

Texas Comptroller adopts new treatment to economic nexus threshold to incorporate *Wayfair*

Overview

On December 20, 2019, the Texas Comptroller of Public Accounts (Comptroller) adopted an amended version of title 34 of the Texas Administrative Code (TAC) § 3.586 to implement an economic nexus threshold of \$500,000 of Texas gross receipts for Texas franchise tax purposes (Adopted Rule).¹ The amendments to title 34 of the Texas Administrative Code (TAC) § 3.586 were filed in response to the United States Supreme Court decision in *South Dakota v. Wayfair, Inc.*,² (*Wayfair*).³ This tax alert summarizes the Adopted Rule and effective dates.

Modifications to Texas' franchise tax rules to incorporate *Wayfair* decision

In response to the *Wayfair* decision, the Comptroller has amended TAC § 3.586 by adding an economic nexus factor-based standard with the Adopted Rule stating:

(f) Economic nexus. For each federal income tax accounting periods ending in 2019 or later, a foreign taxable entity has nexus in Texas and is subject to Texas franchise tax, even if it has no physical presence in Texas, if during its federal income tax accounting period, it had gross receipts from business done in Texas of \$500,000 or more, as determined under § 3.591 of this title (relating to Margin: Apportionment).

(g) Beginning date. A foreign taxable entity begins doing business in the state on the earliest of:

- (1) the date the entity has physical nexus as described in subsection (c) of this section;
- (2) the date the entity obtains a Texas use tax permit; or
- (3) the first day of the federal income tax accounting period in which the entity had gross receipts from business done in Texas in excess of \$500,000.⁴

Further, new subsection (e) of the Adopted Rule provides that out-of-state entities with a use tax permit are subject to the Texas Franchise tax.⁵

The Adopted Rule is effective as of December 29, 2019 and will apply to tax year 2019 Texas franchise tax reports due on or after January 1, 2020.⁶

Contacts:

If you have questions regarding the changes in the Comptroller's Adopted Rule or other Texas tax matters, please contact any of the following Deloitte professionals:

¹ Franchise Tax Margin: Nexus, 44 Tex. Reg. 8021, 8021 (adopted Dec. 20, 2019) (to be codified at 34 Tex. Admin. Code § 3.586) (Tex. Comptroller of Pub. Accounts). A copy of the *Texas Register* issue is available [HERE](#);

² 138 S. Ct. 2080 (2018).

³ Franchise Tax Margin: Nexus, 44 Tex. Reg. 5605, 5605 (Adopted Dec. 20, 2019) (to be codified at 34 Tex. Admin. Code § 3.586) (Tex. Comptroller of Pub. Accounts).

⁴ Franchise Tax Margin: Nexus, 44 Tex. Reg. 5605, 5607 (proposed Sept. 27, 2019) (to be codified at 34 Tex. Admin. Code § 3.586) (Tex. Comptroller of Pub. Accounts). A copy of the *Texas Register* issue is available [HERE](#).

⁵ *Id.*

⁶ *Id.* at 5605.

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