



MULTISTATE INCOME/FRANCHISE TAX

Texas Comptroller announces new policy to follow current federal tax law to determine certain items including bonus depreciation Tax Alert

Overview

The Texas Comptroller's Tax Policy Division released [Memorandum 202512012M](#) ("Memorandum") announcing a new administrative approach to how the Comptroller views Texas conformity to the Internal Revenue Code. Starting with the 2026 tax year, the Comptroller has instructed taxpayers to use current federal tax rules to compute any income or deductions included in the Texas franchise tax return. However, if a Texas statute or rule specifically cites the IRC, taxpayers must instead apply the version of the IRC that was in effect in 2007. This change will have a major impact on companies that elect to use bonus depreciation, especially as the Memorandum has extended this view retroactively to allow a one-time net depreciation adjustment for certain qualifying assets 2026 return.

Texas conformity to federal law

Texas Tax Code §171.0001(9) defines the IRC as that which was in effect for the federal tax year beginning January 1, 2007. However, the Comptroller has reversed its long-time policy of applying this to mean there is a fixed date conformity for any items of income or deduction. Instead, the Memorandum states that the Comptroller's view is that Texas Tax Code §171.0001(9) only applies to the extent Texas statutes specifically reference a section of the IRC. determined that not all amounts taken from the federal return are tied to the 2007 IRC. The memo announces a policy change under which taxpayers use then current federal tax law for amounts used to compute the franchise tax, except where the Texas statute or rule expressly references the IRC.

Bonus depreciation and one-time catch-up adjustment

The Memorandum provides that beginning with the 2026 report, a taxpayer will include in Cost of Goods Sold ("COGS") the depreciation reported on its federal return for each asset that qualifies under §171.1012(c)(6). This amount may include federal bonus depreciation claimed on the federal return for assets placed in service on or after January 19, 2025.

Additionally, the Memorandum states that a taxpayer may compute a one-time net depreciation adjustment for each qualifying asset on its 2026 report, according to the following rules.

- **Qualifying assets.** Assets must have been placed in service prior to the accounting period on which the 2026 report is based, must not have been disposed of before that date, and must be associated with and necessary for the production of goods under Tex. Tax Code §171.1012(c)(6).
- **Year by year depreciation adjustment.** For each tax year the qualifying asset was in service through the accounting period end date on the 2025 report, compute the difference between (i) depreciation claimed on the federal return and (ii) depreciation claimed for Texas franchise tax COGS. The amount may be negative if

franchise tax COGS depreciation exceeded federal depreciation. If no depreciation was claimed in COGS for Texas franchise tax purposes, the adjustment for that year for that asset is zero.

- **Net depreciation adjustment and floor.** Sum the annual adjustments to arrive at the net depreciation adjustment per qualifying asset and include this amount in COGS on the 2026 report. The net depreciation adjustment cannot be less than zero; if the sum is negative, treat it as zero.

The methodology does not explicitly detail how or whether changes in apportionment over different tax years should be taken into account.

Treatment of GILTI and other foreign income

The Memorandum gives the subtraction from total revenue in Tex. Tax Code § 171.1011(c) for amounts “determined under Section 78 or Sections 951-964 of the IRC,” which would include GILTI, as an example of where the law as of 2007 would continue to apply. The Memorandum explains that “amounts under Section 78 and Sections 951-964 are determined under the 2007 IRC and do not include the current IRC Section 951A global intangible low-taxed income (GILTI) as GILTI was added to the IRC after January 1, 2007.” The Memorandum does not explicitly address, however, whether the reference to Section 951A in Tex. Tax Code § 171.1011(c) would mean that the 2007 IRC would also apply in determining whether GILTI, which would otherwise be included in lines 4 through 10 of the Internal Revenue Service Form 1120, would be included in income for Texas tax purposes.

Treatment of section 174 and other federal items

This change would potentially affect a number of other items that are not addressed in the Memorandum. For example, Tex. Tax Code § 171.1012(c)(9) includes in the COGS deduction, “costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Section 174, Internal Revenue Code.” This would appear to fix application of section 174 items to the version applicable in 2007 under the Comptroller’s methodology. However, careful consideration will need to be given to significant federal items and the application of the Comptroller’s announcement.

Get in touch

[Alexis Morrison-Howe](#)

[Robert Topp](#)

[Grace Taylor](#)

[Crissy Williams](#)

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