

By: Shapleigh

S.B. No. 1030

A BILL TO BE ENTITLED

AN ACT

relating to the application of the franchise tax to certain entities.

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

SECTION 1. Section 171.001(b)(3), Tax Code, is amended to read as follows:

(3) "Corporation" includes:

(A) a limited liability company, as defined under the Texas Limited Liability Company Act;

(B) a savings and loan association; ~~and~~

(C) a banking corporation; and

(D) any other entity:

(i) that is operated for profit;

(ii) 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

(iii) 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.

SECTION 2. Subchapter C, Chapter 171, Tax Code, is amended by adding Sections 171.114 and 171.115 to read as follows:

Sec. 171.114. TREATMENT OF CERTAIN ENTITIES. (a) This

1 section applies only to a corporation that is an entity described by
2 Section 171.001(b)(3)(D).

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

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

7 (2) apportioning the entity's taxable capital to this
8 state as provided by Section 171.106 to determine the entity's
9 apportioned taxable capital; and

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

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

18 (d) The net taxable earned surplus of the entity is
19 determined as provided by Section 171.110 if the entity is not a
20 partnership. If the entity is a partnership, the net taxable earned
21 surplus of the entity is computed by:

22 (1) determining the partnership's reportable federal
23 taxable income and making the following adjustments:

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

26 (B) subtracting dividends received from a
27 subsidiary, associate, or affiliated corporation that does not

1 transact a substantial portion of its business or regularly
2 maintain a substantial portion of its assets in the United States;
3 and

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

7 (2) apportioning the partnership's taxable earned
8 surplus to this state as provided by Section 171.106 to determine
9 the partnership's apportioned taxable earned surplus;

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

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

15 (e) For purposes of Subsection (d)(1):

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

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

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

1 2003, may not be used to reduce net taxable earned surplus.

2 Sec. 171.115. INCOME OF NATURAL PERSONS EXCLUDED.

3 Notwithstanding any other provision of this chapter, to the extent
4 that the net income of natural persons, including a person's share
5 of partnership and unincorporated association income, may not be
6 taxed as provided by Section 24, Article VIII, Texas Constitution,
7 the income is not included in net taxable earned surplus and is not
8 subject to the tax imposed under this chapter.

9 SECTION 3. (a) Subject to other provisions of this section,
10 this Act takes effect for initial, annual, or final reports
11 originally due on or after January 1, 2004.

12 (b) For an entity becoming subject to the franchise tax
13 under this Act:

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

16 (2) for entities in existence on January 1, 2003, that
17 would have been subject to the franchise tax had this Act been in
18 effect on January 1, 2003, the first report due under this Act will
19 be either a final report, if applicable, or an annual report due May
20 15, 2004; and

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

25 SECTION 4. This Act takes effect January 1, 2004.