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Texas Comptroller denies use of MTC apportionment election

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In brief

Just days before the California Court of Appeals issued its decision in *Gillette*, the Texas Comptroller of Public Accounts denied a taxpayer's election to apportion its Texas margin tax using the equally-weighted three factor formula available in the Multistate Tax Compact. The Comptroller held that the election was not available under Texas law. [[Comptroller's Decision Nos. 106, 508; 106,723; and 107, 192](#), decided 7/13/12, released 9/12/12].

In detail

Taxpayer filed amended Texas franchise tax (known as the margin tax) returns for report years 2008, 2009, and 2010, seeking a refund for overpayment of franchise taxes. Taxpayer contended that its taxable margin should be apportioned to Texas under the equally weighted three-factor apportionment formula contained in the Multistate Tax Compact (MTC). Texas is a full member of the MTC, and has not passed any laws withdrawing from the MTC. However, effective for taxable years beginning on or after January 1, 2008, Tex. Tax Code Ann. Sec. 171.106(a) apportions a taxable entity's margin to Texas using a single gross receipts factor formula. The predecessor statute also provided for single factor apportionment for the franchise tax's capital and earned surplus bases.

Relying upon Texas law and three prior Comptroller decisions, the Comptroller held that taxable entities are required to apportion using the single-factor apportionment



formula and may not elect to apportion under a three-factor formula. Therefore, the taxpayer's claims for refund were denied.

Actions to think about

Following the rationale in California's *Gillette* opinion, the MTC apportionment election may be available in other Compact member states, like Texas. Accordingly, taxpayers should review MTC election decisions in Compact states to aid in determining whether opportunities exist.

This is not the first Texas Comptroller ruling denying a taxpayer the MTC equally-weighted apportionment election; however, taxpayers should be aware of Texas' position in this matter. The decision offered limited reasoning for its conclusion and it remains unknown what a Texas administrative ruling or court decision would find following the rationale applied in *Gillette*. Accordingly, the decision should not dissuade Texas taxpayers from performing an MTC election analysis to determine potential refund opportunities or to establish future filing positions.

Please read our summary, [available here](#), for more information on the *Gillette* decision.

Let's talk

If you have any questions regarding the validity of the MTC election in Texas, please do not hesitate to contact:

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