

**PRESENTED AT**

**63<sup>rd</sup> Annual Taxation Conference**

December 2-3, 2015

Austin, Texas

## **Texas State Tax Update**

**Danielle Ahlrich**

Author Contact Information:

Danielle Ahlrich

Martens, Todd, Leonard, Taylor & Ahlrich

Austin, Texas

[dahlrich@textaxlaw.com](mailto:dahlrich@textaxlaw.com)

512-542-9898



# Texas State Tax Update

2015

This outline provides information on general tax issues and is not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.

## Instructor



Danielle Ahlrich is a trial attorney and partner with Martens, Todd, Leonard, Taylor & Ahlrich. She and other members of her firm limit their law practices to Texas, multi-state, and federal tax controversies and litigation. Mrs. Ahlrich represents the firm's tax clients principally in state district court, the courts of appeal, and the Texas Supreme Court. She also tries Texas sales tax and Texas franchise tax administrative cases.

She is licensed to practice by the State Bar of Texas and is admitted to practice before the U.S. Tax Court. She speaks frequently on a variety of tax subjects, including Texas sales & use and franchise taxes. Mrs. Ahlrich holds dual bachelor degrees with honors from the University of Texas and a J.D. from Baylor Law School. She may be reached by email at **dahlrich@textaxlaw.com** and by phone at (512) 542-9898.

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	LEGISLATIVE UPDATES .....	1
A.	FRANCHISE TAX.....	1
EXPANDED USE OF E-Z METHOD (H.B. 32) .....		1
PERMANENT DECREASE IN FRANCHISE TAX RATES (H.B. 32) .....		1
NO FRANCHISE TAX FOR NEW VETERAN-OWNED BUSINESSES (S.B. 1049) .....		2
ELECTRONIC FILING (S.B. 1364) .....		2
B.	SALES AND USE TAX.....	2
NEW SALES TAX HOLIDAY WEEKENDS (S.B. 904 & 1356).....		2
OVERHAUL OF AIRCRAFT PROVISIONS (S.B. 1396) .....		3
SALE-FOR-RESALE FOR SOFTWARE SOLD BY INTERNET HOSTING PROVIDERS (S.B. 755) .		6
ELECTRONIC FILING (S.B. 853) .....		7
III.	CASE LAW UPDATES.....	8
A.	FRANCHISE TAX.....	8
TITAN TRANSPORTATION, L.P. V. HEGAR .....		8
AMERICAN MULTI-CINEMA, INC. V. HEGAR.....		9
GRAPHIC PACKAGING CORP. V. HEGAR.....		10
HALLMARK MARKETING CO., LLC V. COMBS .....		11
RENT-A-CENTER, INC. V. HEGAR .....		12
GULF CHEM. & METALLURGICAL CORP. V. HEGAR .....		13
B.	SALES AND USE TAX.....	14
HEGAR V. RYAN, LLC .....		14
SANADCO, INC. V. HEGAR.....		16
IV.	ADMINISTRATIVE DEVELOPMENTS AND TRENDING ISSUES.....	17
A.	FRANCHISE TAX.....	17
POLICY CHANGE REGARDING RESEARCH & DEVELOPMENT COSTS FOR COGS .....		17
B.	SALES AND USE TAX.....	17
SALES AND USE TAX TRAILING NEXUS NIXED.....		17
HOLD ON COMPRESSOR AUDIT ASSIGNMENTS LIFTED .....		18
TRENDING TOPIC: NEXUS AND SOFTWARE LICENSING .....		19

## I. Introduction

This paper discusses Texas tax developments during 2015, including key legislative amendments, judicial opinions, policy changes, and trending issues.

## II. Legislative Updates

### A. Franchise Tax

The 2015 Legislature continued its unbridled attack on the disfavored Texas franchise tax, whittling away at the revenue generated by the tax through decreased tax rates and the expansion of the class of exempt entities.

#### ***Expanded Use of E-Z Method (H.B. 32)***

Small taxable entities are eligible to calculate their Texas franchise tax using the E-Z method, which offers a simpler tax calculation and a lower tax rate in exchange for foregoing a standard deduction (e.g., cost of goods sold).<sup>1</sup> In 2015, the Legislature doubled the revenue threshold for E-Z method qualification from \$10 million or less in gross revenue to \$20 million or less in gross revenue.<sup>2</sup>

#### ***Permanent Decrease in Franchise Tax Rates (H.B. 32)***

The 2015 Legislature also continued a franchise tax rate reduction initiative begun by the 2013 Legislature. In 2013, the Legislature temporarily lowered franchise tax rates for report years 2014 and 2015.<sup>3</sup> In 2015, the Legislature permanently lowered the rate for all franchise tax calculation methods, consistent with its stated intent “to promote economic growth by repealing the franchise tax.”<sup>4</sup> The new rates apply to reports originally due on or after January 1, 2016.<sup>5</sup>

**Regular Rates.** The regular tax rates were changed as follows:

<u>Method</u>	<u>Standard Rate (prior to legislative changes)</u>	<u>2014</u>	<u>2015</u>	<u>2016<sup>6</sup></u>
COGS	1%	0.975%	0.95%	0.75%
Compensation	1%	0.975%	0.95%	0.75%
30% of Revenue	1%	0.975%	0.95%	0.75%
\$1 Million	1%	0.975%	0.95%	0.75%

<sup>1</sup> See Tex. Tax Code § 171.1016.

<sup>2</sup> 84th Leg., R.S., H.B. 32, § 3 (to be codified at Tex. Tax Code § 171.1016(a)).

<sup>3</sup> See <http://comptroller.texas.gov/taxinfo/franchise/rates.html>.

<sup>4</sup> *Id.* at § 1(b).

<sup>5</sup> *Id.* at § 4, 6.

<sup>6</sup> *Id.* at § 2 (to be codified at Tex. Tax Code § 171.002(a)).

**Retailer/Wholesaler Rates.** The retailer and wholesaler tax rates were similarly reduced:

<u>Method</u>	<u>Standard Rate</u> (prior to legislative changes)	2014	2015	<u>2016</u> <sup>7</sup>
COGS	0.5%	0.4875%	0.4750%	0.375%
Compensation	0.5%	0.4875%	0.4750%	0.375%
30% of Revenue	0.5%	0.4875%	0.4750%	0.375%
\$1 Million	0.5%	0.4875%	0.4750%	0.375%

**E-Z Rate.** The E-Z rate was also lowered from .575% to .331%.<sup>8</sup>

### ***No Franchise Tax for New Veteran-Owned Businesses (S.B. 1049)***

A taxable entity started on or after January 1, 2016 and owned by one or more natural persons, all of whom are honorably-discharged veterans, is exempt from franchise tax for the first five years of the entity's existence.<sup>9</sup> The new veteran-owned business may still be required to file an information report with the Comptroller, but it cannot be required to calculate its margin.<sup>10</sup>

### ***Electronic Filing (S.B. 1364)***

Taxable entities must now file no-tax-due and other informational franchise tax reports governed by Texas Tax Code § 171.204 electronically.<sup>11</sup>

## **B. Sales and Use Tax**

### ***New Sales Tax Holiday Weekends (S.B. 904 & 1356)***

The 2015 Legislature added two new sales tax holidays.

**Emergency Preparedness Weekend.** Senate Bill 904 established the last weekend in April as a tax holiday for purchases of emergency preparation supplies.<sup>12</sup> The new exemption will cover purchases of the following items, subject to certain per-item monetary limits:<sup>13</sup>

- emergency rescue ladder
- portable generator
- storm protection device
- artificial ice or cooler
- flashlight

<sup>7</sup> *Id.* at § 2 (to be codified at Tex. Tax Code § 171.002(b)).

<sup>8</sup> *Id.* at § 3 (to be codified at Tex. Tax Code § 171.1016(a)-(b)).

<sup>9</sup> 84th Leg., R.S., S.B. 1049, § 4 (to be codified at Tex. Tax Code § 171.001(d)).

<sup>10</sup> *Id.* at § 7 (to be codified at Tex. Tax Code § 171.204(d)).

<sup>11</sup> 84th Leg., R.S., S.B. 1364, § 1 (to be codified at 111.0626(a)).

<sup>12</sup> 84th Leg., R.S., S.B. 904, § 1 (to be codified at Tex. Tax Code § 151.3565).

<sup>13</sup> *Id.* For example, the exemption places a \$300 cap on an emergency rescue ladder; a \$3,000 cap on an emergency generator; and a \$75 cap on a flashlight or batteries.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Texas State Tax Update

Also available as part of the eCourse

[State of the Tax World 2015](#)

First appeared as part of the conference materials for the  
63<sup>rd</sup> Annual Taxation Conference session

"Texas State Tax Update"