

411 FOR TEXAS FRANCHISE TAX

by Christa Floyd CPA



The 82nd Legislative session has come and gone and with it, left many parts of the Texas Tax Code as it relates to franchise tax untouched in how it impacts owners' associations. While there is often talk of bringing back a minimum tax requirement for all eligible entities as we had in the 1990's that has not happened yet.

What is new for reports due in 2012 is the extension of the \$1,000,000 no tax due threshold. That provision was set to expire with reports due after 2011, but has been extended to reports due before January 1, 2014. In addition to the extension of the provision, the amount has been adjusted for the Consumer Price Index making the threshold \$1,030,000. That means if your association had income of \$1,030,000 or less in 2011, no tax will be due for the 2012 privilege year. Filing the Texas Franchise Tax No Tax Due Information Report will still be required; however, no tax will be due. If your association's revenues for 2011 exceed the threshold, there are still eligible deductions to reduce the margin on which the association will be taxed. And remember, if your report results in owing less than \$1,000 in tax, there is no tax due.

The due date for the franchise tax report remains May 15th, with a filing extension to November 15th. The same rule applies to franchise tax extensions as federal tax return extensions; this is an extension of time to file, but not an extension of time to pay tax. While payment of tax might not apply to many associations there are some that have franchise tax liabilities. Also, complying with the due date for franchise tax is going to be even more important now. The Comptroller's office has instituted a \$50 late fee for late filed franchise tax reports regardless of any tax liability.

Franchise tax as a whole has been a tricky concept for many taxpayers and has even been known to trip up the most seasoned veterans! One of those tricky areas was the "initial franchise tax report". Just the term can stir up emotions of battling with the state agency about the accounting year beginning and ending date and the privilege year beginning and ending date. Well, we can all relax now, because the day of the initial franchise tax report is gone. It will also make explaining accounting years and privilege years easier. The "privilege period" is forward looking. Unlike most taxes we pay, franchise tax is for a current and future date. The franchise tax report due on May 15, 2012 is for the 2012 privilege period. The idea is that your association wants to continue the privilege of doing business in Texas and to do so, a report must be

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filed and a tax may be due. The data for reporting and calculating, though, is based on the prior accounting year. That means that the 2012 privilege period will report 2011 accounting data. For example, if your association was incorporated before January 1, 2011, the franchise tax report you need to file in 2012 will be for the privilege period January 1, 2012 – December 31, 2012 and an accounting year January 1, 2011 – December 31, 2011. If your association was incorporated in 2011, your privilege period will begin with the date of incorporation and will run through December 31, 2012. Your accounting year will adjust to the date of incorporation through December 31, 2011. It may sound complicated, but it has truly been simplified by doing away with “initial” reports.

A franchise tax report filing is not complete without the Public Information Report, or PIR. The PIR reports the board members and directors for your association and that information is provided to the Secretary of State’s office for updating the association’s corporate file. The Texas Business Organizations Code requires that there be three directors, one president and one secretary. The code also requires the president and secretary positions to be filled by different people and they must be natural persons, not trusts or other entities.

And speaking of the Secretary of State’s office, they also keep record of the registered agent for your association. Be sure that your registered agent and registered address is current so that no important notices sent by the Comptroller’s office or the Secretary of State’s office are misdirected to someone who no longer has an interest in the association’s business.

Navigating your way through the franchise tax requirements and other requirements of the Texas Comptroller’s office and Secretary of State’s office can feel overwhelming, but with time, experience and a little help from your trusted resources, your association can file timely and accurate reports and stay in good standing for the life of the association.



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