

#### **Item 16. 1992 Temporary credit**

This credit is only available to corporations that preserved their right in writing to take the credit by March 2, 1992. If the credit has been taken on any previous reports or will be taken on this report, the corporation must pay the additional tax in item 17. This credit expires for all eligible entities in 2012.

The credit is computed as follows:

- 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);
- 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);
- multiply this amount by 5.0% (0.05) per privilege period;
- multiply this amount by 4.5% (0.045)

#### **Item 17. 1992 Additional tax due**

If the corporation has elected to take the 1992 temporary credit on this or previous reports, then an additional tax due must be calculated by multiplying the taxable entity's taxable capital by 0.002 (0.2%) or this credit will be revoked for the current and future reports.

The taxable entity's taxable capital is computed by adding together the entity's stated capital and surplus as those terms are defined in franchise tax rules 3.550 (Taxable Capital: Stated Capital) and 3.551 (Taxable Capital: Surplus). If taxable capital is zero or less, then no additional tax is due and the temporary credit may still be taken to reduce tax due on net taxable margin.

#### **Item 18. Total temporary credits**

Add items 15 and 16, then subtract 17.

#### **PART E – CREDITS CLAIMED**

The total credits claimed cannot reduce the total tax due below zero; therefore, you may need to allocate the credits claimed in Items 19 through 21 so that the tax due will equal zero.

#### **Item 19. Investment credit claimed**

Cannot be greater than the amount entered on item 6.

#### **Item 20. Jobs creation credit claimed**

Cannot be greater than the amount entered on item 10.

#### **Item 21. Research credit claimed**

Cannot be greater than the amount entered on item 14.

#### **Item 22. Other**

*Carryover of 2008 temporary credit for business loss carryforwards.*

Enter the amount of credit that exceeded the amount of tax due on the 2008 or subsequent reports that has not already been used. If the E-Z computation was used on a prior report, there is no carryover amount from that year.

Example: A taxable entity had a business loss credit of \$2,000 that could be used on the 2009 franchise tax report. The entity had \$1,200 tax due, so they used only \$1,200 of the available business loss credit. They may carryover the remaining \$800 to subsequent report years. On the 2010 report, this \$800 should be reported in item 22.

Credit amounts reported by banks for tax erroneously paid on reports originally due prior to January 1, 1992.

*Note: Credits for extension payments or prior payments should not be entered in this item. Enter extension payments on franchise tax Form 05-170, Item 2.*

#### **Item 23. Total credits claimed**

Add items 18, 19, 20, 21, and 22. Enter this amount on item 31 of the franchise tax report Form 05-158-B.

### **FORM 05-163 TEXAS FRANCHISE TAX NO TAX DUE INFORMATION REPORT**

**Filing Requirements:** A taxable entity, including a combined group, qualifies to file the No Tax Due Information Report when any of the four statements shown in Item 1 through Item 4 are true. Blacken the circle for each true statement.

#### **COMBINED REPORT**

A combined group may file a No Tax Due Information Report. The determination of whether a combined group is eligible is based on the total revenue of the combined group as a whole after eliminations. Each member of the group must be included in the combined group report even if, on a separate company basis, the member has \$1 million or less in total revenue.

When filing a combined No Tax Due Information Report, an Affiliate Schedule (Form 05-166) containing all of the required information for each member must be submitted. In addition, an information report must be submitted for each member that has physical presence in Texas.

#### **TIERED PARTNERSHIP ELECTION**

A tiered partnership election is not allowed if the lower tier entity, before passing total revenue to the upper tier entities, has \$1 million or less in annualized total revenue or owes less than \$1,000 in tax. Do NOT blacken the Tiered Partnership Election circle.

If a tiered partnership election is made, the lower tier entity may file the No Tax Due Information Report ONLY if the entity passed 100% of its total revenue to upper tier entities. Upper tier entities are not eligible to file a No Tax Due Information Report if the tiered partnership election is made.

#### **Item 1. This entity is a passive entity as defined in Chapter 171 of the Texas Tax Code.**

A partnership (general, limited and limited liability) or trust (other than a business trust) may qualify as a passive entity and not owe any franchise tax for a reporting period if at

least 90 percent of the entity's federal gross income (as reported on the entity's federal income tax return), for the period upon which the tax is based, is from the following sources:

- dividends, interest, foreign currency exchange gain, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlements or termination payments with respect to a financial instrument, and income from a limited liability company;
- distributive shares of partnership income to the extent that those distributive shares of income are greater than zero, excluding rental income;
- net capital gains from the sale of real property, net gains from the sale of commodities traded on a commodities exchange and net gains from the sale of securities; and
- royalties from mineral properties, bonuses from mineral properties, delay rental income from mineral properties and income from other nonoperating mineral interests including nonoperating working interests.

Passive income does not include rent or income received by a nonoperator from mineral properties under a joint operating agreement, if the nonoperator is a member of an affiliated group and another member of that group is the operator under the same joint operating agreement.

Once an entity has filed as a passive entity, the entity will not have a subsequent franchise tax filing requirement until the entity no longer qualifies as passive. See the passive entity section of these instructions for more information.

**Item 2. This entity's annualized total revenue is below the no tax due threshold.**

If annualized total revenue is less than or equal to \$1 million, the entity qualifies to file the No Tax Due Information Report. See the annualized total revenue section of these instructions for more information.

**Item 3. This entity has zero Texas gross receipts.**

The apportionment factor of an entity with zero Texas gross receipts is zero; therefore, no tax is due. See the instructions for Item 23 of Form 05-158-B for additional information on computing Texas gross receipts.

**Item 4. This entity is a Real Estate Investment Trust (REIT) that meets the qualifications specified in 171.0002(c)(4).**

A real estate investment trust (REIT) that meets the qualifications of Texas Tax Code Sec.171.0002(c)(4) is not a taxable entity for the year upon which the report is based. The REIT must establish its non-taxable status by filing a No Tax Due Information Report for the period upon which the report is based.

A REIT or its qualified REIT subsidiary entities are not considered taxable entities if:

- the REIT holds interests in limited partnerships or other entities that are taxable entities and that directly hold real estate; and
- the REIT does not directly hold real estate, other than real estate it occupies for business purposes.

An information report must be submitted by each REIT or qualified REIT subsidiary:

- a Public Information Report (Form 05-102) for each REIT legally organized as a corporation or LLC and
- an Ownership Information Report (Form 05-167) for each REIT legally organized as a partnership, trust or association.

**Item 5a. Accounting year begin date**

See the accounting period beginning and ending date requirements in the annual, initial and/or final report sections.

**Item 5b. Accounting year end date**

See the accounting period ending date requirements in the annual, initial and/or final report sections.

**Item 6. Total Revenue**

Enter the amount of total revenue using the instructions for Items 1-10 of Form 05-158-A. A passive entity or a REIT may leave this blank.

**Signature Block:**

Report may be signed by an officer, director or other authorized person. This includes a paid preparer authorized to sign the report.

**FORM 05-164  
TEXAS FRANCHISE TAX EXTENSION  
REQUEST**

**Filing Requirements:** Any entity (including a combined group) that cannot file its annual (including the first annual), initial or final report by the original due date may request an extension of time to file on or before the due date. A combined group must also file an Extension Affiliate List (Form 05-165) when they request an extension.

An extension for an annual, non-EFT filer will be through November 15, 2010. When submitting the extension request, the taxable entity must remit 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 (provided that the report due in the previous calendar year was filed on or before May 14, 2010) in order for the extension to be granted.

A taxable entity that became subject to the franchise tax on or after October 4, 2009, filing its first annual report, may not use the 100% extension option.

A separate entity that was included in a 2009 combined group report may not use the 100% extension option.