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## TEXAS COMPTROLLER INCREASES HURDLES FOR LOSS CARRYFORWARDS AND DECREASES ISSUANCES OF LETTER RULINGS

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### **Texas Comptroller Requires Taxpayers Reaffirm Qualification for Credit Claimed for Margin Tax Business Loss Carryforward**

The Texas Comptroller recently reported that it plans to send out letters requiring companies that originally claimed credit for the margin tax business loss carryforward to affirm, **by October 31, 2011**, continued qualification for the credit. Under the Comptroller's Rule 3.594(c)(3), certain changes in the composition of the combined group will result in a loss of the credit. If a member changes combined groups, the credit is lost to the member and to the group. According to the Comptroller's report, failure to respond by the deadline will cause the credit to be lost. Affected companies should note the deadline and determine whether any changes in the composition of their combined groups run afoul of the credit disallowance rules.

### **Changes in Texas Comptroller's Letter Ruling Procedures**

The Texas Comptroller also recently announced a possible change in the procedure for issuing letter rulings to taxpayers. Traditionally, a Comptroller letter ruling issued to a particular taxpayer was binding on the Comptroller, at least in terms of abating penalty. In order to better allocate Comptroller resources, the Comptroller plans to begin issuing two types of rulings:

1. General information letters, which will apply the law to a general set of facts; and
2. Declaratory rulings, which will apply the law to a complete set of specific facts for a specific taxpayer not currently under audit or in litigation.

Under the new procedures, a declaratory ruling will be binding on the Comptroller for the specific facts and issues addressed in that ruling. The Comptroller plans to update the administrative rules to reflect the specific guidelines.

### **Implications for Rulings**

Taxpayers who have reason to seek guidance from the Comptroller should be mindful of these new procedures. While the details have yet to be determined, the Comptroller is following the

lead of other states that require quite specific factual information from the taxpayer before issuing a binding ruling. Taxpayers seeking binding guidance should follow the new procedure for declaratory rulings.

It remains to be seen what effect these procedural changes will have on the Comptroller's long-standing "detrimental reliance" policy. Under this long-standing policy, where the Comptroller's Office by certain communications or conduct directed to a given taxpayer has induced that taxpayer to act in a particular manner, the Comptroller should not later adopt a contrary position or course of conduct which will cause the taxpayer loss, harm, or detriment as a result of the taxpayer's reliance on the earlier Comptroller action. *See, e.g.*, Comptroller Memo 200712099L (2007). While akin to judicial estoppel, the detrimental reliance policy is not mandated by either state statute or judicial decision.



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