

INSTRUCTIONS FOR COMPLETING FRANCHISE TAX REPORTS ORIGINALLY DUE ON OR AFTER JANUARY 1, 1992

ATTENTION: You **MUST** file a franchise tax report and Public Information Report (PIR) even if your corporation is inactive, and/or no tax is due. Failure to file a report shall result in the loss of your corporate privileges as provided by Title 2 of the Tax Code.

NOTE: In these instructions, "corporation" includes a bank, a state limited banking association, a savings and loan association, a limited liability company, a professional limited liability company, a corporation that elects to be an S corporation for federal income tax purposes, and a professional corporation. Professional associations and partnerships are not subject to the franchise tax.

Do not send copies of IRS forms as back up. Keep all forms in your files for possible audit purposes.

WEBSITE: Forms, statutes, rules, publications, and other information concerning Texas franchise tax can be found on the Comptroller's website at <http://www.window.state.tx.us>.

**DO NOT STAPLE
REPORTS**

GENERAL INSTRUCTIONS

**DO NOT SEND
IRS FORMS**

PRIVILEGE PERIOD:

INITIAL REPORTS: For a Texas corporation, the beginning date is the charter date; for a foreign corporation, the beginning date is the date it began doing business in Texas. For all corporations, the initial franchise tax report will cover both an initial privilege period and a second privilege period. The initial privilege period starts on the beginning date and ends on the day before the first anniversary of the beginning date. The second privilege period begins on the anniversary date, and ends on the following December 31. For example: if a Texas corporation is chartered on April 1, 2002, the initial privilege period will begin April 1, 2002 and end March 31, 2003. The second privilege period will begin April 1, 2003 and end on December 31, 2003. Therefore, the initial report will cover the privilege periods from April 1, 2002 through December 31, 2003. If the beginning date is after October 3 and before January 1, an additional privilege period (January 1 through December 31) is included on the initial report. For example: if a Texas corporation is chartered on November 1, 2001, the initial report will cover the privilege periods from November 1, 2001 through December 31, 2003. **NOTE:** Because the privilege period for the initial report covers more than one year, the tax rate for the taxable capital calculation on Schedule A and the additional tax calculation on Schedule B will be greater than the annual rate.

ANNUAL REPORTS: The privilege period is January 1 through December 31 of the report year.

REPORT YEAR: The year in which the report is due.

DUE DATE: If the due date (original or extended) of a report falls on a Saturday, Sunday or legal holiday included on the list published before January 1 of each year in the Texas Register, the due date will be the next business day.

INITIAL REPORTS: The initial report and payment are due 89 days after the first anniversary of the beginning date.

ANNUAL REPORTS: The annual report and payment must be postmarked on or before May 15 of the report year. If the corporation is the survivor of a merger, see Item 1.

FRANCHISE NO TAX DUE INFORMATION REPORT - SHORT FORM (Form 05-141): For reports originally due on or after January 1, 2000, the corporation is eligible to file the short form report in place of the long form report (Forms 05-142 and 05-143) IF the corporation, for the accounting period on which this report is based,

- had no gross receipts in Texas, **OR**
- had gross receipts everywhere of less than \$150,000 (Item 4 and Item 17 are each less than \$150,000), **OR**
- had total taxable capital of less than \$40,000 (less than \$17,800 if this is an initial report) and earned surplus (including officer and director compensation, if applicable) of less than \$2,222.00.

NOTE: You **MUST** file the long form report for any report due prior to January 1, 2000.

EXTENSIONS: An extension request must be postmarked on or before the original due date of the report.

INITIAL FILERS: A 45-day extension may be obtained by completing Form 05-141, EXTENSION REQUEST FOR TEXAS CORPORATION FRANCHISE TAX REPORT, stating the reason the extension is needed and enclosing a payment that is at least 90 percent of the tax that will be due when the report is filed.

ANNUAL FILERS: Use Form 05-141, EXTENSION REQUEST FOR TEXAS CORPORATION FRANCHISE TAX REPORT. If granted, the extension will be through November 15 of the report year. The extension payment must be at least 90 percent of the tax that will be due with this year's report or 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year. If the corporation elects to pay 100 percent of the tax reported as due for the previous calendar year, the previous year's report must be filed on or before May 14 of the current report year in order for the extension to be granted. If the corporation will not owe any tax on the report, it does not have to send a payment, but it **MUST** submit the request to be granted an extension to file the report. If the timely extension payment is not at least 90 percent of the tax that will be due or 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year filed on or before May 14 of the current year, then penalty and interest will apply to any part of the 90 percent not paid by the original due date and to any part of the 10 percent not paid by the extended due date.

If the corporation will owe no tax when it files, **OR** if the corporation owed no tax on last year's report, call us at 1-888-4FILING (1-888-434-5464) to request an extension using a touch-tone phone. Telefiling an extension request is only valid on or before the due date. Please make a note for the corporation's records of the confirmation number provided.

ELECTRONIC FUNDS TRANSFER: The conditions for requiring a corporation to pay via electronic funds transfer (EFT) are outlined in General Rule 3.9 concerning electronic filing and electronic funds transfers. In order to extend the due date of the report from May 15 to August 15, a corporation that is required to pay by EFT must do the following on or before May 15:

- 1) file a request for an extension (Form 05-141 or Form 05-110), and
- 2) pay at least 90 percent of the amount of tax that will be due with this year's report or 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year. If the corporation elects to pay 100 percent of the tax reported as due for the previous calendar year, the previous year's report must be filed on or before May 14 of the current report year in order for the extension to be granted.

A corporation that must pay by EFT may request an additional extension to November 15 to file the report by doing the following on or before August 15:

- 1) file a second extension request (Form 05-141 or 05-110), and
- 2) pay the balance of the amount of tax that will be reported on the franchise tax report for the current year.

The report must then be filed on or before November 15. If the total amount paid by August 15 is at least 99 percent of the tax due, any penalties for the underpayment will be waived, provided the total amount due is paid by November 15.

NOTE: See Form 96-590, TEXNET Payment Instruction Booklet, for additional information concerning requirements for electronic funds transfer payments.

AMENDED REPORTS: If the corporation needs to amend a report, it must file both pages of the report along with a cover letter explaining why it is amending the report. Therefore, even if the amendment only causes a change to Schedule A, the corporation must also complete and file Schedules B and C. Write "AMENDED" at the top of each page of the amended report. Write "AMENDED REFUND" at the top of each page if the amendment results in an overpayment. Write "AMENDED RAR REFUND" if the amendment is an overpayment due to a Revenue Agent Report adjustment.

FINAL REPORT: If the corporation is subject to the earned surplus component, Form 05-139, TEXAS FINAL CORPORATION FRANCHISE TAX REPORT, must be filed with the Comptroller's Office within 60 days after the corporation becomes no longer subject to the earned surplus component. In the case of a Texas corporation or a non-Texas corporation with a certificate of authority (COA) to do business in Texas, a certificate of account status may be requested. See back of final report OR Form 05-359, REQUEST FOR CERTIFICATE OF ACCOUNT STATUS. The certificate will be issued by the Comptroller's Office and may be filed in the Texas Secretary of State's Office along with the proper articles or application and filing fee.

TERMINATION OF CORPORATE EXISTENCE: Once a business has filed formal Articles of Incorporation or Organization with the Texas Secretary of State's Office, it is recognized by the State of Texas as a legal entity, whether or not it conducts business or simply exists as an inactive shell. As such, **the corporation must file tax reports until it formally terminates its legal existence in Texas through the Secretary of State's Office.** Texas corporations must satisfy all tax requirements before filing Articles of Dissolution.

All documents required by the Texas Secretary of State to terminate legal existence in Texas **must be received** in that office before 5:00 p.m. on December 31 to avoid liability for the next annual franchise tax period. If December 31 falls on a weekend, the documents must be received by 5:00 p.m. on the last working day of the year. Postmark dates will not be accepted.

Foreign corporations that have been doing business in Texas, with or without a Certificate of Authority (COA), must satisfy all franchise tax requirements. In order to close the franchise tax account, the corporation must notify the Comptroller's office in writing, provide the date the corporation ceased doing business in Texas, file all reports due, and pay any amount due.

Publication 98-336, REQUIREMENTS TO CHANGE CORPORATE STATUS, provides more information on filing requirements with the Secretary of State for Texas corporations and foreign corporations both with or without a COA.

NOTE: This section does not apply to financial institutions.

CONSOLIDATED REPORTING: Corporations are required to file based on their own financial condition. Consolidated reporting is not allowed.

SPECIFIC INSTRUCTIONS FOR SCHEDULE A

ACCOUNTING METHODS:

GAAP Method: Unless the FIT method is allowed and elected, a corporation should report gross receipts and surplus in accordance with Generally Accepted Accounting Principles (GAAP). The law contains some exceptions to the GAAP reporting requirements.

FIT Method: The following corporations may determine their gross receipts and surplus using the same accounting methods used in completing the corporation's most recent federal income tax (FIT) return (unless otherwise required by the law):

- 1) A corporation with taxable capital of less than \$1 million. In determining if taxable capital is less than \$1 million, the corporation shall apply the accounting methods used in computing the federal income tax return unless another method is required under the law,
- 2) A close corporation that has 35 or fewer shareholders, or
- 3) An S corporation.

A corporation using the FIT method is not eligible to take the temporary credit in Item 30.

NOTE: Close and S corporations with taxable capital of \$1 million or more must notify the Comptroller of their intent to use the FIT method by marking the appropriate boxes on the franchise tax report (Item i). The notification must be made on or before the due date of each report in which they intend to use the FIT method.

ITEM i – Box 1 Blacken this box if the corporation is using GAAP methods for filing Schedule A of this franchise tax report.

Box 2 Blacken this box if the corporation is electing to use the same methods used in determining its FIT liability on Schedule A of this franchise tax report. This method may only be used by qualifying corporations, as described above.

Box 3 Blacken this box if the corporation is a close corporation that has 35 or fewer shareholders.

Box 4 Blacken this box if the corporation is an S corporation.

ITEM 1 - INITIAL REPORTS: If the corporation is the survivor of a merger which occurred between the date entered in Item 2 (see instructions) and January 1 of the year in which this report is due, the corporation owes tax on net taxable capital based on its financial condition as of the day after the date of the merger. The corporation should check "YES" in Item 1 and enter the day after the date of merger in Item 2. The new due date is 91 days after the date of the merger, if that date is after the original due date.

ANNUAL REPORTS: If the corporation is the survivor of a merger which occurred between the end of its last accounting period in the year prior to this report year and January 1 of this report year, the corporation owes tax on net taxable capital based on its financial condition as of the day after the date of merger. The corporation should check "YES" in Item 1 and enter the day after the date of merger in Item 2.

ITEM 2 - INITIAL REPORTS: Enter the last accounting period ending date that is at least six months after the beginning date and at least 60 days before the original due date of the initial report.

Example 1: The corporation's last normal accounting period ending date is 12-31-02. The corporation's beginning date in Texas is 04-03-02. The original due date of its initial report is 07-01-03. Six months from the corporation's beginning date would be 10-03-02. Sixty days before the corporation's original due date would be 05-02-03. The normal accounting period ending date of 12-31-02 falls between the period of 10-03-02 and 05-02-03. Therefore, the corporation must use its last normal accounting period ending date of 12-31-02. If the corporation's normal accounting period ending date does not fall between six months after the beginning date and at least 60 days prior to the original due date, then enter the end of the month that is closest to the first anniversary of the beginning date.

Example 2: The corporation's last normal accounting period ending date is 09-30-02. The corporation's beginning date in Texas is 04-03-02. The original due date of its initial report is 07-01-03. 09-30-02 does not fall between six months after the beginning date and 60 days prior to the due date. Therefore, the corporation must use accounting information as of 03-31-03.

ANNUAL REPORTS: Enter the date of the corporation's last accounting period ending in the calendar year prior to the report year.

Example 3: Report year 2003; corporation's last accounting period ending date - January 31. Corporation should use 01-31-02 to file the 2003 report.

ITEM 3 - A corporation with zero Texas receipts on Schedule A will have a zero apportionment factor for taxable capital and will owe no tax on Schedule A. The survivor of a merger should combine its receipts and the receipts of the non-survivors for the same accounting period used by the survivor. Gross receipts for taxable capital means all revenues that would be recognized annually under a GAAP method of accounting, without deduction for the cost of property sold, or other costs incurred, unless otherwise provided for by law. Initial filers should use gross receipts from the first date of doing business through the month ending date used on line 2. Annual filers should use 12 months of gross receipts based on the last accounting year-end date.

Gross receipts in Texas include:

- sales of real property located in Texas, including royalties from oil, gas, or other mineral interests;

- sales of tangible personal property when the property is delivered or shipped to a purchaser within Texas;
- sales of tangible personal property when the property is shipped from Texas to a state in which the corporation is not subject to taxation (the "throwback rule");
- services performed within Texas;
- rentals of property situated in Texas;
- royalties from use of patents or copyrights within Texas;
- revenues from the use of trademarks, franchises, or licenses within Texas, effective for reports originally due on or after January 1, 1998. For reports that are originally due prior to January 1, 1998, these revenues are apportioned to the location of payor. These revenues do not include receipts from the sale or license of computer software or programs, which are apportioned to the legal domicile of the payor;
- the net gain from the sales of investments or capital assets (See definition in Item 4). A net loss is treated as zero receipts. If the combination of net gains and losses results in a net gain and both Texas and non-Texas sales have occurred, a separate calculation of net gains and losses on Texas sales must be made. Sales of intangibles held as capital assets or investments (e.g., stocks, bonds, goodwill, patents, trademarks, partnership interests, etc.) to corporations incorporated in Texas are gross receipts in Texas. If the Texas net gain is greater than the total net gain, the Texas net gain to report equals the total net gain; and
- all other business receipts within Texas including dividends as of the date declared and interest from Texas payors. For example, dividends received from a corporation incorporated in Texas are Texas receipts.

BANKING CORPORATIONS & SAVINGS AND LOAN ASSOCIATIONS

- For reports originally due before January 1, 2000, dividends and interest received by a banking corporation or savings and loan association are Texas receipts if the banking corporation or savings and loan association has its commercial domicile in Texas. For reports originally due on or after January 1, 2000, dividends and interest received by a banking corporation or savings and loan association are Texas receipts if they are paid by a corporation incorporated in Texas or, if they are paid by an entity or person legally domiciled in Texas. For reports originally due on or after January 1, 2002, a banking corporation should exclude from its Texas receipts interest earned on federal funds and interest earned on securities sold under an agreement to repurchase that are held in a correspondent bank domiciled in Texas.

ITEM 4 - Gross receipts everywhere include:

- all sales of tangible personal property;
- all rentals;
- all services;
- all royalties;
- all other business receipts;
- all dividends as of the date declared and interest; and
- the net gain from the sales of investments or capital assets. A net loss is treated as zero receipts. A capital asset is any asset, other than an investment, which is held for use in the production of income, and is subject to depreciation, depletion or amortization. An investment is any non-cash asset not a capital asset and not held as inventory or proceeds from the sale of inventory.

Note: For reports originally due on or after January 1, 2000, the corporation is eligible to file the Franchise No Tax Due Information Report - Short Form if the corporation had gross

receipts everywhere of less than \$150,000 (Item 4 and Item 17 are each less than \$150,000).

ITEM 5 - If Texas gross receipts are zero, enter zero. If Item 3 and Item 4 are the same and greater than zero, enter 1.0000. Otherwise, divide Item 3 by Item 4 and round to 4 places past the decimal.

ITEM 6 - Enter the stated capital. Include the par or stated value of all shares of stock for all classes, outstanding and in the treasury. If there is no par or stated value, use the amount actually received for the stock. Treasury Stock (stock that has been issued and reacquired by the corporation) must be included as part of stated capital at the par or stated value of the stock until those shares have been canceled.

LIMITED LIABILITY COMPANIES (LLCs) - Enter the amount of the members' contributions.

NOTE: Item 6 cannot be a deficit amount.

ITEM 7 - Surplus calculation: Total ASSETS minus Total DEBTS minus STATED CAPITAL equals SURPLUS.

ASSETS: When determining a corporation's assets, the assets may be reduced by a reserve for bad debts and by contra-asset accounts for depletion, depreciation or amortization, provided these items are in conformance with the franchise tax reporting method, as explained under "Accounting Methods" above. Investments in other corporations must be reported using the cost method of accounting.

DEBTS: Debts are any legally enforceable obligations measured in a certain amount of money that must be performed or paid within an ascertainable period of time or on demand. Liabilities that do not meet the debt criteria cannot be subtracted from assets. Deferred investment tax credits, deferred income taxes and contingent liabilities are not debts and cannot be subtracted from assets for franchise tax purposes.

STATED CAPITAL: See Item 6.

SURPLUS: Some components of taxable surplus are: retained earnings; paid-in capital; and donated capital.

If the above calculation (Assets minus Debts minus Stated Capital) is used to determine surplus, no adjustment is necessary for the cost of treasury shares purchased since the assets have already been reduced by the amount paid for the treasury stock. However, if surplus is determined by adding the separate component accounts, the cost of treasury shares purchased must be subtracted from those accounts.

Corporations receiving dividends must include those dividends in surplus as of the declaration date of the declaring corporation. Corporations declaring dividends shall exclude those dividends from surplus as of the declaration date.

Corporations involved in oil and gas exploration and production activities must report in accordance with the successful efforts or full cost method of accounting unless they are qualified to use the FIT method as explained under "Accounting Methods." A surplus deficit will reduce stated capital, but not below zero. If the corporation has a surplus deficit, the deficit must be enclosed in brackets as follows: <xx,xxx>.

LLCs - Surplus means the net assets (total assets minus total debts) of the company minus its members' contributions.

ITEM 9 - If Item 8 is zero, Item 9 will be zero.

ITEM 10 - Each of the following deductions may be taken against either apportioned taxable capital or apportioned and allocated earned surplus, but not both.

1) A corporation that has been designated as an enterprise project, prior to September 1, 2001, as provided by the

Texas Enterprise Zone Act, may deduct 50 percent of its capital investment in the enterprise zone in which the enterprise project is located. The deduction may not reduce apportioned taxable capital below zero and no carryover of unused deductions is allowed.

- 2) A corporation may deduct the amortized cost of a solar energy device if the device meets the criteria in Sec. 171.107(b). The deduction may not reduce apportioned taxable capital below zero and no carryover of unused deductions is allowed.
- 3) Effective May 19, 1997, a corporation designated as a defense readjustment project prior to September 1, 2001, may deduct 50 percent of its capital investment in the defense readjustment zone in which the defense readjustment project is located. The deduction may not reduce apportioned taxable capital below zero and no carryover of unused deductions is allowed. The 1998 annual report is the first annual report in which this deduction can be taken.

NOTE: If Item 9 is zero, Item 10 will be zero.

ITEM 12 - The tax rate is .00250 per year of privilege period.

NOTE: The tax rate for an initial report is prorated in accordance with the privilege period covered by that report.

SPECIFIC INSTRUCTIONS FOR SCHEDULE B

ACCOUNTING METHODS: A corporation must use the same accounting methods in reporting gross receipts (Texas and everywhere) as used in reporting federal taxable income.

Reports Originally Due Prior to January 1, 1996 - Under the franchise tax statute, the Internal Revenue Code (IRC) in effect for the 1990 calendar year must be used in computing earned surplus. Therefore, a corporation should modify the federal taxable income as reported on the federal income tax return to adjust for any changes to the IRC after December 31, 1990. For example, although the Revenue Reconciliation Act of 1993 increased the amount of depreciable property that can be expensed for federal income tax purposes to \$17,500 (IRC Sec. 179), for franchise tax purposes this deduction is limited to \$10,000 as required by the 1990 IRC.

Reports Originally Due On or After January 1, 1996 and Before January 1, 1998 - The IRC in effect for the 1994 calendar year must be used in computing earned surplus except as indicated in the "NOTE" below.

Reports Originally Due on or After January 1, 1998 - The IRC in effect for the 1996 calendar year must be used in computing earned surplus except as indicated in the "NOTE" below.

NOTE: Because the franchise tax law applicable to reports due prior to January 1, 1996 required the 1990 IRC to be used in computing earned surplus (as indicated above), a corporation may have had differences between federal taxable income for federal income tax purposes and federal taxable income used in computing earned surplus on franchise tax reports due prior to 1996. If a corporation had such differences, it should continue to report the differences based on the 1990 IRC when computing earned surplus on reports due after January 1, 1996.

Example: If a corporation claimed a \$17,500 Sec. 179 deduction in reporting its federal income tax (in accordance with 1993 IRC amendments), but was limited to a \$10,000 deduction in computing earned surplus on franchise tax reports due prior to 1996 (in accordance with the 1990 IRC), the corporation should compute depreciation on the asset based on the \$10,000 Sec. 179 deduction in computing earned surplus on

reports due after January 1, 1996. This treatment allows the corporation to maintain its basis in depreciating the affected assets for earned surplus computations. It will result in a greater depreciation deduction in computing earned surplus than what is reported on the federal income tax return.

ITEM 13 – “BEGINNING DATE” - For INITIAL REPORTS, enter the date a Texas corporation obtained its charter or the date a non-Texas corporation began doing business in Texas. For ANNUAL REPORTS, enter the day after the ending date on the previous report. For example, if the 2002 annual franchise tax report was based on 12-31-01 information, then the beginning date on the 2003 annual report should be 01-01-02.

“ENDING DATE” - For INITIAL REPORTS, enter the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report.

Example 1: The corporation’s last normal accounting period ending date is 12-31-02. The corporation’s beginning date in Texas is 04-03-02. The original due date of the initial report is 07-01-03. Sixty days before the original due date would be 05-02-03. The corporation’s normal accounting period ending date of 12-31-02 occurs at least 60 days before 07-01-03. Therefore, the corporation must use 12-31-02 as its ending date.

Example 2: The corporation’s normal accounting period ending date is 06-30. The corporation’s beginning date in Texas is 04-03-02. The original due date of the initial report is 07-01-03. Sixty days before the original due date is 05-02-03. The corporation’s normal accounting period ending date of 06-30-03 does not occur at least sixty days prior to the original due date of 07-01-03. Therefore, the corporation must use 06-30-02 as the ending date.

For ANNUAL REPORTS, enter the last accounting period ending date for federal income tax purposes in the year before the year the report is originally due.

ITEM 14 - Public Law 86-272 applies if the only business activity of the corporation within this state is the solicitation of orders for sales of tangible personal property. If orders are sent outside the state for approval or rejection and, if approved, are filled by shipment or delivery from a point outside this state, PL 86-272 applies, and the corporation is not subject to the earned surplus component. Enter the date the corporation became protected by PL 86-272. If this protected date is before the calendar year in which this report is due, skip to Item 28, enter zero, and complete the remainder of the report. If the protected date is within the calendar year in which this report is due, the corporation is subject to the earned surplus component for this reporting period and the remainder of the report must be completed. Corporations chartered in Texas are not protected by PL 86-272 and ARE subject to the earned surplus component.

ITEM 15 – Enter the amount of business losses from previous franchise tax reports that is available to be used to offset apportioned earned surplus and allocated earned surplus. A business loss is a negative earned surplus amount after apportionment and allocation. Amounts in Item 15 should not be in brackets. The business loss shall be carried forward five years or until the loss is exhausted, whichever occurs first. A corporation may not convey, assign, or transfer a business loss to another entity.

Example: If a corporation had no losses on any franchise tax reports before the 2000 report, but had a \$10,000 loss in Item

25 of the 2000 report and a \$5,000 loss in Item 25 of the 2001 report, the \$15,000 should be entered in Item 15 of the 2002 franchise tax report as the business loss carryover.

A business loss from a tax year that ends before January 1, 1991 may not be used to reduce net taxable earned surplus; therefore, this item should be zero for the 1992 franchise tax report. Allocated earned surplus does not apply to reports due before January 1, 1994. No business loss amount from prior years can be entered in Item 15 when filing an initial franchise tax report.

NOTE: For reports due on or after January 1, 1994, see Item 24 before completing Items 16, 17 and 19. Do not include allocated earned surplus amounts in Items 16, 17 and 19.

ITEM 16 - Texas gross receipts and gross receipts everywhere should be reported for the period entered in Item 13. Gross receipts for taxable earned surplus means all revenues reportable by a corporation on its federal tax return, without deduction for the cost of property sold, or other costs incurred, unless otherwise provided for by law.

Gross receipts in Texas include:

- sales of real property located in Texas, including royalties from oil, gas, or other mineral interests;
- sales of tangible personal property when the property is delivered or shipped to a purchaser within Texas;
- sales of tangible personal property when the property is shipped from Texas to a state in which the corporation is not subject to any tax on, or measured by, net income without regard to whether the tax is imposed (the “throwback rule”);
- services performed within Texas;
- rentals of property situated in Texas;
- royalties from use of patents or copyrights within Texas;
- revenues from the use of trademarks, franchises, or licenses within Texas, effective for reports originally due on or after January 1, 1998. For reports that are originally due prior to January 1, 1998, these revenues are apportioned to the location of payor. These revenues do not include receipts from the sale or license of computer software or programs, which are apportioned to the legal domicile of the payor;
- the net gain from the sales of investments or capital assets (See definition in Item 17.) A net loss is treated as zero receipts. If the combination of net gains and losses results in a net gain and both Texas and non-Texas sales have occurred, a separate calculation of net gains and losses on Texas sales must be made. Sales of intangibles held as capital assets or investments (e.g., stocks, bonds, goodwill, patents, trademarks, partnership interests, etc.) to corporations incorporated in Texas are gross receipts in Texas. If the Texas net gain is greater than the total net gain, the Texas net gain to report equals the total net gain; and
- all other business receipts within Texas. For example, interest received from a corporation incorporated in Texas is a Texas receipt.

BANKING CORPORATIONS & SAVINGS AND LOAN

ASSOCIATIONS - For reports originally due before January 1, 2000, dividends and interest received by a banking corporation or savings and loan association are Texas receipts if the banking corporation or savings and loan association has its commercial domicile in Texas. For reports originally due on or after January 1, 2000, dividends and interest received by a banking corporation or savings and loan association are Texas receipts if they are paid by a corporation incorporated in Texas

or, if they are paid by an entity or person legally domiciled in Texas. For reports originally due on or after January 1, 2002, a banking corporation should exclude from its Texas receipts interest earned on federal funds and interest earned on securities sold under an agreement to repurchase that are held in a correspondent bank domiciled in Texas.

Any item of revenue that is excluded from net taxable earned surplus under Texas law or United States law is not included in Texas gross receipts or gross receipts everywhere. For example, a corporation should not include in Texas gross receipts:

- income recorded because of IRC Sections 78 or 951-964;
- dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States;
- dividends and/or interest received from federal obligations excluded from the earned surplus tax base; or
- dividends for which a "dividends received" deduction is allowed on Schedule C of Form 1120 (also reported in Item 20a of this franchise tax report.)

NOTE: For reports due on or after January 1, 1994, do not include allocated earned surplus amounts in Item 16. See Item 24.

ITEM 17 - Gross receipts everywhere include:

- all sales of tangible personal property;
- all rentals;
- all services;
- all royalties;
- all other business receipts;
- all dividends and interest not otherwise excluded by operation of law or rules; and
- the net gain from the sales of investments or capital assets. A net loss is treated as zero receipts. A capital asset is any asset, other than an investment, which is held for use in the production of income, and is subject to depreciation, depletion, or amortization. An investment is any non-cash asset not a capital asset and not held as inventory or proceeds from the sale of inventory.

Any item of revenue that is excluded from net taxable earned surplus under Texas law or United States law is not included in gross receipts. For example, a corporation should not include in gross receipts:

- income recorded because of IRC Sections 78 or 951-964;
- dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States;
- dividends and/or interest received from federal obligations excluded from the earned surplus tax base; or
- dividends for which a "dividends received" deduction is allowed on Schedule C of Form 1120 (also reported in Item 20a of this franchise tax report.)

NOTE: For reports due on or after January 1, 1994, do not include allocated earned surplus amounts in Item 17. See Item 24.

ITEM 18 - If Texas gross receipts are zero, enter zero. If Item 16 and Item 17 are the same and greater than zero, enter 1.0000. Otherwise, divide Item 16 by Item 17 and round to 4 places past the decimal.

ITEM 19 - Except for the adjustments indicated below,

- 1) corporations and LLCs filing a Form 1120 for federal income tax purposes should enter the federal taxable income before net operating loss deductions and special deductions;
- 2) LLCs that are treated as partnerships for federal income tax purposes and S corporations should enter the amount of income reportable to the Internal Revenue Service as taxable to the members or shareholders (which includes ordinary income and certain income and expense items reflected on Schedule K of Form 1065 or Form 1120S);
- 3) LLCs that are treated as sole proprietorships for federal income tax purposes should report the taxable income and deductions reflected on Form 1040, including amounts listed on attachments and schedules that relate to the LLC.

An LLC treated as a division of a corporation for federal income tax purposes is subject to franchise tax as a separate legal entity. A consolidated franchise tax report with the corporation cannot be filed.

A qualified Subchapter S subsidiary is subject to franchise tax as a separate legal entity. A consolidated franchise tax report with its parent cannot be filed.

Before entering these federal taxable income amounts on Line 19, the following adjustments must be made:

- If the income includes dividends and/or interest on federal obligations, these amounts should be subtracted.
- Any amounts that must be included in allocated earned surplus on Line 24 must be subtracted.
- For reports due after September 11, 2001, no deduction is allowed for any "bonus depreciation" created as a result of the Job Creation and Workers Assistance Act of 2002. Therefore, any bonus depreciation taken on the federal income tax return must be added back in the computation of earned surplus. Also, see the discussion under "Accounting Methods" for Schedule B.

Reports Originally Due Prior to January 1, 1996 - The Internal Revenue Code (IRC) in effect for the 1990 calendar year must be used in computing earned surplus. See the discussion under "Accounting Methods" for Schedule B.

Reports Originally Due On or After January 1, 1996 - If the required use of the 1990 IRC in computing earned surplus on reports originally due prior to 1996 (as discussed above) caused differences between federal taxable income for federal income tax purposes and federal taxable income used in computing earned surplus, the corporation should report the differences when computing earned surplus based on the 1990 IRC. See the discussion under "Accounting Methods" for Schedule B for additional information about the IRC that must be used in computing earned surplus. If the amount is negative, bracket the amount as follows: <xx,xxx>.

ITEM 20

a. Enter total deductions allowed on Schedule C, U. S. Corporation Income Tax Return Form 1120.

b. Enter amount of income included in Item 19 that is income because of IRC Sections 78 or 951-964. Enter amount of dividends included in Item 19 that was received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

ITEM 21 - Skip this item and go to Item 22 if the corporation, bank, or LLC is not a subsidiary and:

- 1) has 35 or fewer shareholders/members for the entire period in Item 13, or
- 2) is an S corporation for the entire period.

Also skip this item if the corporation, bank, or LLC is a subsidiary and the parent qualifies for the exception as described above.

If the corporation does not qualify for one of the exceptions above:

- Corporations (other than banking corporations) should enter the amount of compensation reportable to officers and directors on Forms W-2 and 1099 for the portion of the period in Item 13 during which the corporation does not qualify for an exception. LLCs that are treated as corporations for federal income tax purposes should enter the amount of compensation reportable to managers and officers on Forms W-2 and 1099 for the portion of the period in Item 13 during which the LLC does not qualify for an exception.
- Banks should enter compensation of executive officers and directors reportable on Forms W-2 and 1099 for the portion of the period in Item 13 during which the bank does not qualify for an exception.
- LLCs treated as partnerships for federal income tax purposes should enter guaranteed payments or compensation to managers and officers for services for the portion of the period in Item 13 during which the LLC does not qualify for an exception.

NOTE: Any person designated as an officer is presumed to be an officer if the person (1) holds an office created by the board of directors or by the corporate charter or by-laws, and (2) has legal authority to bind the corporation with third parties. See Rule 3.558 for more information.

ITEM 22 - If this amount is negative, bracket the amount as follows: <xx,xxx>. If Item 19 is negative, Item 20 will increase the negative amount and Item 21 will reduce the negative amount.

ITEM 23 - If Item 22 is negative, the percentage of the negative amount apportioned to Texas should be entered in Item 23 in brackets as follows: <xx,xxx>.

ITEM 24 - Skip this item if filing a report due on or after January 1, 1992 and before January 1, 1994. If the corporation's commercial domicile is not in Texas, Item 24 should be zero. Corporations with a Texas commercial domicile may need to allocate certain income items to Texas. Income items that are considered non-unitary, except dividends and interest, must be allocated to Texas and reported in Item 24. Non-unitary income must be entered in Item 24 net of related expenses. This amount must be excluded from Items 16, 17, and 19. If the amount is negative, bracket the amount as follows: <xx,xxx>.

NOTE: All income is presumed to be unitary. If all of a corporation's income is used in its operations, it will be considered unitary income. For example, investment income from stocks, bonds, etc. that is part of operating revenue is considered unitary. Such income will be apportioned and will not be subject to allocation.

ITEM 26 - Each of the following deductions may be taken against either apportioned taxable capital or apportioned and allocated earned surplus, but not both.

- 1) A corporation that has been designated as an enterprise project prior to September 1, 2001, as provided by the Texas Enterprise Zone Act, may deduct 5 percent of its

capital investment in the enterprise zone in which the enterprise project is located. The deduction may not reduce apportioned and allocated earned surplus below zero and no carryover of unused deductions is allowed.

- 2) A corporation may deduct 10 percent of the amortized cost of a solar energy device if the device meets the criteria in Sec. 171.107(b). The deduction may not reduce apportioned and allocated earned surplus below zero and no carryover of unused deductions is allowed.
- 3) Effective May 19, 1997, a corporation designated as a defense readjustment project prior to September 1, 2001, may deduct 5 percent of its capital investment in the defense readjustment zone in which the defense readjustment project is located. The deduction may not reduce apportioned and allocated earned surplus below zero and no carryover of unused deductions is allowed. The 1998 annual report is the first annual report in which this deduction can be taken.

NOTE: If Item 25 is zero or less, enter zero in Item 26.

ITEM 27 - Enter the amount of business losses from previous franchise tax reports that will be used this year to reduce apportioned and allocated earned surplus. A business loss is a negative earned surplus amount after apportionment and allocation. No business loss amount can be entered in Item 27 when filing an initial franchise tax report. Allocated earned surplus does not apply to reports due before January 1, 1994.

The following examples illustrate the application of the business loss carryover for a corporation that has negative apportioned and allocated earned surplus (Item 25) on its 2002 franchise tax report of \$10,000. The available business loss to be used to offset apportioned and allocated earned surplus on the 2003 franchise tax report is \$10,000.

Example 1: If the corporation's apportioned and allocated earned surplus less allowable deductions is \$14,000 on its 2003 franchise tax report, then the \$10,000 loss carryover should be entered in Items 15 and 27 of the 2003 franchise tax report.

Example 2: If the corporation's apportioned and allocated earned surplus less allowable deductions is \$3,000 on its 2003 franchise tax report, then the corporation should enter \$10,000 in Item 15 and \$3,000 in Item 27 of its 2003 franchise tax report.

The business loss amount in Item 27 will not necessarily be the same amount of loss that the corporation reported on its Federal Income Tax Return (e.g. Form 1120, 1120S, etc.). Apportioned plus allocated earned surplus, less allowable deductions, may not be reduced below zero by a business loss carryover. If Item 25 is zero or less, enter zero in Item 27. Amounts in Items 15 and 27 should not be in brackets.

For more information about business losses and business loss carryovers, see Item 15 instructions.

ITEM 28 - If Item 25 is zero or less, Item 28 will be zero.

ITEM 29 - If Item 28 is zero, Item 29 will be zero.

ITEM 30 - This credit is only available to corporations that preserved their right in writing to take the credit by March 2, 1992. In order to begin taking the credit, the corporation must notify the Comptroller that it will take the credit on or before the original due date of the report on which the corporation begins to take the credit. This can be done on the extension form or by entering the credit in Item 30 of the franchise tax report filed on or before the original due date of the report.

Once the corporation begins taking the credit, the credit should be entered in Item 30 and the additional tax must be paid (see instructions for Item 33). Thus, even if the corporation owes no tax on net taxable earned surplus (Item 29 is zero), the corporation must enter the credit amount in Item 30 and add the additional tax in Item 33. If the corporation fails to enter the appropriate amounts, the credit will be revoked for the current and future reports. A corporation may claim the credit for not more than 20 consecutive privilege periods beginning with the first report due after January 1, 1992. A corporation may make only one election under this section and the election may not be conveyed, assigned, or transferred to another entity.

The credit is computed as follows:

- 1) determine the amount, as of the end of the corporation's accounting year ending in 1991, that is the excess of the basis used for financial accounting purposes over the basis used for federal income tax purposes of qualifying assets and liabilities that at some future date will reverse (use this amount every year the credit is taken);
- 2) multiply this amount by the apportionment factor entered in Item 18 of the corporation's 1992 franchise tax report (use this apportionment factor every year the credit is taken);
- 3) multiply this amount by 5 percent per privilege period;
- 4) multiply this amount by the tax rate for the earned surplus component (Item 29) in effect for the year the credit is taken.

NOTE: If the corporation wants to take the temporary credit, it must file the long form report as its information report.

ITEM 33 - If the corporation has elected to take the temporary credit on this or previous reports, then an additional tax due must be calculated by multiplying Item 11, Schedule A, by .002, for an annual report, or the temporary credit will be revoked for the current and future reports. The .002 rate will be prorated on initial reports. Even if the corporation did not have tax due on net taxable earned surplus (Item 29), the additional tax due must be paid or the temporary credit will be revoked for the current and future reports. If Item 11, Schedule A, is zero, then no additional tax is due and the temporary credit may still be taken to reduce tax due on net taxable earned surplus.

ITEM 34 - For any credits claimed, Schedule D must be completed and submitted with the tax report. Credits that may be entered in Item 34 include:

- 1) Credit amounts reported by banks for tax erroneously paid on reports originally due prior to January 1, 1992.
- 2) Credit amounts for sales tax paid on property used in manufacturing pursuant to Sec. 171.0021 of the Texas Tax Code. The credit is the sum of: (A) 25 percent of the state tax paid to the state under Chapter 151 for property purchased on or after October 1, 1991, and on or before December 31, 1992; and (B) 50 percent of the state tax paid to the state under Chapter 151 for property purchased on or after January 1, 1993, and on or before September 30, 1993. The credit is not available for local taxes. The

credit may be claimed, until completely used, on any of the first five reports that are originally due on or after January 1, 1994. The credit claimed on a report may not exceed the tax due. A corporation may not convey, assign, or transfer the credit to another entity. *NOTE: The 1998 report is the last report for which a corporation can claim this credit.*

- 3) Credits allowed to title insurance companies. See Rule 3.566 for credit qualifications and calculations.
- 4) Total tax credits from Item 14 of Schedule D, the Texas Franchise Tax Credit Summary. The total amount of credits entered in Item 34 cannot be used to reduce Item 35 below zero.

NOTE: Credits for extension payments or prior payments should not be entered in this item. Enter extension payments or prior payments in Item 37.

SPECIFIC INSTRUCTIONS FOR SCHEDULE C

ITEM 36 - If Item 35 is less than \$100, the corporation owes no tax. For reports originally due on or after January 1, 2000, if Item 4 and Item 17 are each less than \$150,000, the corporation owes no tax. The corporation must file completed Schedules A, B, and C as its information report for any report due prior to January 1, 2000 or if the corporation wants to take the temporary credit.

ITEM 37 - Enter prior payments, such as an extension payment.

ITEMS 39 & 40 - PENALTY AND INTEREST IN EXTENSION SITUATIONS:

INITIAL REPORTS - If the extension payment is not at least 90 percent of the tax that is due when the initial report is filed, then penalty and interest will be assessed based on the original due date of the report.

ANNUAL REPORTS - If the extension payment for the 1993 through 1997 annual reports is not at least 100 percent of the tax paid in the prior year or 90 percent of the tax that will be due with the current year's report, then penalty and interest will apply to any part of the 90 percent not paid on or before May 15, and any part of the 10 percent not paid on or before November 15. If the extension payment for the 1998 and subsequent reports is not at least 100 percent of the tax reported as due for the previous calendar year (on the report due in the previous calendar year filed on or before May 14 of the current year) or 90 percent of the tax that will be due with the current year's report, then penalty and interest will apply to any part of the 90 percent not paid on or before May 15, and any part of the 10 percent not paid on or before November 15. See Rule 3.545 for more information. For corporations required to pay their franchise tax by electronic funds transfer (EFT), see Rule 3.575 for penalty and interest in extension situations.

INTEREST CALCULATION -

See http://www.window.state.tx.us/taxinfo/int_rate.html for more information about computing interest.

SIGNATURE: The report must be signed on the second page by an officer, director, or other authorized person of the corporation, LLC, or financial institution.

DO NOT SEND IRS FORMS

**READ DETAILED INSTRUCTIONS
BEFORE COMPLETING THIS REPORT**

You have certain rights under Ch. 559, Government Code, to review, request, and correct information we have on file about you. Contact us at the address or toll-free number listed on this form.

WHO MUST FILE: All Texas corporations and all foreign corporations doing business in Texas are liable for Texas franchise tax. The term "corporation" includes a bank, a state limited banking association, a savings and loan association, a limited liability company, a corporation that elects to be an S corporation for federal income tax purposes, and a professional corporation.

FOR ASSISTANCE: If you have any questions regarding franchise tax, you may contact the Texas State Comptroller's field office in your area or call 1-800-252-1381, toll free, nationwide. The Austin number is 512/463-4600. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free, or in Austin, 512/463-4621.

GENERAL INSTRUCTIONS:

- Please do not write in shaded areas.
- TYPE OR PRINT information in the heading of this form.
- To assist the Comptroller's office in processing your report more quickly and accurately, please print all your numbers in the boxes, as shown, using black ink. →

0	1	2	3	4	5	6	7	8	9
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- If **typing**, numbers may be typed consecutively, as shown. →

0	1	2	3	4	5	6	7	8	9
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- Complete all applicable items that are not preprinted.
- Correct any preprinted information that is not correct by marking it out and writing in the correct information.
- **NEGATIVE NUMBERS:** On this report, Items 7, 19, 22, 23, 24, and 25 may be negative numbers. If any of these numbers are negative, enclose them in brackets < >.
- **MAIL TO:** COMPTROLLER OF PUBLIC ACCOUNTS
111 E. 17th Street
Austin, Texas 78774-0100

DETAILED INSTRUCTIONS: To complete this report for annual franchise tax originally due May 17, 2004, see Form 05-386. For instructions to complete initial reports originally due 1992 through 2004 and annual reports originally due 1992 through 2003, see Form 05-364.