

## Income/Franchise:

### Texas: Gains from Sale of Certain Leasehold Interests Deemed Includable in Franchise Tax Base

*Case No. 03-21-00527-CV*, Tex. Ct. App. (4/21/23). The Texas Third Court of Appeals, Austin (Court of Appeals) affirmed that because a taxpayer's gains from the sale of certain leasehold interests were reportable as income on Form 1065 (Line 11 of Schedule K) for federal tax purposes, such gains are included in "total revenue" for Texas franchise tax purposes notwithstanding contentions that the federal form instructions may have suggested otherwise. The taxpayer claimed the federal Form 1065 instructions expressly excluded gains or losses from the disposition of an interest in oil-and-gas properties as reportable income because the instructions only referenced "disposition of an interest" rather than "gains (losses) from the disposition of an interest." In response, the Court of Appeals explained that (i) gains from the disposition of oil-and-gas properties must constitute "gross income" under a plain reading of the Internal Revenue Code, and (ii) "common sense" suggested the federal Treasury Department did not intend to exclude a type of gross income from the overall federal reporting requirement; as such, the gains from the disposition of oil-and-gas interests were properly "reportable as income" on the taxpayer's federal tax return and therefore included in total revenue for Texas purposes. Further, the Court of Appeals emphasized the taxpayer had the ability to calculate the gain, which was further bolstered by the original return filing that reported the gain essentially using gross proceeds less its purchase price. Please contact us with any questions.

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