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## Texas Gross Margins Tax Upheld

*By Foy Mitchell, Dallas*

The Texas Supreme Court has ruled the state's primary business tax doesn't violate a constitutional ban on personal income taxes.

Since the Gross Margins Tax is assessed on businesses and not individuals, justices decided it doesn't violate state law requiring voter approval on new state income taxes.

Despite the ruling, the controversy over the tax is far from over.

### REVENUES FALL SHORT

The Gross Margins Tax was the centerpiece of the school finance package approved by the Texas Legislature in 2006. It was designed to help offset the cost of local school property tax cuts, which amounted to almost 33% of the annual school tax when first initiated.

However, the Margins Tax has consistently failed to meet expectations, falling \$4.6 billion short this biennium according to the Legislative Budget Board. Furthermore, the State Comptroller's office estimates the "structural budget" shortfall may approach \$10 billion per biennium.

### PROBLEMS PERSIST

Companies doing business in Texas already pay 60% of all state and local taxes, including property taxes, sales taxes, business taxes and more. Business owners complain that the Gross Margins Tax is so complex that it imposes high compliance costs.

To make matters worse, since the tax is based on revenues minus allowed deductions, some companies that lose money still owe tax to the state.

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## **REVERT BACK TO A FRANCHISE TAX?**

The National Federation of Independent Business in Texas wants the Legislature to consider replacing the Gross Margins Tax with one similar to the “profit mode” franchise tax that was used before 2007.

The old franchise tax had many loopholes that allowed businesses to escape taxation but NFIB officials think that can be fixed. They believe if more Texas companies are taxed in a profit-based system, the state can receive more money than under the current revenue-based Gross Margins Tax.

## **SOLUTION WILL HAVE TO WAIT**

The Legislature doesn’t go back into session until 2013 to deal with problems associated with the budget and the Gross Margins Tax.

In the meantime, the House Ways and Means Committee plans to evaluate the state’s entire tax structure to determine its effect on economic growth, capital investment and job creation.

As part of the review, the committee will study the Gross Margins Tax and determine “whether the tax structure should continue to exist in its current form, in a revised form, or whether the existing tax structure should be repealed and replaced with a different business tax.”