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Texas 82nd Regular Legislative Session Preview

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The Texas Legislature is set to convene for the 82nd regular session on January 11, 2011. Budget deficit projections are reaching as high as \$25 billion, and Texas' constitutionally mandated balanced budget will create difficult decisions as to how to meet spending commitments. The Comptroller has stated that cash collections for fiscal year 2010 were down 6.5%, or \$2.5 billion.¹ While redistricting may be the forefront concern for some legislators, revenue creation will certainly be a major issue. Governor Perry may well use his executive power to call special sessions focusing on revenue creation.

Even before the deficit projections ballooned up to \$25 billion, revenue creation was a concern for the 82nd session. During the legislative interim, the House Ways and Means Committee was tasked to study certain tax topics, including monitoring the performance of the revised franchise tax; examining major sales/use and other tax exemptions to determine how costs and benefits comport with original objectives; studying the tax structure applicable to cable television service, with consideration of competitive fairness; and identifying ways to improve the quality and uniformity of property tax appraisals.²

The following is a preview of some of the topics expected to be addressed in the upcoming session, as well as an example of the significant goals that can be accomplished from taxpayer involvement.

- **Margin Tax Underperforming** – The Texas margin tax has raised about \$1.5 billion a year less than anticipated when it was enacted in 2006. One major reason cited for the underperformance is that more businesses are claiming the cost of goods sold deduction than anticipated, so the dollar value of that deduction is greater than expected. Businesses have taken varying views and the controlling guidance does not address all of the various costs that may properly be includable in the deduction. Expect the Legislature to take a close

¹ Susan Combs, *State of Texas Annual Cash Report v* (2010).

² See Bill Kidd, *Texas House Panel to Study Franchise Tax, Property Appraisal Issues*, STATE TAX TODAY, Nov. 23, 2009.

look at the definition of “cost of goods sold,” perhaps considering simplification by adopting the federal definition of cost of goods sold or creating a cap on the deduction.

- **Increased Sales Tax Rates** – Until sales tax rates become so high that spending decreases or the pressure for unreported transactions results in diminishing tax revenue, raising rates on existing sales/use taxes is often cited as a quick fix. Expect legislation to propose increasing the sales tax rate and the ceiling on local tax rates, may be proposed during the 82nd session.
- **Reducing or Eliminating Existing Exemptions** – The Legislature is considering alternatives to increase tax collections by scaling back or eliminating some existing sales/use and other tax exemptions. No doubt this will raise the debate of whether decreasing the scope of exemptions such as the *manufacturing exemption*, may hurt jobs or otherwise reduce in-state business with longer term negative effects on the state’s economy.
- **Expanding the Sales Tax Base** – In addition to scaling back exemptions, the Legislature is considering additional types of items (generally services) that might be subjected to the sales tax. Expect the list of *taxable services* to be a topic of debate.
- **Streamlined Sales Tax Project** – Having failed to implement the project in the past, the Legislature may once again consider renewed attempts at implementation in the upcoming session. Now that the Streamlined Sales and Use Tax Agreement (SSUTA) permits more flexibility on local sourcing rules, expect discussion of whether and how other states have benefitted from the SSUTA.

With revenue statutes at the forefront of the upcoming session, taxpayers should take proactive steps to ensure their voice is heard regarding tax legislation likely to affect them. We closely monitor legislative matters in consultation with several taxpayer groups and have years of experience in evaluating and assisting in drafting favorable provisions³ and in successfully opposing negative legislative changes.



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³ See, e.g., S.B. 640, 1995 Leg., 74th Sess. (Tex. 1995) (adding semiconductor fabrication cleanrooms and equipment to the sales and use tax manufacturing exemption, codified at Texas Tax Code § 111.318.).

