

By: Burnam

H.B. No. 78

A BILL TO BE ENTITLED

AN ACT

relating to imposition of an income tax on income that exceeds \$1 million.

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

SECTION 1. Title 2, Tax Code, is amended by adding Subtitle L to read as follows:

SUBTITLE L. PERSONAL INCOME TAX

CHAPTER 261. PERSONAL INCOME TAX

SUBCHAPTER A. IMPOSITION OF TAX

Sec. 261.001. TAX IMPOSED. (a) A tax is imposed for each tax year:

(1) on the taxable income that exceeds \$1 million of every resident of this state; and

(2) on the taxable income that exceeds \$1 million derived from sources in this state of every nonresident.

(b) The tax rate for an individual is three percent.

Sec. 261.002. JOINT RETURN. If persons subject to this tax file a joint federal income tax return with a spouse, they may file a joint return under this chapter but they may not combine their incomes for the purpose of determining the amount of tax owed. The separate incomes of each spouse are taxed as individual incomes under Section 261.001.

Sec. 261.003. MEANING OF TERMS. (a) In this chapter:

(1) an individual is a resident of this state if the

1 individual:

2 (A) is domiciled in this state, unless the
3 individual does not maintain a permanent abode in this state and
4 does maintain a permanent abode elsewhere and spends, in the
5 aggregate, not more than 30 days of the tax year in this state; or

6 (B) is not domiciled in this state but maintains
7 a permanent abode in this state and spends, in the aggregate, more
8 than 183 days of the tax year in this state; and

9 (2) an individual is a nonresident if the individual
10 is not a resident of this state.

11 (b) Any term used in this chapter and not defined by or for
12 purposes of this chapter has the same meaning as when used in a
13 comparable context in the laws of the United States relating to
14 federal income taxes, unless a different meaning is clearly
15 required. Any reference in this chapter to federal law means the
16 provisions of the Internal Revenue Code of 1986 in effect on
17 December 31, 2004, and other provisions of federal laws relating to
18 federal income taxes in effect on December 31, 2004.

19 [Sections 261.004-261.050 reserved for expansion]

20 SUBCHAPTER B. COMPUTATION OF TAXABLE INCOME

21 Sec. 261.051. TAXABLE INCOME. The taxable income of a
22 resident of this state is the resident's federal adjusted gross
23 income as defined by federal law.

24 Sec. 261.052. CREDIT FOR INCOME TAX PAID TO ANOTHER STATE.

25 (a) A resident individual is allowed a credit against the tax
26 otherwise due under this chapter for the amount of any income tax
27 imposed on the individual for the tax year by another state of the

1 United States on income that is derived from sources in that state
2 and that is subject to tax under this chapter.

3 (b) The credit provided by this section may not exceed the
4 proportion of the tax otherwise due under this chapter that the
5 amount of the taxpayer's adjusted gross income derived from sources
6 in the other taxing jurisdiction bears to the taxpayer's entire
7 adjusted gross income as modified by this subchapter.

8 Sec. 261.053. DUAL RESIDENCE; REDUCTION OF TAX. If a
9 taxpayer is a resident of this state and is regarded as a resident
10 of another jurisdiction for purposes of personal income taxation,
11 the comptroller shall reduce the tax on that portion of the
12 taxpayer's income that is subject to tax in both jurisdictions
13 solely by virtue of dual residence. The reduction shall be in an
14 amount equal to that portion of the lower of the two taxes
15 applicable to the income taxed twice that the tax imposed by this
16 state bears to the combined taxes of the two jurisdictions on the
17 income taxed twice.

18 Sec. 261.054. NONRESIDENT INDIVIDUALS--TAXABLE INCOME.
19 The taxable income of a nonresident individual is that part of the
20 individual's federal adjusted gross income derived from sources in
21 this state determined under Section 261.055.

22 Sec. 261.055. ADJUSTED GROSS INCOME FROM SOURCES IN THIS
23 STATE--NONRESIDENT. (a) The adjusted gross income of a
24 nonresident derived from sources in this state is the net amount of
25 items of income, gain, loss, and deduction entering into the
26 nonresident's federal adjusted gross income that are derived from
27 or connected with sources in this state, including:

1 (1) the nonresident's distributive share of
2 partnership income and deductions determined under Section
3 261.403; and

4 (2) the nonresident's share of estate or trust income
5 and deductions derived from sources in this state.

6 (b) Items of income, gain, loss, and deduction derived from
7 or connected with sources in this state are those items
8 attributable to:

9 (1) the ownership or disposition of an interest in
10 real or tangible personal property in this state; and

11 (2) a business, trade, profession, or occupation
12 conducted in this state.

13 (c) Income from intangible personal property, including
14 annuities, dividends, interest, and gains from the disposition of
15 intangible personal property, constitutes income derived from
16 sources in this state only to the extent that the income is from
17 property used in a business, trade, profession, or occupation
18 carried on in this state.

19 (d) Deductions for capital losses, net long-term capital
20 gains, and net operating losses derived from or connected with
21 sources in this state, are determined in the same manner as the
22 corresponding federal deductions. However, the extent to which the
23 deductions are derived from or connected with sources in this state
24 is determined under the comptroller's rules.

25 (e) For a nonresident individual who is a shareholder of a
26 corporation that is an electing small business corporation for
27 federal income tax purposes, the undistributed taxable income of

1 the corporation does not constitute income derived from sources in
2 this state and a net operating loss of the corporation does not
3 constitute a loss or deduction connected with sources in this
4 state.

5 (f) If a business, trade, profession, or occupation is
6 carried on partly in and partly outside this state, the items of
7 income and deduction derived from or connected with sources in this
8 state are determined by apportionment and allocation consistent
9 with Chapter 141 under the comptroller's rules.

10 (g) Compensation paid by the United States for service in
11 the armed forces of the United States performed by a nonresident is
12 not income derived from sources in this state.

13 [Sections 261.056-261.100 reserved for expansion]

14 SUBCHAPTER C. [RESERVED]

15 [Sections 261.101-261.200 reserved for expansion]

16 SUBCHAPTER D. ACCOUNTING PERIODS AND METHODS

17 Sec. 261.201. PERIOD FOR COMPUTATION OF TAXABLE INCOME.

18 (a) For purposes of the tax imposed by this chapter, a taxpayer's
19 tax year is the same as the taxpayer's tax year for federal income
20 tax purposes.

21 (b) If a taxpayer's tax year is changed for federal income
22 tax purposes, the taxpayer's tax year for purposes of the tax
23 imposed by this chapter shall be similarly changed.

24 Sec. 261.202. METHODS OF ACCOUNTING. (a) A taxpayer's
25 method of accounting is the same as the taxpayer's method of
26 accounting for federal income tax purposes. If a single method of
27 accounting has not been regularly used by the taxpayer, taxable

1 income for purposes of this chapter shall be computed under any
2 method that in the opinion of the comptroller fairly reflects
3 income.

4 (b) If a taxpayer's method of accounting is changed for
5 federal income tax purposes, the taxpayer's method of accounting
6 for purposes of this chapter is changed in the same manner.

7 Sec. 261.203. ADJUSTMENTS. In computing a taxpayer's
8 taxable income for any tax year under a method of accounting
9 different from the method under which the taxpayer's taxable income
10 for the previous year was computed, there shall be taken into
11 account those adjustments that are determined, under rules
12 prescribed by the comptroller, to be necessary solely by reason of
13 the change in order to prevent amounts from being duplicated or
14 omitted.

15 Sec. 261.204. LIMITATION ON ADDITIONAL TAX. (a) If a
16 taxpayer's method of accounting is changed, other than from an
17 accrual to an installment method, an additional tax that results
18 from adjustments determined to be necessary solely because of the
19 change may not be greater than if those adjustments were ratably
20 allocated and included for the tax year of the change and not more
21 than two preceding tax years during which the taxpayer used the
22 method of accounting from which the change is made.

23 (b) If a taxpayer's method of accounting is changed from an
24 accrual to an installment method, an additional tax for the year of
25 the change of method and for a subsequent year that is attributable
26 to the receipt of installment payments properly accrued in a prior
27 year shall be reduced by the portion of tax for any prior tax year

1 attributable to the accrual of the installment payments, under
2 rules adopted by the comptroller.

3 [Sections 261.205-261.400 reserved for expansion]

4 SUBCHAPTER E. PARTNERS AND PARTNERSHIPS

5 Sec. 261.401. ENTITY NOT TAXABLE. A partnership as an
6 entity is not subject to the tax imposed by this chapter. Persons
7 carrying on business as partners are liable for the tax imposed by
8 this chapter only in their separate or individual capacities.

9 Sec. 261.402. RESIDENT PARTNER--ADJUSTED GROSS INCOME. (a)
10 Partnership income, gain, loss, or deduction shall be allocated in
11 accordance with each partner's distributive share for federal
12 income tax purposes.

13 (b) Each item of partnership income, gain, loss, or
14 deduction has the same character for a partner under this chapter as
15 it has for federal income tax purposes. If an item is not
16 characterized for federal income tax purposes, it has the same
17 character for a partner as if realized directly from the source from
18 which realized by the partnership or incurred in the same manner as
19 incurred by the partnership.

20 (c) If a partner's distributive share of an item of
21 partnership income, gain, loss, or deduction is determined for
22 federal income tax purposes by a special provision in the
23 partnership agreement with respect to the item, and the principal
24 purpose of the provision is the avoidance or evasion of tax under
25 this chapter, the partner's distributive share of the item and a
26 modification required with respect to it is determined in
27 accordance with the partner's distributive share of the taxable

1 income or loss of the partnership generally, excluding those items
2 requiring separate computation under Section 702, Internal Revenue
3 Code of 1986.

4 Sec. 261.403. NONRESIDENT PARTNER--ADJUSTED GROSS INCOME
5 FROM SOURCES IN THIS STATE. (a) In determining the adjusted gross
6 income of a nonresident partner of any partnership, there shall be
7 included only that part derived from or connected with sources in
8 this state of the partner's distributive share of items of
9 partnership income, gain, loss, and deduction entering into the
10 partner's federal adjusted gross income, as that part is determined
11 under rules adopted by the comptroller and consistent with the
12 rules adopted under Section 261.055.

13 (b) Except as authorized by Subsection (c), in determining
14 the sources of a nonresident partner's income, no effect is given to
15 a provision in the partnership agreement that:

16 (1) characterizes payments to the partner as being for
17 services or for the use of capital, or allocates to the partner, as
18 income or gain from sources outside this state, a greater
19 proportion of the partner's distributive share of partnership
20 income or gain than the ratio of partnership income or gain from
21 sources outside this state to partnership income or gain from all
22 sources; or

23 (2) allocates to the partner a greater proportion of a
24 partnership item of loss or deduction connected with sources in
25 this state than the partner's proportionate share, for federal
26 income tax purposes, of partnership loss or deduction generally.

27 (c) The comptroller may, on application, authorize the use

1 of other methods of determining a nonresident partner's portion of
2 partnership items derived from or connected with sources in this
3 state, and the modifications related to it, that are appropriate
4 and equitable, on terms the comptroller may require.

5 (d) A nonresident partner's distributive share of items of
6 income, gain, loss, or deduction is determined under Section
7 261.402(a). The character of partnership items for a nonresident
8 partner is determined under Section 261.402(b). The effect of a
9 special provision in a partnership agreement, other than a
10 provision described by Subsection (b), having as a principal
11 purpose the avoidance or evasion of tax under this chapter is
12 determined under Section 261.402(c).

13 [Sections 261.404-261.500 reserved for expansion]

14 SUBCHAPTER F. TAX RETURNS AND PAYMENTS

15 Sec. 261.501. PERSONS REQUIRED TO MAKE RETURNS OF INCOME. A
16 state income tax return shall be made by every individual who has
17 adjusted gross income from sources in this state in excess of \$1
18 million.

19 Sec. 261.502. RETURNS BY FIDUCIARIES. (a) An income tax
20 return for a deceased individual shall be made and filed by the
21 executor, administrator, or other person charged with the care of
22 the property of the decedent. A final return of a decedent is due
23 when it would have been due if the decedent had not died.

24 (b) An income tax return for an individual who is unable to
25 make a return because of minority or other disability shall be made
26 and filed by the individual's duly authorized agent, guardian,
27 conservator, fiduciary, or other person charged with the care of

1 the individual or the individual's property other than a receiver
2 in possession of only a part of the individual's property.

3 (c) If two or more fiduciaries are acting jointly, the
4 return may be made by any one of them.

5 Sec. 261.503. NOTICE OF QUALIFICATION AS RECEIVER. A
6 receiver, trustee in bankruptcy, assignee for benefit of creditors,
7 or other similar fiduciary shall give notice of the person's
8 qualification to the comptroller, as may be required by rule.

9 Sec. 261.504. CHANGE OF STATUS AS RESIDENT OR NONRESIDENT
10 DURING YEAR. (a) If the status of an individual changes during the
11 individual's tax year from resident to nonresident or from
12 nonresident to resident, the comptroller by rule may require the
13 individual to file one return for the portion of the year during
14 which the individual is a resident and one for the portion of the
15 year during which the individual is a nonresident.

16 (b) Except as provided by Subsection (c), the taxable income
17 of an individual is determined as provided by Section 261.051 for
18 residents and Section 261.054 for nonresidents as if the
19 individual's tax year for federal income tax purposes were limited
20 to the period of the individual's resident and nonresident status
21 respectively.

22 (c) There shall be included in determining taxable income
23 from sources in or outside this state, as the case may be, income,
24 gain, loss, or deduction accrued prior to the change of status even
25 though not otherwise includable or allowable in respect to the
26 period before the change, but the taxation or deduction of items
27 accrued before the change of status is not affected by the change.

1 (d) If two returns are required to be filed under this
2 section, the total of the taxes due may not be less than would be due
3 if the total of the taxable incomes reported on the two returns were
4 includable in one return.

5 Sec. 261.505. TIME AND PLACE FOR FILING RETURNS AND PAYING
6 TAX. The income tax return required by this chapter shall be filed
7 not later than the 15th day of the fourth month following the end of
8 the taxpayer's tax year. A person required to make and file a
9 return under this chapter shall pay a tax due to the comptroller not
10 later than the last day that the filing of the return is allowed
11 without penalty, excluding an extension of time for filing the
12 return. The comptroller by rule shall prescribe the place for
13 filing a return, statement, or other document required by this
14 chapter and for the payment of a tax.

15 Sec. 261.506. ESTIMATED TAX. (a) An individual subject to
16 the income tax imposed by this chapter shall make estimated
17 payments of the tax. Section 6654, Internal Revenue Code of 1986,
18 other than Subsections (a), (b), (d)(2), and (e) of that section,
19 governing the payment of estimated federal income taxes on
20 individuals applies to the payments required by this section,
21 including exemptions from the estimated tax payment requirement. A
22 reference in that section to the federal income tax imposed on
23 individuals is construed as a reference to the tax imposed by this
24 chapter as required to administer this section. A power or duty
25 given by Section 6654, Internal Revenue Code of 1986, to the United
26 States secretary of the treasury is assigned to the comptroller for
27 purposes of the estimated payments required by this section.

1 (b) The comptroller shall adopt rules for the
2 administration of this section.

3 (c) Payment of the estimated tax or an installment is
4 considered payment on account of the tax imposed by this chapter.

5 Sec. 261.507. EXTENSION OF TIME FOR FILING AND PAYMENT. (a)
6 The comptroller, on terms the comptroller may require, may grant a
7 reasonable extension of time for payment of tax or an installment,
8 or for filing a return, statement, or other document required under
9 this chapter. Except for an extension for a taxpayer who is outside
10 the United States, an extension for filing a return, statement, or
11 document may not exceed six months.

12 (b) If the time for the payment of an amount of tax is
13 extended, the comptroller may require the taxpayer to furnish a
14 bond or other security in an amount not exceeding twice the amount
15 of tax for which the extension of time for payment is granted, on
16 terms the comptroller may require.

17 Sec. 261.508. CHANGE OF ELECTION. An election expressly
18 authorized by this chapter may be changed as authorized by the
19 comptroller or by the comptroller's rule.

20 Sec. 261.509. SIGNING OF RETURNS AND OTHER DOCUMENTS. (a)
21 A return, statement, or other document required to be made or filed
22 under this chapter shall be signed as provided by the comptroller.
23 An individual's name signed to a return, statement, or other
24 document is prima facie evidence that the individual signed the
25 return, statement, or other document.

26 (b) A return, statement, or other document required of a
27 partnership must be signed by at least one partner. A partner's

1 name signed to a return, statement, or other document is prima facie
2 evidence that the partner is authorized to sign on behalf of the
3 partnership.

4 (c) The making or filing of a return, statement, or other
5 document or copy required to be made or filed under this chapter,
6 including a copy of a federal return, constitutes a certification
7 by the person making or filing the return, statement, or other
8 document or copy that the statements contained in it are true and
9 that a copy filed is a true copy.

10 [Sections 261.510-261.520 reserved for expansion]

11 SUBCHAPTER G. INFORMATION RETURNS

12 Sec. 261.521. GENERAL REQUIREMENTS. The comptroller by
13 rule may require the keeping of records, the content and form of
14 returns and statements, and the filing of copies of federal income
15 returns and determinations. The comptroller may require a person,
16 by rule or by notice served on the person, to make returns, render
17 statements, or keep records, as the comptroller considers
18 sufficient to show whether the person is liable under this chapter
19 for tax or for the collection of tax.

20 Sec. 261.522. REPORT OF CHANGE IN FEDERAL TAXABLE INCOME.

21 (a) If the amount of a taxpayer's federal taxable income reported
22 on the taxpayer's federal income tax return for a tax year is
23 changed or corrected by the United States Internal Revenue Service
24 or other competent authority, or as the result of a renegotiation of
25 a contract or subcontract with the United States, the taxpayer
26 shall:

27 (1) report the change or correction in federal taxable

1 income not later than the 90th day after the final determination of
2 the change, correction, or renegotiation, or as required by the
3 comptroller; and

4 (2) concede the accuracy of the determination or state
5 in what way it is erroneous.

6 (b) A taxpayer filing an amended federal income tax return
7 shall also file, not later than the 90th day after filing, an
8 amended return under this chapter, and shall give any information
9 required by the comptroller.

10 (c) The comptroller by rule may prescribe exceptions to the
11 requirements of this section.

12 [Sections 261.523-261.600 reserved for expansion]

13 SUBCHAPTER H. ADDITIONS TO TAX; PENALTIES

14 Sec. 261.601. FAILURE TO FILE TAX RETURN. (a) A person who
15 does not file a return required under this chapter on or before the
16 prescribed date is subject to the following penalty based on a
17 percentage of the full amount of tax owed on the prescribed day:

18 (1) if the return is filed not later than the 30th day
19 after the prescribed date, five percent;

20 (2) if the return is filed later than the 30th day
21 after the prescribed date, but not later than the 60th day after the
22 prescribed date, 10 percent;

23 (3) if the return is filed later than the 60th day
24 after the prescribed date, but not later than the 90th day after the
25 prescribed date, 15 percent;

26 (4) if the return is filed later than the 90th day
27 after the prescribed date, but not later than the 120th day after

1 the prescribed date, 20 percent; or

2 (5) if the return is filed later than the 120th day
3 after the prescribed date, 25 percent.

4 (b) The prescribed date is determined with regard to an
5 extension of time for filing.

6 (c) In determining the amount owed on the prescribed date,
7 the taxpayer is entitled to credit for a portion of the tax paid on
8 or before the prescribed date and other credit that may be claimed
9 on the return.

10 (d) The penalty required by this section does not apply if
11 the taxpayer shows that the failure to file a return was not the
12 result of wilful neglect before the prescribed date or at any time
13 during the delinquency and that good cause for the failure existed
14 at all times before filing.

15 Sec. 261.602. FAILURE TO PAY TAX. (a) A person who does not
16 pay any amount of tax owed by the person on the prescribed date
17 shall pay, in addition to all other penalties and interest, a
18 penalty of 10 percent of the amount of the tax due and owing on the
19 prescribed date.

20 (b) The prescribed date is determined with regard to
21 extensions of time allowed by the comptroller.

22 (c) A failure to pay all or part of an estimated tax is
23 considered to be an underpayment of estimated tax. The comptroller
24 by rule shall prescribe the method of determining the amount and
25 period of underpayment.

26 Sec. 261.603. PENALTIES AND INTEREST TREATED AS TAX. The
27 penalties and interest provided by this subchapter shall be paid on

1 notice and demand and shall be assessed, collected, and paid in the
2 same manner as other taxes. The comptroller may issue a deficiency
3 notice for all or part of a penalty or interest along with or
4 separate from the amount of tax owed in absence of penalties or
5 interest.

6 [Sections 261.604-261.630 reserved for expansion]

7 SUBCHAPTER I. CREDITS AND REFUNDS

8 Sec. 261.631. CREDITS AND REFUNDS. (a) Within the
9 applicable period of limitations the comptroller may credit an
10 overpayment of income tax and interest on the overpayment against a
11 liability of a tax imposed by the tax laws of this state on the
12 person who made the overpayment, and the balance shall be refunded
13 by the comptroller out of the proceeds of the tax retained by the
14 comptroller.

15 (b) The comptroller may prescribe rules providing for
16 crediting against the estimated tax for a tax year the amount
17 determined to be an overpayment of the income tax for a preceding
18 tax year.

19 (c) If an amount of income tax is assessed and collected
20 after the expiration of the period of limitations properly
21 applicable, the amount is an overpayment.

22 Sec. 261.632. ABATEMENTS. (a) The comptroller may abate
23 any unpaid portion of a tax or a tax liability that is excessive in
24 amount, assessed after the expiration of the applicable period of
25 limitations, or erroneously or illegally assessed.

26 (b) The comptroller may abate the unpaid portion of a tax or
27 a tax liability if the comptroller determines under uniform rules

1 prescribed by the comptroller that the administration and
2 collection costs involved would not warrant collection of the
3 amount due.

4 Sec. 261.633. EXTENDED LIMITATION PERIOD. (a) If a
5 taxpayer is required by Section 261.522 to report a change or
6 correction in federal taxable income reported on a federal income
7 tax return, or to report a change or correction that is treated in
8 the same manner as if it were an overpayment for federal income tax
9 purposes, or to file an amended return with the comptroller, a claim
10 for credit or refund of a resulting overpayment of tax must be filed
11 by the taxpayer not later than the second anniversary of the date
12 the notice of the change or correction or the amended return was
13 required to be filed with the comptroller. If the report or amended
14 return required by Section 261.522 is not filed within the period
15 prescribed by that section, interest on a resulting refund or
16 credit ceases to accrue after the period. The amount of credit or
17 refund may not exceed the amount of the reduction in tax
18 attributable to the federal change, correction, or items amended on
19 the taxpayer's amended federal income tax return. This subsection
20 does not affect the time within which or the amount for which a
21 claim for credit or refund may be filed under a provision other than
22 this section.

23 (b) If a claim for credit or refund relates to an
24 overpayment of tax on account of the deductibility by the taxpayer
25 of a debt as a debt that became worthless or a loss from
26 worthlessness of a security or the effect that the deductibility of
27 a debt or of a loss has on the application to the taxpayer of a

1 carryover, the claim may be made, under rules adopted by the
2 comptroller, not later than the seventh anniversary of the date
3 prescribed by law for filing the return for the year with respect to
4 which the claim is made.

5 (c) If a claim for credit or refund relates to an
6 overpayment attributable to a net operating loss carryback, the
7 claim may be made, under rules adopted by the comptroller, not later
8 than the 15th day of the 40th month following the end of the tax year
9 of the net operating loss that resulted in the carryback or the
10 period prescribed by Section 111.104, whichever expires later.

11 [Sections 261.634-261.650 reserved for expansion]

12 SUBCHAPTER J. MISCELLANEOUS ENFORCEMENT PROVISIONS

13 Sec. 261.651. TAXPAYER NOT RESIDENT. If notice and demand
14 for the payment of a tax is given to a nonresident and it appears to
15 the comptroller that it is not practicable to locate property of the
16 taxpayer sufficient in amount to cover the amount of tax due, the
17 comptroller may authorize the institution of any available action
18 or proceeding to collect or enforce the claim in any place by any
19 procedure by which a civil judgment of a court of record of this
20 state could be collected or enforced. The comptroller may
21 designate agents or retain counsel outside this state for the
22 purpose of collecting taxes due under this chapter and require of
23 them bonds or other security for the faithful performance of their
24 duties. The comptroller may enter into agreements with the tax
25 department of another state for the collection of taxes from
26 persons found in this state who are delinquent in the payment of
27 income taxes imposed by that state on condition that the agreeing

1 state afford similar assistance in the collection of taxes from
2 persons found in that state who are delinquent in the payment of
3 taxes imposed by this chapter.

4 Sec. 261.652. INCOME TAX CLAIMS OF OTHER STATES. The courts
5 of this state shall recognize and enforce liabilities for personal
6 income taxes lawfully imposed by another state that extends a like
7 comity to this state, and the duly authorized officer of the other
8 state may sue for the collection of personal income tax in the
9 courts of this state. A certificate by the secretary of state of
10 the other state that an officer suing for the collection of the tax
11 is duly authorized to collect the tax is conclusive proof of the
12 officer's authority. For the purposes of this section, "taxes"
13 includes additions to tax, interest, and penalties.

14 Sec. 261.653. ORDER TO COMPEL COMPLIANCE. (a) On
15 application of the attorney general, a judge of a court of
16 appropriate jurisdiction for the county in which a taxpayer or
17 other person who intentionally or knowingly refuses to file a tax
18 return required by this chapter may, by order, direct the person to
19 file the return. A person who fails or refuses to obey the order is
20 guilty of contempt of court.

21 (b) If any person intentionally or knowingly refuses to make
22 available any books, papers, records, or memorandums for
23 examination by the comptroller or wilfully refuses to attend and
24 testify, in accordance with the powers conferred on the comptroller
25 by Chapter 111, on application of the comptroller, a judge in the
26 court of appropriate jurisdiction for the county where the person
27 resides may by order direct the person to comply with the

1 comptroller's request for books, papers, records, or memorandums or
2 for the person's attendance and testimony. If the books, papers,
3 records, or memorandums required by the comptroller are in the
4 custody of a corporation, the order of the court may be directed to
5 any principal officer of the corporation. A person who fails or
6 refuses to obey the order is guilty of contempt of court.

7 Sec. 261.654. TRANSFEREES. (a) The liability, at law or in
8 equity, of a transferee of property of a taxpayer for any tax,
9 addition to tax, penalty, or interest due under this chapter, is
10 assessed, paid, and collected in the same manner and subject to the
11 same provisions and limitations as in the case of the tax to which
12 the liability relates except as otherwise provided by this section.
13 "Transferee" includes an heir or a recipient of a donation, legacy,
14 devise, or distribution.

15 (b) The period of limitation for assessment of liability of
16 a transferee is:

17 (1) the first anniversary of the expiration of the
18 period of limitation against the initial transferor if the
19 transferee is the initial transferee;

20 (2) the first anniversary of the expiration of the
21 period of limitation against the preceding transferee, but not
22 later than the third anniversary of the expiration of the period of
23 limitation for assessment against the initial transferor, if the
24 transferee is not the initial transferee; or

25 (3) notwithstanding Subdivisions (1) and (2), if
26 before the expiration of the period of limitation under Subdivision
27 (1) or (2) a proceeding for the collection of the liability has been

1 begun against the initial transferor or the last preceding
2 transferee, respectively, the first anniversary of the date on
3 which the proceeding is terminated.

4 (c) If, before the expiration of the period of limitation
5 applicable to a transferee, the comptroller and the transferee
6 consent in writing to an assessment after that time, the liability
7 may be assessed at any time before the expiration of the agreed
8 period. The period of limitation on credit or refund to the
9 transferee of overpayments of tax made by the transferee or of
10 overpayments of tax made by the transferor of which the transferee
11 is legally entitled to credit or refund is extended by an agreement
12 under this subsection and any extension of the agreement.

13 (d) If a person dies, the period of limitation for
14 assessment against that person is the period that would be in effect
15 had death not occurred.

16 Sec. 261.655. JEOPARDY DETERMINATIONS. (a) If the
17 comptroller issues a jeopardy determination for a tax for a current
18 period, the comptroller shall terminate the tax period of the
19 taxpayer immediately, and the notice and demand for a return and
20 immediate payment of the tax shall apply to the terminated period
21 and to income accrued and deductions incurred on or before
22 termination date if not otherwise properly includable or deductible
23 for the period.

24 (b) The comptroller may abate the jeopardy determination if
25 the comptroller finds that jeopardy does not exist.

26 Sec. 261.656. BANKRUPTCY OR RECEIVERSHIP. (a) On the
27 adjudication of bankruptcy of any taxpayer in any bankruptcy

1 proceeding or the appointment of a receiver for any taxpayer in any
2 receivership proceeding before any court of the United States or
3 any state or territory, any deficiency, together with additions to
4 tax and interest provided by law, determined by the comptroller may
5 be immediately assessed.

6 (b) Claims for the deficiency and additions to tax and
7 interest may be presented, for adjudication in accordance with law,
8 to the court before which the bankruptcy or receivership proceeding
9 is pending, despite the pendency of any protest before the
10 comptroller. A protest against a proposed assessment may not be
11 filed with the comptroller after the adjudication of bankruptcy or
12 appointment of the receiver.

13 Sec. 261.657. EVIDENCE OF RELATED FEDERAL DETERMINATION.
14 Evidence of a federal determination relevant to the taxes imposed
15 by this chapter is admissible in an administrative or judicial
16 proceeding relating to those taxes.

17 [Sections 261.658-261.670 reserved for expansion]

18 SUBCHAPTER K. OFFENSES

19 Sec. 261.671. ATTEMPT TO EVADE OR DEFEAT TAX. (a) A person
20 commits an offense if the person intentionally or knowingly
21 attempts in any manner to evade or defeat a tax imposed by this
22 chapter or the payment of tax imposed by this chapter.

23 (b) An offense under this section is a felony of the third
24 degree.

25 Sec. 261.672. FAILURE TO PAY. (a) A person commits an
26 offense if the person is required under this chapter to pay a tax
27 imposed by this chapter and the person intentionally or knowingly

1 fails to pay the tax.

2 (b) An offense under this section is a felony of the third
3 degree.

4 Sec. 261.673. FAILURE TO FILE RETURN, SUPPLY INFORMATION,
5 OR PAY TAX. (a) A person commits an offense if the person is
6 required under this chapter to pay a tax, or required by this
7 chapter or rule adopted under this chapter to make a return, to keep
8 records, or to supply information, and the person intentionally or
9 knowingly fails to pay the tax, make the return, keep the records,
10 or supply the information at the time or times required by law.

11 (b) An offense under this section is a Class A misdemeanor.

12 [Sections 261.674-261.680 reserved for expansion]

13 SUBCHAPTER L. POWERS OF COMPTROLLER

14 Sec. 261.681. COOPERATION WITH OTHER JURISDICTIONS. The
15 comptroller may permit the United States secretary of the treasury
16 or the secretary's delegate, or the proper officer of any state or
17 other jurisdiction imposing an income tax on the incomes of
18 individuals, or the authorized representative of either officer, to
19 inspect the income tax returns of an individual, or may furnish to
20 the officer or authorized representative an abstract of the return
21 of income of an individual or supply the officer with information
22 concerning an item of income contained in a return, or disclosed by
23 the report of an investigation of the income or return of income of
24 an individual, but permission may be granted only if the statutes of
25 the United States or of the other jurisdiction, as applicable,
26 grant substantially similar privileges to the comptroller.

27 Sec. 261.682. COOPERATION WITH OTHER TAX OFFICIALS OF THIS

1 STATE. The comptroller may permit other tax officials of this state
2 to inspect tax returns and reports filed under this chapter but the
3 inspection shall be permitted only for purposes of enforcing a tax
4 law and only to the extent and under the conditions prescribed by
5 rule of the comptroller.

6 Sec. 261.683. CONTRACT WITH SECRETARY OF TREASURY FOR
7 COLLECTION OF TAX. The comptroller may enter into an agreement with
8 the United States secretary of the treasury or the secretary's
9 delegate under which, to the extent provided by the terms of the
10 agreement, the secretary or delegate will administer, enforce, and
11 collect a tax imposed by this chapter on behalf of this state. The
12 cost of the services performed by the secretary or delegate in
13 administering, enforcing, or collecting the tax under the terms of
14 the agreement may be paid from the appropriations for the general
15 operations of the comptroller.

16 Sec. 261.684. ARMED FORCES RELIEF PROVISIONS. (a) The
17 period of service in the armed forces of the United States in a
18 combat zone plus a period of continuous hospitalization outside
19 this state attributable to that service plus the next 180 days shall
20 be disregarded in determining, under rules of the comptroller,
21 whether an act required by this chapter was performed by a taxpayer
22 or the taxpayer's representative within the time prescribed.

23 (b) If an individual dies during an induction period while
24 in active service as a member of the armed forces of the United
25 States and the death occurred while the individual was serving in a
26 combat zone or as a result of wounds, disease, or injury incurred
27 while serving, the tax imposed by this chapter does not apply to the

1 tax year in which the individual dies or to any prior tax year
2 ending on or after the first day the individual so served in a
3 combat zone.

4 Sec. 261.685. DISPOSITION OF PROCEEDS. The revenue from
5 the tax imposed by this chapter shall be deposited to the credit of
6 a special account in the general revenue fund and may be
7 appropriated only for a purpose provided by Section 24, Article
8 VIII, Texas Constitution.

9 SECTION 2. Section 111.201, Tax Code, is amended to read as
10 follows:

11 Sec. 111.201. ASSESSMENT LIMITATION. (a) No tax imposed by
12 this title may be assessed after four years from the date that the
13 tax becomes due and payable except as provided by Subsection (b).

14 (b) A tax imposed by Chapter 261 may not be assessed after
15 six years from the date the tax becomes due and payable.

16 SECTION 3. A referendum as required by Section 24, Article
17 VIII, Texas Constitution, on the adoption of the income tax under
18 this Act shall be submitted to the voters at an election to be held
19 November 2, 2004. The ballot for the referendum shall be printed to
20 permit voting for or against the proposition: "The adoption of an
21 income tax at a rate of three percent for taxable income in excess
22 of \$1 million."

23 SECTION 4. (a) Except as provided by Subsection (b) of this
24 section, this Act applies to income earned, accrued, or received on
25 or after the effective date of this Act.

26 (b) Income, deductions, losses, credits against income, or
27 other adjustments allowed in determining the amount of tax under

1 this Act or the amount of federal adjusted gross income under this
2 Act, including carryovers, are not prohibited in computing the
3 taxes for a tax period beginning on January 1, 2005, because those
4 adjustments may have accrued or otherwise originated before the
5 effective date of this Act.

6 (c) In 2005, the comptroller by rule may suspend the
7 application of Section 261.506, Tax Code, as added by this Act,
8 wholly or partly and may extend the deadlines for estimated tax
9 payments under that section.

10 SECTION 5. (a) If the proposition in Section 3 of this Act
11 is approved, this Act takes effect January 1, 2005.

12 (b) If the proposition in Section 3 of this Act is not
13 approved, this Act has no effect.