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Texas Policy Change on Combined Group Extension Payments

Overview

In the April 2017 issue of Tax Policy News, the Texas Comptroller of Public Accounts (Comptroller) released a statement indicating the policy on extension payment requirements for combined groups would be changed, such that a combined group can use the 100 percent tax due extension option regardless of any changes (notably the addition of a new member) to the combined group.[1] In this Tax Alert, we summarize the current regulations affecting combined group extension payment requirements, the guidance provided by the Comptroller in the recent Tax Policy News release, and provide some taxpayer considerations.

Current Texas Regulatory Requirements for Securing Valid Extension

Under Title 34 of the Texas Administrative Code § 3.585(c), a taxable entity is only granted an extension if the taxable entity:

(1) Requests the extension on or before May 15;
(2) Requests the extension on a form provided by the comptroller; and
(3) Remits with the extension request:

> (A) 90% or more of the amount of tax reported as due on the report filed on or before November 15; or
> (B) 100% of the tax reported as due for the previous calendar year on the report due in the previous calendar year and filed on or before May 14 of the year for which the extension is requested. *A combined group may only use this 100% 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 separate entity that was included in a combined group report originally due in the previous calendar year may not use the 100% extension option* (emphasis added).

Thus, under the current regulation, a combined group is only eligible to use the 100 percent of the prior year's tax safe harbor on the May 15th extension if the combined group remains the same or if the combined group has lost a member(s).

Policy Change on Extension Payment Options for Combined Groups

In the April 2017 Tax Policy News, the Comptroller indicated a change in its policy regarding extension payment requirements for combined groups, stating:

> We have changed our policy on extension payment requirements for combined groups. Combined groups that added a member during the accounting period can use the 100 percent tax due extension option. Before this policy change, combined groups that added a member did not have this option. A combined group can now use the 100 percent tax due extension option regardless of any changes to the combined group.
>
> We are updating Franchise Tax Rule 3.585 to reflect the policy change.[2]

Although the affected Texas regulations have not yet been updated, the 2017 Texas Franchise Tax Report Information and Instructions have been modified to reflect this change. The Report Year 2016 Texas Franchise Tax Report Information and Instructions stated: "A combined group that added a member during the accounting period may not use the 100% extension option. See Rule 3.585 for additional information."[3] By contrast, no such limitation appears in the Report Year 2017 Texas Franchise Tax Report Information and Instructions.[4] As a result, combined groups are now eligible to use the 100 percent of prior year's tax due extension option for the May 15th extension, even if the combined group has added additional members relative to the prior year.

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[1] Texas Comptroller of Public Accounts, Tax Policy News April 2017, available here.
[2] *Id.*
[3] 2016 Texas Franchise Tax Report Information and Instructions, at *6, available here.
[4] *See* 2017 Texas Franchise Tax Report Information and Instructions, available here.

It is anticipated that the Comptroller will seek to formally amend Texas Franchise Tax Rule 3.585 (34 Tex. Admin. Code § 3.585) to reflect this change before the May 15, 2017, extension due date for Report Year 2017 filings.

Considerations

Although it is expected that the Comptroller will seek to limit the application of this policy change to tax reports for 2017 and forward, questions continue to exist relative to the manner in which the extension rule was applied for prior tax year reports. A combined group that previously submitted an extension sufficient to satisfy the 100 percent of prior year tax safe harbor and that had the extension request denied based on having added members to the combined group should consult with its Texas tax advisors if this has unfavorably impacted the timeliness of subsequently-filed refund claims (or otherwise resulted in the imposition of late payment penalties or interest.)

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