

Amend CSHB 5 by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS to read as follows:

Sec. _____. APPLICABILITY OF FRANCHISE TAX. (a) This section applies only to an entity that is not defined as a corporation by Section 171.001(b) (3), Tax Code, but:

(1) that is operated for profit;

(2) that is operating, organized, or registered under the laws of this state in a manner that provides liability limitations for a person who holds an ownership interest in the entity, including a partner's interest in a partnership; and

(3) in which any ownership interest is held by an entity other than a natural person, without regard to whether the person that is not a natural person is located in this state or is in any other manner doing business in this state,

(b) An entity to which this section applies is subject to the franchise tax under Chapter 171, Tax Code, in the manner provided by this section.

(c) The net taxable capital of the entity is computed by:

(1) adding the entity's capital accounts, undistributed profits, and surplus to determine the entity's taxable capital;

(2) apportioning the entity's taxable capital to this state as provided by Section 171.106, Tax Code, to determine the entity's apportioned taxable capital; and

(3) subtracting from the amount computed under Subdivision (2) of this subsection any other allowable deductions to determine the entity's net taxable capital.

(d) For purposes of Subsection (c) (1) of this section, an amount that belongs to or is included in the entity's capital accounts, undistributed profits, or surplus is excluded if the amount has been added once under that subsection in determining the entity's taxable capital.

(e) The net taxable earned surplus of the entity is determined as provided by Section 171.110, Tax Code, if the entity is not a partnership. If the entity is a partnership, the net taxable earned surplus of the entity is computed by:

(1) determining the partnership's reportable federal

taxable income and making the following adjustments:

(A) subtracting any taxable income of a partner who is a natural person;

(B) subtracting dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States; and

(C) adding any compensation of each officer or director who owns 0.1 percent or more of the partnership, to the extent excluded in determining reportable federal taxable income;

(2) apportioning the partnership's taxable earned surplus to this state as provided by Section 171.106, Tax Code, to determine the partnership's apportioned taxable earned surplus;

(3) adding the partnership's taxable earned surplus allocated to this state as provided by Section 171.1061, Tax Code; and

(4) subtracting from that amount any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (f) of this section.

(f) For purposes of Subsection (e) (1) of this section:

(1) an amount may not be subtracted from reportable federal taxable income more than once; and

(2) an amount may not be added to reportable federal taxable income more than once.

(g) For purposes of this section, a business loss is any negative amount after apportionment and allocation. The business loss shall be carried forward to the year succeeding the loss year as a deduction to net taxable earned surplus, then successively to the succeeding four taxable years after the loss year or until the loss is exhausted, whichever occurs first, but for not more than five taxable years after the loss year. Notwithstanding the preceding sentence, a business loss incurred before January 1, 2003, may not be used to reduce net taxable earned surplus.

(h) Notwithstanding any other provision of this section, to the extent that the net income of natural persons, including a

person's share of partnership and unincorporated association income, may not be taxed as provided by Section 24, Article VIII, Texas Constitution, the income is not included in net taxable earned surplus and is not subject to the tax imposed under this Act.

(i) Subject to Subsection (j) of this section, the changes made by this section take effect for initial, annual, or final franchise tax reports originally due on or after January 1, 2004.

(j) For an entity becoming subject to the franchise tax under this section:

(1) income or losses occurring before January 1, 2003, may not be considered for purposes of the earned surplus component;

(2) for entities in existence on January 1, 2003, that would have been subject to the franchise tax had this Act been in effect on January 1, 2003, the first report due under this Act will be either a final report, if applicable, or an annual report due May 15, 2004; and

(3) for entities that would have become subject to the franchise tax after January 1, 2003, had this Act been in effect on January 1, 2003, the first report due under this Act will be an initial report or a final report, if applicable.

(k) The revenue from the franchise tax imposed by this section shall be deposited to the credit of the foundation school fund.