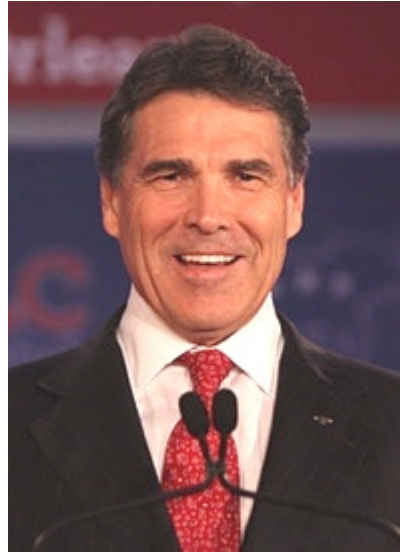




Written by [Kelly Holt](#) on August 23, 2011

## Rick Perry and the Largest Tax Hike In Texas

In Rick Perry's August 13 presidential announcement speech in South Carolina the Texas Governor (photo at left) stated: ....we have led Texas based on some just really pretty simple guiding principles. One is don't spend all of the money. Two is keeping the taxes low and under control. Three is you have your regulatory climate fair and predictable.



Later in his speech he claimed:

I've cut taxes. I have delivered historic property tax reductions. I was the first governor since World War II to cut general revenue spending in our state budget.

But Perry's record on taxes reveals something entirely different. Especially for Texas businesses, where things are far from fair and predictable.

On May 18, 2006 Perry signed into law a Business Margin Tax that dramatically changed the way businesses are taxed in Texas. The *Dallas Morning News (DMN)* May 16, 2006 called it ["the largest tax increase in Texas"](#). The paper continued,

In 2006, the state was facing a judicial mandate to change the unconstitutional way it funded public schools, mostly through property taxes. Under Perry's leadership, a tax swap was created that cut school property taxes by up to one-third. To pay for that, Perry signed a bill that nearly tripled the amount Texas collects from businesses. The tax swap created a net tax decrease, but the new business tax coupled with one added to tobacco still counts as the largest tax increase in Texas.

Crafted to replace the Texas Franchise Tax, it was explained by [Harper and Pearson](#), a CPA firm in Houston, Texas, as "a tax on taxable margin, which is a concept similar to taxable income. Generally, an entity's taxable margin is its revenue as reported on its federal income tax return less either its cost of goods sold or its compensation expense (limited to \$300,000 per employee), but not both." But there was widespread confusion over how the law permitted the calculation of cost of goods sold and which expenses were considered.

And *Texas Conservative Review (TCR)* echoed the *DMN*, adding,

[\[W\]hat really irks conservatives](#) is a business would have to pay taxes whether it made a profit or not. In that way, it is worse than a corporate income tax. The non-partisan Tax Foundation in 2006 described gross receipts taxes as poor tax policy that lead to harmful tax pyramiding, distort companies [sic] structures, and damage the performance of state and local economies. The tax was sold as a "trade-off" for lower property taxes. This is a recurring myth that never works...



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In other words, critics say, it's the same as having an income tax. Which is prohibited by the Texas Constitution that the Governor has sworn to uphold.

TCR continued,

It's hard to believe but the Texas Gross Receipts (Margins) Tax on business proposed by a Republican, Governor Perry, and passed by a GOP dominated legislature in 2006 was further complicated in 2007. This was the largest tax increase in Texas history, which requires business to pay up to 10% of its gross income to the state while large corporations were given loopholes.

And Texas Representative [Gary Elkins](#) (R) wrote,

I cast a "no" vote today on HB 3 for a number of significant reasons. First, this bill calls for the imposition of nothing less than an income tax on Texas business owners — a gross net receipts tax. Texas has a long-standing tradition of paying our way as we go. Given the substantial and ever-growing budget surplus, it is unconscionable to burden Texans with a new tax when we can simply use their money to meet the mandate imposed on us by the Texas Supreme Court.

He explained the effect on business like this:

... this new tax will have the effect of punishing many businesses that have unexpected expenses. For example, a service company that has a gross revenue of \$1 million and payroll expenses of half a million dollars will pay a new income (franchise) tax of 1 percent on \$500,000, or \$5,000. Suppose that this company was frivolously sued and spent half a million dollars defending itself. This company would likely sustain a net operating loss in the year that it was sued but would nevertheless owe the State of Texas a franchise tax on income that was never realized. In addition, HB 3 does not take into consideration the numerous other expenses that are not related to payroll. For example, rent, phones, advertising, maintenance contracts on business equipment, casualty insurance, key man insurance, property taxes on real estate and business equipment, bank interest on notes, lease payments on equipment, occupancy taxes, filing fees, and a myriad of other expenses are not deductible under this new tax scheme.

He closed by adding,

The governor's own policy advisor has informed members of the house that the average small service sector business will pay more in taxes and in most cases double, triple, or even quadruple what they are currently paying under the current franchise tax system.

The *Houston Chronicle* also argued that the tax is unconstitutional because the Texas Constitution requires a statewide vote in order to pass an income tax on individuals — including income they receive from partnerships — that Perry's tax was enacted without a vote of the people, and that it taxes partnerships. The article noted astute [law student](#) Nikki Laing's observation that just because the law declares itself not to be an income tax doesn't make it so. She cited " a number of U.S. Supreme Court decisions on the point, including one that said 'the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act.'"

Critics note that particularly unfair is the feature that [businesses are taxed differently](#) according to their classifications. According to a February 6 article in the *Houston Chronicle*, for example, businesses such as independently owned auto repair shops are taxed twice as much as, say, a dealership or franchise store, for the same services.



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Beginning in 2012, the exemption from the tax falls from \$1 million in revenue to \$600,000, but it is uncertain whether that exemption will be extended.

The Tax Foundation's evaluation of the measure is this:

With the Texas margin tax collecting far less in revenue than expected, causing significant confusion and compliance costs, resulting in significant litigation and controversy over "cost of goods sold" definitions, and facing calls for substantial overhaul and even repeal, it [should not be used as a model tax](#) reform for any other state.

Regardless of Perry's rhetoric, and his claims that the Texas financial climate is robust and healthy, businessmen in Texas disagree, saying that his policy regarding the business tax is hardly the fair and equitable practice Perry claims he oversees. And prudent observers ask if he will repeat such practices if elected to the White House.



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