

## ***Texas – Changes to a group's common owner do not terminate temporary credit carryforward, refunds available***

May 7, 2014

### ***In brief***

Effective April 9, 2014, change to a group's common owner will no longer determine whether the Texas temporary credit for business loss carryforwards terminates. Entities that lost credits under the old policy may request reinstatement of their credits and apply such credits to open tax years. The credit may not be claimed for any years closed under statute nor can a credit be carried forward from a closed year. [Texas Policy Letter Ruling [201404878L](#), (4/9/2014)]

### ***In detail***

#### ***Texas temporary credit for business loss carryforwards***

When Texas transitioned from the old franchise tax to the new franchise tax (the Margin Tax), taxpayers converted their existing business loss carryforwards to a temporary credit for business loss carryforwards. Each eligible entity must have preserved its right to take the credit on or before the due date of its 2008 report. A combined group may claim the temporary credit for each eligible member of the combined group. If a taxable entity 'changes combined groups,' that entity loses its right to claim the credit.

#### ***Prior policy – Entity 'changes combined groups' based on common owner***

Under prior Texas policy, if a combined group's common owner changed (e.g., if a common owner was acquired resulting in a new common owner of a group), a new combined group was created and *all members* of the combined group 'changed combined groups.' Consequently, all of the members lost their credits and the new combined group was not entitled to claim the credit going forward.

The Comptroller enforced this by requiring taxpayers to [electronically](#) file 'common owner' information by the due date of their Texas report.

Common owner information was used to determine if the ownership of the taxpayer had changed, and if so, the Comptroller would disallow credits. [Texas Policy Letter No. [201109239L](#) (9/1/11)]

#### ***New policy – Credit disallowance determined on an entity-by-entity basis***

Effective April 9, 2014, credit disallowance will no longer be determined based on changes to a group's common owner. The Texas Tax Policy Division outlined the following criteria for determining when an entity 'changes combined groups:' (1) when an entity leaves a combined group, (2) when an entity joins an existing combined group, or (3) when an

entity's acquisition results in creation of a new combined group.

- **Leaving a combined group.** An entity leaves a combined group when it: (1) ceases to be engaged in a unitary business with the other member entities, (2) no longer shares common ownership with the other member entities, or (3) terminates or dissolves. In such case, the member entity loses its right to claim the credit and the combined group is no longer allowed to claim that entity's credit.
- **Joining an existing group.** An entity joins an existing group when (1) the common owner or a member entity of an existing combined group acquires a controlling interest in the entity and (2) the acquired entity is engaged in a unitary business with member entities of the combined group. Although the acquired entities cannot bring their credits with them into the combined

group, the acquisition of new members does not impact the ability of the combined group to claim existing members' credits.

- **Acquisition creates a new combined group.** An entity's acquisition by another taxable entity results in the creation of a new combined group when (1) a controlling interest in one taxable entity is acquired by another taxable entity and the entities are engaged in a unitary business, or (2) when a controlling interest in one taxable entity is acquired by an individual who already owns another taxable entity and the entities are engaged in a unitary business. In both situations, only the acquired entity loses its right to claim the credit and the newly-formed combined group may not take the acquired entity's credit on the combined group report. The acquiring entity does not lose the right to claim its credit.

Additionally, if a common owner changes without any change in the members of the combined group, the members have not 'changed combined groups' and the combined group may continue to claim the credit of the member entities.

### *The takeaway*

Several questions remain unanswered following the changes in this policy letter. Will the Comptroller continue to require common owner reporting? Will a taxpayer's failure to file past common owner reports preclude such taxpayer from taking the credit allowed under this new policy letter?

If an entity's credit was revoked under the old policy, the entity may request reinstatement of the credit and apply the credit to open years by filing amended returns. A reinstated credit cannot be claimed for years outside the statute of limitations. Texas has a four year statute of limitation. Thus, the 2010 report year statute will expire on May 15, 2014, for a report filed on the original due date.

### *Let's talk*

If you have any questions regarding the new policy change, please contact:

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