

Texas amends franchise tax rate, rehab credit and broadcaster apportionment

June 24, 2015

Overview

Texas Governor Greg Abbott recently signed the following bills, amending the Texas franchise tax:

- House Bill 32 (HB 32; reduces franchise tax rates)—signed on June 15, 2015.
- House Bill 3230 (HB 3230; updates eligible costs and expenses for the rehabilitation of historic structure credit)—signed on June 17, 2015.
- House Bill 2896 (HB 2896; changes broadcaster receipts apportionment)—signed on June 19, 2015.

HB 32 will impact all industries and taxpayers, while HB 3230 and HB 2896 will impact a limited group of taxpayers. In this Tax Alert we summarize these new laws.

Reduced franchise tax rate and expansion of EZ computation eligibility

HB 32 reduces the franchise tax rate from 1 percent to 0.75 percent of taxable margin for all taxpayers *not* primarily engaged in retail or wholesale trade and not filing an EZ Computation Report.¹ For taxpayers engaged in retail or wholesale trade, HB 32 reduces the franchise tax rate from .5 percent to 0.375 percent of taxable margin.²

HB 32 also expands the eligibility to file the Franchise Tax EZ Computation Report. Taxpayers whose total revenue is \$20 million or less can elect to file using the EZ computation (under prior law the eligibility limit was \$10 million). Entities using the EZ computation will not be allowed to take any credits or margin deductions (*i.e.*, no deductions for cost of goods sold or compensation) for the applicable report year. The franchise tax rate for EZ filers will be reduced from 0.575 percent to 0.331 percent.³ These changes are effective for reports originally due on or after January 1, 2016.

Updated expense definition for tax credit for rehabilitation of historic structures

Beginning on January 1, 2015, a tax credit for certified rehabilitation of certified historic structures became available in the amount of 25 percent of the total eligible costs and expenses incurred in the rehabilitation of a single structure.⁴ The credit may be earned by any property owner and is also freely transferrable to other entities. The original legislation referred to a section of the Internal Revenue Code that, when read broadly, had the effect of excluding rehabilitation costs incurred by nonprofits, thereby frustrating the legislative intent.⁵ HB 3230 amends the definition of “eligible costs and expenses” to clarify that a nonprofit corporation exempt under Tex. Tax Code § 171.063 would be entitled to include eligible costs and expenses incurred when determining the tax credit for rehabilitation of historic structures.⁶ Accordingly, the credit is available for costs incurred by certain tax exempt entities. This change is effective for reports originally due on or after January 1, 2016.

Changes to apportionment of receipts for broadcasters

HB 2896 adds subsection (h) to Tex. Tax Code § 171.106, which describes how taxpayers apportion their taxable margin. Subsection (h) applies specifically to broadcasters as follows:

- A taxable entity that is a broadcaster shall include in the numerator of the apportionment factor receipts arising from licensing income from broadcasting or otherwise distributing film programming by any

¹ HB 32, Section 2, amending Tex. Tax Code § 171.002(a).

² HB 32, Section 2, amending Tex. Tax Code § 171.002(b).

³ HB 32, Section 3, amending Tex. Tax Code § 171.1016(a)(b).

⁴ Tex. Tax Code § 171.901.

⁵ Senate Research Center Bill Analysis 84R13839 TJB-F, discussing Author's/Sponsor's Statement of Intent.

⁶ HB 3230, Section 1, amending Tex. Tax Code § 171.901(4).

means only if the legal domicile of the broadcaster's customer is in Texas.⁷

- The term "broadcaster" is defined as a taxable entity, not including a cable service provider or a direct broadcast satellite service, that is a:
 - Television station licensed by the Federal Communications Commission;
 - Television broadcast network;
 - Cable television network; or
 - Television distribution company.⁸
- The term "customer" is defined as a person, including a licensee, that has a direct connection or contractual relationship with the broadcaster under which the broadcaster derives revenue.⁹
- The term "film programming" is defined as all or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience.¹⁰
- The term "programming" is defined as news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.¹¹

This change to Tex. Tax Code §171.106 is effective for reports originally due on or after January 1, 2018.

ASC 740 considerations

The Texas legislative record confirms that the franchise tax law changes discussed in this Tax Alert were enacted in June 2015. Accordingly, any impact of these law changes should be treated as a second quarter event for financial statement purposes for calendar year taxpayers.

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⁷ HB 2896, Section 1, adding new Subsection (h) to Tex. Tax Code § 171.106.

⁸ HB 2896, Section 1, adding new Subsection (h)(1) to Tex. Tax Code § 171.106.

⁹ HB 2896, Section 1, adding new Subsection (h)(2) to Tex. Tax Code § 171.106.

¹⁰ HB 2896, Section 1, adding new Subsection (h)(3) to Tex. Tax Code § 171.106.

¹¹ HB 2896, Section 1, adding new Subsection (h)(4) to Tex. Tax Code § 171.106.