

## Income/Franchise:

### Texas Comptroller Addresses Treatment of IRC sections 336(e) and 368(a)(1)(C) Elections

*Accession No. 202204015L*, Texas Comptroller of Public Accounts (4/4/22). The Texas Comptroller of Public Accounts (Comptroller) issued a Texas franchise tax ruling related to an unused temporary credit for business loss carryforward (temporary credit) that originated with a member (Subsidiary A) of the taxpayer's combined group, denying the temporary credit in part based on a finding that the Texas franchise tax does *not* recognize the federal income tax elections under Internal Revenue Code sections 336(e) (election to treat transaction as a deemed asset sale for federal tax purposes) and 368(a)(1)(C) (involving tax-free reorganizations). The Comptroller concluded the taxpayer sold 100% of the issued and outstanding shares of Subsidiary A to an unrelated third-party, and Subsidiary A was neither merged nor liquidated into Subsidiary B under Texas law. Further, Tex. Admin. Code title 34 section 3.594(c)(3) provides that if a member of a combined group changes combined groups, the business loss carryforward of that member will no longer be included in the temporary credit calculation of the original group; accordingly, Subsidiary A's temporary credit could no longer be claimed by the taxpayer (*i.e.*, the original combined group). Please contact us with any questions.

**URL:** <https://star.comptroller.texas.gov/view/202204015L>

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