$900,000).

#### **Item 34. Total tax due**

Must equal the amount of tax due in Item 32 since discounts do not apply to the 2010 and 2011 report years.

If this amount is less than \$1,000, or the annualized total revenue is \$1 million or less, you owe no tax, but you must submit this report along with the appropriate information report(s) (Form 05-102 and/or Form 05-167).

If this amount is \$1,000 or more, and the annualized total revenue is more than \$1 million, please complete the

franchise tax payment Form 05-170. Make the check payable to the Comptroller of Public Accounts. Submit both pages of this report (Forms 05-158-A and 05-158-B), all appropriate schedules, the appropriate information report(s) (Form 05-102 and/or Form 05-167), the franchise tax payment form (Form 05-170) and your payment.

*Note: If the tiered partnership election is made and total revenue is passed, both the upper and lower tier entities will owe any amount in Item 34, even if the amount is less than \$1,000 or annualized total revenue after the tiered partnership election is less than \$1 million.*

**Signature Block:**

Report may be signed by an officer, director or other authorized person. This includes a paid preparer authorized to sign the report.

**FORM 05-160  
TEXAS FRANCHISE TAX CREDITS  
SUMMARY SCHEDULE**

A taxable entity that has carryforwards or installments from economic development credits must complete this form to take any of those carryforwards or installments.

A taxable entity must also complete this form if it is taking either the temporary credit for business loss carryforwards or the 1992 temporary credit.

**PART A – INVESTMENT CREDIT**

**Item 1. Investment credit installment from prior years**

Enter the yearly installment amount for an investment credit established on a franchise tax report originally due prior to January 1, 2008. Investment credits must have been established by filing the appropriate credit schedules on the 2005-2007 franchise tax reports. If, in one of the five years in which the installment of an investment credit would be claimed, the capital investments are taken out of service, removed from Texas, or otherwise disposed of or the credit expires, the corporation may not take any remaining installment of the credit.

**Item 2. Investment credit carried forward from prior years**

Investment credit carried forward to this year from prior years. Subtract Item 19 from Item 3 of the 2009 franchise tax report credits summary schedule, Form 05-160.

**Item 3. Subtotal**

Add item 1 plus item 2

**Item 4. Tax due before credits**

Enter the amount of tax due before credits as reported on Form 05-158-B, Item 30.

**Item 5. Investment Credit Limit**

Item 4 multiplied by 0.50 (50%).

**Item 6. Investment Credit Available**

Enter the lower of Item 3 or Item 5.

**PART B – JOBS CREATION CREDIT**

**Item 7. Jobs creation credit carried forward from prior years**

Job creation credit carried forward to this year from prior years. Subtract Item 20 from Item 7 of the 2009 franchise tax report credits summary schedule, Form 05-160.

**Item 8. Tax due before credits**

Enter the amount of tax due before credits as reported on Form 05-158-B, item 30.

**Item 9. Jobs creation credit limit**

Item 8 multiplied by 0.50 (50%).

**Item 10. Jobs creation credit available**

Enter the lower of item 7 or item 9.

**PART C – RESEARCH AND DEVELOPMENT CREDIT**

**Item 11. Research credit carried forward from prior years**

Research credit carried forward to this year from prior years. Subtract Item 21 from Item 11 of the 2009 franchise tax report credits summary schedule, Form 05-160.

**Item 12. Tax due before credits**

Enter the amount of tax due before credits as reported on Form 05-158-B, item 30.

**Item 13. Research credit limit**

Item 12 multiplied by 0.50 (50%).

**Item 14. Research credit available**

Enter the lower of Item 11 or Item 13.

**PART D – TEMPORARY CREDITS**

**Item 15. Temporary credit for business loss carryforwards**

A qualifying taxable entity must have preserved its right to take this credit on or before the due date of its 2008 report.

Enter the result of the following calculation in item 15:

- preserved amount of business loss carryforwards (item 2 of Form 05-172 filed in 2008)
- multiplied by 2.25% (0.0225)
- multiplied by 4.5% (0.045)

If the taxable entity is a combined group, each qualifying member of the group should have made a separate preservation of the business loss carryforwards. Use the cumulative amount of the preserved business loss carryforwards in the calculation of the credit.

*Note: If a member of a combined group leaves the group, the business loss carryforward of that member may no longer be used by the group or by the member.*

**Item 16. 1992 Temporary credit**

This credit is only available to corporations that preserved their right in writing to take the credit by March 2, 1992. If the credit has been taken on any previous reports or will be taken on this report, the corporation must pay the additional tax in item 17. This credit expires for all eligible entities in 2012.

The credit is computed as follows:

- determine the amount, as of the end of the corporation's accounting year ending in 1991, that is the excess of the basis used for financial accounting purposes over the basis used for federal income tax purposes of qualifying assets and liabilities that at some future date will reverse (use this amount every year the credit is taken);
- multiply this amount by the apportionment factor entered in Item 18 of the corporation's 1992 franchise tax report (use this apportionment factor every year the credit is taken);
- multiply this amount by 5.0% (0.05) per privilege period;
- multiply this amount by 4.5% (0.045)

**Item 17. 1992 Additional tax due**

If the corporation has elected to take the 1992 temporary credit on this or previous reports, then an additional tax due must be calculated by multiplying the taxable entity's taxable capital by 0.002 (0.2%) or this credit will be revoked for the current and future reports.

The taxable entity's taxable capital is computed by adding together the entity's stated capital and surplus as those terms are defined in franchise tax rules 3.550 (Taxable Capital: Stated Capital) and 3.551 (Taxable Capital: Surplus). If taxable capital is zero or less, then no additional tax is due and the temporary credit may still be taken to reduce tax due on net taxable margin.

**Item 18. Total temporary credits**

Add items 15 and 16, then subtract 17.

**PART E – CREDITS CLAIMED**

The total credits claimed cannot reduce the total tax due below zero; therefore, you may need to allocate the credits claimed in Items 19 through 21 so that the tax due will equal zero.

**Item 19. Investment credit claimed**

Cannot be greater than the amount entered on item 6.

**Item 20. Jobs creation credit claimed**

Cannot be greater than the amount entered on item 10.

**Item 21. Research credit claimed**

Cannot be greater than the amount entered on item 14.

**Item 22. Other**

*Carryover of 2008 temporary credit for business loss carryforwards.*

Enter the amount of credit that exceeded the amount of tax due on the 2008 or subsequent reports that has not already been used. If the E-Z computation was used on a prior report, there is no carryover amount from that year.

Example: A taxable entity had a business loss credit of \$2,000 that could be used on the 2009 franchise tax report. The entity had \$1,200 tax due, so they used only \$1,200 of the available business loss credit. They may carryover the remaining \$800 to subsequent report years. On the 2010 report, this \$800 should be reported in item 22.

Credit amounts reported by banks for tax erroneously paid on reports originally due prior to January 1, 1992.

*Note: Credits for extension payments or prior payments should not be entered in this item. Enter extension payments on franchise tax Form 05-170, Item 2.*

**Item 23. Total credits claimed**

Add items 18, 19, 20, 21, and 22. Enter this amount on item 31 of the franchise tax report Form 05-158-B.

**FORM 05-163****TEXAS FRANCHISE TAX NO TAX DUE INFORMATION REPORT**

**Filing Requirements:** A taxable entity, including a combined group, qualifies to file the No Tax Due Information Report when any of the four statements shown in Item 1 through Item 4 are true. Blacken the circle for each true statement.

**COMBINED REPORT**

A combined group may file a No Tax Due Information Report. The determination of whether a combined group is eligible is based on the total revenue of the combined group as a whole after eliminations. Each member of the group must be included in the combined group report even if, on a separate company basis, the member has \$1 million or less in total revenue.

When filing a combined No Tax Due Information Report, an Affiliate Schedule (Form 05-166) containing all of the required information for each member must be submitted. In addition, an information report must be submitted for each member that has physical presence in Texas.

**TIERED PARTNERSHIP ELECTION**

A tiered partnership election is not allowed if the lower tier entity, before passing total revenue to the upper tier entities, has \$1 million or less in annualized total revenue or owes less than \$1,000 in tax. Do NOT blacken the Tiered Partnership Election circle.

If a tiered partnership election is made, the lower tier entity may file the No Tax Due Information Report ONLY if the entity passed 100% of its total revenue to upper tier entities. Upper tier entities are not eligible to file a No Tax Due Information Report if the tiered partnership election is made.

**Item 1. This entity is a passive entity as defined in Chapter 171 of the Texas Tax Code.**

A partnership (general, limited and limited liability) or trust (other than a business trust) may qualify as a passive entity and not owe any franchise tax for a reporting period if at

least 90 percent of the entity's federal gross income (as reported on the entity's federal income tax return), for the period upon which the tax is based, is from the following sources:

- dividends, interest, foreign currency exchange gain, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlements or termination payments with respect to a financial instrument, and income from a limited liability company;
- distributive shares of partnership income to the extent that those distributive shares of income are greater than zero, excluding rental income;
- net capital gains from the sale of real property, net gains from the sale of commodities traded on a commodities exchange and net gains from the sale of securities; and
- royalties from mineral properties, bonuses from mineral properties, delay rental income from mineral properties and income from other nonoperating mineral interests including nonoperating working interests.

Passive income does not include rent or income received by a nonoperator from mineral properties under a joint operating agreement, if the nonoperator is a member of an affiliated group and another member of that group is the operator under the same joint operating agreement.

Once an entity has filed as a passive entity, the entity will not have a subsequent franchise tax filing requirement until the entity no longer qualifies as passive. See the passive entity section of these instructions for more information.

**Item 2. This entity's annualized total revenue is below the no tax due threshold.**

If annualized total revenue is less than or equal to \$1 million, the entity qualifies to file the No Tax Due Information Report. See the annualized total revenue section of these instructions for more information.

**Item 3. This entity has zero Texas gross receipts.**

The apportionment factor of an entity with zero Texas gross receipts is zero; therefore, no tax is due. See the instructions for Item 23 of Form 05-158-B for additional information on computing Texas gross receipts.

**Item 4. This entity is a Real Estate Investment Trust (REIT) that meets the qualifications specified in 171.0002(c)(4).**

A real estate investment trust (REIT) that meets the qualifications of Texas Tax Code Sec.171.0002(c)(4) is not a taxable entity for the year upon which the report is based. The REIT must establish its non-taxable status by filing a No Tax Due Information Report for the period upon which the report is based.

A REIT or its qualified REIT subsidiary entities are not considered taxable entities if:

- the REIT holds interests in limited partnerships or other entities that are taxable entities and that directly hold real estate; and
- the REIT does not directly hold real estate, other than real estate it occupies for business purposes.

An information report must be submitted by each REIT or qualified REIT subsidiary:

- a Public Information Report (Form 05-102) for each REIT legally organized as a corporation or LLC and
- an Ownership Information Report (Form 05-167) for each REIT legally organized as a partnership, trust or association.

**Item 5a. Accounting year begin date**

See the accounting period beginning and ending date requirements in the annual, initial and/or final report sections.

**Item 5b. Accounting year end date**

See the accounting period ending date requirements in the annual, initial and/or final report sections.

**Item 6. Total Revenue**

Enter the amount of total revenue using the instructions for Items 1-10 of Form 05-158-A. A passive entity or a REIT may leave this blank.

**Signature Block:**

Report may be signed by an officer, director or other authorized person. This includes a paid preparer authorized to sign the report.

**FORM 05-164  
TEXAS FRANCHISE TAX EXTENSION  
REQUEST**

**Filing Requirements:** Any entity (including a combined group) that cannot file its annual (including the first annual), initial or final report by the original due date may request an extension of time to file on or before the due date. A combined group must also file an Extension Affiliate List (Form 05-165) when they request an extension.

An extension for an annual, non-EFT filer will be through November 15, 2010. When submitting the extension request, the taxable entity must remit at least 90 percent of the tax that will be due with this year's report or 100 percent of the tax reported as due for the previous calendar year (provided that the report due in the previous calendar year was filed on or before May 14, 2010) in order for the extension to be granted.

A taxable entity that became subject to the franchise tax on or after October 4, 2009, filing its first annual report, may not use the 100% extension option.

A separate entity that was included in a 2009 combined group report may not use the 100% extension option.

#### INITIAL AND FINAL REPORTS:

A taxable entity may request a 45 day extension and must remit with the extension request at least 90 percent of the tax that will be due with the initial or final report.

*Note: Initial reports apply only to taxable entities that became subject to the tax before October 4, 2009.*

#### ELECTRONIC FUNDS TRANSFER:

The conditions for requiring a taxable entity to pay via electronic funds transfer (EFT) are outlined in Rule 3.9 concerning electronic filing and electronic funds transfers. Information about the EFT requirements can be viewed at [www.window.state.tx.us/webfile/req\\_franchise.html](http://www.window.state.tx.us/webfile/req_franchise.html).

The extension rules for mandatory EFT filers are different from that of other taxpayers. In order to extend the due date of the report from May 17, 2010 to August 16, 2010, a taxable entity that is required to pay by EFT must make their extension payment online using tax type Code 13080 (Franchise Tax Extension) in a timely fashion that permits the payment to be posted on or before May 17, 2010. With the extension request, taxable entities must remit at least 90 percent of the amount of tax that will be due with this year's report or 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year. If the taxable entity elects to pay 100 percent of the tax reported as due for the previous calendar year, the previous year's report must be filed on or before May 14, 2010 in order for the extension to be granted.

Combined groups that are mandatory EFT filers must submit the required Extension Affiliate List (Form 05-165) by mail.

An EFT filer may request a second extension to November 15, 2010 to file the report by paying online before August 16, 2010 the balance of the amount of tax that will be reported as due on November 15, 2010 using tax type Code 13080 (Franchise Tax Extension) or by submitting a paper Form 05-164, Extension Request, if the entity has paid all of the tax due with its first extension. If an online extension payment is made, then the taxpayer should not submit a paper Form 05-164, Extension Request.

A combined group should not submit an Extension Affiliate List (Form 05-165) when requesting a second extension.

*Note: See Form 96-590, TEXNET Payment Instruction Booklet, for additional information concerning requirements for electronic funds transfer payments.*

#### **Item 1. Blacken this circle if you will be using your 2008 Temporary Credit for Business Loss Carryforward for the report year for which you are requesting this extension.**

See the instructions for Form 05-160, Texas Franchise Credits, and Rule 3.594 for additional information on this credit.

#### **Item 2. Blacken this circle if you will begin using your 1992 Temporary Credit for the report year for which you are requesting this extension.**

Texas Tax Code Section 171.111(a) (text of section effective until January 1, 2008) requires that a taxable entity elect to claim this credit on or before the original due date of any report due after January 1, 1992.

#### **Item 3. Extension Payment**

Enter the amount submitted with this request.

#### *Combined Report Extensions*

If the extension request is being made on behalf of a combined group, the reporting entity must also submit Form 05-165, Texas Franchise Tax Extension Affiliate List.

A combined group may only use the 100% extension option if the combined group has lost a member or if the members of the combined group are the same as they were on the last day of the period upon which the report due in the previous calendar year was based.

#### **Signature Block:**

Report may be signed by an officer, director or other authorized person. This includes a paid preparer authorized to sign the report.

### **FORM 05-165 TEXAS FRANCHISE TAX EXTENSION AFFILIATE LIST**

**Filing Requirements:** A reporting entity filing an extension request on behalf of a combined group, must file the extension affiliate list along with the extension request Form 05-164. If the combined group is required to file using EFT and makes an extension payment via EFT, it is not required to file Form 05-164, but must submit Form 05-165. The filing of this list by itself does not constitute a valid extension. Attach as many forms as necessary to report all members of the combined group.

#### **Column 1 – Legal name of affiliate**

Enter the legal name of each affiliate in the combined group. Affiliates can be any type of taxable entity including corporations, LLCs, partnerships (general, limited and limited liability), business trusts, professional associations, etc.

#### **Column 2 – Affiliate's Texas Taxpayer Number**

Enter the assigned Texas taxpayer identification (ID) number of the affiliate. If the affiliate does not have a Texas ID number, enter the affiliate's federal employer identification number (FEIN). If the affiliate does not have an FEIN, leave blank.

#### **Column 3 - Blacken this circle if affiliate does not have nexus in Texas**

Blacken the circle as appropriate for each member of the affiliated group.

**FORM 05-166  
TEXAS FRANCHISE TAX AFFILIATE SCHEDULE**

**Filing Requirements:** A reporting entity filing a combined report on behalf of an affiliated group engaged in a unitary business must complete the required information for each member of the group, including the reporting entity. Attach as many forms as necessary to report the required information for each member of the group.

If a combined group elects to report its franchise tax using the E-Z Computation or qualifies to file a No Tax Due Information Report, the reporting entity is required to provide the requested information for each member of the combined group on this form (Form 05-166).

**Item 2. Affiliate taxpayer number**

Enter the taxpayer identification number that has been assigned to the affiliated entity by the Comptroller's office. If the affiliate does not have an assigned number, enter the affiliate's federal employer identification (FEI) number. If the affiliate does not have a separate FEI number, leave blank.

**Item 3. Affiliate NAICS code**

Enter the code that is appropriate for the affiliate. The North American Industry Classification System (NAICS) codes can be found at [www.census.gov/epcd/www/naics.html](http://www.census.gov/epcd/www/naics.html).

**Item 5. Blacken circle if this affiliate does NOT have NEXUS in Texas**

Blacken this circle if the affiliate does not have nexus (i.e. physical presence) in Texas.

**Item 6. Affiliate reporting begin date**

Enter the beginning date of the affiliate's accounting period that will be included in the combined report. See note under "Accounting Period of the Combined Group" (Page 7).

**Item 7. Affiliate reporting end date**

Enter the ending date of the affiliate's accounting period that will be included in the combined report. See note under "Accounting Period of the Combined Group" (Page 7).

**Item 4. Blacken circle if disregarded for franchise tax**

If this affiliate is a disregarded entity for federal income tax reporting purposes, the reporting entity may blacken this circle and treat the entity as disregarded for franchise tax reporting purposes. Blackening this circle means that the disregarded entity will not unwind its operations from its "parent" entity and both entities are considered to have nexus in Texas for purposes of apportionment. If circle is blackened, skip Items 8-11.

**Reporting entity must be included on Affiliate Schedule.**

1. Legal name of affiliate			2. Affiliate taxpayer number (if none, use FEI number)			3. Affiliate NAICS code		
4. Blacken circle if this is a disregarded entity			5. Blacken circle if this affiliate does NOT have NEXUS in Texas			6. Affiliate reporting begin date		
7. Affiliate reporting end date			8. Gross receipts subject to throwback in other states (before eliminations)			9. Gross receipts everywhere (before eliminations)		
10. Gross receipts in Texas (before eliminations)			11. Cost of goods sold or compensation (before eliminations)					

**Item 8. Gross receipts subject to throwback in other states**

Texas Tax Code Section 171.103(c) requires that Texas gross receipts subject to throwback provisions in other states be reported for each member of the combined group. This means that if a member makes a sale of tangible personal property to a purchaser in Texas and those receipts are subject to the throwback provisions of any other state, that sale should be included in this computation. Note: Texas throwback provisions have been repealed.

**Item 10. Gross receipts in Texas**

The amount entered is the portion of gross receipts everywhere that are attributable to Texas before intercompany eliminations but after exclusions from revenue. See the instructions for Item 23 of Form 05-158-B and Rule 3.591 for more information on determining Texas receipts.

**Item 9. Gross receipts everywhere**

The amount entered should equal the gross revenue of the entity before intercompany eliminations but after exclusions from revenue. To determine gross receipts everywhere, review the instructions for Items 1-7 and Item 9 of Form 05-158-A.

**Item 11. Cost of goods sold or compensation**

The reporting entity will make an election on behalf of the combined group to compute margin using one of the following three calculations:

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

If the reporting entity elects the cost of goods sold or compensation method, enter the applicable amount for each member of the combined group.

## **FORM 05-167**

### **TEXAS FRANCHISE TAX OWNERSHIP INFORMATION REPORT**

**Filing Requirements:** 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.

The OIR is due on the date the franchise tax report is due and must be completed and signed by a partner, member, owner, or other authorized person of the taxable entity. A separate OIR is to be filed by each taxable entity that files a separate franchise tax report or that is part of a combined group (unless the taxable entity does not have physical presence in Texas).

Even if the franchise tax report is filed and all taxes paid, the entity's right to transact business may be forfeited for failure to file the completed, signed OIR. The effects of forfeiture may include the denial of the taxable entity's right to sue or defend in a Texas court, and each partner, member, or owner may become personally liable for certain debts of the entity. (*Tex. Tax Code Secs. 171.251, 171.252 and 171.255*)

Changes to the registered agent or registered office must be filed directly with the Secretary of State, and cannot be made on this form. The changes can be made online or on forms downloaded from their Web site at [www.sos.state.tx.us/corp/forms\\_option.shtml](http://www.sos.state.tx.us/corp/forms_option.shtml).

#### **Section A:**

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.)

#### **Section B:**

Registered Agent and Registered Office - This should include the entity's registered agent or agent for service of process in accordance with Texas Tax Code Sec. 171.354.

Changes that occur after the report is filed should be reported to the Comptroller on the next OIR the entity is required to file. The Comptroller will not accept changes during the year, except as noted below.

An individual whose name was included on the report but who was not associated with the entity on the date the report was filed, may file a sworn statement to that effect with the Comptroller. An entity that made an error on its OIR may file an amended OIR with a cover letter explaining the error.

#### **Signature Block:**

Report may be signed by an officer, director or other authorized person. This includes a paid preparer authorized to sign the report.

## **FORM 05-169**

### **TEXAS FRANCHISE TAX E-Z COMPUTATION REPORT**

**Filing Requirements:** Any entity (including a combined group) that has annualized total revenue of \$10 million or less is eligible to use the E-Z computation to report their franchise tax.

Upper and lower tier entities, when the tiered partnership election has been made, will qualify for the E-Z computation only if the lower tier entity would have qualified for the E-Z computation before total revenue is passed to the upper tier entities.

Taxable entities that elect this method to file are not eligible to take any economic development or temporary credits. When using the E-Z computation, the current year's portion of the temporary credit for business loss carryforwards may not be used and may not be carried forward to a future period.

If a combined group elects to use the E-Z computation method to report its franchise tax, the reporting entity is required to provide the requested information on Form 05-166 (Texas Franchise Tax Affiliate Schedule) for each member of the combined group.

#### **Item 1. Gross receipts or sales**

See instructions for Item 1 on Form 05-158-A. (page 12)

#### **Item 2. Dividends**

See instructions for Item 2 on Form 05-158-A. (page 12)

#### **Item 3. Interest**

See instructions for Item 3 on Form 05-158-A. (page 12)

#### **Item 4. Rents**

See instructions for Item 4 on Form 05-158-A. (page 12)

#### **Item 5. Royalties**

See instructions for Item 5 on Form 05-158-A. (page 13)

#### **Item 6. Gains/losses**

See instructions for Item 6 on Form 05-158-A. (page 13)

#### **Item 7. Other income**

See instructions for Item 7 on Form 05-158-A. (page 13)

**Item 8. Total gross revenue**

See instructions for Item 8 on Form 05-158-A. (page 13)

**Item 9. Exclusions from gross revenue**

Do not enter COGS or compensation amounts as they cannot be deducted if electing to use the E-Z computation. See instructions for Item 9 on Form 05-158-A. (page 13)

**Item 10. Total Revenue**

See instructions for Item 10 on Form 05-158-A (page 14)

**Item 11. Gross receipts in Texas**

See instructions for Item 23 on Form 05-158-B (page 17) and Rule 3.591 for more information on determining Texas receipts.

**Item 12. Gross receipts everywhere**

See instructions for Item 24 on Form 05-158-B (page 18) and Rule 3.591 for information on determining gross receipts everywhere.

**Item 13. Apportionment factor**

See instructions for Item 25 on Form 05-158-B. (page 18)

**Item 14. Apportioned revenue**

Multiply item 10 by Item 13.

**Item 15. Tax due before discount**

Multiply Item 14 by .00575 (.575%).

**Item 16. Discount**

Discounts do not apply for the 2010 and 2011 franchise tax reports because the no tax due threshold of \$1 million exceeds the total revenue to which the discounts would apply (\$900,000).

**Item 17. Total tax due**

Item 17 must equal Item 15.

If this amount is less than \$1,000, or the annualized total revenue is \$1 million or less, you owe no tax, but you must submit this report along with the appropriate information report(s) (Form 05-102 and/or Form 05-167).

If this amount is \$1,000 or more, and the annualized total revenue is more than \$1 million, please complete the franchise tax payment Form 05-170. Make the check payable to the Comptroller of Public Accounts. Submit this report, all appropriate schedules, the appropriate information report(s) (Form 05-102 and/or Form 05-167), the franchise tax payment form (Form 05-170) and your payment.

*Note: If the tiered partnership election is made and total revenue is passed, both the upper and lower tier entities will owe any amount in Item 17, even if the amount is less than \$1,000 or annualized total revenue after the tiered partnership election is less than \$1 million.*

**Signature Block:**

Report may be signed by an officer, director or other authorized person. This includes a paid preparer authorized to sign the report.

**FORM 05-170****TEXAS FRANCHISE TAX PAYMENT FORM**

**Filing requirements:** Any taxable entity that owes any amount of franchise tax where the tax was not remitted electronically is required to submit the payment form with a check or money order made payable to the Comptroller of Public Accounts. Please put the taxpayer (reporting entity) identification number and the report year on the check.

**Item 1. Total tax due on this report**

Enter the amount of tax due as reflected on:  
Form 05-158-B, item 34, or  
Form 05-169, item 17

**Item 2. Enter prior payment**

Enter prior payments, such as an extension payment.

**Item 3. Net tax due**

Item 1 minus item 2

**Item 4. Penalty**

If the taxable entity did not file an extension request on or before the due date, and the franchise tax report and payment are not postmarked on or before the due date, then a penalty of five percent of the tax reported as due will be assessed (multiply Item 3 by 0.05). If the report and payment are more than 30 days delinquent, an additional five percent penalty will be assessed.

For the initial and final franchise tax report, if the timely extension payment is not at least 90 percent of the tax that will be due, then penalty will apply to any tax not paid by the original due date.

If there is a timely filed extension request for an annual report, and the extension payment was not at least 100 percent of the tax reported as due for the previous calendar year (on the report due in 2009, filed on or before May 14, 2010) or 90 percent of the tax that will be due with the 2010 annual report, then penalty will apply to any part of the 90 percent not paid on or before May 17, 2010, and any part of the 10 percent not paid on or before November 15, 2010.

For taxable entities required to pay their franchise tax by electronic funds transfer (EFT), see Rule 3.585 for penalty calculations.

**Item 5. Interest**

If any amount of the required payment is not made within 60 days of the original or extended due date, interest will be assessed beginning on the 61<sup>st</sup> day.

For more information on interest calculations see [www.window.state.tx.us/taxinfo/int\\_rate.html](http://www.window.state.tx.us/taxinfo/int_rate.html).

**FORM 05-175  
TEXAS FRANCHISE TAX TIERED  
PARTNERSHIP REPORT**

**Filing requirements:**

This form must be completed by all upper and lower tier entities making the tiered partnership election under Texas Tax Code Section 171.1015.

If the lower tier entity has \$1 million or less in annualized total revenue or owes less than \$1,000 in tax before passing total revenue to the upper tier entities, this election is not allowed. If the election is made and total revenue is passed, both the upper and lower tier entities will owe any amount of tax that is calculated as due even if the amount is less than \$1,000 or annualized total revenue after the tiered partnership election is less than \$1 million.

Lower Tier Entities:

If the entity filing this report is a lower tier entity, then enter the requested information below for each upper tier entity to which revenue was passed.

**Item 1.** Enter the lower tier entity's total revenue before revenue is passed to upper tier entities.

**Item 2.** Enter the taxpayer number or FEI number of the upper tier entity to which the total revenue was passed.

**Item 3.** Enter the amount of total revenue excluded by the lower tier entity that was passed to the upper tier entity.

**Item 4.** Enter the legal name and address of the upper tier entity to which the total revenue was passed.

**Item 5.** Enter the state of formation of the upper tier entity.

**Item 6.** Leave blank

**Item 7.** Blacken this circle.

Upper Tier Entities:

If the entity filing this report is an upper tier entity, then enter the requested information below for each lower tier entity that total revenue was passed from.

**Item 1.** Enter the lower tier entity's total revenue before revenue is passed to upper tier entities.

**Item 2.** Enter the taxpayer number or FEI number of the lower tier entity from which the total revenue was passed.

**Item 3.** Enter the amount of total revenue included by the upper tier entity that was passed from the lower tier entity.

**Item 4.** Enter the legal name and address of the lower tier entity from which total revenue was passed.

**Item 5.** Enter the state of formation of the lower tier entity.

**Item 6.** Blacken this circle.

**Item 7.** Leave blank.

*Note: An upper tier entity may also be a lower tier entity if there are multiple tiers. If this is true for the upper tier entity filing this report, then complete both upper and lower tier information as requested above.*

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For additional information on all instructions in this booklet, refer to the following franchise tax rules:

- 3.581 Margin: Taxable and Nontaxable Entities
- 3.582 Margin: Passive Entities
- 3.583 Margin: Exemptions
- 3.584 Margin: Reports and Payments
- 3.585 Margin: Annual Report Extensions
- 3.586 Margin: Nexus
- 3.587 Margin: Total Revenue
- 3.588 Margin: Cost of Goods Sold
- 3.589 Margin: Compensation
- 3.590 Margin: Combined Reporting
- 3.591 Margin: Apportionment
- 3.592 Margin: Additional Tax
- 3.593 Margin: Franchise Tax Credit
- 3.594 Margin: Temporary Credit for Business Loss Carryforwards
- 3.595 Margin: Transition

All of these rules can be viewed on the Comptroller's Web site at [www.window.state.tx.us](http://www.window.state.tx.us).

**WHERE TO FILE**

Reports and payments should be mailed to:

COMPTROLLER OF PUBLIC ACCOUNTS  
P.O. Box 149348  
Austin, TX 78714-9348

If tax is due, and the taxable entity is not required to use EFT or does not submit payment online, make the check or money order payable to the Comptroller of Public Accounts. Write the Texas taxpayer identification number and the report year on the check or money order. Complete the franchise tax payment Form 05-170.

Private Delivery Services

Texas law conforms to federal law regarding the use of certain designated private delivery services to meet the "timely mailing as timely filing/paying" rule for tax reports and payments. If a private delivery service is used, address the return to:

COMPTROLLER OF PUBLIC ACCOUNTS  
Franchise Tax Processing  
Austin, TX 78711