



This Week in State Tax (TWIST)

August 12, 2024



Texas: Comptroller Releases Guidance on Statute of Limitations and Educational Testing Taxability

The Comptroller of Public Accounts recently issued a memorandum on the application of the franchise tax statute of limitations when a taxpayer has requested an extension to file its franchise tax report. Generally, the statute of limitations to request refund or for the Comptroller to assess tax is four years from the date on which the tax “becomes due and payable.” Without an extension, franchise tax payments are due by May 15, and the statute of limitations begins to run on May 16. A taxpayer may request an extension to file their tax report by making an estimated payment meeting certain criteria. Of note, the memorandum indicates the beginning date for the statute of limitations for taxpayers required to make payments by electronic funds transfer that have made a valid extension request will be August 16th. Earlier guidance had provided that the beginning date for the statute of limitations was November 16th if an electronic funds taxpayer submitted a 2nd extension request with the required tax payment. The guidance in the memorandum will apply to all reports originally due on or after January 1, 2021.

In another Texas development, the Comptroller recently released a private letter [ruling](#) discussing the taxability of a fee charged by the taxpayer for its computer-based testing service. The taxpayer produces and administers a college admissions exam that helps assess an examinee’s readiness for college. The taxpayer analyzes the examinee’s responses to the test questions and provides an assessment score, which can help determine the examinee’s readiness for higher education. The fee also allowed the examinee to have the taxpayer to send the test score to their high school and up to four colleges. In the past, the test had been administered in-person with supervision, using pencil and paper. The taxpayer planned to offer an option to take the test in-person with supervision, using a computer on which the taxpayer’s downloadable software application would be installed.

The question presented was whether fee charged for the computer-based testing would be subject to sales and use tax as a taxable data processing service. The Comptroller explained that the service contains elements of data processing, including compiling the examinee’s responses, generating an assessment score, and providing the score to the examinee. The Comptroller determined, however, that these activities were performed only to facilitate the testing and assessment of the examinee’s readiness for higher education. Such a service is not an enumerated taxable service in Texas, and it was not, therefore, subject to tax. For more information on [Memorandum 202408001M](#) and [PLR20240206093134](#), please contact [Karey Barton](#).

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