

By: Mowery

H.B. No. 42

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of a minimum franchise tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 171.002(a), (b), and (d), Tax Code, are amended to read as follows:

(a) Except as provided by Subsection (d), the ~~[The]~~ rates of the franchise tax are:

(1) 0.25 percent per year of privilege period of net taxable capital; and

(2) 4.5 percent of net taxable earned surplus.

(b) Except as provided by Subsection (d), the ~~[The]~~ amount of franchise tax on each corporation is computed by adding the following:

(1) the amount calculated by applying the tax rate prescribed by Subsection (a)(1) to the corporation's net taxable capital; and

(2) the difference between:

(A) the amount calculated by applying the tax rate prescribed by Subsection (a)(2) to the corporation's net taxable earned surplus; and

(B) the amount determined under Subdivision (1).

(d) If the amount of tax computed under Subsection (b) is less than \$100 after all credits are claimed, the amount of the tax is \$100 ~~[A corporation is not required to pay any tax and is not~~

1 ~~considered to owe any tax for a period if:~~

2 ~~[(1) the amount of tax computed for the corporation is~~
3 ~~less than \$100; or~~

4 ~~[(2) the amount of the corporation's gross receipts:~~

5 ~~[(A) from its entire business under Section~~
6 ~~171.105 is less than \$150,000; and~~

7 ~~[(B) from its entire business under Section~~
8 ~~171.1051, including the amount excepted under Section 171.1051(a),~~
9 ~~is less than \$150,000].~~

10 SECTION 2. Section 171.201(a), Tax Code, is amended to read
11 as follows:

12 (a) A ~~[Except as provided by Section 171.2022, a]~~
13 corporation on which the franchise tax is imposed shall file an
14 initial report with the comptroller containing:

15 (1) information showing the financial condition of the
16 corporation on the day that is the last day of a calendar month and
17 that is nearest to the end of the corporation's first year of
18 business;

19 (2) the name and address of each officer and director
20 of the corporation;

21 (3) the name and address of the agent of the
22 corporation designated under Section 171.354; and

23 (4) other information required by the comptroller.

24 SECTION 3. Sections 171.202(a) and (d), Tax Code, are
25 amended to read as follows:

26 (a) A ~~[Except as provided by Section 171.2022, a]~~
27 corporation on which the franchise tax is imposed shall file an

1 annual report with the comptroller containing:

2 (1) financial information of the corporation
3 necessary to compute the tax under this chapter;

4 (2) the name and address of each officer and director
5 of the corporation;

6 (3) the name and address of the agent of the
7 corporation designated under Section 171.354; and

8 (4) other information required by the comptroller.

9 (d) In the case of a taxpayer whose previous return was its
10 initial report, the optional payment provided under Subsection
11 (c)(2)(B) or (e)(2)(B) must be equal to the greater of:

12 (1) an amount produced by multiplying the net taxable
13 capital, as reported on the initial report filed on or before May
14 14, by the rate of tax in Section 171.002(a)(1) that is effective
15 January 1 of the year in which the report is due; ~~[or]~~

16 (2) an amount produced by multiplying the net taxable
17 earned surplus, as reported on the initial report filed on or before
18 May 14, by the rate of tax in Section 171.002(a)(2) that is
19 effective January 1 of the year in which the report is due; or

20 (3) \$100.

21 SECTION 4. Section 171.203(a), Tax Code, is amended to read
22 as follows:

23 (a) A corporation on which the franchise tax is imposed [~~7~~
24 ~~regardless of whether the corporation is required to pay any tax,~~]
25 shall file a report with the comptroller containing:

26 (1) the name of each corporation in which the
27 corporation filing the report owns a 10 percent or greater interest

1 and the percentage owned by the corporation;

2 (2) the name of each corporation that owns a 10 percent
3 or greater interest in the corporation filing the report;

4 (3) the name, title, and mailing address of each
5 person who is an officer or director of the corporation on the date
6 the report is filed and the expiration date of each person's term as
7 an officer or director, if any;

8 (4) the name and address of the agent of the
9 corporation designated under Section 171.354 of this code; and

10 (5) the address of the corporation's principal office
11 and principal place of business.

12 SECTION 5. Section 171.204, Tax Code, is amended to read as
13 follows:

14 Sec. 171.204. INFORMATION REPORT. To ~~[(a) Except as~~
15 ~~provided by Subsection (b), to determine eligibility for the~~
16 ~~exemption provided by Section 171.2022, or to]~~ determine the amount
17 of the franchise tax or the correctness of a franchise tax report,
18 the comptroller may require an officer of a corporation that may be
19 subject to the tax imposed under this chapter to file an information
20 report with the comptroller stating the amount of the corporation's
21 taxable capital and earned surplus, or any other information the
22 comptroller may request.

23 ~~[(b) The comptroller may require an officer of a corporation~~
24 ~~that does not owe any tax because of the application of Section~~
25 ~~171.002(d)(2) to file an abbreviated information report with the~~
26 ~~comptroller stating the amount of the corporation's gross receipts~~
27 ~~from its entire business. The comptroller may not require a~~

1 ~~corporation described by this subsection to file an information~~
2 ~~report that requires the corporation to report or compute its~~
3 ~~earned surplus or taxable capital.]~~

4 SECTION 6. Section 171.851, Tax Code, is amended to read as
5 follows:

6 Sec. 171.851. LIMITATION. The total credits claimed under
7 this chapter for a report, including the amount of any carryforward
8 credits, may not exceed the amount of franchise tax due for the
9 report as computed under Section 171.002(b).

10 SECTION 7. Section 171.2022, Tax Code, is repealed.

11 SECTION 8. This Act takes effect January 1, 2005, and
12 applies only to a report originally due on or after that date. A
13 report originally due before that date is governed by the law in
14 effect on that date, and that law is continued in effect for the
15 purpose of the liability for and collection of those taxes.