

202404005M [Tax Type: Franchise-Margin] [Document Type: Memos]

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Texas Comptroller of Public Accounts STAR System

**202404005M**

**DATE:** April 24, 2024

**TO:** Emma Fuentes  
Director, Audit Division

**FROM:** Jenny Burleson  
Director, Tax Policy Division

**SUBJECT:** Franchise Tax Extensions and the Statute of Limitation

The purpose of this memo is to provide guidance on the application of the statute of limitation when a taxpayer requests an extension and revises the application date of the provisions of the memo. This memo updates and replaces the previous policy memo, STAR Accession No. 202404001L (April 12, 2024).

### **Issue**

This memo provides guidance on determining the statute of limitation when a taxpayer requests an extension for the report period. This memo applies to determining the applicable period of limitation for the comptroller to assess tax and for a taxable entity to file a refund claim. This memo does not apply to calculating penalty and interest.

### **Background**

Generally, no tax may be assessed and no refund may be requested after four years from the date a tax becomes due and payable. Section 111.201 (Assessment Limitation) [ENDNOTE 1] and Section 111.107 (When Refund or Credit is Permitted). In determining the beginning date for a period of limitation, the date a

tax is due and payable is the day after the last day on which a payment is required. Section 111.204 (Beginning of Period of Limitation).

Annual franchise tax reports (including first annual reports) and payments of the franchise tax are due on or before May 15 [ENDNOTE 2] of each year. Section 171.202(b) (Annual Report), Section 171.152(c) (Date on Which Payment is Due), and Rule 3.584(c) (Reports and Due Dates). If an entity is not granted an extension of time to file its franchise tax report, payment of the franchise tax is due on May 15 and the entity's beginning date for the period of limitation is May 16.

An entity may request an extension of time to file its report using one of two methods to determine the amount of tax the entity must remit to receive a valid extension of time to file its report. Section 171.202(c), (e), and (f). If the comptroller grants an entity's request for an extension, the extension method the entity chooses to employ and whether the entity is required to make its payments by electronic funds transfer (EFT) affects the entity's beginning date for the period of limitation.

## **Policy for Determining the Period of Limitation when Extensions are Requested**

### **Non-EFT Payer**

#### **100 Percent of Tax Due in Prior Report Year Extension Method**

To use this extension method, the taxable entity must have satisfied its filing requirements for the prior report year on or before May 14 of the report year for which the extension is requested. An entity that is not required to make its tax payments by electronic funds transfer (non-EFT payer) may obtain an extension of time to Nov. 15 to file its annual report by:

- filing an extension request on or before May 15 and
- remitting with the extension request 100 percent of the amount of tax due in the prior report year.

If the entity meets these two requirements, the entity obtains a valid extension and the report and any remaining tax owed is due on Nov. 15, even if the entity fails to file a report or pay the remaining tax due on or before Nov. 15. The beginning date for the period of limitation for a non- EFT payer that obtains a valid extension under this method is Nov. 16.

#### **90 Percent of Tax Due in Current Report Year Extension Method**

A non-EFT payer may obtain an extension of time to Nov. 15 to file its annual report by:

- filing an extension request on or before May 15,
- remitting with the extension request at least 90 percent of the amount of tax eventually reported as due on the report, and
- filing the report due on or before Nov. 15.

An entity that meets these requirements has a valid extension and the period of limitation begins on Nov. 16.

An entity that attempts to use this extension method and fails to file the extension request and remit, by May 15, 90 percent of the amount of tax reported as due or fails to file a report by Nov. 15 has not met the requirements for a valid extension. The due date of the report and payment of the tax due reverts to May 15. The period of limitation begins on May 16, the day after the last day on which a payment is required.

## **EFT Payer**

### **First Extension**

#### **100 Percent of Tax Due in Prior Report Year Extension Method**

To use this method, the taxable entity must have satisfied its filing requirements for the prior report year on or before May 14 of the report year for which the extension is requested. An entity required to make its tax payments by electronic funds transfer (EFT payer) may obtain an extension of time to Aug. 15 to file its annual report by:

- filing an extension request on or before May 15 and
- remitting with the extension request 100 percent of the amount of tax due in the prior report year.

If the entity meets these requirements, the entity obtains a valid first extension and the report and any remaining tax owed is due on Aug. 15, even if the entity fails to file a report or pay the remaining tax due on or before Aug. 15. The beginning date for the period of limitation for an EFT payer that obtains a valid first extension using this extension method is Aug. 16.

#### **90 Percent of Tax Due in Current Report Year Extension Method**

An EFT payer may obtain an extension of time to Aug. 15 to file its annual report by:

- filing an extension request on or before May 15,
- remitting with the extension request at least 90 percent of the amount of tax eventually reported as due on the report, and
- filing the report due or filing a second extension request on or before Aug. 15.

To obtain a valid extension under this method, an entity must file its report on or before Aug. 15, unless the entity requests a second extension on or before the Aug. 15 due date. If the entity remits, on or before May 15, 90 percent of the amount of tax reported as due and files its report, or requests a second extension, on or before Aug. 15, a valid first extension to Aug. 15 is obtained. The beginning date for the period of limitation is Aug. 16, as that is the day after the last day on which a payment is required.

An entity that fails to remit by May 15 at least 90 percent of the amount of tax eventually reported as due or fails to file either the franchise tax report or a second extension request on or before Aug. 15 has not met the requirements for a first extension and the due date of the report and tax due reverts to May 15. The beginning date for the period of limitation is May 16, as that is the day after the last day on which a payment is required.

### **Second Extension**

An EFT payer that has a valid first extension may obtain a second extension of time to Nov. 15 to file its annual report by:

- filing a second extension request on or before Aug. 15,
- remitting with the extension request the difference between the amount remitted with the first extension request and the amount of tax eventually reported as due on the report, and
- filling the report due on or before Nov. 15.

An entity that obtains a valid second extension by meeting these requirements extends the due date of the report to Nov. 15. If the entity fails to file the second extension request on or before Aug. 15, fails to make the required payment on or before Aug. 15, or fails to file the report on or before Nov. 15, the entity does not have a valid second extension and the due date of the report reverts to Aug. 15.

Regardless of whether a valid second extension is obtained, the beginning date for the period of limitation for an EFT payer that obtains a valid first extension is Aug. 16. This is because Aug. 16 is the day after the last day on which a payment is required.

### **Penalty Waiver**

Section 171.202(h) waives penalty with respect to the second extension payment if the sum of the amounts the entity paid with its first and second extension request is at least 99 percent of the amount reported as due on the report filed on or before Nov. 15. However, an entity that has paid only 99 percent of the amount reported as due with its second extension request has not met the requirements for a valid second extension and does not obtain a valid second extension of time to file its report. An EFT payer must remit, on or before Aug. 15, 100 percent of the tax reported as due to receive a second extension to Nov. 15 to file its report.

### **Conclusion**

The Comptroller's office amended Rule 3.585, relating to annual report extensions, on Oct. 11, 2017, to align the guidance in the rule with the statutory language as interpreted above. EFT payers must remit 100 percent of the tax reported as due on or before Aug. 15 to receive a second extension to Nov. 15 to file a report. The beginning date for the period of limitation for an EFT payer that obtains a valid first extension is Aug. 16, regardless of whether a valid second extension is obtained, as Aug. 16 is the day after the last day on which a payment is required.

Although the Comptroller's office amended Rule 3.585 in 2017, apply this policy to reports originally due on or after Jan. 1, 2020.

### **Appendix**

<b>Taxpayer Type</b>	<b>Extension Method</b>	<b>Beginning Date of Limitation Period</b>
<b>Non-EFT</b>	Valid Extension Extension request and payment timely, and payment meets 100% criteria. Report and remainder of current year's tax due Nov. 15.	Nov. 16
	Invalid Extension Extension request or payment not timely, or payment did not meet 100% criteria. Report and current year's tax due May 15.	May 16
	100% of Prior Year's Tax Due	

	90% of Current Year's Tax Due	Valid Extension		Nov. 16	
		Extension request and payment timely, payment meets 90% criteria, and current year report filed by Nov. 15. Report and remainder of current year's tax due Nov. 15.			
		Invalid Extension		May 16	
		Extension request or payment not timely, payment did not meet 90% criteria, or current year report not filed by Nov. 15. Report and remainder of current year's tax due May 15.			
<b>EFT</b>	First Extension	100% of Prior Year's Tax Due	Valid Extension		Aug. 16
			Extension request and payment timely, and payment meets 100% criteria. Report and remainder of current year's tax due Aug. 15.		
		90% of Current Year's Tax Due	Invalid Extension		May 16
			Extension request or payment not timely, or payment did not meet 100% criteria. Report and current year's tax due May 15.		
			Valid Extension		Aug. 16
			Extension request and payment timely, payment meets 90% criteria, and either current year report or 2nd extension request filed by Aug. 15. Report or 2nd extension request, and remainder of current year's tax due Aug. 15.		
			Invalid Extension		May 16
			Extension request or payment not timely, payment did not meet 90% criteria, or either current year report or 2nd extension request not filed by Aug. 15. Report and remainder of current year's tax due May 15.		
Second Extension (Presumes a valid First Extension)		Valid Extension		Aug. 16	
		Extension request and payment timely, sum of 1st and 2nd extension payments equals tax due on the current year report, and the current year report is filed by Nov. 15. Report Due Nov. 15.			
		Invalid Extension			
		Extension request or payment not timely, sum of 1st and 2nd extension payments do not equal tax due on the current year report, or current year report not filed by Nov. 15. Report and remainder of current year's tax due Aug. 15.			

Note: This chart should not be used for penalty and interest calculation.

ENDNOTES

<sup>1</sup> Unless otherwise indicated, all references to “Section” are to the Texas Tax Code, and all references to “Rule” are to Title 34 of the Texas Administrative Code.

<sup>2</sup> If the date on which the report is due falls on a Saturday, Sunday, or legal holiday, the next day that is not a Saturday, Sunday, or legal holiday becomes the due date. Section 111.053.

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