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Texas proposal would force large taxpayers to accelerate margin tax payments

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On April 7, 2011, the Texas House of Representatives Appropriations Committee debated a proposal that would require taxpayers deemed a "large taxable entity" to pay the franchise (margin) tax covering the annual period in five payments, as opposed to the current single May 15 payment due date. An identical measure was introduced in the Senate. Under the proposal, the first four payments would be due on July 15, October 15, January 15, and April 15, with each amount being equal to 25 percent of 90 percent of the large taxable entity's total tax owed for the preceding regular annual period. The final payment, due on May 15, would be equal to the total tax for the regular annual period, minus the sum of the amounts of the first four payments. If the sum of the amounts of the first four payments exceeds the total tax for the regular annual period, the large taxable entity may deduct the amount of the overpayment from the next payment required to be made or request a refund of that amount. [[H.B. 3790](#), considered in Appropriations (H), 4/7/11; [S.B. 1811](#), referred to Finance (S), 3/24/11]

Under the proposal, a large taxable entity would mean a taxable entity for which the amount of franchise tax due for the preceding regular annual period "exceeds the median amount of tax reported as due under this chapter for all taxable entities for the same annual period." The proposal would require the Comptroller of Public Accounts by every June 1 to: (1) compute the median tax liability of all taxable entities for the preceding regular annual period; and (2) post the information on the Comptroller's website so that a taxpayer can determine whether it is a "large taxable entity." In addition, the proposal would allow a large taxable entity to request a payment extension.

PwC observes

"While the bill may not actually pass in its current form, most observers expect that this bill, or something very similar, will likely get strong consideration and could become law," observes William Essay, SALT Partner with PwC in Houston. "It has the potential benefit of accelerating over \$1.5 billion into the current fiscal year. Most businesses have not yet strongly opposed the concept, but have voiced concerns about certain details of the bill."

Essay noted the following concerns:

- *Large Taxpayer concept:* "Under the present language, companies would not know until June 1 if they were deemed to be a 'large taxpayer' and, accordingly, required to make quarterly prepayments. This could create a burden on both the Comptroller to perform the calculation and for the taxpayer to determine whether it was classified as a large taxable entity."
- *Payments and Timing:* "As explained, the prepayments would be equal to 25 percent of 90 percent of the large taxable entity's total tax owed for the preceding regular annual period. However, as of July 15, the date of the first prepayment, the total tax owed may not be final if the filing of the annual report for the preceding year was extended. Further, the payment could not be adjusted to consider any current year circumstance of the taxpayer, which might result in a materially different liability than in the prior year. Most states as well as the IRS generally require estimated tax payments on the 4th, 6th, 9th and 12th months of the taxpayer's year, rather than the proposed July, October, January, and April pattern. Compliance would be easier if it were consistent with most states and the federal return."
- *Extension:* "The provision allowing a large taxable entity to apply for an extension for an

estimated payment may add an unnecessary level of complexity."

- *Lack of Clarity and Flexibility:* "The bill does not state the consequences of missing or underpaying an amount. Additionally, there is no flexibility in the amount due. The IRS and nearly all of the other states provide that a taxpayer needs to pay a percentage of last year's tax or a certain percentage of the current year's tax, and many states provide for annualization if a company's earnings are uneven throughout the year."
- *Franchise Tax Concept:* "The Texas franchise tax is paid for the privilege of doing business in the state during a particular year. This bill does not consider the effect of a company leaving the state before the end of the year. If, for example, a company makes a July and October payment, then leaves the state in November and does not do business during the next tax year when the tax accrues, it will not have an annual franchise tax, rather, it will pay the 'additional tax' or 'exit tax.' The current bill does not consider this complexity or relate the estimated payments to the exit tax."

"As indicated, this bill has a strong chance of passing and could become effective with the July 15, 2011 prepayment. The PwC SALT Practice in Texas will keep taxpayers posted as to developments with this bill as well as others in the current legislative session, which is scheduled to close at the end of May, says Essay.

For more information on PricewaterhouseCoopers' state legislative tracking service, [click here](#).

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