Issues Concerning the Margin Tax

This is a working draft of issues and comments concerning the conversion of the Texas franchise tax to tax based on margin, as adopted by House Bill 3 of the 79th Legislature, 3rd Called Session.

Computation of Tax Liability (171.101, 171.002, 171.111, & Section 18 of HB3)
The margin tax is calculated as follows:

\[
\text{Margin} = \left\{ \begin{array}{ll}
70\% \text{ of Total Revenues} \\
\text{Total Revenues less the greater of:} \\
& \text{Cost of Goods Sold (state definition), or} \\
& \text{Compensation}
\end{array} \right.
\]

\[
\begin{align*}
\text{Apportioned Margin} & \times \text{Percent of Gross Receipts in Texas} \\
\text{Taxable Margin} & - \text{Allowable Deductions} \\
\text{Taxable Margin} & \times (0.5\% \text{ or } 1.0\%) \\
\text{Net Margin Tax Due} & - \text{Tax Credits, including Economic Development Credits, and Temporary Credits}
\end{align*}
\]

An entity with less than $300,000 in total revenues or with a tax liability of less than $1,000 owes no tax.

The following sections review potential issues and concerns involving the key aspects of the calculation of the tax.

Taxable Entity (171.0002)
In general, "taxable entity" means a partnership, corporation, banking corporation, savings and loan association, limited liability company, business trust, professional association, business association, joint venture, joint stock company, holding company, or other legal entity. The term includes a combined group, but does not include:

- a sole proprietorship;
- a general partnership the direct ownership of which is entirely composed of natural persons;
- a passive entity (as defined by Section 171.0003); and
- an entity that is already exempt from taxation under Subchapter B of the franchise tax code.
“Taxable entity” does not include an entity that is:

- a grantor trust\(^1\) all of the grantors and beneficiaries of which are natural persons or charitable entities;
- an estate of a natural person\(^2\);
- an escrow;
- a family limited partnership, a passive investment partnership, a trust, that meets certain tests,
- a real estate investment trust (REIT) that does not directly hold real estate; and
- a real estate mortgage investment conduit (REMIC)\(^3\).

### Questions and Issues

- **Definition.** “Business trust” is not defined in Texas statute.
- **“Cliff” issue.** It appears a general partnership is taxable if one partner is not a natural person. What happens to a general partnership of natural persons if one partner dies and the partnership interest is then owned by that person’s estate? While an estate is not taxable, is a partnership with a partner that is an estate taxable? Similar issue applies with grantor trusts.
- **Use of the term “Partnership.”** In some parts of the bill, the term partnerships appears to be specific to a business registered as a partnership, in other parts of the bill (e.g. transition provisions) it appears to be a more generic term applying to pass-through entities. Some clarification may be appropriate.
- **Needless(?) qualifiers.** According to HB3, a family limited partnership that is a passive entity is exempt if at least 80 percent of the interests are held by members of the same family and the partnership was formed under Texas’ or some other state’s limited partnership law or is treated as a partnership for federal income tax purposes. If the partnership fails one of these tests (for example, only 75 percent of the partnership is owned by family members), is the partnership taxable even if it qualifies as a passive entity in Section 171.0003? A similar issue might exist with definitions of passive investment partnerships, and trusts, in which 171.0002 places additional qualifiers not found in 171.0003.
- **Limited liability partnerships.** Texas law may view limited liability partnerships as a form of general partnerships. If general partnerships in which all general partners are natural persons are exempt, are limited liability partnerships in which all partners are natural persons also exempt? [Note to LLPs: expect this issue to be resolved to clarify that LLPs are indeed taxable, as was legislative intent]

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\(^1\) As defined by Sections 671 and 7701(a)(30)(E), Internal Revenue Code, excluding a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

\(^2\) As defined by Section 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

\(^3\) As defined by Section 860D, Internal Revenue Code.
Passive Entity (171.0003)
In general, a passive entity is a general or limited partnership or a trust (other than a business trust), of which no less than 90 percent of its federal gross income consists of:

- dividends, interest, foreign currency exchange gain, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlement 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;
- gains from the sale of real property, commodities traded on a commodities exchange, and securities; and
- royalties, bonuses, or delay rental income from mineral properties and income from other nonoperating mineral interests, and provided the entity does not receive more than 10 percent of its federal gross income from conducting an active trade or business.

Questions and Issues

- **Definition of “LLC income.”** The term “income” as it applies to that received from a limited liability company is not defined. It is assumed to refer to net income, as opposed to gross income.
- **Definition of “securities.”** The term “securities is not defined; does “securities” include the sale of limited partnership interests, as the Texas Securities Act would imply?
- **Income test.** Is it possible for an entity to meet the 90 percent passive income threshold and have more than ten percent of its income from active operations?
- **Partnerships exempt, corporations not.** Is it equitable for a limited partnership to be exempt as a passive entity but not a corporation? [This is a policy, not a technical, issue].
- **Intangibles.** Is licensing of intangibles a passive activity? It would appear not.
- **Active trade.** Should there be a definition of “active” trade or business?

Tax Rates (171.002)
In general, the tax rate is one percent for all businesses, except that the rate is 0.5 percent for those entities primarily engaged in retail or wholesaler trade, as defined by the 1987 Standard Industrial Classification Manual. A taxable entity is primarily engaged in retail or wholesale trade if more than half or its total revenue is from retail or wholesale trade activities, and less than half of its revenue from wholesale and retail trade is from sales of items it produces (except for eating and drinking places). An entity providing
retail or wholesale utilities, including telecommunications services and electricity or gas may not be considered a wholesaler or retailer for purposes of the reduced tax rate.

**Questions and Issues**

- **Providing utilities.** If a wholesaler or retailer is in any way determined to provide utilities, they are subject to the higher one percent tax rate. What is “providing utilities”? Would it include the sale of excess telecommunications capacity? Co-generation?
- **Classification.** Must an entity be specifically classified as a wholesaler/retailer if its storefront appears to be in a different line of business? For example, is a hotel in which the majority of its income is from its restaurant a retailer?4

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**Total Revenue (171.1011)**

Total revenue corresponds with the following items on a federal corporate tax return:

- **Begin With:**
  - Corporations (IRS form 1120)
    - Line 1c: gross receipts less returns and allowances
  - Partnerships (IRS form 1065)
    - Line 1c: gross receipts less returns and allowances

- **Add:**
  - Corporations (IRS form 1120)
    - Lines 4-10: dividends, interest, gross rents and royalties, capital gain net income, net gain from form 4797 and other income,
  - Partnerships (IRS form 1065)
    - Lines 4-7: ordinary income, net farm profits, and net gain(loss) from form 4797,

- **Minus\(^5\)**
  - Corporations (IRS form 1120)
    - Bad debt
    - Foreign royalties and foreign dividends
    - Net distributive income from partnerships, trusts, limited liability companies, and S corporations
    - Income from a disregarded entity
    - Income from a related entity
    - Allowable deductions from IRS form 1120
    - Other amounts authorized in 171.1011
  - Partnerships (IRS form 1065)
    - Bad debt
    - Foreign royalties and foreign dividends
    - Net distributive income from partnerships, trusts, limited liability companies, and S corporations
    - Income from a disregarded entity
    - Income from a related entity
    - Allowable deductions from IRS form 1120
    - Other amounts authorized in 171.1011

**Exclusions from Total Revenue.** A taxable entity may exclude flow-through funds that are mandated by law or fiduciary duty to be distributed to other entities (including sales

4 According to the 1987 SIC manual, SIC 7011, a subset of services, includes inns furnishing lodging and food.

5 These items may be subtracted to the extent included above.
taxes). In addition, the following flow-through payments are specifically exempted: real estate sales commissions paid to non-employees, the tax basis of securities underwritten, and payments to a subcontractor for labor and materials for design, construction, remodeling, repair of real property. A lending institution may exclude proceeds from the repayment of principal on a loan. A taxable entity shall exclude the tax basis of securities and loans sold. An entity providing legal services shall exclude the following flow through funds: damages due the claimant, funds subject to a lien or contractual obligation arising out of the representation, funds subject to a third party contractual claim, fees paid to an outside attorney, reimbursements, and certain pro-bono expenses (capped at $500 per case). A staff leasing company shall exclude payments received for wages, payroll taxes, and certain employee benefits. A taxable entity may exclude dividends and interest from federal obligations from total revenue. A management company may exclude certain reimbursements. A health care provider may exclude revenue from Medicaid, Medicare, Children’s Health Insurance Program, payments related to a workers compensation claim, and from the military health system, and the actual cost for uncompensated care (a health care institution may only exclude 50 percent of these amounts). A taxable entity may exclude revenue from military housing on federal property.

Questions and Issues

- **Real estate partnership rental income.** The line references to Schedule K of the federal partnership return capture “net” rental income. The Tax Reform Commission has noted that this was inadvertent, and the line references should capture “gross rental income,” instead—a change which is expected to raise approximately $150 million annually. This would be consistent with the treatment of rental income for corporations. (This change was noted in HCR51)

- **Double-count of guaranteed payments to partners.** The calculation of a partnership’s total revenue requires the add-back of guaranteed payments to partners (Line 4 of Schedule K), even though the payments are not subtracted previously. Consequently, the calculations double count guaranteed payments to partners. (This change was noted in HCR51)

- **References to federal tax forms.** What happens to the calculation of margin if the Internal Revenue Service changes its line references or modifies what is included on a certain line of the referenced return? Is tying the calculation of an entity’s margin tax to specific lines from the federal tax return an unconstitutional delegation of authority to the federal government? Should the line references be specific to how they existed at a certain point in time?

- **Flow through funds.** Should “flow-through funds” be limited to only those specifically listed, or should there be a more general definition and exclusion [This is a policy, not a technical, issue; to do so will likely impact the revenue estimate.]

- **Pro bono legal services.** It is unclear what may be considered a “single case” subject to the $500 cap for pro-bono legal services.
Issues Concerning the Margin Tax

- **Demarcation of “health care provider” and “health care institution.”** It is uncertain at which point a group of health care providers may cross the line and become a health care institution.
- **Amount of health care credit.** The bill as adopted allows a lesser credit for Medicaid, CHIP and other certain receipts than what the Governor called for.

### Cost of Goods Sold (171.1102)

In general, a “good” is real or tangible personal property sold in the ordinary course of business and is **not** a service. “Cost of goods sold” includes all *direct* costs of acquiring or producing goods, including production costs for labor, materials, handling (such as processing, assembling, packaging, and *inbound* transportation), utilities, storage, quality control, storage, licensing and franchising costs, and production taxes. Also includable are certain *indirect* costs for *production-related* facilities, land and equipment, such as depreciation, depletion, amortization, renting, leasing, and repair and maintenance, as well as costs attributable to research and design, geological and geophysical costs for locating minerals properties, and insurance. Excluded from “cost of goods sold” are costs for facilities, equipment, and land not used for the production of goods, selling costs, advertising, distribution and outbound transportation costs, interest or financing costs, income and franchise taxes. Up to four percent of administrative and overhead expenses may be included to the extent they are allocable to the costs of acquiring or producing the goods. Cost of goods sold shall be capitalized to the extent required by Section 263A, Internal Revenue Code. A “lending institution” may include interest expense as a part of cost of goods sold. Expenses associated with certain leased automobiles and equipment are included in “cost of goods sold.”

### Questions and Issues

It appears that the “cost of goods sold” deduction will be selected by most taxpayers as opposed to “compensation.” Consequently the issues surrounding “cost of goods sold” are critical.

- **Definitions.** A number of terms and phrases are used that are not clearly defined, including: “direct versus indirect costs,” “directly related to production,” “in relation to,” “officers’ compensation (the definition in existing statutes is repealed),” “integrated,”

- **Labor.** Direct production labor costs are includable as a part of “cost of goods sold;” however, labor costs may not be equivalent to “compensation,” as it is defined for the compensation deduction. For example, labor costs allowable as a deduction for cost of goods sold but which may not be allowable as a compensation deduction include:
  - cash compensation in excess of $300,000 per employee (for production workers and allowable indirect workers)
  - an employer’s social security contributions, and
  - payments to independent contract workers.

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• **Research and development activities directly related to production.** It is unclear how to determine which activities are directly related to production and will therefore be deductible.

• **Strike expenses.** Section e(11) states: “Strike expenses, including costs of hiring replacement personnel, but not including wages of replacement personnel, costs of security, and legal fees associated with settling strikes.” It is unclear whether the phrase “but not” applies only to wages of replacement personnel, or if it applies to security and legal fees.

• **Transfer pricing (Subsections I through n).** These sections allow the deduction of payments to an affiliated entity (but not within the combined group) to be deducted only if the transaction was made at “arm’s length,” as opposed to denying the deduction for only that amount that was in excess of an “arm’s length” amount.

• **Contract manufacturers.** (Subsection i) states “A taxable entity may make a subtraction under this section [i.e. “cost of goods sold”] only if that entity owns the goods.” How does this affect contract manufacturers, who manufacture a product which may be contractually owned by someone else? Are they denied the “cost of goods sold” deduction entirely?

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**Compensation (171.1013)**

Compensation is the sum of “cash compensation” and “benefits.” In general, “cash compensation” includes wages and amounts paid to all officers, directors, owners, partners, employees (and leased employees), except that no more than $300,000\(^6\) may be included for any given person. “Benefits” includes workers compensation benefits, health care, and employer contributions to an employee’s health savings account and retirement (to the extent deductible for federal income tax purposes). Compensation would not include social security or Medicare contributions, or other payroll taxes. Compensation includes the wages and benefits portion of payments for staff leasing services. Cash compensation paid to undocumented workers is not deductible from total revenues in calculating margin.

**Questions and Issues**

• **Tips.** An employer reports tips on an employee’s W-2 form (so they may be subject to the employee’s federal taxes) but may not include the employees tips as a part of their total revenue. This would appear to allow certain businesses a deduction for expenses not included in their total revenues.

• **Independent contractors.** Payment of wages and salaries are deductible as compensation, as are payments for leased employees; however, payments to independent contractors, many of which are sole proprietors and outside the scope of the margin tax are not deductible.

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\(^6\) This threshold will be indexed to inflation beginning in 2009.

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• **Social security contributions.** The Texas Tax Reform Commission staff has advised that employer’s contributions for social security are a tax and are not deductible as compensation, even though they would appear to meet the test as a retirement benefit.

• **Undocumented workers.** An employer may not deduct cash compensation paid to undocumented workers, but apparently may deduct benefits provided them.

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**Combination (171.1014)**

In general, taxable entities that are a part of an affiliated group shall file a combined tax return in lieu of individual returns. An “affiliated group” is one engaged in a unitary business—a single economic enterprise made up of one or more entities in which a controlling interest (80 percent or more) is owned by a common owner or owners and the entities are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a flow of value to the separate parts. Vertical and horizontal integration may be considered in determining what constitutes a “unitary group,” as well as centralized management. An affiliated group is a single taxable entity, and determines its taxes by summing each of the tax return entries of its members (netting out transactions between affiliated entities). A group that includes an exempt entity may elect to include that exempt entity in its combined return and to treat it as a taxable entity.

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**Questions and Issues**

• **Ownership threshold.** HB3 uses an 80 percent ownership threshold for inclusion in a combined return. Consideration may be given to reducing the threshold to 50 percent (this would require legislation).

• **Definition:** “taxable entity.” HB3 uses the term “taxable entity” in some places to refer to the individual members of a combined group, and in other places to refer to the combined group as a whole.

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**Texas Receipts (171.103)**

Texas gross receipts includes receipts from the sale of tangible personal property delivered or shipped to a buyer in this state, services performed in this state (except that receipts from real estate loan servicing are in this state if the real property is in this state), the use of a patent, copyright, trademark, franchise, or license in this state, sale of real property in this state (including royalties from minerals) and other business done in this state. Only gross receipts from those entities within the group which have nexus in Texas shall be included in the calculation of Texas receipts. Receipts across taxable entities within the affiliated group net out, unless they are sold to an out-of-state affiliate and resold into Texas. The current “throwback rule” is eliminated.
Questions and Issues

- **Joyce or Finnegan.** As passed, a combined group’s Texas receipts only include the Texas receipts of those entities that have nexus in Texas (the so-called “Joyce” method). Consideration was given to using the “Finnegan” method of apportionment, in which the combined group’s Texas receipts would include those of all members of the group, whether they have nexus in Texas or not. Such a change would increase the amount of tax by an estimated $100 million, but may be subject to legal challenge.

- **Gross receipts (for apportionment) versus total revenues (tax base).** There may be some definitional differences between “gross receipts” and “total revenues.”

**Total Receipts (171.105)**

“Gross receipts” includes receipts from the group’s sale of tangible personal property, services, rentals, royalties, and other business. Receipts excluded from “total revenue” on Line 1 are to be excluded from gross receipts. Receipts across taxable entities within the affiliated group net out.

Questions and Issues

- **Gross receipts (for apportionment) versus total revenues (tax base).** There may be some definitional differences between “gross receipts” and “total revenues.”

**Temporary Credit on Taxable Margin (171.111, i.e. Temporary Differences and Net Operating Losses)**

In new section 171.111, taxpayers are allowed a credit for the amount of the difference between 1) deductible temporary differences and net operating losses, net of valuation allowance amounts, shown on the company’s books and records at the end of its 2006 fiscal year, and, 2) taxable temporary differences on that date. This amount is apportioned to Texas in the same manner that margin is. The Texas-apportioned amount is divided into one-tenth increments and valued using the earned surplus tax rate of 4.5 percent (or is it the applicable margin tax rate?). The credit may be claimed against the margin tax liability over the next 20 years.

Questions and Issues

This language in this section is problematic and will have to be revised.

- **Timing.** A taxpayer must notify the Comptroller of their intent to take the credit by March 1, 2007, though the bill is not effective until January 1, 2008.
• **Net operating losses.** It is unclear whether the net operating losses are those accrued under Chapter 171, in which case the NOL’s are limited to current franchise taxpayers only, or whether NOL’s accrued under federal tax law.

• **Eligibility for credit.** Are companies that have not been subject to the franchise tax previously eligible for the credit?

• **Booked differences.** Can a taxpayer claim a credit for amounts earned but not recorded on their books and records?

• **Tax rate.** The statutory reference to the applicable tax rate is to the earned surplus tax rate of 4.5 percent; however, that provision will have been repealed when the margin tax law takes effect. The Comptroller calculated the value of the credit based on the margin tax rates of 0.5 and 1.0 percent.

• **Length of credit.** The credit may be claimed in one-tenth increments over 20 years, implying a total value of 200 percent.

• **Refund.** While an entity’s tax base, i.e. taxable margin, may not be less than zero (171.101c), will the temporary credit claimed against the calculated amount of margin tax due be allowed to reduce an entity’s tax liability below zero, entitling them to a refund?

*Note: According to the Comptroller’s Office the revenue estimate provided for HB3 assumed the provision applied to Texas franchise tax NOLs (based on franchise tax returns, whether booked or not) at the margin tax rate.*

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**Economic Development Credits (HB3, Section 18, 19)**

Companies with accumulated economic development tax credits will be allowed to claim their accumulated credits against the margin tax. Only companies with a written agreement with the Texas Department of Economic Development or its successor will be allowed to continue to accumulate new credits.

**Questions and Issues**

• **Policy decision to repeal credits.** The Economic Development credits have proven to be a valuable business recruiting tool, and should be retained.

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**Income Tax (HB3, Section 21)**

Section 21 of the bill states that the franchise tax based on margin is not an income tax and Public Law 86-272, dealing with taxpayer nexus does not apply.

**Questions and Issues**

• **Income tax or no income tax.** There may be no uniform determination as to whether the franchise tax based on margin is an income tax or not. In fact, the answer may differ depending on the purpose of the question:
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<table>
<thead>
<tr>
<th>Purpose</th>
<th>Background</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Reporting</td>
<td>If the margin tax is an income tax, then taxpayers must make adjustments on their financial books.</td>
<td>The nation’s pre-eminent accounting firms appear to be in agreement that for financial reporting purposes, the margin tax IS an income tax.</td>
</tr>
<tr>
<td>Nexus</td>
<td>Federal public law 86-272 places limitations on a state’s ability to impose an income tax on businesses with limited presence in that state.</td>
<td>While HB3 holds that the margin tax is not an income tax and public law 86-272 does not apply, the issue may likely be litigated. Can state law dictate the applicability of federal law dealing with interstate commerce?</td>
</tr>
<tr>
<td>Other states</td>
<td>Many states allow businesses to deduct other state’s non-income based taxes in calculating that state’s income tax.</td>
<td>If other state’s hold that the margin tax is an income tax, it may not be deductible in those states, punishing margin taxpayers.</td>
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<tr>
<td>“Bullock Amendment”</td>
<td>The Texas Constitution prohibits the imposition of a tax on “the net incomes of natural persons, including a person’s share of partnership and unincorporated association income” without an affirmative public vote. Does a tax on margin violate the Constitution?</td>
<td>Likely to be litigated.</td>
</tr>
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Transition Provisions (HB3, Section 22)

The margin tax takes effect January 1, 2008, and applies to all returns due after that date. The first tax payment due May 15, 2008 will apply to company’s financial activity based on the fiscal year ending in 2007, but in no instance will be based on activity prior to June 1, 2006:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>First Tax Due</th>
<th>Tax Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1 to December 31</td>
<td>May 15, 2008</td>
<td>Fiscal year ending the December 31, 2007</td>
</tr>
<tr>
<td>Ending after January 1, 2007 but before June 1, 2007</td>
<td>May 15, 2008</td>
<td>June 1, 2006 to the end of the fiscal year ending prior to June 1, 2007 (the May 2008 payment will be based on a partial year)</td>
</tr>
<tr>
<td>Ending on or after June 1, 2007 but before December 31, 2007</td>
<td>May 15, 2008</td>
<td>Fiscal period ending during 2007 (full year)</td>
</tr>
</tbody>
</table>

An entity subject to the franchise tax as it existed prior to January 1, 2008 must file a final report for the privilege of doing business at any time after June 20, 2007.
Questions and Issues

- **Certain fiscal year payers.** For taxpayers with a fiscal year beginning prior to June 1, 2006 but ending after January 1, 2007, how will the franchise tax apply to the portion of the fiscal year prior to June 1, 2006? The bill says the margin tax may not apply to any period prior to June 1, 2006, yet this will be a part of the fiscal year for which payment would normally be due in May of 2008.

- **Old taxpayers versus new.** The transition provisions appear to limit an existing taxpayer’s ability to restructure to limit the application of the margin tax in the first year, but there is no similar provision for taxpayers who become subject to the tax when the bill takes effect. A corrective amendment by Senator Ogden would have addressed this issue.

- **What is a “new taxpayer?”** Is a combined group a new taxpayer since businesses have always filed on a separate entity basis previously?

Information Return (HB3, Section 23)

In 2007 and 2008 the Comptroller is to identify and require the state’s top 1,000 franchise taxpayers, the state’s top 1,000 private employers, the top 1,000 businesses in terms of gross receipts, and the state’s 1,000 top school taxpayers to file an information return by February 15, 2007 reporting the amount of margin tax they would have paid based on their 2006 business activity. The Comptroller is to report the findings from these returns by April 1, 2007. [This will determine if the current revenue estimates of the gain from the margin tax are accurate.]

Questions and Issues

- **Separate or combined?** Will the top 1,000 taxpayers be identified on a separate entity basis or a combined entity basis?

- **Confidentiality.** The statute provides that the Comptroller’s report may not disclose or effectively disclose the specific identity of a reporting taxpayer. Does this provision apply only to the financial data on the report, or is the identity of the top 1,000 companies on the respective lists confidential, as well. If the list of taxpayers is confidential, how can a company check to verify if it or its affiliates are subject to the requirement?

Other Provisions

- **Voter approval.** New Section 171.003 requires that any increase in the margin tax rate be approved in a public referendum. The Texas Constitution would appear to prohibit this type of delegation of legislative authority.
• **Taxpayer harassment, Round 1.** New 171.052 provides that entities subject to the insurance gross premiums tax retain their historical exemption from the franchise (margin) tax unless they are in violation of a final order from the Department of Insurance to refund excessive rate charges.

• **Taxpayer harassment, Round 2.** New Section 171.2035 requires a taxpayer with more than 100,000 employees in the state to file a public information report identifying the number of their employees or the employees' family that receive benefits under the Children's Health Insurance Program or Medicaid. This provision places an unusual reporting burden on possibly a single company and may violate the privacy of their employees.

• **Oil and gas price triggers.** New 171.1011r&s provides that revenue from “stripper” (i.e. low-producing) oil and gas wells be excluded from the calculation of total revenues should the prices of both fall below a set amount ($40 barrel and $5 MMbtu). Repeal of this provision was likely had the bill been subject to further amendments.

…to be continued