



TTARA 2017

Texas Comptroller Panel

Updates for Chapter 313, Franchise Tax, and Other Statistics

November 30, 2017

Mike Reissig, Moderator

Deputy Comptroller

Texas Comptroller of Public Accounts



Chapter 313 Update and Changes

- In its 14th year, the program is dynamic and growing.
- 2016 - 37 new applications and 32 amendments.
- 2017 to date - 61 new applications and 33 amendments.
- Forms are being revised to streamline processes, reduce administrative burden and make them easier to understand.



Chapter 313 Update and Changes

- The program is moving to electronic reporting.
 - Will remove hard-copy format requirement.
 - Will shorten the time needed to complete the forms.
 - Will address reporting issues identified in the last State Auditor's Office report.
- The program is also implementing SB 277 that was passed the last legislative session.
 - Wind-power electric generation devices.
 - Fixed-wing military aviation facilities.



Franchise Tax Revenue Before and After Margin

Earned Surplus/Taxable Capital

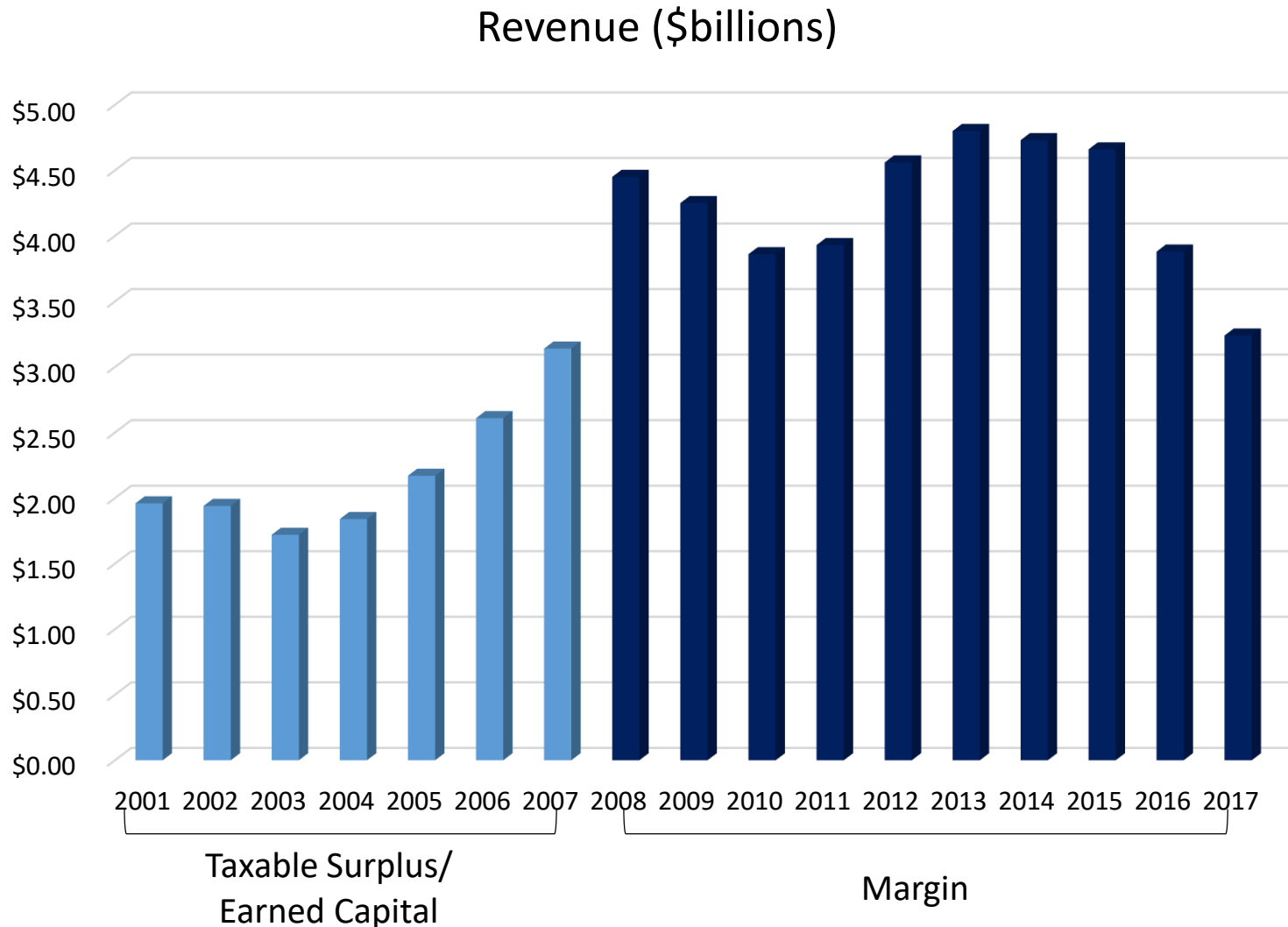
Fiscal Year	Revenue (\$billions)	Tax as % of GSP	% of All Taxes
2001	\$1.96	0.25%	7.21%
2002	\$1.94	0.24%	7.40%
2003	\$1.72	0.21%	6.59%
2004	\$1.84	0.20%	6.62%
2005	\$2.17	0.22%	7.28%
2006	\$2.61	0.24%	7.81%
2007	\$3.14	0.27%	8.72%

Margin

Fiscal Year	Revenue (\$billions)	Tax as % of GSP	% of All Taxes
2008	\$4.45	0.36%	11.50%
2009	\$4.25	0.36%	12.07%
2010	\$3.86	0.32%	11.63%
2011	\$3.93	0.30%	10.77%
2012	\$4.56	0.32%	11.09%
2013	\$4.80	0.32%	10.76%
2014	\$4.73	0.30%	9.83%
2015	\$4.66	0.29%	9.00%
2016	\$3.88	0.24%	8.00%
2017	\$3.24	0.18%	6.52%



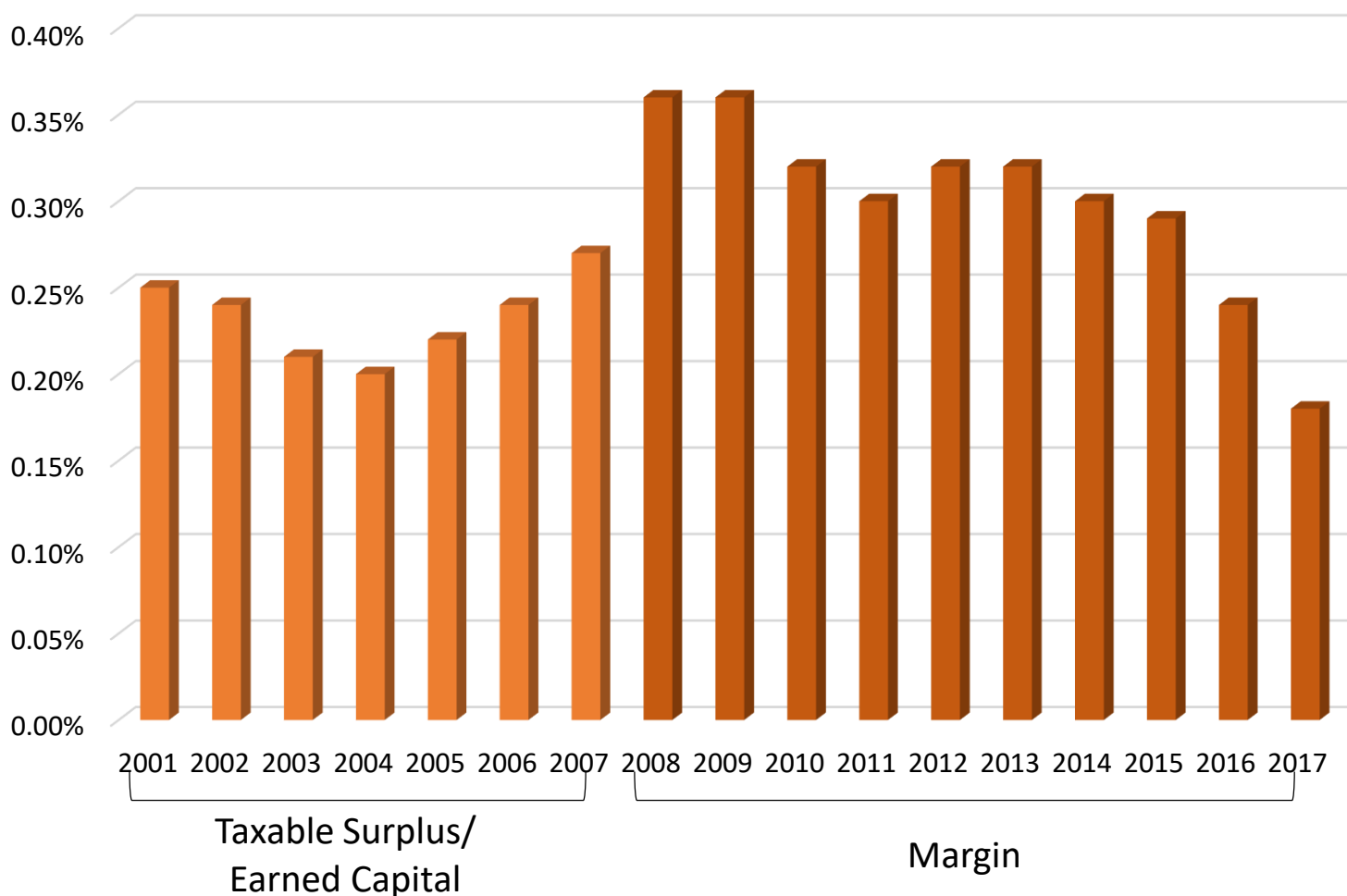
Franchise Tax Revenue Before and After Margin





Franchise Tax Revenue Before and After Margin

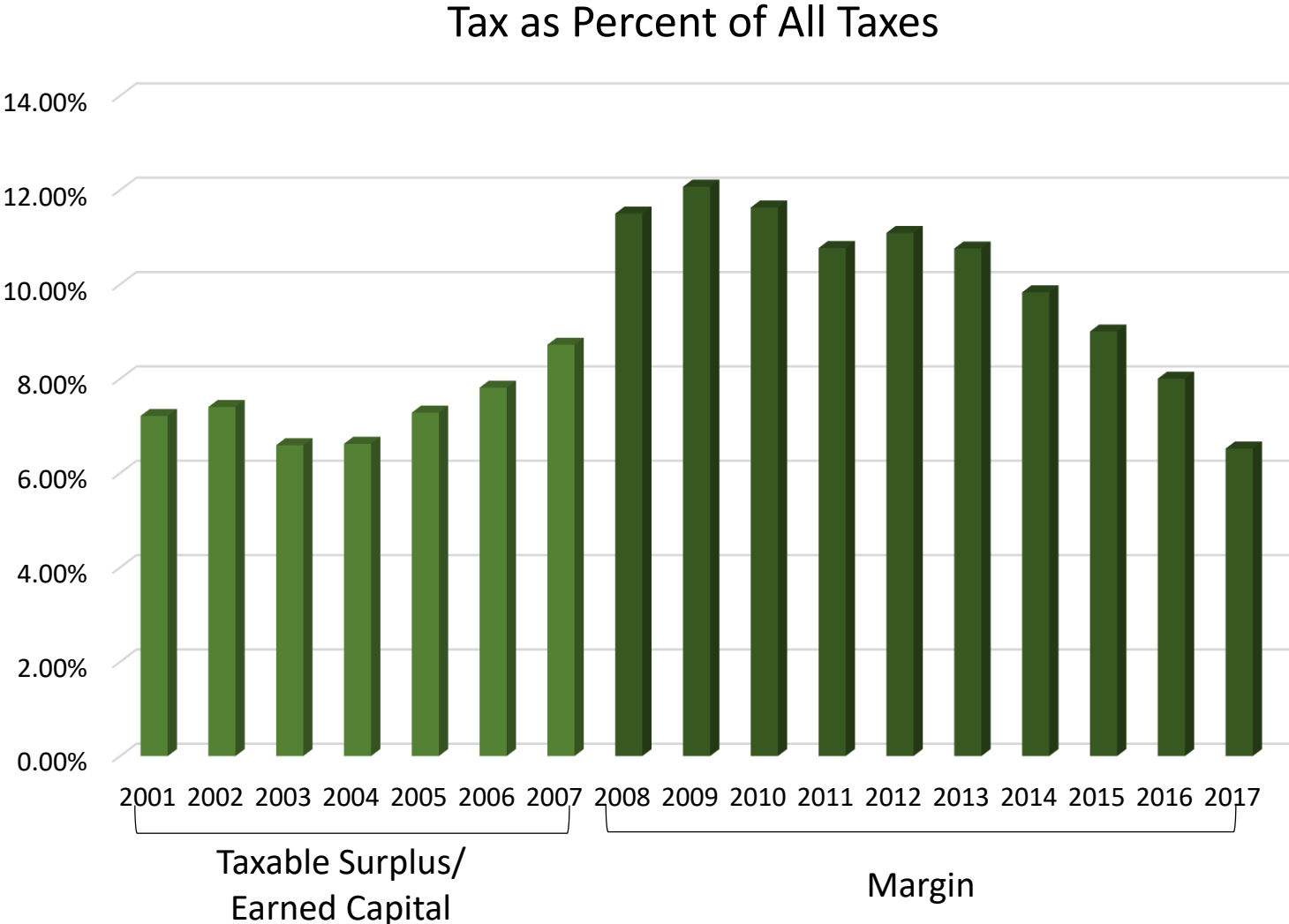
Tax as Percent of Gross State Product





Franchise Tax Revenue

Before and After Margin





Franchise Tax Margin Base

Report Year Analysis

(\$thousands)

Fiscal Year	Base	Legislation	Total	Tax Relief %
2008	\$4,451,325	\$0	\$4,451,326	0%
2009	\$4,250,332	\$0	\$4,250,332	0%
2010	\$3,940,303	(\$83,437)	\$3,856,866	2%
2011	\$4,014,864	(\$82,750)	\$3,932,114	2%
2012	\$4,647,931	(\$83,200)	\$4,564,731	2%
2013	\$4,887,199	(\$88,500)	\$4,798,699	2%
2014	\$5,174,506	(\$442,244)	\$4,732,262	9%
2015	\$5,115,286	(\$459,000)	\$4,656,286	9%
2016	\$5,507,492	(\$1,626,316)	\$3,881,176	30%
2017	\$4,834,009	(\$1,591,790)	\$3,242,219	33%



Property Tax Relief Fund

Tax Revenue 2013 & 2017

(\$thousands)

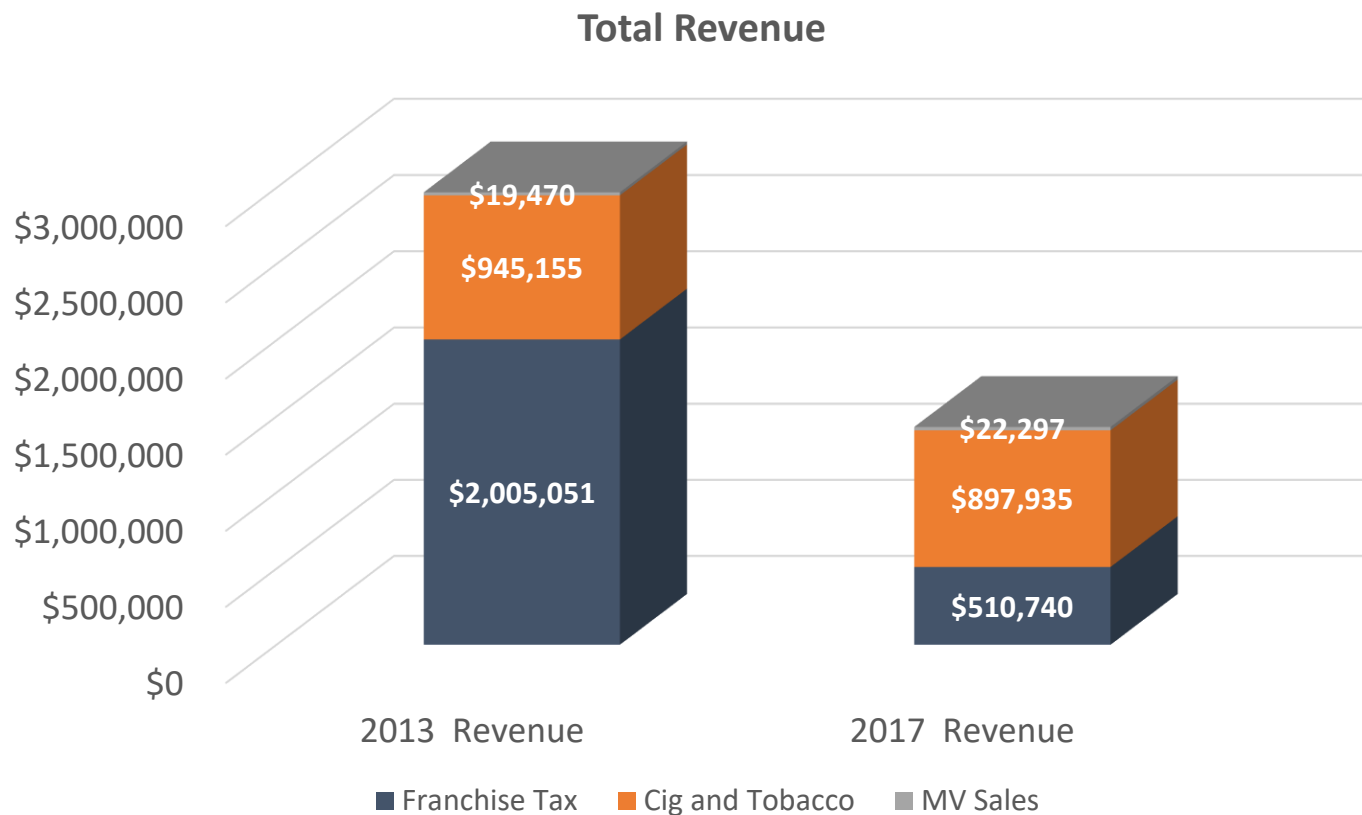
<u>Tax</u>	2013		2017	
	<u>Revenue</u>	<u>Pct.</u>	<u>Revenue</u>	<u>Pct.</u>
Franchise Tax	\$2,005,051	68%	\$510,740	36%
Cig and Tobacco	\$945,155	32%	\$897,935	63%
MV Sales	<u>\$19,470</u>	<u>1%</u>	<u>\$22,297</u>	<u>2%</u>
Total	\$2,969,676	100%	\$1,430,972	100%



Property Tax Relief Fund

Tax Revenue 2013 & 2017

(\$thousands)





Franchise Tax Margin Base

Report Year	<u>2009</u>	<u>2013</u>	<u>2016</u>
Apportionment Ratio	10.1%	9.8%	10.2%
Texas Revenue (\$millions)	\$2,425	\$2,457	\$2,525
% of Texas Rev with COGS	86%	85%	82%
Average Applied Tax Rate	0.89%	0.88%	0.61%
Avg. Rate on Texas Receipts	0.18%	0.19%	0.14%



Franchise Tax Paid

by Deduction Type

(\$millions)

<u>Deduction</u>	2009		2013		2016	
	<u>Tax Paid</u>	<u>Deduction % of Total Revenue</u>	<u>Tax Paid</u>	<u>Deduction % of Total Revenue</u>	<u>Tax Paid</u>	<u>Deduction % of Total Revenue</u>
COGS	\$2,657.3	84%	\$2,769.8	85%	\$2,030.5	82%
70%	\$771.4	30%	\$900.0	30%	\$725.6	30%
Compensation	\$698.0	56%	\$797.3	56%	\$586.6	56%
EZ	\$242.7	43%	\$262.3	43%	\$255.3	57%
\$1 million	N.A.		N.A.		\$59.8	73%
Total	\$4,369.4		\$4,729.4		\$3,657.8	



Some Pending Franchise Tax Cases

2016

- ***Graphic Packaging v. Hegar***, Tex. S. Ct. No. 15-0669
 - Can taxpayer use MTC three factor allocation?
 - 09/30/2016 Petitioner's Brief on the Merits
- ***American Multi-Cinema, Inc. v. Hegar***,
Austin Ct. App. No. 03-14-00397-CV
 - Do movie theaters get COGS?
 - 01/19/2016 State's Reply in Support of State's MRH
- ***Sirius XM Radio, Inc. v. Hegar***,
Travis Co. Dist. Ct. No. D-1-GN-16-000739
 - Apportionment, COGS, flow-through funds mandated by law
 - Discovery in progress



Some Pending Franchise Tax Cases

2017

- ***Graphic Packaging v. Hegar***, Tex. S. Ct. No. 15-0669
 - Can taxpayer use MTC three factor allocation?
 - 09/13/2017 Oral Argument
- ***American Multi-Cinema, Inc. v. Hegar***,
Tex. S. Ct. No. 17-0464
 - Do movie theaters get COGS?
 - 11/21/2017 Reply to State's Petition for Review Due
- ***Sirius XM Radio, Inc. v. Hegar***,
Travis Co. Dist. Ct. No. D-1-GN-16-000739
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Sons of ***American Multi-Cinema, Inc. v. Hegar***

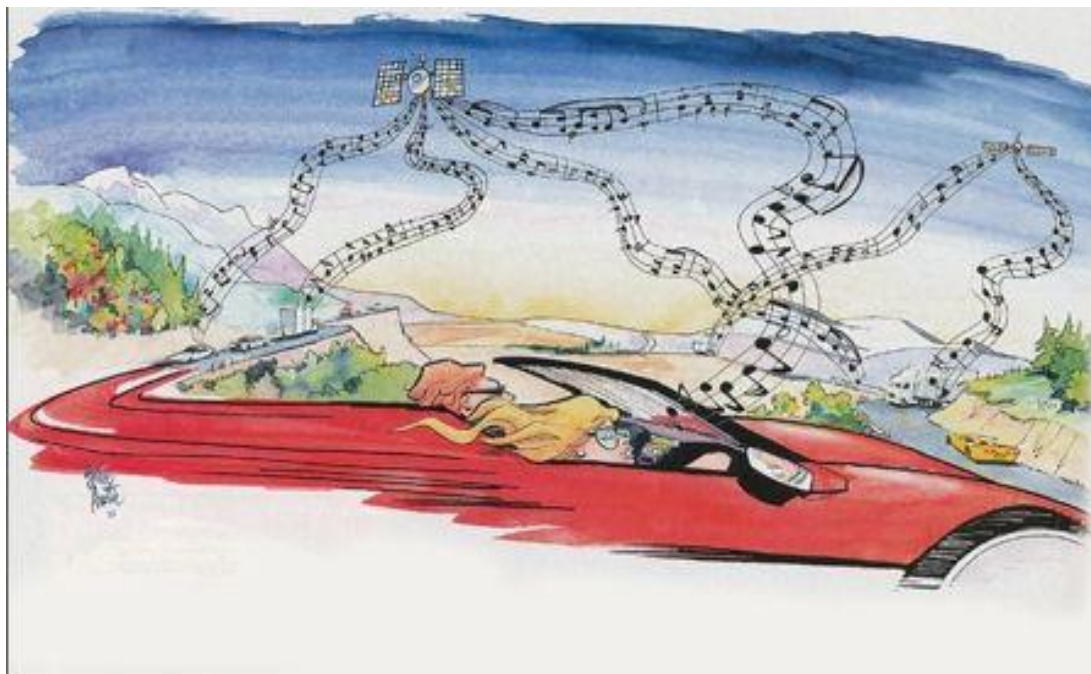
- ***Dallas World Aquarium v. Hegar***, No. D-1-GN-15-004255,
Travis County District Court
- ***Colonial Country Club v. Hegar***, No. D-1-GN-16-005464,
Travis County District Court
- ***Sirius XM Radio, Inc. v. Hegar***, No. D-1-GN-16-000739,
Travis County District Court



Sirius XM Radio, Inc. V. Hegar

Franchise Tax Apportionment

- Where do you source satellite radio subscription receipts?





Volatility of Selected Revenue, Spending Drivers, & Economic Measures 2000-01 to 2016-17

<u>Measure</u>	<u>Type</u>	<u>Volatility to Growth Ratio</u>	<u>Average Deviation of Growth Rates</u>	<u>Average Biennial Growth</u>
Oil and Gas Severance Taxes	Revenue	5.8	39.7%	6.9%
Franchise Tax*	Revenue	3.1	8.8%	2.8%
Motor Vehicle Sale and Rental Taxes	Revenue	1.8	10.8%	6.1%
Total Tax Collections	Revenue	1.1	9.3%	8.1%
Sales Tax	Revenue	0.8	7.5%	9.0%
Insurance Tax	Revenue	0.7	9.6%	14.0%
GSP (Current \$)	Economy	0.5	4.8%	10.4%
Medicaid Average Monthly Caseload**	Spending	0.4	8.2%	19.3%
Public Higher Ed. Enrollment**	Spending	0.4	4.1%	9.9%
Motor Fuels Taxes	Revenue	0.4	1.3%	3.3%
Personal Income	Economy	0.3	3.3%	10.6%
Inflation CPI	Economy	0.3	1.3%	4.2%
Alcoholic Beverage Taxes	Revenue	0.3	3.1%	10.8%
Public School Students ADA**	Spending	0.2	1.6%	8.0%
Medical Inflation CPI	Spending	0.2	1.6%	8.0%
Population	Economy	0.1	0.3%	3.6%

* Margin base for 2008-09 to 2016-17 adjusted for tax rate reductions.

** Adjusted for inflation.



How Broad are Sales Taxes in the 15 Largest States?

Overall Rank	State	Rank Among 45 States w/ Sales Taxes	2016 Tax Base % of GSP	Rank of 45 States	2007--Services Taxable (of 197)	Rank of 45 States
1	Washington	2	44.40%	3	158	2
2	Texas	7	31.80%	18	83	7
3	Florida	10	40.10%	10	63	18
4	Ohio	12	34.00%	14	68	15
5	New Jersey	23	22.80%	36	74	11
6	Michigan	28	31.30%	20	26	35
7	Pennsylvania	29	23.50%	35	55	22
8	Georgia	30	26.10%	31	36	27
9	New York	31	22.70%	37	57	21
10	North Carolina	33	29.20%	28	30	31
11	Maryland	39	19.80%	42	39	25
12	California	42	20.10%	40	21	40
13	Massachusetts	43	19.20%	43	18	41
14	Virginia	44	15.00%	45	18	41
15	Illinois	45	18.30%	44	17	44

Sources: Bureau of Economic Analysis; Census Bureau; Federation of Tax Administrators



Are Taxes Becoming Less Important?

(Selected Fiscal Years)

Revenue Collections (\$billions)

<u>Source</u>	<u>1972</u>	<u>1994</u>	<u>2017</u>
Taxes	\$2.34	\$18.11	\$49.64
Fees	0.30	2.19	6.38
Other non-federal	0.21	5.86	16.81
Total	\$2.86	\$26.16	\$72.83

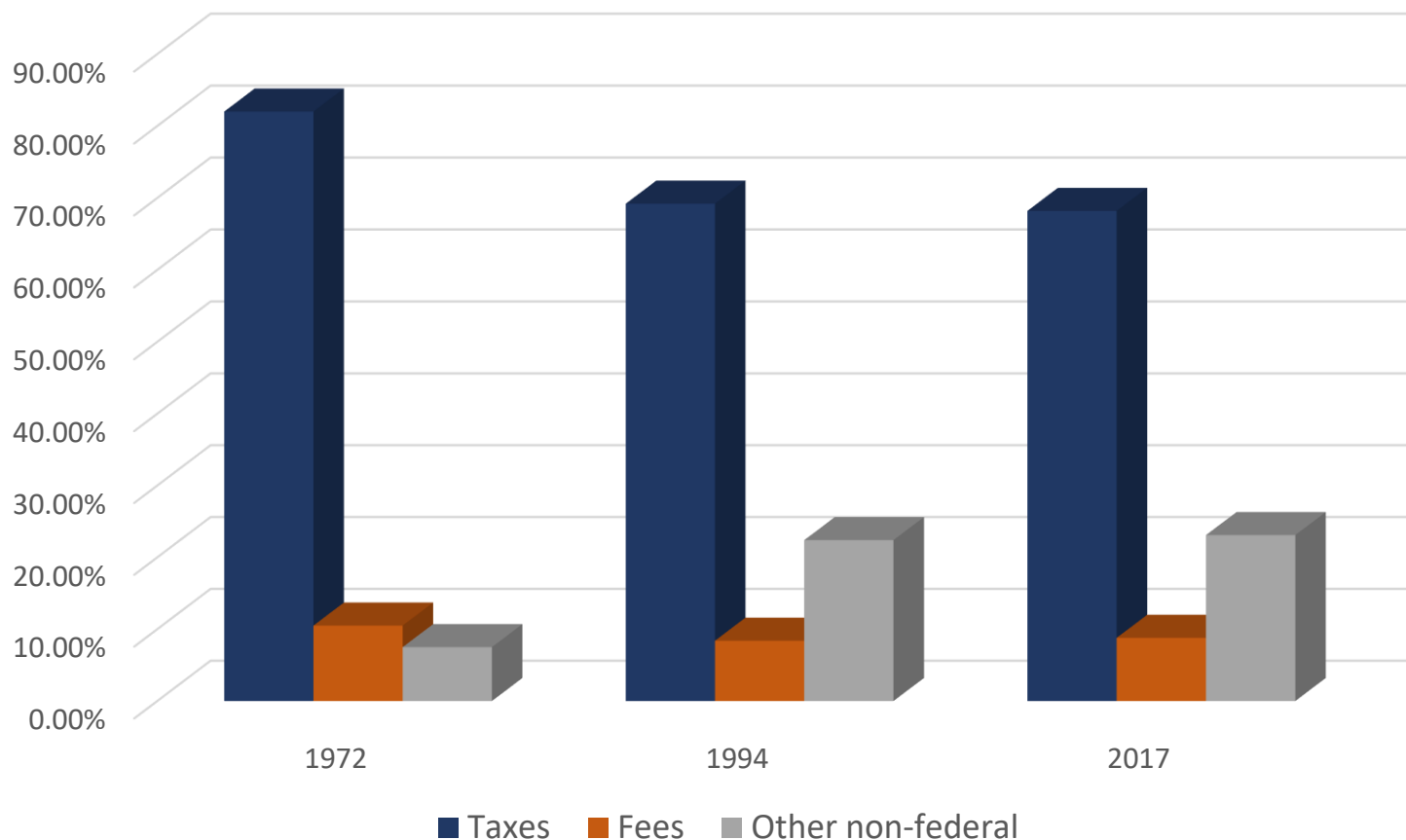
Percent of Total

<u>Source</u>	<u>1972</u>	<u>1994</u>	<u>2017</u>
Taxes	82.0%	69.2%	68.2%
Fees	10.5%	8.4%	8.8%
Other non-federal	7.5%	22.4%	23.1%
Total	100.0%	100.0%	100.0%



Are Taxes Becoming Less Important? (Selected Fiscal Years)

Percent of Total





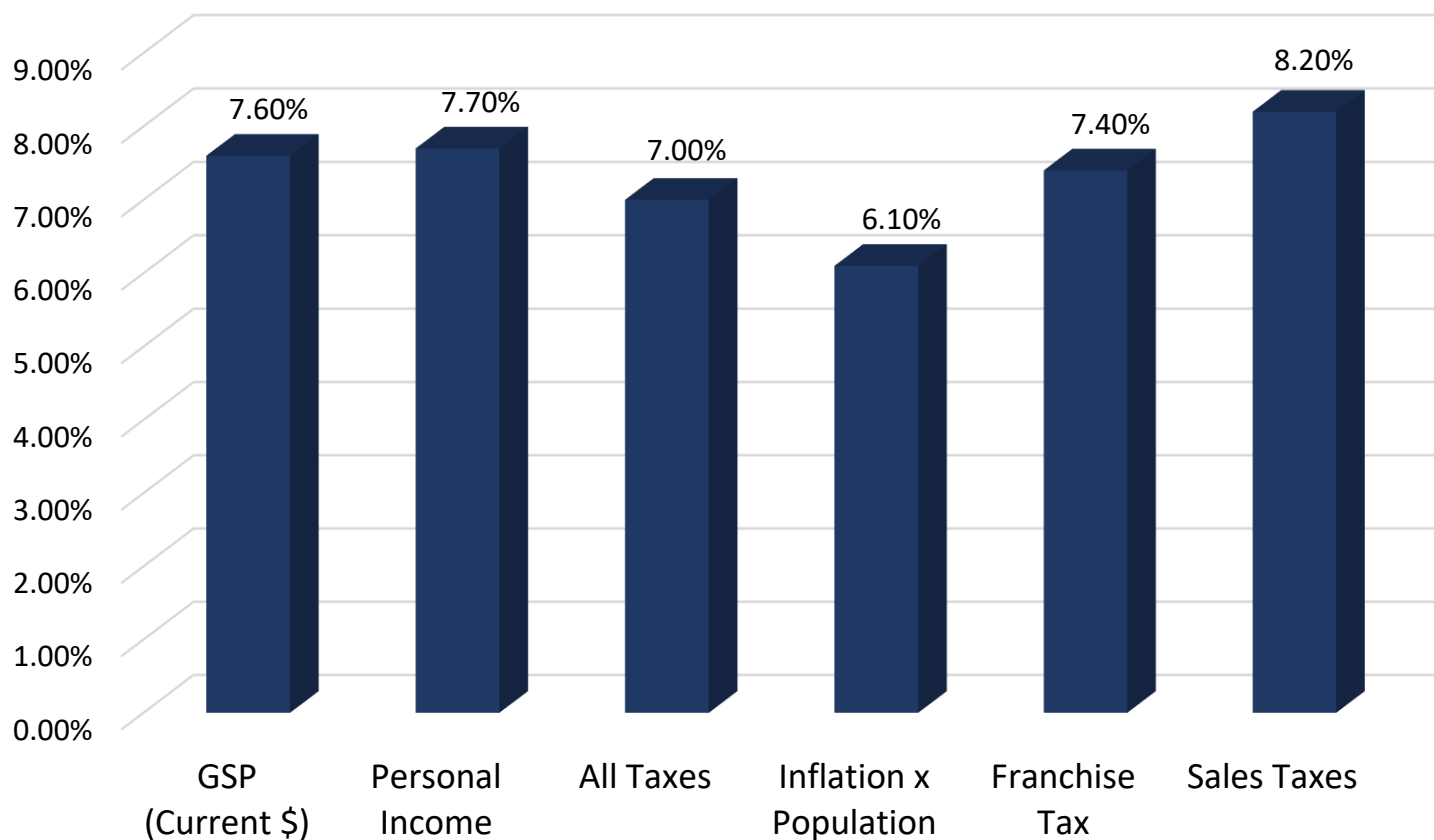
Average Annual Growth of Texas Taxes and Certain Economic Growth Measures 1972-2017

Gross State Product (Current \$)	7.6%
Personal Income	7.7%
All Taxes	7.0%
Inflation x Population	6.1%
Franchise Tax	7.4%
Sales Taxes	8.2%



Average Annual Growth

Texas Taxes and Economic Growth Measures 1972-2017





Some Pending Sales Tax Cases

2016

- ***Southwest Royalties, Inc. v. Hegar***, Tex. S. Ct. No. 14-0743
 - Manufacturing exemption for downhole equipment
 - 09/06/2016 Petitioner's Motion for Rehearing
- ***Anatole Partners III, Inc. v. Hegar***,
Travis Co. Dist. Ct. No. D-1-GN-15-001398
 - Sale for resale exemption for hotel amenities
 - 08/31/2016 Summary Judgment Hearing
- ***Fitness International, LLC v. Hegar***, Tex. S. Ct. No. 16-0482
 - Sale for resale exemption on stationary gym equipment
 - 08/31/2016 Petition for Review



Some ~~Pending~~ Sales Tax Cases

2017

- ***Southwest Royalties, Inc. v. Hegar***, Tex. S. Ct. No. 14-0743
 - Manufacturing exemption for downhole equipment
 - 10/21/2016 Motion for Rehearing denied
- ***Anatole Partners III, Inc. v. Hegar***,
Travis Co. Dist. Ct. No. D-1-GN-15-001398
 - Sale for resale exemption for hotel amenities
 - 02/02/2017 Summary Judgment for State
- ***Fitness International, LLC v. Hegar***, Tex. S. Ct. No. 16-0482
 - Sale for resale exemption on stationary gym equipment
 - 02/17/2017 Petition for Review denied



Sale for Resale Exemption

Rule 3.285 (eff. 11/01/2017)

(6) Tangible personal property used to perform a taxable service is not considered resold unless the care, custody, and control of the tangible personal property is transferred to the purchaser of the service. The care, custody, and control of tangible personal property is transferred to the purchaser of the service when the purchaser has primary possession of the tangible personal property.



Sale for Resale Rule 3.285 ***(eff. 11/01/2017)***

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, to have primary possession, the purchaser or the purchaser's designee must have:

(i) physical possession of the tangible personal property off of the premises of the service provider;

(ii) a contractual duty to care for the tangible personal property. At a minimum, the contract must prohibit the purchaser from damaging the tangible personal property or impose liability if the purchaser damages the tangible personal property; and

(iii) a superior right to use the tangible personal property for a contractually specified period of time.



Sale for Resale Rule 3.285 ***(eff. 11/01/2017)***

(B) The purchaser may have primary possession of tangible personal property if the purchaser or the purchaser's designee has physical possession of the tangible personal property and directly consumes the tangible personal property during the provision of the taxable service...

(C) A purchaser may have primary possession of a computer program if the purchaser acquires a license to use the computer program from the service provider and the service provider does not retain the right to use the computer program under that license.

Sexually Oriented Business Fee





Sexually Oriented Business Fee

- *RPM Dining*, D-1-GN-17-004451, D-1-GN-17-003586
- *Alam and Panah*, D-1-GN-17-003987
- *Allen Sena*, D-1-GN-17-006148
- *Centex Business Consultants*, D-1-GN-17-006044)
- *Duncan Burch*, D-1-GN-17-005165
- *Gateway Regency*, D-1-GN-17-003680
- *Badger Tavern*, D-1-GN-17-003415
- *TMBJ Investments*, D-1-GN-17-002879
- *JAI Dining*, D-1-GN-17-002833
- *Texas BLC*, D-1-GN-17-002768
- *Michael D's Restaurant San Antonio*, D-1-GN-17-005915
- *RJL Dining*, D-1-GN-17-005594
- *South Houston Taverns*, D-1-GN-17-005814
- *MZ Entertainment*, D-1-GN-17-002762
- *Flashdancer*, D-1-GN-16-001361
- *I Gotcha Inc.*, D-1-GN-16-000787, D-1-GN-08-002546
- *Green Star International*, D-1-GN-15-005643
- *Ice Embassy*, D-1-GN-15-002546
- *Texas Entertainment Association*, 1:17-cv-00594 (Fed)

Clothed
or
Unclothed?

